



# Railways Act 2005

## 2005 CHAPTER 14

### PART 5

#### FURTHER MISCELLANEOUS PROVISIONS

##### *Railway administration orders for companies providing Scottish services*

#### **49 Functions of Scottish Ministers in relation to railway administration**

- (1) In subsection (6) of section 59 of the 1993 Act (interpretation of expressions used in connection with railway administration)—
- (a) after “Part—” insert—
- “(za) “appropriate national authority”—
- (i) in relation to a Scottish protected railway company or a company subject to a railway administration order that was such a company when the order was made, means the Scottish Ministers; and
- (ii) in relation to any other protected railway company or company subject to a railway administration order, means the Secretary of State;”
- (b) after paragraph (b) insert—
- “(c) “Scottish protected railway company” means a protected railway company that is such a company only in respect of activities carried on by it as franchise operator in relation to a Scottish franchise agreement.”
- (2) In subsection (1) of section 60 (petition for railway administration order), for the words from the beginning to the end of paragraph (b) substitute—
- “(1) If, on an application relating to a protected railway company”.
- (3) After that subsection insert—

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- “(1A) An application under subsection (1) for the making of a railway administration order may be made—
- (a) in the case of an application on the ground specified in paragraph (a) of subsection (2), only by the appropriate national authority; and
  - (b) in the case of an application on the ground specified in paragraph (b) of that subsection, only by the Secretary of State.”
- (4) In each of the following provisions of the 1993 Act, for “Secretary of State”, wherever occurring, substitute “ appropriate national authority ”, namely—
- (a) section 61(1)(a)(i) and (2)(a) (notice and power to petition for railway administration order in the case of a winding-up petition);
  - (b) section 62(2)(a)(i), (3)(a), (5)(a)(i), (6)(a) and (7)(a) (notice and power to petition for railway administration order in the case of voluntary winding-up and other insolvency proceedings); and
  - (c) paragraphs 3, 7, 9 and 10 of Schedule 6 (modifications of the Insolvency Act 1986 (c. 45)).
- (5) In paragraph 1 of Schedule 6 to the 1993 Act, before the “and” at the end of paragraph (a) insert—
- “(aa) as if references in those sections to the appropriate national authority were to be construed in accordance with section 59(6)(za) of this Act;”.
- (6) In paragraphs 7(4), 8, and 10(5) of Schedule 6 to the 1993 Act, for “the Strategic Rail Authority” substitute “ the appropriate national authority ”.
- (7) In paragraph 2 of Schedule 7 to the 1993 Act (making and modification of transfer schemes in connection with railway administration orders), for each of the following substitute “ the appropriate national authority ”, namely—
- (a) in sub-paragraph (2), the words from “the Secretary of State” onwards;
  - (b) in sub-paragraphs (4) and (5), “the Secretary of State”, wherever occurring;
  - (c) in sub-paragraph (6), “the Secretary of State or Authority”, in each place, and “the Secretary of State or the Authority”; and
  - (d) in sub-paragraph (7), the words from “the Secretary of State or, in” to “the Authority” and “the Secretary of State or Authority”.
- (8) In that paragraph—
- (a) in sub-paragraph (3), for the words from “the Secretary of State”, where first occurring, to “or Authority” substitute “ “the appropriate national authority, it ”; and
  - (b) in sub-paragraph (6), for “his” substitute “ the appropriate national authority's ”.
- (9) After sub-paragraph (8) of that paragraph insert—
- “(9) A statutory instrument containing an order under this paragraph by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (10) Where a railway administration order is in force immediately before the commencement of this section in relation to a Scottish protected railway company, things done by or in relation to the Secretary of State for the purposes of or in connection with that order and by virtue of —

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- (a) any provision of sections 59 to 62 of the 1993 Act, or
  - (b) any provision of Schedule 6 or 7 to that Act, or of the Insolvency Act 1986 (c. 45) as modified by Schedule 6 to the 1993 Act,
- are to have effect, so far as necessary for giving them continuing validity and effect, as if done by the Scottish Ministers.

- (11) The power to amend Schedule 6 to the 1993 Act under section 249 of the Enterprise Act 2002 (c. 40) applies to the modifications of that Schedule by this Act, as it applies to that Schedule.

#### Commencement Information

- II** S. 49 in force at 16.10.2005 by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

## 50 Assistance by Scottish Ministers for companies in railway administration

- (1) In section 63 of the 1993 Act (financial assistance by the Secretary of State where railway administration orders made)—
- (a) in subsection (1), after “a company” insert “ other than a Scottish protected railway company ”; and
  - (b) in subsection (2), for the words from “in relation to which” onwards substitute “where that company—
    - (a) is a company in relation to which a railway administration order is in force at the time when the guarantee is given; and
    - (b) is not a Scottish protected railway company.”
- (2) After section 64 of that Act insert—

### “64A Financial assistance by Scottish Ministers

- (1) Where a railway administration order is for the time being in force in relation to a Scottish protected railway company, the Scottish Ministers may—
- (a) make grants or loans to the company of such sums as appear to them to be appropriate for the purpose of facilitating the achievement of the purposes of the order; or
  - (b) agree to indemnify a relevant person in respect of—
    - (i) liabilities incurred by that person in connection with the carrying out by the railway administrator of his functions under the order; and
    - (ii) loss or damage incurred by that person in that connection.
- (2) The Scottish Ministers may guarantee—
- (a) the repayment of the principal of any sum borrowed by a Scottish protected railway company in relation to which a railway administration order is in force when the guarantee is given;
  - (b) the payment of interest on a sum so borrowed; and
  - (c) the discharge of any other financial obligation in relation to a sum so borrowed.

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- (3) A grant, loan, indemnity or guarantee under this section may be made or given in whatever manner, and on whatever terms and subject to whatever conditions, the Scottish Ministers consider appropriate.
- (4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Scottish Ministers if there is a contravention of the other terms on which the grant is made.
- (5) The terms on which a loan may be made under this section include, in particular, terms requiring—
  - (a) the loan to be repaid at such times and by such methods, and
  - (b) interest to be paid on the loan at such rates and at such times, as the Scottish Ministers may from time to time direct.
- (6) The power of the Scottish Ministers under this section to agree to indemnify a relevant person—
  - (a) is confined to a power to agree to indemnify that person in respect of liabilities, loss and damage incurred or sustained by him as a relevant person; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (7) A person is a relevant person for the purposes of this section if he is—
  - (a) the railway administrator;
  - (b) an employee of the railway administrator;
  - (c) a member or employee of a firm of which the railway administrator is a member;
  - (d) a member or employee of a firm of which the railway administrator is an employee;
  - (e) a member of a firm of which the railway administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the railway administrator; or
  - (g) an officer, employee or member of such a body corporate.
- (8) In this section—
  - (a) references to the railway administrator, in relation to a railway administration order, are references to the person appointed to achieve the purposes of the order and, where two or more persons are so appointed, are to be construed as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.
- (9) If sums are paid out by the Scottish Ministers in respect of an indemnity or guarantee under this section, the company in relation to which the indemnity or guarantee was given must pay them—

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- (a) such amounts in or towards the repayment to them of those sums as they may direct; and
  - (b) interest, at such rates as they may direct, on amounts outstanding under this subsection.
- (10) Payments to the Scottish Ministers under subsection (9) must be made at such times and in such manner as they may determine.
- (11) Subsection (9) does not apply in the case of a sum paid by the Scottish Ministers for indemnifying a person in respect of a liability to the company in relation to which the railway administration order in question was made.”

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**Commencement Information**

**I2** S. 50 in force at 16.10.2005 by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

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