

**Changes to legislation:** There are currently no known outstanding effects for the Railways Act 1993, Cross Heading: Paragraphs 13 and 14: supplementary. (See end of Document for details)

## SCHEDULES

### <sup>F1</sup>SCHEDULE 4A

#### REVIEW OF ACCESS CHARGES BY [<sup>F1</sup>THE OFFICE OF RAIL AND ROAD]

##### Textual Amendments

- F1** Sch. 4A inserted (30.11.2000) by 2000 c. 38, ss. 231(2), 275(1), Sch. 24, Sch. 28 paras. 11, 17
- F1** Words in Sch. 4A substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 1(cc)(i)**

##### *Paragraphs 13 and 14: supplementary*

- 15 [<sup>F1</sup>(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.
- (2) In giving any notice under paragraph 13(4) or 14(3) above, the [<sup>F2</sup>CMA] must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [<sup>F2</sup>CMA] thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the [<sup>F2</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the [<sup>F2</sup>CMA] thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs [<sup>F3</sup>(2DA),] (2E) and (2F) below, in relation to any investigation by the [<sup>F4</sup>CMA] for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);

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- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

[ Section 109 shall, in its application by virtue of sub-paragraph (2D) above, have<sup>F5</sup>(2DA) effect as if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under paragraphs 13 or 14 of Schedule 4A to the Railways Act 1993.”, and

- (b) subsection (8A) were omitted.]

(2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—

- (a) subsection (2) were omitted;

[<sup>F6</sup>(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the sending of a copy to [<sup>F7</sup>the Office of Rail and Road] under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the CMA in connection with the reference concerned or, if no direction has been given by the CMA under paragraph 13 of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—

“(“ if earlier, the day on which a copy of the relevant changes made by the [<sup>F8</sup>CMA] in connection with the reference concerned is sent to [<sup>F7</sup>the Office of Rail and Road] under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the [<sup>F8</sup>CMA] under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”.

(2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the [<sup>F9</sup>CMA] in connection with the exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), [<sup>F10</sup>—

- (a) the words “, OFCOM or the Secretary of State” were omitted; and
- (b) for the words “their functions” there were substituted “ its functions ”.]

(2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to

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offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.]
- (3) For the purpose of assisting the [F11CMA] in exercising their functions under paragraphs 13 and 14 above, [F7the Office of Rail and Road] shall give to the [F11CMA][F12(in addition to the information provided in accordance with paragraph 12(5) and (6))] any information in [F13:its] possession which relates to matters relevant to the exercise of those functions and—
- (a) is requested by the [F11CMA] for that purpose; or
  - (b) is information which, in his opinion, it would be appropriate for that purpose to give to the [F11CMA] without any such request;
- and any other assistance which the [F11CMA] may require, and which it is within [F13:its] power to give, in relation to any such matters.
- (4) For the purpose of exercising those functions, the [F11CMA] shall take account of
- [F14(a) every revision of which they have been given notice under paragraph 12(6) of information provided under paragraph 1D; and
  - (b) all information]
- given to them for that purpose under sub-paragraph (3) above.

#### Textual Amendments

- F1** Sch. 4A para. 15(1)-(2I) substituted (20.6.2003) for Sch. 4 para. 15(1)(2) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(c); S.I. 2003/1397, art. 2(1), Sch.
- F2** Words in Sch. 4A para. 15(2)-(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in Sch. 4A para. 15(2D) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), Sch. 1 para. 112(2) (with art. 3, Sch. 2 para. 2)
- F4** Word in Sch. 4A para. 15(2D) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Sch. 4A para. 15(2DA) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), Sch. 1 para. 112(3) (with art. 3, Sch. 2 para. 2)
- F6** Sch. 4A para. 15(2E)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), Sch. 1 para. 112(4) (with art. 3, Sch. 2 para. 2)
- F7** Words in Sch. 4A paras. 11-16 substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), Sch. para. 1(ccc)(iii)
- F8** Word in Sch. 4A para. 15(2F) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in Sch. 4A para. 15(2G) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(c)(i); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in Sch. 4A para. 15(2G) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(c)(ii); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in Sch. 4A para. 15(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 81(13)(d); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F12** Words in Sch. 4A para. 15(3) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 10(1)**; S.I. 2007/62, **art. 2**
- F13** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**
- F14** Sch. 4A para. 15(4)(a)(b) substituted (29.1.2007) for words by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 10(2)**; S.I. 2007/62, **art. 2**

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