



Transport Act 2000

2000 CHAPTER 38

PART IV

RAILWAYS

CHAPTER II

OTHER PROVISIONS ABOUT RAILWAYS

Directions to provide etc. railway facilities

223 Regulator's power to require provision etc. of railway facilities

In the Railways Act 1993, after section 16 insert—

"Directions to provide, improve or develop railway facilities

16A Provision, improvement and development of railway facilities

- (1) The Regulator may, on an application—
 - (a) made by the Authority, or
 - (b) made by any other person with the consent of the Authority,give to the operator of a network, station or light maintenance depot a direction to provide a new railway facility if the Regulator considers him to be an appropriate person to provide the new railway facility.
- (2) The Regulator may, on an application—
 - (a) made by the Authority, or
 - (b) made by any other person with the consent of the Authority,give to a person who has an estate or interest in, or right over, an existing railway facility a direction to improve or develop the railway facility if the Regulator

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considers him to be an appropriate person to improve or develop the railway facility.

- (3) The Authority's consent to the making by any other person of an application under subsection (1) or (2) above may be given subject to compliance with conditions (and may be withdrawn if any condition is not complied with before the Regulator decides whether to give the direction).

16B Exemption of railway facilities from section 16A

- (1) The Secretary of State may, after consultation with the Regulator, by order grant exemption from subsection (1) or (2) of section 16A above (or from both of those subsections) in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.
- (2) An exemption under subsection (1) above may be granted in respect of—
- (a) railway facilities of a particular class or description, or
 - (b) a particular railway facility,
- or in respect of part only of railway facilities of a particular class or description or a particular railway facility.
- (3) An exemption under subsection (1) above may be granted generally, to persons of a particular class or description or to a particular person.
- (4) If a person fails to comply with any condition subject to compliance with which an exemption was granted, the Secretary of State may give a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.
- (5) Subject to subsection (4) above, an exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in, or determined by or under, the exemption.
- (6) Exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.

16C Making of applications for directions

- (1) An application for a direction under section 16A above must be made to the Regulator in writing.
- (2) The application must—
- (a) specify the person to whom the direction would be given;
 - (b) state what it would require him to do; and
 - (c) give the applicant's reasons for considering that person to be an appropriate person to do what the direction would require him to do.
- (3) The applicant may at any time vary what the direction would require that person to do by giving to the Regulator notice in writing of the variation; but if the applicant is a person other than the Authority such a notice may only be given with the consent of the Authority.

- (4) The application or notice of a variation may be accompanied by any written representations which the applicant wishes to make in relation to the direction.

16D Procedure for considering applications

- (1) When the Regulator has received the application or notice of a variation, he must—
- (a) send a copy to the person specified in the application, the Authority (if it is not the applicant) and any other persons who the Regulator considers ought to be sent one; and
 - (b) invite them to make written representations within a period specified in the invitation.
- (2) If the person specified in the application makes representations that he is not an appropriate person to do what the direction would require him to do, the Regulator must decide that issue in advance of considering any other matters which may be relevant in deciding whether to give the direction.
- (3) If that person makes such representations but the Regulator decides that he is an appropriate person to do what the direction would require him to do, the Regulator must—
- (a) notify him of that decision; and
 - (b) invite him to make written representations within a period specified in the invitation about any other matters which may be relevant in deciding whether to give the direction.
- (4) The Regulator must—
- (a) send the applicant a copy of any representations received by him in response to any invitation under subsection (1) or (3) above; and
 - (b) invite him to make further written representations within a period specified in the invitation.
- (5) Subject to subsection (6) below, the Regulator may substitute as the applicant any other person if—
- (a) the applicant,
 - (b) the other person, and
 - (c) the Authority (if it is neither the applicant nor the other person),
- consent to the substitution.
- (6) The applicant may, by giving notice in writing to the Regulator, withdraw or suspend the application at any time before the Regulator decides whether to give the direction.
- (7) The Regulator may direct—
- (a) the person specified in the application,
 - (b) the applicant, or
 - (c) any other person (apart from the Authority),
- to provide him with any information required by him in order to decide whether to give the direction.

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- (8) If a person fails to comply with a direction under subsection (7) above, the High Court or the Court of Session may, on the application of the Regulator, make such order as it thinks fit for requiring the failure to be made good.
- (9) Such an order may provide that all the costs or expenses of and incidental to the application shall be borne by—
 - (a) the person who failed to comply; or
 - (b) in the case of a company or other association, any officers who are responsible for the failure to comply.

16E Decisions on applications: adequate reward

- (1) The Regulator may only give a direction to a person under section 16A above to provide, improve or develop a railway facility if he is satisfied that the person will be adequately rewarded for providing, improving or developing the railway facility in accordance with the direction.
- (2) In considering whether he is so satisfied the Regulator shall take into account (in particular)—
 - (a) any receipts obtained or likely to be obtained by the person (from the Authority, passengers, operators of railway services or any other persons) in connection with, or as a result of, the provision, improvement or development of the railway facility; and
 - (b) any other benefit obtained or likely to be obtained by him in consequence of its provision, improvement or development.
- (3) Representations made by the applicant for a direction—
 - (a) under section 16C(4) above, or
 - (b) in response to an invitation under section 16D(4) above,
 may, in particular, include representations as to matters which he considers the Regulator should take into account in deciding whether the person to whom the direction would be given would be adequately rewarded for doing what it would require him to do.

16F Other provisions about decisions

- (1) If the Regulator does not consider it right to give a direction under section 16A above in the terms applied for (or to reject the application), he may give a direction under that section in modified terms.
- (2) The Regulator may include supplementary provisions in any direction under section 16A above, including (in particular)—
 - (a) provision adding detail (for instance, as to the time by which, or standard to which, the person to whom it is given is to do anything which it requires him to do); and
 - (b) provision imposing requirements on the applicant (for instance, to make arrangements for rewarding the person to whom the direction is given or to make payments to him).
- (3) Before giving a direction under section 16A above which is in modified terms or includes supplementary provisions, the Regulator shall—

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- (a) notify his intention to give a direction to the applicant, the Authority (if it is not the applicant) and any other persons who the Regulator considers ought to be notified; and
- (b) invite them to make written representations within a period specified in the invitation;

and if the applicant makes representations that the direction should not be given, the Regulator shall not give it.

- (4) Whatever the Regulator's decision on an application he shall notify the decision to—
 - (a) the person specified in the application;
 - (b) the applicant; and
 - (c) any other persons who he considers ought to be notified.
- (5) The Regulator may direct the person specified in the application or the applicant to pay to—
 - (a) the other of those persons, or
 - (b) any other person directed to provide information under section 16D(7) above,any such amount as he considers appropriate in respect of costs incurred in connection with the application.

16G Directions: compliance, variation and revocation

- (1) A person shall not be regarded as failing to comply with a direction under section 16A above if he has done everything which it is reasonably practicable to do in order to comply with the direction.
- (2) If a person is unable to comply with such a direction because he does not have the necessary powers or rights (including rights over land), he shall not be taken to have done everything which it is reasonably practicable to do in order to comply with the direction unless he has done everything which it is reasonably practicable to do in order to obtain those powers or rights.
- (3) A direction under section 16A above may only be revoked or varied by the Regulator—
 - (a) on the application of the person to whom the direction was given, the applicant for the direction or the Authority (if it was not the applicant); and
 - (b) after consultation with the other persons with power to apply for a revocation or variation.
- (4) Such a direction may only be varied on an application by the applicant for the direction or the Authority if the Regulator is satisfied that the person to whom the direction was given will be adequately rewarded for providing, improving or developing the railway facility in accordance with the varied direction, taking into account (in particular) the matters specified in section 16E(2) above.
- (5) The Regulator may grant an application for the variation or revocation of a direction under section 16A above by the applicant for the direction or the Authority on condition that he or it secures that any such compensation as the Regulator may specify is paid to the person to whom the direction was given

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in respect of any liabilities incurred, or other things done, by him in complying with the direction.

16H Code of practice

- (1) The Regulator shall prepare, and from time to time revise, a code of practice supplementing sections 16A to 16G above and shall publish it in such manner as he considers appropriate.
- (2) The Regulator shall have regard to the code of practice in the exercise of his functions under those sections.
- (3) The code of practice may (in particular)—
 - (a) set out minimum periods to be specified in invitations to make representations;
 - (b) include provision about requesting the provision of information prior to giving a direction under section 16D(7) above;
 - (c) specify principles according to which directions to pay costs are to be given under section 16F(5) above; and
 - (d) make provision about the consultation required by section 16G(3)(b) above.

16I Supplementary

- (1) References in sections 16A to 16H above and this section to a railway facility include part of a railway facility.
- (2) Nothing in any of those sections or a direction under section 16A above—
 - (a) limits any power of the Regulator under any other provision of this Act; or
 - (b) affects any obligation to provide a new railway facility, or to improve or develop an existing railway facility, arising otherwise than from such a direction.”

Objectives of Regulator and Secretary of State

224 Amendment of objectives

- (1) Section 4 of the Railways Act 1993 (general duties of Regulator and Secretary of State) is amended as follows.
- (2) In subsection (1) (objectives)—
 - (a) for “Secretary of State and the Regulator shall each” substitute “Regulator shall”,
 - (b) before paragraph (a) insert—
 - “(za) to facilitate the furtherance by the Authority of any strategies which it has formulated with respect to its purposes;”,
 - (c) after paragraph (b) insert—
 - “(ba) to contribute to the development of an integrated system of transport of passengers and goods;

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- (bb) to contribute to the achievement of sustainable development;”, and
 - (d) in paragraph (d) (promotion of competition in provision of railway services), insert at the end “for the benefit of users of railway services”.
- (3) In subsection (2) (objectives)—
- (a) for “Secretary of State and the Regulator shall each” substitute “Regulator shall”, and
 - (b) omit “the Secretary of State or, as the case may be,”.
- (4) In subsection (3) (safety and the environment), for “Secretary of State and the Regulator shall each” substitute “Regulator shall”.
- (5) After that subsection insert—
- “(3A) Subsections (1) to (3) above shall have effect in relation to the Secretary of State as in relation to the Regulator, except that in their application to the Secretary of State—
- (a) paragraph (za) of subsection (1) above shall be disregarded; and
 - (b) the references in each of the subsections to the functions transferred or assigned to the Secretary of State under or by virtue of this Part include only the functions transferred or assigned to him under or by virtue of sections 6 to 22 and 37 to 50 below.”
- (6) In subsection (5) (additional duties of Regulator), for paragraph (a) (duty until 31st December 1996 to take account of guidance of Secretary of State) substitute—
- “(a) to have regard to any general guidance given to him by the Secretary of State about railway services or other matters relating to railways;”.
- (7) After subsection (7) insert—
- “(7ZA) Any general guidance given by the Secretary of State to the Regulator about railway services or other matters relating to railways—
- (a) shall be published by the Secretary of State in such manner as he considers appropriate; and
 - (b) may be varied or revoked.”

Enforcement regime

225 Penalties

- (1) In the Railways Act 1993, after section 57 insert—

“57A Penalties

- (1) If the appropriate authority is satisfied that a relevant operator has contravened or is contravening—
- (a) a relevant condition or requirement, or
 - (b) a final or provisional order made by the appropriate authority,
- the appropriate authority may impose on the relevant operator a penalty of such amount as is reasonable.
- (2) A penalty is payable to the Authority.

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- (3) The amount of a penalty imposed on a relevant operator may not exceed 10 per cent. of his turnover determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (4) No penalty may be imposed in respect of any contravention of a final or provisional order if provision was made in the order by virtue of section 55(7A) above in relation to the contravention.
- (5) The Authority shall not impose a penalty on a licence holder or person under closure restrictions unless—
 - (a) it has given notice to the Regulator specifying a period within which he may give notice to it if he considers that the most appropriate way of proceeding is under the Competition Act 1998;
 - (b) that period has expired; and
 - (c) the Regulator has not given notice to the Authority within that period that he so considers (or, if he has, he has withdrawn it).
- (6) The Regulator shall not impose a penalty if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

57B Statement of policy

- (1) The Authority and the Regulator shall each prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) A statement of policy may include provision for a decision whether to impose a penalty, or the determination of the amount of any penalty, in respect of the contravention of any relevant condition or requirement or order to be influenced by—
 - (a) the desirability of securing compliance with that relevant condition or requirement or order;
 - (b) the consequences or likely consequences of anything which has been or is being done or omitted to be done in contravention of that relevant condition or requirement or order; and
 - (c) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional orders.
- (3) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the Authority and Regulator shall have regard to any statement of its or his policy published at the time when the contravention occurred.
- (4) The Authority and Regulator—
 - (a) may at any time alter or replace a statement of his or its policy; and
 - (b) shall publish the altered or replacement statement.
- (5) The Authority and Regulator shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.

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- (6) The Authority and Regulator shall publish a statement of policy in the manner that appears most suitable for bringing it to the attention of those likely to be affected by it.
- (7) This section applies in relation to sums required to be paid by virtue of section 55(7A) above as to penalties, but as if—
 - (a) references to the imposition of penalties were to the inclusion in an order of a requirement to pay a sum;
 - (b) references to relevant conditions or requirements were omitted; and
 - (c) the reference in subsection (2)(b) above to anything which has been or is being done or omitted to be done included a reference to anything which is likely to be done or omitted to be done.

57C Procedural requirements for penalties

- (1) Before it imposes a penalty on a relevant operator, the appropriate authority shall give notice—
 - (a) stating that it proposes to impose a penalty on the relevant operator and the amount of the penalty proposed,
 - (b) setting out the relevant condition or requirement or order in question,
 - (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of a penalty and the amount of the penalty proposed,
 - (d) specifying the manner in which, and place at which, it is proposed to require the penalty to be paid, and
 - (e) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
 - (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
 - (b) by serving a copy of the notice on the relevant operator.
- (3) Where the Regulator serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the Authority; and where the Authority so serves a copy of such a notice, it shall also serve a copy on the Regulator.
- (4) The appropriate authority shall not modify a proposal to impose a penalty except—
 - (a) with the consent of the relevant operator;
 - (b) where the modifications consist of a reduction of the amount of the penalty or a deferral of the date by which it is to be paid; or
 - (c) after complying with the requirements of subsection (5) below.
- (5) The requirements mentioned in subsection (4)(c) above are that the appropriate authority shall—

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- (a) give to the relevant operator such notice as appears to it requisite of its modified proposal;
 - (b) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty, the appropriate authority shall give notice—
- (a) stating that it has imposed a penalty on the relevant operator and its amount;
 - (b) setting out the relevant condition or requirement or order in question;
 - (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of the penalty and its amount;
 - (d) specifying the manner in which, and place at which, the penalty is to be paid; and
 - (e) specifying the date (not being less than fourteen days from the date of publication of the notice) by which the penalty is to be paid.
- (7) A notice under subsection (6) above shall be given—
- (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
 - (b) by serving a copy of the notice on the relevant operator.
- (8) The relevant operator may, within 21 days of the date of service on him of the notice under subsection (6) above, make an application to the appropriate authority for it to specify different dates by which different portions of the penalty are to be paid.

57D Time limits

- (1) No penalty may be imposed in respect of a contravention by a relevant operator—
- (a) by virtue of paragraph (a) of subsection (1) of section 57A above in a case where no final or provisional order has been made in relation to the contravention, or
 - (b) by virtue of paragraph (b) of that subsection,
- unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator within two years of the time of the contravention.
- (2) No penalty may be imposed in respect of a contravention by a relevant operator by virtue of section 57A(1)(a) above in a case where a final or provisional order has been made in relation to the contravention unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator—
- (a) within three months of the confirmation of the provisional order or the making of the final order; or

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- (b) where the provisional order is not confirmed, within six months of the making of the provisional order.

57E Interest and payment of instalments

- (1) If the whole or any part of a penalty is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (8) of section 57C above in relation to a penalty, the penalty need not be paid until the application has been determined.
- (3) If the appropriate authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the appropriate authority under that subsection, so much of the penalty as has not already been paid is to be paid immediately.

57F Validity and effect of penalties

- (1) If the relevant operator to whom a penalty order relates is aggrieved by a penalty and desires to question its validity on the ground—
 - (a) that it was not within the powers of section 57A above,
 - (b) that any of the requirements of section 57C above have not been complied with in relation to it and his interests have been substantially prejudiced by the non-compliance, or
 - (c) that it was unreasonable of the appropriate authority not to grant an application under section 57C(8) above;he may make an application to the court under this section.
- (2) An application under this section by a person shall be made—
 - (a) where it is on the ground mentioned in subsection (1)(c) above, within 42 days from the date on which he is notified of the decision not to grant the application under section 57C(8) above, and
 - (b) in any other case, within 42 days from the date of service on him of the notice under section 57C(6) above.
- (3) If an application is made under this section in relation to a penalty, the penalty need not be paid until the application has been determined.
- (4) On an application under this section on the ground mentioned in subsection (1) (a) or (b) above the court, if satisfied that the ground is established, may quash the penalty or (instead of quashing it) make provision under either or both of paragraphs (a) and (b) of subsection (5) below.
- (5) The provision referred to in subsection (4) above is—
 - (a) provision substituting a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; and
 - (b) provision substituting as the date by which the penalty, or any portion of the penalty, is to be paid a date later than that specified in the notice under section 57C(6) above.

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- (6) On an application under this section on the ground mentioned in subsection (1) (c) above the court, if satisfied that the ground is established, may specify different dates by which different portions of the penalty are to be paid.
 - (7) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it determines; and where it specifies as the date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application it may require the payment of interest on the penalty, or portion, from that date at such rate as it determines.
 - (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.”
- (2) In section 55 of that Act (orders for securing compliance), for subsection (8) substitute—
- “(7A) The provision that may be made in a final or provisional order includes, in particular, provision requiring the relevant operator to pay to the Authority in the event of any specified contravention of the order such reasonable sum in respect of the contravention as is specified in, or determined in accordance with, the order in such manner, at such place and by such date as is so specified or determined.
 - (7B) The amount of the sum may not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
 - (7C) If the whole or any part of the sum is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.”

226 Orders for securing compliance

- (1) In section 55 of the Railways Act 1993 (orders for securing compliance)—
- (a) in subsection (5) (cases where order shall not be made or confirmed) omit paragraphs (b) and (c),
 - (b) after subsection (5A) insert—
 - “(5B) If the appropriate authority is satisfied—
 - (a) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question, or
 - (b) that the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure,
 it shall only make a final order, or make or confirm a provisional order, if it considers it appropriate to do so.”, and

- (c) in subsection (6) (requirement to serve and publish notice that subsection (5) or (5A) applies), for the words from “is satisfied” to “so satisfied” substitute “does not make a final order, or make or confirm a provisional order, because of any provision contained in any of subsections (5) to (5B) above, it shall—
 - (a) serve notice of that fact”.
- (2) In section 56 of that Act (procedural requirements about orders)—
 - (a) in subsection (1)(c) (requirement of at least 28 days' notice for making representations or objections to proposed final order or proposed confirmation of provisional order), for “28” substitute “21”,
 - (b) in subsection (4)(b) (requirement of at least 28 days' notice for making representations or objections to proposed modifications), for “in that notice specify the period (not being less than 28” substitute “unless the proposed modifications are trivial, in that notice specify a period (not being less than seven”, and
 - (c) in subsection (6)(b) (requirement of at least 28 days' notice for making representations or objections to proposal to revoke order), for “28” substitute “21”.

Consultative committees

227 Renaming of committees

- (1) The Central Rail Users' Consultative Committee is renamed the Rail Passengers' Council and the Rail Users' Consultative Committees are renamed Rail Passengers' Committees.
- (2) Schedule 22 makes amendments in consequence of subsection (1).
- (3) References in private Acts, instruments made under Acts, other documents and legal proceedings to the Central Rail Users' Consultative Committee shall have effect as references to the Rail Passengers' Council; and such references to a Rail Users' Consultative Committee shall have effect as references to a Rail Passengers' Committee.

228 Extension of functions

- (1) Sections 76 and 77 of the Railways Act 1993 (duties of Central Committee and consultative committees) are amended as follows.
- (2) In subsection (1) of each of those sections, for paragraph (a) (duty to investigate any matter which relates to the provision of railway passenger services by the Board or a subsidiary, under a franchise agreement or on behalf of the Franchising Director) substitute—
 - “(a) to the provision of railway passenger services, or”.
- (3) In—
 - (a) subsection (5)(b) of section 76, and
 - (b) subsection (4)(b) of section 77,(matters to be referred), after “that” insert “a franchisee is contravening, or is likely to contravene, any term of the franchise agreement or that”.

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(4) After subsection (7) of section 76 insert—

“(7A) It shall also be the duty of the Rail Passengers' Council, so far as it appears expedient from time to time to do so—

- (a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services;
- (b) to make representations to, and consult, such persons as they think appropriate about those matters; and
- (c) to co-operate with other bodies representing the interests of users of public passenger transport services.

(7B) The Secretary of State may, after consultation with the Rail Passengers' Council, make an order excluding services from the duties imposed by this section; and an order under this subsection—

- (a) may exclude services of a particular class or description, particular services or services provided by a particular person;
- (b) may provide that services are excluded subject to compliance with specified conditions; and
- (c) may not revoke an exclusion except for breach of condition or in accordance with the order which made it.

(7C) The Secretary of State may, after consultation with the Rail Passengers' Council, make an order providing that the duties imposed by this section apply to services of a particular class or description, particular services or services provided by a particular person—

- (a) only to such extent as is specified by the order; or
- (b) with such modifications as are so specified.”

(5) After subsection (9) of section 77 insert—

“(9A) It shall also be the duty of each Rail Passengers' Committee, so far as it appears expedient from time to time to do so—

- (a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services; and
- (b) to make representations to, and consult, such persons as they think appropriate about those matters; and
- (c) to co-operate with other bodies representing the interests of users of public passenger transport services.

(9B) The Secretary of State may, after consultation with the Rail Passengers' Council, make an order excluding services from the duties imposed by this section; and an order under this subsection—

- (a) may exclude services of a particular class or description, particular services or services provided by a particular person;
- (b) may provide that services are excluded subject to compliance with specified conditions; and
- (c) may not revoke an exclusion except for breach of condition or in accordance with the order which made it.

(9C) The Secretary of State may, after consultation with the Rail Passengers' Council, make an order providing that the duties imposed by this section apply

to services of a particular class or description, particular services or services provided by a particular person—

- (a) only to such extent as is specified by the order; or
- (b) with such modifications as are so specified.”

229 Financial and procedural changes

Schedule 23 makes amendments of the provisions about the finances and procedures of consultative committees.

Access agreements

230 Regulator’s general approvals of access agreements etc

(1) In subsection (1) of section 18 of the Railways Act 1993 (access contracts requiring approval of Regulator), after paragraph (b) insert “or

- (c) the access contract is of a class or description specified in a general approval given by the Regulator;”;

and for the words from “which is” to the end substitute “shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.”

(2) After subsection (7) of that section insert—

“(7A) Where the Regulator gives or revokes a general approval under subsection (1) (c) above, he shall publish the approval or revocation in such manner as he considers appropriate.

(7B) The revocation of a general approval given under subsection (1)(c) above shall not affect the continuing validity of any access contract to which it applied.”

(3) In subsection (3) of section 19 of that Act (installation access contracts requiring approval of Regulator), after paragraph (b) insert “or

- (c) the installation access contract is of a class or description specified in a general approval given by the Regulator;”;

and for the words from “which is” to the end substitute “shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.”

(4) After subsection (5) of that section insert—

“(5A) Where the Regulator gives or revokes a general approval under subsection (3) (c) above, he shall publish the approval or revocation in such manner as he considers appropriate.

(5B) The revocation of a general approval given under subsection (3)(c) above shall not affect the continuing validity of any installation access contract to which it applied.”

(5) In section 72(2)(b)(v) of that Act (provisions of general approvals under section 22(3) to be entered in register kept by Regulator), after “section” insert “18(1)(c), 19(3)(c) or”.

(6) In section 83(1) of that Act (interpretation), in the definition of “access agreement”—

Status: This is the original version (as it was originally enacted).

- (a) in paragraph (a), for “entered into pursuant to directions under section 17 or 18” substitute “which satisfies one of the conditions in paragraphs (a) to (c) of section 18(1)”, and
- (b) in paragraph (b), for “entered into pursuant to directions under section 19” substitute “which satisfies one of the conditions in paragraphs (a) to (c) of section 19(3)”.

231 Review of access charges by Regulator

- (1) In the Railways Act 1993, after section 19 insert—

“19A Review of access charges by Regulator

Schedule 4A to this Act (which contains provision about the review of access charges by the Regulator) shall have effect.”

- (2) After Schedule 4 to that Act insert, as Schedule 4A, the Schedule set out in Schedule 24 to this Act.

232 Amendment of access agreements

- (1) In subsection (1) of section 22 of the Railways Act 1993 (amendment of access agreement void unless approved by Regulator), insert at the end “or is made pursuant to directions under section 22A or 22C below or Schedule 4A to this Act.”
- (2) After that section insert—

“22A Directions to require amendment permitting more extensive use

- (1) The Regulator may, on the application of the person permitted by an access agreement to use the whole or part of a railway facility or network installation, give directions requiring the parties to the access agreement to make to the agreement—
- (a) amendments permitting more extensive use of the railway facility or network installation by the applicant; and
 - (b) any amendments which the Regulator considers necessary or desirable in consequence of those amendments.
- (2) In subsection (1)(a) above “more extensive use” means—
- (a) increased use for the purpose for which the applicant is permitted by the access agreement to use the railway facility or network installation, or
 - (b) (in the case of a railway facility) use for any other permitted purpose, and if the applicant is permitted to use only part of the railway facility or network installation, includes use for the purpose for which he is permitted to use it, or (in the case of a railway facility) for any other permitted purpose, of any other part of the railway facility or network installation.
- (3) In subsection (2) above “permitted purpose”, in relation to a railway facility, means a purpose for which directions may be given in relation to the railway facility under section 17 above.

Status: This is the original version (as it was originally enacted).

- (4) No directions shall be given under this section in relation to a railway facility if and to the extent that—
 - (a) the railway facility is, by virtue of section 20 above, an exempt facility; or
 - (b) performance of the access agreement as amended would necessarily involve the facility owner in being in breach of another access agreement or an international railway access contract.
- (5) No directions shall be given under this section in relation to a railway facility or network installation if and to the extent that, as a result of an obligation or duty owed by the facility owner or installation owner which arose before the coming into force of section 17 or 19 above, the consent of some other person is required by him before he may make the amendments.
- (6) Nothing in this section authorises the Regulator to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility or network installation.
- (7) In this section and section 22B below—
 - (a) “international railway access contract” and “lease” have the same meaning as in section 17 above; and
 - (b) “network installation” has the same meaning as in section 19 above.

22B Applications for directions under section 22A: procedure

- (1) Schedule 4 to this Act shall have effect with respect to applications for directions under section 22A above as it has effect with respect to applications for directions under section 17 above (but subject as follows).
- (2) In its application by virtue of this section Schedule 4 to this Act has effect with the following modifications—
 - (a) in paragraph 1, in the definition of “the facility owner”, for “17(1)” there shall be substituted “22A” and, in the definition of “interested person”, for “enter into the required access contract” there shall be substituted “make the amendments”;
 - (b) in paragraph 2(1), for “which the applicant proposes should be contained in the required access contract” and “to be contained in the required access contract” there shall be substituted “of the proposed amendments”;
 - (c) in paragraph 5(2), for “to the facility owner requiring him to enter into an access contract” there shall be substituted “under section 22A of this Act”;
 - (d) for paragraph 5(2)(a)(i) and (ii) there shall be substituted “the amendments to be made and the date by which they are to be made; and”;
 - (e) in paragraph 6(2), for the words from “facility owner's” to the end of paragraph (c) there shall be substituted “making of the amendments, the performance of the access agreement as amended or failing to take any step to protect the interests of the interested person in connection with the application for directions or the making of the amendments,”; and

Status: This is the original version (as it was originally enacted).

- (f) in paragraph 6(3), for “any access contract which is entered into” there shall be substituted “the amendments made”;
 and the definition of “the required access contract”, and the words following that definition, in paragraph 1 and paragraph 5(4) shall be omitted.
- (3) In its application by virtue of this section in relation to an application relating to an installation access contract Schedule 4 to this Act has effect with the following further modifications—
 - (a) references to the railway facility shall have effect as references to the network installation;
 - (b) references to the facility owner shall have effect as references to the installation owner; and
 - (c) in the definition of “interested person” in paragraph 1, for “17” there shall be substituted “19”.
- (4) The Regulator may determine that, in their application by virtue of this section in relation to any particular application, paragraphs 3 and 4 of Schedule 4 to this Act shall have effect as if for any of the numbers of days specified in them there were substituted the lower number specified by the Regulator.

22C Amendment: supplementary

- (1) The Regulator may give directions requiring the parties to an access agreement to make to the access agreement amendments which are, in his opinion, necessary to give effect to the conditions of a licence or otherwise required in consequence of the conditions of a licence.
- (2) The Regulator shall not have power to direct or otherwise require amendments to be made to an access agreement except in accordance with section 22A above, subsection (1) above or Schedule 4A to this Act.
- (3) If an access agreement includes provision for any of its terms to be varied—
 - (a) by agreement of the parties, or
 - (b) by direction or other requirement of the Regulator,
 a variation made pursuant to that provision shall not be regarded for the purposes of section 22 above or subsection (2) above as an amendment of the agreement.”

233 Prospective facility owners, proposed facilities etc

- (1) In section 17(6) of the Railways Act 1993 (directions requiring facility owners to enter into contracts for use of their railway facilities), in the definition of “facility owner”, after paragraph (b) insert “but also includes a person before he becomes a facility owner;”.
- (2) In section 19 of that Act (contracts for use of installations comprised in a network)—
 - (a) in subsection (9), in the definition of “installation owner”, after paragraph (b) insert “but also includes a person before he becomes an installation owner;”, and
 - (b) in subsection (11), insert at the end “and to one which is proposed to be constructed or is in the course of construction.”
- (3) In section 83 of that Act (interpretation of Part I), after subsection (1) insert—

“(1A) In sections 17 to 22C above (and Schedule 4 to this Act) references to a railway facility (including references to any track, station or light maintenance depot) or a network include references to a railway facility (or any track, station or light maintenance depot) or a network which is proposed to be constructed or is in the course of construction.”

Closures

234 Transfer of Regulator’s functions to Secretary of State

- (1) In sections 37(6), 38(5), 39(7), 40(5), 41(6) and 42(4) of the Railways Act 1993 (lodging of objections to proposed closures with Regulator), for “Regulator” substitute “Secretary of State”.
- (2) In sections 37(9), 38(7), 39(10), 40(7), 41(9) and 42(6) of that Act, in the definition of “the final decision on the closure question”, for paragraphs (a) and (b) substitute “the Secretary of State’s decision under section 43(9) below with respect to the proposed closure;”.
- (3) In section 43 of that Act (notification to, and functions of, Regulator)—
 - (a) for “Regulator” (in each place except subsection (11)) substitute “Secretary of State”,
 - (b) omit subsection (11) (time limit for making of decisions by Regulator), and
 - (c) in subsection (12), for “Secretary of State” substitute “Regulator”.
- (4) Omit section 44 of that Act (reference of Regulator’s decisions to Secretary of State).
- (5) In section 46 of that Act (variation of closure conditions)—
 - (a) in subsection (1), for “Regulator” substitute “Secretary of State” and omit the words from “, other than” to the end,
 - (b) in subsection (2), for “Regulator” substitute “Secretary of State” and for “Secretary of State” substitute “Regulator”, and
 - (c) omit subsection (3).
- (6) In section 48 of that Act (experimental services)—
 - (a) in subsection (1), for “, 43 and 44” substitute “and 43”, and
 - (b) in subsection (7), for “Regulator” substitute “Secretary of State”.
- (7) In section 68 of that Act (investigatory functions of Regulator), omit subsection (1) (b) (duty to investigate contravention of condition of closure consent).

235 Publication of proposed closures at stations

- (1) In section 43 of the Railways Act 1993 (notification of proposed closures), after subsection (1) insert—

“(1A) The Authority shall also—

 - (a) send a copy of the notice to every person who is the operator of a station within the area affected; and
 - (b) require him to publish it at the station.”
- (2) After subsection (12) of that section insert—

Status: This is the original version (as it was originally enacted).

“(12A) The Secretary of State shall also—

- (a) send a copy of the decision to every person who is the operator of a station within the area affected; and
- (b) require him to publish it at the station.”

(3) In Schedule 5 to that Act (alternative closure procedure), renumber paragraph 2 as sub-paragraph (1) of that paragraph and after that sub-paragraph insert—

“(2) The operator shall also—

- (a) send a copy of the notice to every person who is the operator of a station within the area affected; and
- (b) require him to publish it at the station.”

(4) After paragraph 3 of that Schedule insert—

“Publication of consent at stations

3A Where the Secretary of State has given his consent under paragraph 3(2) (b) above, he shall—

- (a) send a copy of it to every person who is the operator of a station within the area affected; and
- (b) require him to publish it at the station.”

(5) In paragraph 5A of that Schedule (services in and around Greater London), insert at the end—

“(10) The Secretary of State shall also—

- (a) send a copy of his decision to every person who is the operator of a station within the area affected; and
- (b) require him to publish it at the station.”

(6) In sub-paragraph (1) of paragraph 6 of that Schedule (interpretation), for “in which the station or the line, or any part of the line, affected by the proposed closure is situated” substitute “affected”.

(7) After that sub-paragraph insert—

“(1A) In this Schedule “the area affected” means the area in which the station or line, or any part of the line, affected by the proposed closure is situated.”

236 Conditions

(1) In section 37(1) of the Railways Act 1993 (notice of proposed closure of non-franchised passenger services except where closure is minor closure), after “minor closure” insert “and the service operator has agreed to comply with any conditions imposed by the Authority”.

(2) In sections 39(1) and 41(1) of that Act (notice of proposed closure of whole or part of network or facility except where closure is minor closure), after “minor closure” insert “and the operator has agreed to comply with any conditions imposed by the Authority”.

(3) In section 55(10) of that Act (enforcement), in the definition of “relevant condition or requirement”, after paragraph (c) insert—

Status: This is the original version (as it was originally enacted).

“(d) in the case of a person (other than the Authority) who is required to comply with closure conditions or has agreed to comply with conditions under section 37(1), 39(1) or 41(1) above, any of those conditions;”,

and, in the definition of “relevant operator”, for “or person under closure restrictions” substitute “, person under closure restrictions or person who is required to comply with closure conditions or has agreed to comply with conditions under section 37(1), 39(1) or 41(1) above”.

(4) In sections 37(8)(b), 38(6)(b), 39(9)(b), 40(6)(b), 41(8)(b) and 42(5)(b) of that Act (securing compliance with closure conditions), after “secure” insert “(in accordance with sections 55 to 58 below)”.

237 Closure of unnecessary track to be minor closure

In section 39(10) of the Railways Act 1993 (proposals to close part of network used or previously used for or in connection with provision of services for carriage of passengers), in the definition of “minor closure”, after paragraph (a) insert—

“(aa) any part of a network which consists of a stretch of track, or installations associated with a stretch of track, doing no more than serve a station or light maintenance depot, or some part of it, where the circumstances are such that—

- (i) that part of the network is not necessary for the use of the station or light maintenance depot, or that part of it, for the purpose of or in connection with the provision of services for the carriage of passengers by railway; or
- (ii) the use of the station or light maintenance depot, or that part of it, has been or is proposed to be subject to termination constituting a minor closure within the meaning of section 41 below; or”.

238 General determinations of minor closures

In the Railways Act 1993, after section 46 insert—

“46A General determinations of minor closures

- (1) The Authority may make a general determination for the purposes of any or all of sections 37(1), 38(2), 39(1), 40(2), 41(1) and 42(2) above that closures of a particular class or description are minor closures.
- (2) Where the Authority makes or revokes a general determination under subsection (1) above, it shall—
 - (a) give a copy of the determination or revocation to the Regulator; and
 - (b) publish it in such manner as it considers appropriate.
- (3) The revocation of a general determination made under subsection (1) above shall not affect any closure if its status as a minor closure by virtue of the general determination has been relied on before the revocation as the ground for not giving a notice or for discontinuing any services or the operation of the whole or part of any network or facility.”

Status: This is the original version (as it was originally enacted).

239 Operator’s duty to continue

- (1) In section 37 of the Railways Act 1993 (closures of non-franchised passenger services)
 - (a) in subsections (1) and (3)(b), for “will” substitute “proposes to”, and
 - (b) in subsection (6), for the words following the paragraphs substitute “and the service operator shall not discontinue the services to which the proposed closure relates before the end of the interim period.”
- (2) In section 39(7) of that Act (closures of operational passenger networks), for the words following the paragraphs substitute “and the operator shall not discontinue the operation of the network, or the part of the network, to which the proposed closure relates before the end of the interim period.”
- (3) In section 41(6) of that Act (closures of railway facilities used in connection with passenger services), for the words following the paragraphs substitute “and the operator shall not terminate the use of the relevant facility, or the part of the relevant facility, to which the proposed closure relates before the end of the interim period.”
- (4) In section 55(10) of that Act (enforcement), in the definition of “relevant condition or requirement”, in paragraph (c)(i), for the words after “under” substitute “section 37(1) or (6), 39(1) or (7) or 41(1) or (6) above not to discontinue a railway passenger service or the operation of the whole or part of a network or not to terminate the use of the whole or part of a station or light maintenance depot; and”.

The Board

240 Transfer of Board’s property etc. to Secretary of State

Schedule 25 makes provision for the transfer to the Secretary of State of property, rights and liabilities of the Board.

241 Winding down and abolition of Board

- (1) Section 84 of the Railways Act 1993 (power of Board to form companies) shall apply as if facilitating the carrying into effect of, or of any provision made under, sections 217, 218 and 240 and Schedules 18, 19 and 25 were a purpose specified by the Secretary of State under subsection (1)(d) of that section; and section 85 of that Act (power of Board to make transfer schemes) shall apply as if that were a purpose specified in subsection (3)(b) of that section.
- (2) The Board shall give to the Authority any information, prepare any document and do any other thing which appears to the Authority appropriate for facilitating the carrying into effect of, or of any provision made under, sections 217, 218 and 240 and Schedules 18, 19 and 25.
- (3) The Secretary of State may—
 - (a) by order made by statutory instrument reduce the membership of the Board to a chairman and one or more other persons appointed by the Secretary of State, and
 - (b) by notice in writing remove from office any member of the Board or vary the terms of his appointment.

Status: This is the original version (as it was originally enacted).

- (4) When, after consulting the Board, the Secretary of State considers that it is no longer necessary for the Board to continue to exist, he shall by order made by statutory instrument provide for its dissolution.
- (5) If a person ceases to hold office as chairman or a member of the Board by virtue of subsection (3)(b) or (4) before his term of office would otherwise have expired and the Secretary of State determines that there are special circumstances which make it right that the person should receive compensation—
- (a) if the person ceases to hold office by virtue of subsection (3)(b), the Board, and
 - (b) if the person ceases to hold office by virtue of subsection (4), the Secretary of State,
- shall pay to the person such compensation as may be determined by the Secretary of State.
- (6) Where an order under subsection (4) provides for the Board to be dissolved with effect from a time which would not, apart from this subsection, be the end of its financial year, the financial year of the Board which is current at that time shall be deemed to end with its dissolution.
- (7) An order under subsection (4) which so provides may contain such provision as the Secretary of State considers appropriate (including provision modifying the effect of any enactment) for the Board or the Authority—
- (a) to prepare accounts for the final financial year of the Board, and
 - (b) to make and lay before Parliament a report relating to the carrying out of the Board's functions during that financial year.

Competition

242 Licence modifications following Competition Commission report

- (1) In section 15 of the Railways Act 1993 (modification of licence conditions following report of Competition Commission), after subsection (4) insert—
- “(4A) Where (after considering any representations or objections which are duly made and not withdrawn) the Regulator or Authority proposes to make or require the making of modifications under this section, he or it shall give notice to the Competition Commission—
- (a) setting out the modifications he proposes to make or it proposes to require to be made; and
 - (b) stating the reasons why he proposes to make the modifications or it proposes to require the making of them.
- (4B) The Regulator or Authority shall include with the notice under subsection (4A) above a copy of any representations and objections which have been considered.
- (4C) If the period within which a direction may be given by the Competition Commission under section 15A below expires without such a direction being given, the Regulator or Authority shall make, or require the making of, the modifications set out in the notice given under subsection (4A) above.

Status: This is the original version (as it was originally enacted).

(4D) If a direction is given by the Competition Commission under section 15A(1) (b) below, the Regulator or Authority shall make, or require the making of, such of those modifications as are not specified in the direction.”

(2) After that section insert—

“15A Competition Commission’s power to veto modifications following report

- (1) The Competition Commission may, within the period of four weeks beginning with the day on which they are given notice under section 15(4A) above, give a direction to the Regulator or Authority—
 - (a) not to make, or require the making of, the modifications set out in the notice; or
 - (b) not to make such of those modifications as are specified in the direction.
- (2) The Secretary of State may, if an application is made to him by the Competition Commission within that period of four weeks, extend the period within which a direction may be given under this section to one of six weeks beginning with the day on which the Competition Commission are given notice under section 15(4A) above.
- (3) The Competition Commission may give a direction under this section only if the modifications to which it relates do not appear to them requisite for the purpose of remedying or preventing the adverse effects specified in their report on the reference under section 13 above.
- (4) If the Competition Commission give a direction under this section, they shall give notice—
 - (a) setting out the modifications contained in the notice given under section 15(4A) above;
 - (b) setting out the direction; and
 - (c) stating the reasons why they are giving the direction.
- (5) A notice under subsection (4) above shall be given—
 - (a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the direction; and
 - (b) by serving a copy of the notice on the holder of the licence.

15B Making of modifications by Competition Commission

- (1) If the Competition Commission give a direction under section 15A above, they shall themselves make such modifications of the conditions of the licence as appear to them requisite for the purpose of remedying or preventing—
 - (a) the adverse effects specified in their report on the reference under section 13 above; or
 - (b) such of those adverse effects as would not be remedied or prevented by the modifications made by the Regulator, or required to be made by the Authority, under section 15(4D) above.

Status: This is the original version (as it was originally enacted).

- (2) In exercising the function conferred by subsection (1) above, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Regulator by section 4 above.
- (3) Before making modifications under this section, the Competition Commission shall give notice—
 - (a) stating that they propose to make the modifications and setting out their effect,
 - (b) stating the reasons why they propose to make the modifications, and
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
 - (a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the holder of the licence.
- (5) As soon as practicable after making any modifications under this section, the Competition Commission shall send a copy of those modifications to the Regulator, the Authority and the Health and Safety Executive.

15C Sections 15A and 15B: supplementary

- (1) The provisions mentioned in subsection (2) below are to apply in relation to the exercise by the Competition Commission of their functions under sections 15A and 15B above as if—
 - (a) in section 82(1) and (2) of the 1973 Act references to a report of the Competition Commission under that Act were references to a notice under section 15A(4) or 15B(3) above;
 - (b) in section 85 of that Act references to an investigation on a reference made to the Competition Commission were references to an investigation by the Competition Commission for the purposes of the exercise of their functions under those sections; and
 - (c) in section 93B of that Act references to the functions of the Competition Commission under that Act were references to their functions under those sections.
- (2) The provisions are—
 - (a) sections 82(1) and (2) (general provisions as to reports), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the 1973 Act;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission's general functions); and
 - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

Status: This is the original version (as it was originally enacted).

- (3) For the purpose of assisting the Competition Commission in exercising their functions under sections 15A and 15B above, the Regulator and the Authority shall give to the Competition Commission any information in his or its possession which relates to matters relevant to the exercise of those functions and—
- (a) is requested by the Competition Commission for that purpose; or
 - (b) is information which, in his or its opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;
- and any other assistance which the Competition Commission may require, and which it is within his or its power to give, in relation to any such matters.
- (4) For the purpose of exercising those functions, the Competition Commission shall take account of any information given to them for that purpose under subsection (3) above.”

243 Competition functions of Regulator

- (1) Section 67 of the Railways Act 1993 (functions of Regulator and Director General of Fair Trading) is amended as follows.
- (2) In subsection (3) (concurrent exercise by Regulator and Director of functions under Part I of Competition Act 1998 so far as relating to agreements etc. which relate to supply of railway services), for “railway services” substitute “services relating to railways”.
- (3) After that subsection insert—
- “(3ZA) In subsection (3) above “services relating to railways” means—
- (a) railway services;
 - (b) the provision or maintenance of rolling stock;
 - (c) the development, maintenance or renewal of a network, station or light maintenance depot; and
 - (d) the development, provision or maintenance of information systems designed wholly or mainly for facilitating the provision of railway services.
- (3ZB) The Secretary of State may by order amend subsection (3ZA) above; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.”

Pensions

244 Authority’s duty to continue Board’s practice of indexation

- (1) The Authority shall make provision for increases in pensions and capital sums to which this section applies broadly corresponding to each increase in official pensions under the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975 (“an official pensions increase”).
- (2) This section applies to a pension or capital sum at any time if—

Status: This is the original version (as it was originally enacted).

- (a) at that time it is a pension in payment, a deferred pension or capital sum or a pension or capital sum to which a person's future entitlement is contingent on the death of another person, and
 - (b) the Board either made provision for an increase in it broadly corresponding to an official pensions increase or would have done so if it had been within paragraph (a) at a time when the Board made provision for increases broadly corresponding to an official pensions increase.
- (3) But where it was the practice of the Board, when making increases broadly corresponding to an official pensions increase, in any circumstances—
- (a) not to make provision for an increase, or
 - (b) to make provision for an increase of a reduced amount,
- subsection (1) does not require the Authority to make in similar circumstances provision for an increase in excess of any for which the Board would have made provision.

245 Amendments of pension protection provisions

- (1) In paragraph 6(2)(a)(ii) of Schedule 11 to the Railways Act 1993 (power to make order providing for pension rights of protected persons to be no less favourable as a result of a transfer of pension rights), after “rights” insert “(whether made between occupational pension schemes or sections of an occupational pension scheme or otherwise)”.
- (2) The Railway Pensions (Protection and Designation of Schemes) Order 1994 is amended as follows.
- (3) In article 6 (transfers etc.), insert at the end—
 - “(9) In paragraphs (2), (3), (5), (7)(a) and (b)(i) and (8) references to an occupational pension scheme include a section of such a scheme.”
- (4) In article 7(4) (payments on transfers), insert at the end (but not as part of sub-paragraph (b))—
 - “and in this paragraph references to an occupational pension scheme include a section of such a scheme.”
- (5) In article 9 (circumstances in which breaks in continuity of employment are disregarded)—
 - (a) in paragraph (2), omit “, except to the extent specified in paragraph (3),” and “relevant” (in both places), and
 - (b) in paragraph (3), for “this article” substitute “paragraph (1)”.
- (6) In article 11(4) (activities to be regarded as the railway industry)—
 - (a) after “of Schedule 11 are” insert “the activities of the Authority or any subsidiary of the Authority and activities consisting of”, and
 - (b) for “in each case” substitute “in each of the cases in sub-paragraphs (a) to (d)”.
- (7) Omit paragraphs 13 and 14 (arbitration).
- (8) The amendments made by subsections (3) to (7) shall be treated as if made by an order made under Schedule 11 to the Railways Act 1993 (and, accordingly, may be varied or revoked by an order so made).

Status: This is the original version (as it was originally enacted).

Miscellaneous

246 Passenger Transport Executives

- (1) Section 34 of the Railways Act 1993 (Passenger Transport Authorities and Executives: franchising) is amended as follows.
- (2) After subsection (8) insert—
 - “(8A) The Authority shall not do anything under subsection (8) above if or to the extent that to do it would prevent or seriously hinder the Authority—
 - (a) from complying with any directions given to it by the Secretary of State under section 207(5) of the Transport Act 2000 or from having regard to any guidance so given;
 - (b) from complying with any directions given to it by the Scottish Ministers under section 208 of that Act with which it must comply or from having regard to any guidance so given to which it must have regard; or
 - (c) from exercising any of its functions in a manner which is consistent with its financial framework.
 - (8B) The Authority need not do anything under subsection (8) above if or to the extent that to do it would have an adverse effect on the provision of services for the carriage of passengers or goods by railway (whether inside or outside the Passenger Transport Executive’s passenger transport area).
 - (8C) The Authority need not do anything under subsection (8) above if or to the extent that to do it would increase the amount of any expenditure of the Authority under agreements or other arrangements entered into (in accordance with a franchise agreement) with—
 - (a) the franchise operator;
 - (b) the franchisee; or
 - (c) any servant, agent or independent contractor of the franchise operator or franchisee.”
- (3) In subsection (17) (disputes between Authority and Passenger Transport Executives: directions by Secretary of State), for “with respect to the dispute” substitute “with respect to the proposal or franchise agreement”.

247 Standards

- (1) The Secretary of State may by regulations make provision for the setting of standards to be complied with in relation to railway assets, railway vehicles or railway services.
- (2) The regulations may provide—
 - (a) for standards to be set (and from time to time varied), or
 - (b) for compliance with standards to be monitored,
 by persons specified in, or designated in accordance with, the regulations.
- (3) The regulations may authorise the setting of standards which involve obtaining the approval of any person.
- (4) The regulations may authorise the charging of fees in respect of—

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- (a) the monitoring of compliance with standards, or
 - (b) the seeking of approvals in connection with standards.
- (5) The regulations may impose requirements to provide information on persons who—
- (a) are required to comply with standards, or
 - (b) set, or monitor compliance with, standards,
- and prohibit the giving of false information.
- (6) The regulations may create criminal offences in respect of failures to comply with requirements imposed by the regulations.
- (7) The regulations may provide for such offences to be triable—
- (a) only summarily, or
 - (b) either summarily or on indictment.
- (8) The regulations may provide for an offence triable only summarily to be punishable on conviction with a fine not exceeding—
- (a) level 5 on the standard scale, or
 - (b) such lower amount as may be prescribed.
- (9) The regulations may provide for an offence triable either summarily or on indictment to be punishable—
- (a) on summary conviction, with a fine not exceeding the statutory maximum or such lower amount as may be prescribed, or
 - (b) on conviction on indictment, with a fine.
- (10) The regulations may make different provision for different cases and may (in particular) include provision—
- (a) authorising conditional or unconditional dispensation from requirements imposed by the regulations which would otherwise apply, or
 - (b) requiring compliance with requirements so imposed which would not otherwise apply,
- in particular cases or descriptions of case.
- (11) The regulations may include such incidental, consequential, supplementary or transitional provisions or savings as the Secretary of State may consider appropriate, including (in particular) provision modifying any provision made by or under any other enactment.
- (12) The regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

248 Substitute services to be suitable for disabled passengers

- (1) This section applies where—
- (a) a person who provides services for the carriage of passengers by railway provides or secures the provision of substitute road services, or
 - (b) the Authority secures the provision of such services (under an agreement entered into in pursuance of section 214).
- (2) In doing so the person or Authority shall ensure, so far as is reasonably practicable, that the substitute road services allow disabled passengers to undertake their journeys safely and in reasonable comfort.

Status: This is the original version (as it was originally enacted).

- (3) In the event of any failure by the person or Authority to comply with subsection (2), he or it shall be liable to pay damages in respect of any expenditure reasonably incurred, or other loss sustained, by a disabled passenger in consequence of the failure.
- (4) The Secretary of State may by order grant exemption from subsection (2) to—
 - (a) any class or description of persons who provide services for the carriage of passengers by railway, or
 - (b) any particular person who provides such services,
 in respect of all substitute road services or any class or description of such services.
- (5) Before making an order under subsection (4) the Secretary of State shall consult—
 - (a) the Disabled Persons Transport Advisory Committee, and
 - (b) such other representative organisations as he thinks fit.
- (6) An order under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “substitute road services” means services for the carriage of passengers by road which are provided where railway services have been temporarily interrupted or discontinued.
- (8) For the purposes of this section a passenger is disabled if he has a disability, or has suffered an injury, which seriously impairs his ability to walk.

249 Freight assistance by Scottish Ministers and Welsh Assembly

- (1) The Authority shall notify the Scottish Ministers and the National Assembly for Wales about any scheme in accordance with which it exercises its functions under section 211 for the purpose of securing the provision, improvement or development of—
 - (a) services for the carriage of goods by railway, or
 - (b) facilities for or in connection with the carriage of goods by railway or the loading or unloading of goods carried or intended to be carried by railway,
 and the criteria applied by it in exercising those functions for that purpose in accordance with the scheme.
- (2) The Scottish Ministers and the National Assembly for Wales may enter into agreements or other arrangements for the purpose of securing the provision, improvement or development in Scotland and Wales (respectively) of—
 - (a) services for the carriage of goods by railway, and
 - (b) facilities for or in connection with the carriage of goods by railway or the loading or unloading of goods carried or intended to be carried by railway,
 in accordance with any scheme notified to them under subsection (1) and applying the criteria so notified.
- (3) In this section—
 - “facilities” includes track, rolling stock, depots, access roads and equipment for use in connection with the carriage, loading or unloading of goods, and
 - “railway” has its wider meaning.

250 Taxation of transfers

Schedule 26 contains provisions about tax.

251 Abolition of requirements for Treasury approval

- (1) The Railways Act 1993 has effect subject to the following amendments.
- (2) In Schedule 1 (Regulator), in paragraph 1 (remuneration, pensions etc.), omit subparagraph (4) (Treasury approval of Secretary of State's determinations).
- (3) In Schedule 2 (rail users' consultative committees), in paragraph 2 (remuneration etc. of chairman), omit “, with the approval of the Treasury,”.
- (4) In Schedule 3 (Central Rail Users' Consultative Committee), in paragraph 2 (remuneration etc. of chairman), omit “, with the approval of the Treasury,”.