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STATUTORY INSTRUMENTS

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**1996 No. 639**

**TRANSPORT**

**RAILWAYS**

**The Railway Industry (Employees'  
Transport Vouchers) (Taxation) Order 1996**

<i>Made</i>	- - - -	<i>7th March 1996</i>
<i>Laid before Parliament</i>		<i>8th March 1996</i>
<i>Coming into force</i>	- -	<i>31st March 1996</i>

The Secretary of State, in exercise of the powers conferred by paragraph 27(5) and (6) of Schedule 24 to the Finance Act 1994<sup>(1)</sup>, and with the consent of the Treasury, hereby makes the following Order:

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**1.—(1)** This Order may be cited as the Railway Industry (Employees' Transport Vouchers) (Taxation) Order 1996 and shall come into force on 31st March 1996.

**(2)** In this Order—

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978<sup>(2)</sup>;

“the 1993 Act” means the Railways Act 1993<sup>(3)</sup>;

“conciliation officer” means an officer designated under section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(4)</sup>;

“dismissal procedures agreement” has the meaning given by section 153(1) of the 1978 Act;

“railway asset” has the meaning given by section 6(2) of the 1993 Act, and any reference to the operation of such an asset shall be construed in accordance with that Act;

“railway services” has the meaning given by section 82 of the 1993 Act;

“railway undertaking” means an undertaking—

**(a)** the whole or part of which was transferred or otherwise disposed of (whether or not to the person carrying on that undertaking) by the Board or a subsidiary of the Board by virtue of something done under or by virtue of, or pursuant to, the 1993 Act, or

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**(1)** 1994 c. 9; paragraph 27 of Schedule 24 was amended by the Employment Protection (Part-time Employees) Regulations 1995 (S.I.1995/31), regulation 6 and the penultimate item in the Schedule.

**(2)** 1978 c. 44.

**(3)** 1993 c. 43.

**(4)** 1992 c. 52.

- (b) in the course of which property, rights or liabilities transferred or otherwise disposed of (whether or not to the person carrying on that undertaking) by the Board or a subsidiary of the Board by virtue of something done under or by virtue of, or pursuant to, the 1993 Act are, or have been, used or otherwise turned to account;

“relevant complaint of dismissal”, and “relevant compromise contract”, have the meaning given by paragraph 20(3) of Schedule 13 to the 1978 Act<sup>(5)</sup>;

“relevant date”, in relation to a person who ceases, or ceased, to be in the employment mentioned in paragraph 27(2)(a), means the date on which that person ceases, or ceased, to be in that employment.

(3) In this Order, unless provision is made to the contrary, any reference to a numbered paragraph is to the paragraph in Schedule 24 to the Finance Act 1994 (Provisions relating to the 1993 Act) which bears that number.

2.—(1) For the purposes of paragraph 27(2)(a), a person who ceases, or ceased, as mentioned in the said paragraph 27(2)(a) to be in the employment there mentioned shall be treated as if he had not ceased, or so ceased, to be in that employment—

- (a) where, within fourteen days after so ceasing (or, if shorter, the period ending at midnight on the second Monday after so ceasing), he enters or entered the employment of a person falling within sub-paragraph (i), (ii) or (iii) of paragraph 27(1)(a) who is or was the person by whom he had been employed immediately before the relevant date;
- (b) where, at any time after so ceasing, he enters or entered the employment of a person falling within sub-paragraph (i), (ii) or (iii) of paragraph 27(1)(a) (whether or not that person is or was the person by whom he had been employed immediately before the relevant date) pursuant to a statutory or contractual right to do so which existed on that date;
- (c) for any period during which, and for the time preceding any period during which, he is or was in the employment of a person engaged in the railway industry—
- (i) who is or was carrying on the undertaking or the part of the undertaking in which he had been employed immediately before the relevant date, and
- (ii) to whom the said undertaking or part had been transferred or otherwise disposed of, directly or indirectly by virtue of something done under or by virtue of, or pursuant to, the 1993 Act,

provided that, had that person been the person by whom he had been employed immediately before the relevant date, he would have been entitled, on the date he enters or entered that person’s employment, to return to that person’s employment pursuant to a statutory or contractual right to do so which existed on the relevant date;

- (d) where, in consequence of any action to which this sub-paragraph applies, he is or was reinstated or re-engaged in the employment of a person falling within sub-paragraph (i), (ii) or (iii) of paragraph 27(1)(a) (whether or not that person is or was the person by whom he had been employed immediately before the relevant date);
- (e) for any period during which, and for the time preceding any period during which, he is or was in the employment of a person who is or was engaged in the railway industry and in whose employment he was or had been reinstated or re-engaged in consequence of any action to which this sub-paragraph applies.

(2) Sub-paragraphs (d) and (e) of paragraph (1) of this article apply to any action taken in relation to the dismissal of a person who, by virtue of that dismissal, ceases, or ceased, as mentioned in paragraph 27(2)(a) to be in the employment there mentioned which consists of any of the following—

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(5) Paragraph 20(3) was added by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 7, paragraph 14(d).

- (a) the making by that person of a relevant complaint of dismissal,
- (b) the making by that person of a claim in accordance with a dismissal procedures agreement designated by an order under section 65 of the 1978 Act<sup>(6)</sup>,
- (c) the making by that person of a claim in accordance with procedures relating to dismissal established by or on behalf of the person by whom he was dismissed,
- (d) the taking by a conciliation officer of any action under section 64(2) of the Sex Discrimination Act 1975<sup>(7)</sup>, section 55(2) of the Race Relations Act 1976<sup>(8)</sup>, or section 134(3) of the 1978 Act,
- (e) the making of a relevant compromise contract.

**3.—(1)** For the purposes of paragraph 27(2)(b) and (4)(a), a person shall be treated for a period during which he is not or was not in the employment of any person engaged in the railway industry as if he were or had been in the employment of such a person—

- (a) where, within fourteen days after its commencement (or, if shorter, the period ending at midnight on the second Monday after its commencement), that period ends or ended in consequence of his entering the employment of a person engaged in the railway industry who is or was the person by whom he had been employed immediately before the commencement of that period;
- (b) where that period ends or ended in consequence of his entering the employment of a person engaged in the railway industry (whether or not that person is or was the person by whom he had been employed immediately before the commencement of that period) pursuant to a statutory or contractual right to do so which existed at the commencement of that period;
- (c) where, during that period, he is or was treated as if he had not ceased to be in the employment of a person falling within sub-paragraph (i), (ii) or (iii) of paragraph 27(1)(a) for the purposes of paragraph 27(2)(a) by virtue of article 2(1)(c) or (e) of this Order;
- (d) where that period ends or ended because, in consequence of any action to which this sub-paragraph applies, he is or was reinstated or re-engaged in the employment of a person engaged in the railway industry (whether or not that person is or was the person by whom he had been employed immediately before the commencement of that period).

(2) Sub-paragraph (d) of paragraph (1) of this article applies to any action taken in relation to the dismissal of a person who, by virtue of that dismissal, ceases, or ceased, to be in the employment of a person engaged in the railway industry which consists of any of the actions referred to in sub-paragraphs (a) to (e) of paragraph (2) of article 2 of this Order.

**4.** For the purposes of paragraph 27(2)(c), a break in the continuity of a person's period of employment shall be disregarded where the break occurs, or occurred, because the person ceases, or ceased, to be in the employment of a person engaged in the railway industry in circumstances where he is to be treated for the period during which he is not or was not in such employment as if he were or had been in such employment for the purposes of paragraph 27(2)(b) and (4)(a) by virtue of article 3 of this Order.

**5.** For the purposes of paragraph 27(4)(b), a transport voucher shall be treated as if it were, or had been, provided for a person by reason of his being in the employment of an employer engaged in the railway industry where—

- (a) the transport voucher is or was provided for the person during a period during which he is to be treated as if he were or had been in the employment of a person engaged in the

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<sup>(6)</sup> Section 65(4) of the 1978 Act was amended by the Trade Union Reform and Employment Rights Act 1993, section 49(2), Schedule 8, paragraph 16. Other amendments, not relevant to this Order, have been made to section 65(4) of the 1978 Act.

<sup>(7)</sup> 1975 c. 65.

<sup>(8)</sup> 1976 c. 75.

railway industry for the purposes of paragraph 27(2)(b) and (4)(a) by virtue of article 3 of this Order, and

- (b) during that period any employment which he undertakes or undertook under a contract of employment or a contract for services is or was undertaken with the consent, given before the commencement of that period, of the person in whose employment he was immediately before the commencement of that period.

6.—(1) Any class or description of activity set out in paragraph (2) of this article is specified for the purposes of paragraph 27(6) (Activities carried on by those who are to be regarded as employers engaged in the railway industry).

(2) The classes and descriptions of activity referred to in paragraph (1) of this article are—

- (a) the provision of any railway services,
- (b) the operation of any railway asset,
- (c) the manufacture or supply (whether by way of sale, lease or otherwise) of goods for use in the provision of any railway services or the operation of any railway asset,
- (d) the maintenance of goods used in the provision of any railway services or the operation of any railway asset,
- (e) the supply (whether by way of sale, lease or otherwise) of goods or the provision of services or facilities for any purpose connected with an activity of a class or description specified in sub-paragraph (a), (b), (c) or (d) of this paragraph,
- (f) the disposal (by way of sale) of any goods of a person who carries on an activity of a class or description specified in sub-paragraph (a), (b), (c), (d) or (e) of this paragraph, being goods which have been used in the carrying on of that activity but which are no longer required for that purpose,

where the activity is carried on for the purposes of the business of the Board, a subsidiary of the Board or a railway undertaking.

Signed by authority of the Secretary of State for Transport

4th March 1996

*John Watts*  
Minister of State,  
Department of Transport

We consent to the making of this Order

7th March 1996

*Simon Burns*  
*Michael Bates*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes the following provisions for the purposes of paragraph 27 of Schedule 24 to the Finance Act 1994.

First, it sets out the circumstances in which the said paragraph 27 is to continue to apply to an “eligible person” within the meaning of that paragraph notwithstanding the fact that one of the conditions set out in paragraph 27(2) becomes or became satisfied in his case: articles 2 to 4.

Secondly, it sets out the circumstances in which a transport voucher is to be treated as if it were, or had been, provided for a person by reason of his being in the employment of an employer engaged in the railway industry: article 5.

Thirdly, it specifies classes and descriptions of activity for the purposes of paragraph 27(6) of the said Schedule 24: article 6. A person carrying on an activity of a class or description so specified is to be regarded as an employer “engaged in the railway industry” for the purposes of paragraph 27.

This Order does not impose any costs on business.