



# Railways Act 2005

## 2005 CHAPTER 14

PROSPECTIVE

### PART 5

#### FURTHER MISCELLANEOUS PROVISIONS

##### *Conduct and accessibility on railways*

#### 46 Bye-laws

- (1) A railway operator may make bye-laws regulating one or more of the following—
  - (a) the use and working of a relevant asset;
  - (b) travel on or by means of a relevant asset;
  - (c) the maintenance of order on relevant assets;
  - (d) the conduct of persons while on relevant assets.
- (2) Those bye-laws may include, in particular—
  - (a) bye-laws with respect to tickets issued for entry on relevant assets or for travel by railway or with respect to evasion of the payment of fares or other charges;
  - (b) bye-laws with respect to the obstruction of a railway;
  - (c) bye-laws with respect to any other interference with the working of a railway, with a relevant asset or with the provision of a railway service;
  - (d) bye-laws prohibiting or restricting smoking in railway carriages and elsewhere;
  - (e) bye-laws for the prevention of nuisance;
  - (f) bye-laws with respect to the receipt and delivery of goods; and
  - (g) bye-laws for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the railway operator in question and intended to be used by those on foot.

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- (3) Schedule 9 (which makes provisions about bye-laws under this section) has effect.
- (4) Bye-laws which—
- (a) were made by the Strategic Rail Authority under section 219 of the 2000 Act, and
  - (b) are in force immediately before the repeal of that section by this Act,
- shall continue to have effect after the coming into force of that repeal as if every reference in those bye-laws to that Authority were a reference to the Secretary of State.
- (5) The Secretary of State may by order revoke or amend—
- (a) any bye-laws having effect in accordance with subsection (4); or
  - (b) any bye-laws saved by the 2000 Act.
- (6) In subsection (5), “bye-laws saved by the 2000 Act” means bye-laws which—
- (a) were made (or have effect as if they were made) under section 67 of the Transport Act 1962 (c. 46) or section 129 of the 1993 Act;
  - (b) were continued in force by paragraph 5(2) of Schedule 28 to the 2000 Act; and
  - (c) are in force immediately before the commencement of this section.
- (7) In this section “railway operator” means an operator of a railway asset who is—
- (a) authorised to be the operator of that asset by a licence granted under section 8 of the 1993 Act; or
  - (b) exempt by virtue of section 7 of that Act or any other enactment from the requirement to be so authorised.
- (8) In this section “relevant asset”, in relation to a railway operator, means—
- (a) a railway asset of which he is the operator; or
  - (b) any rolling stock not falling within paragraph (a) of which he has the management for the time being.

#### **47 Power of Scottish Ministers to make penalty fare regulations**

- (1) In section 130 of the 1993 Act (penalty fare regulations), in subsection (1), for “The Secretary of State may by regulations” substitute “ The Secretary of State and the Scottish Ministers shall each have power by regulations to ”.
- (2) After subsection (1) insert—
- “(1A) The power of the Scottish Ministers under this section shall be exercisable only in relation to trains and stations used for the purposes of—
- (a) railway passenger services provided under Scottish franchise agreements; or
  - (b) a railway passenger service not falling within paragraph (a) which is a Scotland-only service or (without being such a service) is a service the provision of which is secured by the Scottish Ministers.”
- (3) After subsection (11) insert—
- “(11A) A statutory instrument containing regulations made by the Scottish Ministers under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

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#### **48 Code of practice for disabled rail users in Scotland**

- (1) The Scottish Ministers shall have power to prepare, and from time to time to revise, a code of practice for protecting the interests of users of relevant Scottish services who are disabled.
- (2) The Scottish Ministers must publish a code prepared by them under this section, and every revision of it, in such manner as they consider appropriate.
- (3) Before preparing or revising a code under this section the Scottish Ministers must consult the Disabled Persons Transport Advisory Committee established under section 125 of the Transport Act 1985 (c. 67).
- (4) In this section “relevant Scottish service” means—
  - (a) a railway passenger service provided under a Scottish franchise agreement;
  - (b) a railway passenger service not falling within paragraph (a) which is a Scotland-only service or (without being such a service) is a service the provision of which is secured by the Scottish Ministers; or
  - (c) a station service provided in relation to a station in Scotland at which a service falling within paragraph (a) or (b) makes a scheduled call.

*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—

“(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

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- (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—
- (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,

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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.

## **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.
- (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.

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- (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—
- (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.

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- (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.”

#### *Duties of co-operation*

### **51 ORR to assist and advise national authorities**

- (1) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the Secretary of State—
- (a) to provide him with information or advice about a matter connected with a function or other activity of his in relation to railways or railway services;
  - (b) to provide him with information or advice about a matter relevant to the railway safety purposes; or
  - (c) otherwise to provide him with assistance in relation to a matter that is connected with such a function or activity or is relevant to those purposes.
- (2) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the Scottish Ministers—
- (a) to provide them with information or advice about a matter connected with a function or other activity of theirs in relation to railways or railway services; or
  - (b) otherwise to provide them with assistance in relation to a matter that is connected with such a function or activity.
- (3) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the National Assembly for Wales to provide the Assembly with information or advice about a matter connected with a function or other activity of the Assembly in relation to railways or railway services.
- (4) References in this section to the functions of a person in relation to railways or railway services include references, in particular, to all that person's functions under Part 1 of the 1993 Act, Part 4 of the 2000 Act or this Act.
- (5) In this section “railway safety purposes” has the same meaning as in Schedule 3.

### **52 Duty of Passenger Transport Executives to advise Secretary of State**

- (1) It shall be the duty of a Passenger Transport Executive to comply with every requirement of the Secretary of State to provide him with advice about a matter connected with a function or other activity of his in relation to railways or railway services.
- (2) A Passenger Transport Executive are not required to do anything under this section to the extent that it would involve an unreasonable administrative burden for the Executive.
- (3) In determining the extent to which anything would involve an unreasonable administrative burden regard must be had (where relevant) to so much of whatever else the Passenger Transport Executive are required to do under this section as they have accepted does not involve such a burden.
- (4) References in this section to the functions of the Secretary of State in relation to railways or railway services—

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- (a) include references, in particular, to all his functions under Part 1 of the 1993 Act, Part 4 of the 2000 Act or this Act; but
- (b) do not include references to any functions of his so far as they are exercisable, or fall to be performed, for or in connection with the railway safety purposes (within the meaning of Schedule 3).



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 36](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 12(3)(aa) inserted by [S.I. 2018/631 Sch. para. 40\(2\)\(a\)](#)
- s. 12(3)(da) inserted by [S.I. 2018/631 Sch. para. 40\(2\)\(c\)](#)
- s. 19A inserted by [2008 c. 26 s. 74](#)
- s. 19A words substituted by [S.I. 2010/439 Sch. para. 9\(4\)\(a\)](#)
- s. 19A heading words substituted by [S.I. 2010/439 Sch. para. 9\(4\)\(b\)](#)
- s. 22(11)(aa) inserted by [S.I. 2018/631 Sch. para. 42](#) (comes into force 2.00am on the 14/10/2018)
- s. 23(9)(aa) inserted by [S.I. 2018/631 Sch. para. 43](#) (comes into force 2.00am on the 14/10/2018)
- s. 24(11)(aa) inserted by [S.I. 2018/631 Sch. para. 44\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 25(7)(aa) inserted by [S.I. 2018/631 Sch. para. 45](#) (comes into force 2.00am on the 14/10/2018)
- s. 29(11)(12) inserted by [S.I. 2018/631 Sch. para. 46\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 30(9)(10) inserted by [S.I. 2018/631 Sch. para. 47\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 31(10)(11) inserted by [S.I. 2018/631 Sch. para. 48\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 33(2)(da) inserted by [2009 c. 20 Sch. 6 para. 119](#)
- s. 34(2A)(2B) inserted by [S.I. 2018/631 Sch. para. 50](#) (comes into force 2.00am on the 14/10/2018)
- s. 35(6A)-(6C) inserted by [S.I. 2018/631 Sch. para. 51\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 36(1)(ba) inserted by [S.I. 2018/631 Sch. para. 52\(a\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 38(2)(ba)(bb) inserted by [S.I. 2018/631 Sch. para. 53\(2\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 38(2A) inserted by [S.I. 2018/631 Sch. para. 53\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 40(4)(c)-(e) substituted for s. 40(c) by [S.I. 2018/631 Sch. para. 54\(4\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 40(4)(aa)(ab) inserted by [S.I. 2018/631 Sch. para. 54\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 42(1A)(1B) inserted by [S.I. 2018/631 Sch. para. 55\(2\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 43(2A) inserted by [S.I. 2018/631 Sch. para. 56\(2\)](#)
- s. 43(3A) inserted by [S.I. 2018/631 Sch. para. 56\(3\)](#)
- s. 45(5)(aa) inserted by [S.I. 2018/631 Sch. para. 58\(3\)](#) (comes into force 2.00am on the 14/10/2018)
- s. 45(5A) inserted by [S.I. 2018/631 Sch. para. 58\(4\)](#) (comes into force 2.00am on the 14/10/2018)

- s. 46(5A) inserted by S.I. 2018/631 Sch. para. 59(2) (comes into force 2.00am on the 14/10/2018)
- s. 46(7)(c) and word added by S.I. 2005/3050 Sch. 1 para. 5(b)
- s. 46(7)(c) words substituted by S.I. 2019/700 reg. 25(2)
- s. 46(9) inserted by S.I. 2018/631 Sch. para. 59(3) (comes into force 2.00am on the 14/10/2018)
- s. 48A inserted by S.I. 2018/631 Sch. para. 60 (comes into force 2.00am on the 14/10/2018)
- s. 56(3)(d)(e) word omitted by S.I. 2018/631 Sch. para. 62(4)(b)
- s. 57(1A) inserted by S.I. 2018/631 Sch. para. 63(3)
- s. 59(5A) added by S.I. 2005/3050 Sch. 1 para. 6
- s. 59(5A) words substituted by S.I. 2019/700 reg. 25(3)
- Sch. 3 para. 7(4) inserted by 2006 c. 49 s. 51(1)
- Sch. 3 para. 1(5)(ba) inserted by 2013 c. 32 Sch. 12 para. 83
- Sch. 3 para. 4(4A) inserted by 2013 c. 32 Sch. 12 para. 85
- Sch. 5 para. 16(2)(c) and word inserted by S.I. 2010/439 art. 5(2)(b)
- Sch. 9 para. 1(2A) inserted by S.I. 2018/631 Sch. para. 67(b) (comes into force 2.00am on the 14/10/2018)
- Sch. 10 para. 11(3) inserted by 2010 c. 4 Sch. 1 para. 478(2)(b)

**Commencement Orders yet to be applied to the Railways Act 2005**

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2008/113 art. 2 commences (2007 c. 24)
- S.I. 2009/107 art. 2-5 Sch. 1-5 Commencement Order
- S.I. 2009/3318 art. 2-4 commences (2009 c. 20)
- S.I. 2011/2329 art. 23 commences (2011 c. 5)