



# Railway and Canal Traffic Act 1888

## 1888 CHAPTER 25

### PART I

#### COURT AND PROCEDURE OF RAILWAY AND CANAL COMMISSIONERS

##### *Establishment of Railway and Canal Commission*

#### **2 Establishment of new Railway and Canal Commission**

On the expiration of the provisions of the Regulation of Railways Act, 1873, with respect to the Commissioners therein mentioned, there shall be established a new Commission, styled the Railway and Canal Commission (in this Act referred to as the Commissioners), and consisting of two appointed and three ex officio Commissioners; and such Commission shall be a court of record, and have an official seal, which shall be judicially noticed. The Commissioners may act notwithstanding any vacancy in their body.

#### **3 Appointment and tenure of office of appointed Commissioners**

- (1) The two appointed Commissioners may be appointed by Her Majesty at any time after the passing of this Act, and from time to time as vacancies occur.
- (2) They shall be appointed on the recommendation of the President of the Board of Trade, and one of them shall be of experience in railway business.
- (3) Section five of the Regulation of Railways Act, 1873, shall apply to each appointed Commissioner.
- (4) There shall be paid to each appointed Commissioner such salary not exceeding three thousand pounds a year as the President of the Board of Trade may, with the concurrence of the Treasury, determine.
- (5) It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehaviour any appointed Commissioner.

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#### **4 Appointment and attendance of ex officio Commissioners**

- (1) Of the three ex officio Commissioners of the Railway and Canal Commission one shall be nominated for England, one for Scotland, and one for Ireland ; and an ex officio Commissioner shall not be required to attend out of the part of the United Kingdom for which he is nominated.
- (2) The ex officio Commissioner in each case shall be such judge of a superior court as—
  - (a) in England the Lord Chancellor ; and
  - (b) in Scotland the Lord President of the Court of Session ; and
  - (c) in Ireland the Lord Chancellor of Ireland;may from time to time by writing under his hand assign, and such assignment shall be made for a period of not less than live years.
- (3) For the purpose of the attendance of the ex officio Commissioners, regulations shall be made from time to time by the Lord Chancellor, the Lord President of the Court of Session, and the Lord Chancellor of Ireland respectively, in communication with the ex officio Commissioners for England, Scotland, or Ireland, as the case may be, as to the arrangements for securing their attendance, as to the times and place of sitting in each case, and otherwise for the convenient and speedy hearing thereof.

#### **5 Sitings of Commissioners**

- (1) Subject to the provisions of this Act, and to general rules under this Act, the Commissioners may hold sittings in any part of the United Kingdom, in such place or places as may be most convenient for the determination of proceedings before them.
- (2) The central office of the Commissioners shall be in London, and the Commissioners when holding a public sitting in London shall hold the same at the Royal Courts of Justice, or at such other place as the Lord Chancellor may from time to time appoint.
- (3) Not less than three Commissioners shall attend at the hearing of any case, and the ex officio Commissioner shall preside, and his opinion upon any question which in the opinion of the Commissioners is a question of law shall prevail.
- (4) Save as aforesaid, section twenty-seven of the Regulation of Railways Act, 1873, shall apply, and any act may be done by any two Commissioners.
- (5) Every judge who may with his consent be assigned to hold the office of ex officio Commissioner shall attend to hear any cases before the Commission, which as ex officio Commissioner he is required to hear, when and as soon as the cases are ready to be heard, or as soon thereafter as reasonably may be; and any such judge shall be required to perform any of the other duties of a judge of a superior court only when his attendance on the Commission is not required.
- (6) If and when any judge who may be assigned to hold the office of ex officio Commissioner is temporarily unable to attend, the Lord Chancellor in England, the Lord President of the Court of Session in Scotland, and the Lord Chancellor in Ireland, may respectively nominate any judge of a superior court to sit as ex officio Commissioner in place of the judge who is so temporarily unable to attend as aforesaid, and the judge so nominated shall for the purpose of any case which he may hear be an ex officio Commissioner.
- (7) If the President of the Board of Trade is satisfied either of the inability of an appointed Commissioner to attend at the hearing of any case, or of there being a vacancy in

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the office, and in either case of the necessity of a speedy hearing of the case, he may appoint a temporary Commissioner to hear such case, and such Commissioner, for all purposes connected with such case, shall, until the final determination thereof, have the same jurisdiction and powers as if he were an appointed Commissioner. A temporary Commissioner shall be paid such sum by the Commissioner so unable to sit, or, if the office is vacant, out of the salary of the office, as the President of the Board of Trade may assign.

## **6 Appointment of additional judge**

On an address from both Houses of Parliament representing that, regard being had to the duties imposed by this Act on the ex officio Commissioners, the state of business of the High Court in England requires the appointment of an additional judge of that court, it shall be lawful for Her Majesty to appoint an additional judge of such court, and from time to time, on a like address but not otherwise, to fill any vacancy in such judgeship, and the law relating to the appointment and qualification of the judges of such superior court, to their duties and tenure of office, to their precedence, salary and pension, and otherwise, shall apply to any judge so appointed under this section, and a judge so appointed under this section shall be attached to such division or branch of the court as Her Majesty may direct, subject to such power of transfer as may exist in the case of any other judge of such division or branch.

## **7 Provision for complaints by public authority in certain cases**

(1) Any of the following authorities, that is to say—

- (a) any of the following local authorities, namely, any harbour board, or conservancy authority, the Common Council of the City of London, any council of a city or borough, any representative county body which may be created by an Act passed in the present or any future session of Parliament, any justices in quarter sessions assembled, the Commissioners of Supply of any county in Scotland, the Metropolitan Board of Works, or any urban sanitary authority not being a council as aforesaid, or any rural sanitary authority ; or
- (b) any such association of traders or freighters, or chamber of commerce or agriculture as may obtain a certificate from the Board of Trade that it is, in the opinion of the Board of Trade, a proper body to make such complaint,

may make to the Commissioners any complaint which the Commissioners have jurisdiction to determine, and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authorities may appear in opposition to any complaint which the Commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the Commissioners to be likely to be affected by any determination of the Commissioners upon such Complaint.

- (2) The Board of Trade may, if they think fit, require, as a condition of giving a certificate under this section, that security be given in such manner and to such amount as they think necessary, for any costs which the complainants may be ordered to pay or bear.
- (3) Any certificate granted under this section shall, unless withdrawn, be in force for twelve months from the date on which it was given.