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PROSPECTIVE

SCHEDULES

SCHEDULE 1

TRANSFER ETC. OF FUNCTIONS OF THE STRATEGIC RAIL AUTHORITY

PART 1

TRANSFER AND ABOLITION OF FUNCTIONS

Transfer etc. of functions relating to enforcement

- 21 (1) Section 55 of the 1993 Act (orders for securing compliance) is amended as follows.
- (2) In subsections (1), (2) and (4), for “(5B)”, in each place, substitute “ (5C) ”.
- (3) In subsection (5), omit “or, as the case may be, section 207 of the Transport Act 2000”.
- (4) In subsection (5ZA)—
- (a) for “The Authority shall not” substitute “ Neither the Secretary of State nor the Scottish Ministers shall ”;
 - (b) in paragraph (a), for “it has” and “the Authority” substitute, respectively “ the Secretary of State has or (as the case may be) those Ministers have ” and “him or them”; and
 - (c) in paragraph (c), for “the Authority” substitute “ the Secretary of State or (as the case may be) the Scottish Ministers ”.
- (5) After subsection (5B) insert—
- “(5C) Neither the Secretary of State nor the Scottish Ministers shall be required, in respect of any contravention or apprehended contravention of the terms of a franchise agreement, to make a final order, or to make or to confirm a provisional order, if he considers or (as the case may be) they consider—
- (a) that the contravention or apprehended contravention is trivial; and
 - (b) that it would be inappropriate, for that reason, to make or to confirm the order.
- (5D) The appropriate authority must comply with subsection (6)—
- (a) in a case where the appropriate authority is the Secretary of State or the Scottish Ministers, if that authority decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5) or (5ZA) above; or
 - (b) in the case of the Office of Rail Regulation, if it decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5), (5A) or (5B) above.”

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- (6) In subsection (6) (notice of decisions), for the words from the beginning to the end of paragraph (a) substitute—
- “(6) Where the appropriate authority must comply with this subsection, it must—
- (a) serve notice of its decision on the relevant operator; and”.
- (7) In subsection (7A), for “to the Authority in the event of any specified contravention of the order such” substitute “in the event of a specified contravention of the order—
- (a) in the case of an order made by the Scottish Ministers, to them, and
- (b) in any other case, to the Secretary of State,
- such ”.
- (8) In subsection (10)—
- (a) in paragraph (a) of the definition of “the appropriate authority”, omit “apart from a condition which relates to consumer protection,”;
- (b) for paragraph (b) substitute—
- “(aa) in relation to any relevant condition or requirement in the case of—
- (i) a franchisee under a Scottish franchise agreement,
- (ii) a franchise operator in relation to such an agreement, or
- (iii) a person under Scottish closure restrictions, the Scottish Ministers; and
- (b) in relation to any relevant condition or requirement in the case of—
- (i) a franchisee not falling within paragraph (aa)(i),
- (ii) a franchise operator not falling within paragraph (aa)(ii), or
- (iii) a person under closure restrictions that are not Scottish closure restrictions, the Secretary of State;”.
- 22 In section 56(2A) of the 1993 Act (procedural requirements for section 55 orders), for the words from “Authority”, where first occurring, to the end of the subsection substitute “ Secretary of State and on the Scottish Ministers. ”
- 23 (1) Section 57A of the 1993 Act (penalties) is amended as follows.
- (2) In subsection (2), for “to the Authority” substitute—
- “(a) in the case of a penalty imposed by the Scottish Ministers, to them; and
- (b) in any other case, to the Secretary of State”.
- (3) In subsection (5)—
- (a) for “The Authority shall not” substitute “ Neither the Secretary of State nor the Scottish Ministers shall ”;

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- (b) in paragraph (a), for “it has” and “the Authority” substitute, respectively, “the Secretary of State has or (as the case may be) those Ministers have” and “him or them”; and
 - (c) in paragraph (c), for “the Authority” substitute “the Secretary of State or (as the case may be) the Scottish Ministers”.
- 24 (1) In section 57B of the 1993 Act—
 - (a) for “Authority”, wherever occurring, substitute “Secretary of State, the Scottish Ministers”; and
 - (b) in subsections (3) and (4), after “statement of” insert “his, their or”.
- (2) The fact that a statement of policy has not been published by the Secretary of State, by the Scottish Ministers or by the Office of Rail Regulation under section 57B of the 1993 Act does not affect—
 - (a) the validity of any decision to impose a penalty under section 57A;
 - (b) any determination of the amount of any such penalty;
 - (c) the inclusion in a final or provisional order of any requirement to pay a sum; or
 - (d) any determination of the amount of the sum payable in accordance with such an order.
- 25 In section 57C(3) of the 1993 Act (service of penalty notices), for the words from “Authority”, where first occurring, to the end of the subsection substitute “Secretary of State and on the Scottish Ministers.”
- 26 (1) This paragraph applies to things done under or for the purposes of any provision of sections 55 to 58 of the 1993 Act (enforcement) so far as they were done before the commencement of this paragraph by or in relation to the Strategic Rail Authority as the appropriate authority.
- (2) In relation to times after the commencement of this paragraph, those things shall have effect, so far as necessary for giving them continuing validity or effect—
 - (a) so far as they are things done by or in relation to the Strategic Rail Authority as the appropriate authority in relation to a condition relating to consumer protection, as if they were done by or in relation to the Secretary of State or the Scottish Ministers, as the case may require; and
 - (b) in any other case, as if they were done by or in relation to the Office of Rail Regulation.

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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(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
- 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)