

SCHEDULES

SCHEDULE 11

Section 54

MISCELLANEOUS AMENDMENTS OF 1993 ACT

Introductory provision

1 The 1993 Act is amended as follows.

Licence conditions

2 In section 9(3)(f) (conditions requiring the provision of information), after “this Part” insert “or Part 4 of the Railways Act 2005”.

Access agreements

3 In—

- (a) section 17(4) (access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities), and
- (b) section 19(7) (access agreements: contracts for the use of installations comprised in a network),

after “this Part” insert “or Part 4 of the Railways Act 2005 (network modifications etc.)”.

Duties of provider of last resort

4 In paragraph (b) of section 30(3) (duty of Authority in absence of franchise)—

- (a) for “giving notice under subsection (5) of section 38 below” substitute “making a proposal to which section 24 of the Railways Act 2005 (proposals to discontinue franchised or secured services) applies”; and
- (b) for the words from “subsections (5) and (6)” to the end of the paragraph substitute “subsections (7) and (8) of that section) terminate on the proposal date specified for the purposes of subsection (5)(a)(ii) of that section; or”.

Exclusion for liability for breach of statutory duty

5 In section 50(1) (exclusion of liability for breach of statutory duty), for “Authority,” substitute “Secretary of State and of the Scottish Ministers, so far as”.

Purposes for which franchising functions may be exercised

6 (1) In section 54 (purposes for which franchising functions may be exercised), in subsection (1)—

- (a) for “Authority or a Passenger Transport Authority or Passenger Transport Executive” substitute “Secretary of State or the Scottish Ministers”; and
- (b) in paragraph (a), after “any of” insert “his or”.

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(2) For subsection (2) of that section substitute—

“(2) The Secretary of State and the Scottish Ministers shall each have power to enter into agreements under which an undertaking is given by him or them—

- (a) to exercise his or their franchising functions;
- (b) to refrain from exercising them; or
- (c) to exercise them in a particular manner.”

(3) In subsection (3) of that section, in the first definition of “franchising functions”—

- (a) for “Authority”, wherever occurring, substitute “Secretary of State or the Scottish Ministers”;
- (b) in paragraph (a), for “of the Authority’s functions” substitute “of the functions of the Secretary of State or of the Scottish Ministers”;
- (c) in that paragraph, for “35” substitute “31”; and
- (d) in paragraph (b), for “Schedule 21 to the Transport Act 2000” substitute “section 1(2) of the Railways Act 2005”;

and omit the definition of “franchising functions” in relation to a Passenger Transport Authority or Passenger Transport Executive.

Orders for securing compliance

7 (1) In subsection (9) of section 55 (interpretation of provision relating to orders for securing compliance), for “section 50 above” substitute “section 44 of the Railways Act 2005 (exclusion of liability for breach of statutory duty)”.

(2) In subsection (10) of that section, in the definition of “final order”, after “provisional order” insert “or an order under subsection (7B)”.

(3) In that subsection, in the definition of “relevant condition or requirement”, for paragraphs (c) and (d) substitute—

“(c) in the case of a person under closure restrictions, any duty mentioned in subsection (11) to which he is subject;”.

(4) For the definition of “relevant operator” in that subsection substitute—

““relevant operator” means—

- (a) a licence holder;
- (b) a franchisee;
- (c) a franchise operator who is a party to the franchise agreement;
- (d) a person under closure restrictions.”

(5) In subsection (11) of that section, for paragraphs (a) and (b) substitute “who is under—

- (a) a duty under section 22(8), 26(8), 29(8) or 37(2) of the Railways Act 2005 not to discontinue a railway passenger service or an experimental passenger service or not to discontinue the operation or use of a network or station, or part of a network or station;
- (b) a duty to comply with any requirement imposed under section 33(2) (i) of that Act (closure requirements imposed on operators); or
- (c) a duty to comply with conditions to which he has agreed under section 34(5) of that Act (conditions of minor modification determination).”

(6) After that subsection insert—

“(11A) In the definition of “the appropriate authority” in subsection (10) above the reference to a relevant condition or requirement in the case of a person under Scottish closure restrictions is a reference to a relevant condition or requirement which—

- (a) falls within paragraph (c) of the definition in that subsection;
- (b) is imposed or arises in the case of a closure; and
- (c) is so imposed or so arises in a Scottish case;

and the reference to a relevant condition or requirement in the case of a person under closure restrictions that are not Scottish closure restrictions is a reference to any relevant condition or requirement in relation to which paragraphs (a) and (b) are satisfied, but not paragraph (c).

(11B) In subsection (11A), “a Scottish case”, in relation to a closure, means—

- (a) a case in which the Scottish Ministers are the national authority for the purposes of provisions of Part 4 of the Railways Act 2005 relating to the proposal for the closure;
- (b) a case in which it is the Scottish Ministers who make a determination under section 34 of that Act (minor modifications) in relation to the closure; or
- (c) a case in which the closure is a closure notice of which is given under section 37 of that Act (experimental passenger services) and the proposal relates to a Scotland-only service.”

8 In section 57F(1) (validity and effect of penalties), for “penalty order” substitute “penalty notice”.

Financial assistance from the Secretary of State to companies in railway administration

9 (1) In section 63 (financial assistance for companies in railway administration), for subsection (1)(b) substitute—

- “(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) After subsection (2) of that section insert—

“(2A) 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 Secretary of State considers appropriate.”

(3) After subsection (3) insert—

“(3A) The power of the Secretary of State 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

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- (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.
- (3B) 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.
- (3C) For the purposes of this section—
- (a) the references in this section 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.”
- (4) After subsection (4) of that section insert—
- “(4A) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section in the case of a company in relation to which a railway administration order is in force, the company must pay him—
- (a) such amounts in or towards the repayment to him of those sums as he may direct; and
 - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (4B) Payments to the Secretary of State under subsection (4A) must be made at such times and in such manner as he may determine.
- (4C) Subsection (4A) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the railway administration order in question was made.
- (4D) The consent of the Treasury is required for the giving of a direction under subsection (4A) and for the making of a determination under subsection (4B).”

Register kept by ORR

- 10 (1) In section 72(2) (matters to be entered in register)—

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- (a) in paragraph (d) (notices with respect to experimental passenger services), for “section 48 above” substitute “Part 4 of the Railways Act 2005”;
- (b) for sub-paragraphs (i) to (iii) of that paragraph substitute—
 - “(i) every designation under section 36 of that Act of a service as experimental;
 - (ii) every notice under section 37(1) or (2) of that Act of the proposed discontinuance of a service designated as experimental;”
- (c) after that paragraph insert—
 - “(da) in relation to closures, the provisions of—
 - (i) every closure ratification notice or closure non-ratification notice (within the meaning of Part 4 of the Railways Act 2005) issued by it;
 - (ii) every closure requirement imposed by it;”

(2) Nothing in this paragraph requires the removal of anything from the register maintained under section 72.

Register kept by Secretary of State

- 11 (1) In section 73(2) (matters to be entered in the register)—
- (a) for paragraph (da) (closure notices etc.) substitute—
 - “(da) every determination made by him under section 34 of the Railways Act 2005 that a closure is a minor modification or that closures of a particular description are minor modifications;
 - (db) every revocation of a determination made by him under that section in relation to a description of closures;
 - (dc) every condition agreed to under subsection (5) of that section in connection with a determination made by him;”
 - (b) in paragraph (e) (final or provisional orders), for “or to any closure or proposed closure or to any closure consent or closure condition” substitute “or to any closure or proposed closure or to any closure requirement”.
- (2) Neither this paragraph nor any repeal made by this Act requires the removal of anything from the register maintained under section 73.

Purposes for which the Secretary of State may require information from licence holders

- 12 In section 80(1) (duty of licence holders to provide information to the Secretary of State or the Scottish Ministers on request), for “or the Transport Act 2000” substitute “, the Transport Act 2000 or the Railways Act 2005 or any other function or activity of his, theirs or its in relation to railway services”.

General interpretation

- 13 In section 83(1) (interpretation of Part 1)—
- (a) after the definition of “appropriate authority” insert—
 - ““appropriate designating authority” has the meaning given by section 23(3) above;

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“appropriate franchising authority” has the meaning given by section 23(3) above;

“appropriate national authority” has the meaning given by section 59(6)(za) above;”

(b) for the definition of “bus substitution service” substitute—

““bus substitution service” means a service for the carriage of passengers by road that is provided as an alternative to the whole or a part of a railway passenger service that has been discontinued, reduced or modified (whether temporarily or permanently);”

(c) for the definitions of “closure” and “closure conditions” substitute—

““closure” has the same meaning as in Part 4 of the Railways Act 2005 (see section 45 of that Act);

“closure requirement” means a requirement imposed under section 33 of that Act;”.

Competent authority status for the purposes of grants and loans under EU regulations

14 (1) In subsection (1) of section 136 (competent authorities in relation to railways financial status regulations), for “shall continue to” substitute “and the Scottish Ministers shall each”.

(2) In subsection (2) of that section (competent authority in respect of freight services for the purposes of the public service obligation regulations), for “shall be” substitute “, the Scottish Ministers and, to the extent specified in subsection (2A) below, the National Assembly for Wales shall each be”.

(3) After that subsection insert—

“(2A) For the purposes of subsection (2) above the National Assembly for Wales shall only be the competent authority in relation to services for the carriage of goods by railway which are operated within Wales.”

(4) In subsection (3) of that section (competent authority in respect of passenger services for the purposes of the public service obligation regulations), after paragraph (a) insert—

“(aa) the Scottish Ministers,

(ab) to the extent specified in subsection (3A) below, the National Assembly for Wales,”.

(5) After that subsection insert—

“(3A) For the purposes of subsection (3) above the National Assembly for Wales shall only be the competent authority in relation to services for the carriage of passengers by railway which—

(a) are Welsh services (within the meaning of the Railways Act 2005);
or

(b) are provided under a franchise agreement to which the Assembly is a party.”

(6) In subsection (4) of that subsection (extent to which a PTE are a competent authority), for paragraphs (a) and (b) substitute “which the Executive provide, or secure are

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provided, in exercise of their powers under section 10(1) of the Transport Act 1968 or section 13 of the Railways Act 2005”.

- (7) Sub-paragraph (6) shall not affect the extent to which the competent authorities for the purposes of the public service obligations regulations include a Passenger Transport Executive in relation to railway passenger services provided under a franchise agreement to which the Executive continues to be a party by virtue of section 14(2) of this Act.

Powers to make statutory instruments

- 15 In section 143 (powers to make statutory instruments)—
- (a) in subsection (1), for “under this Act to make orders” substitute “or the Scottish Ministers under this Act to make orders (except the power to make provisional or final orders under section 55)”;
 - (b) in subsection (3), for “to make an order” substitute “or the Scottish Ministers to make an order (other than a provisional or final order under section 55)”;
 - (c) in subsection (4), for “under this Act to make an order” substitute “or the Scottish Ministers under this Act to make an order (other than a provisional or final order under section 55)”.

Restrictions on disclosure of information

- 16 (1) In subsection (2) of section 145 (purposes for which information obtained under the 1993 Act may be disclosed)—
- (a) in paragraph (a)—
 - (i) after “the Secretary of State,” insert “the Scottish Ministers,”; and
 - (ii) for “or the Transport Act 2000” substitute “, the Transport Act 2000 or the Railways Act 2005”;
 - (b) after that paragraph insert—
 - “(aa) for the purpose of facilitating the carrying out or carrying on by the Secretary of State or the Scottish Ministers of any other functions or activities of his or theirs in relation to railways or railway services;”.
- (2) In subsection (5) of that section, for “the Rail Passengers' Council or a Rail Passengers' Committee” substitute “or the Rail Passengers' Council”.