Railways Act 1993

1993 CHAPTER 43

An Act to provide for the appointment and functions of a Rail Regulator and a Director of Passenger Rail Franchising and of users' consultative committees for the railway industry and for certain ferry services; to make new provision with respect to the provision of railway services and the persons by whom they are to be provided or who are to secure their provision; to make provision for and in connection with the grant and acquisition of rights over, and the disposal or other transfer and vesting of, any property, rights or liabilities by means of which railway services are, or are to be, provided; to amend the functions of the British Railways Board; to make provision with respect to the safety of railways and the protection of railway employees and members of the public from personal injury and other risks arising from the construction or operation of railways; to make further provision with respect to transport police; to make provision with respect to certain railway pension schemes; to make provision for and in connection with the payment of grants and subsidies in connection with railways and in connection with the provision of facilities for freight haulage by inland waterway; to make provision in relation to tramways and other guided transport systems; and for connected purposes. [5th November 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act applied (18.9.1996) by 1996 c. 42, **ss. 7(2)**, 8(3)
Act modified (*prosp.*) by 1999 c. 29, ss. 204(1), 425(2) (with **Sch. 12 para. 9(1)**)

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART I

THE PROVISION OF RAILWAY SERVICES

Modifications etc. (not altering text)

C2 Pt. I (ss. 1-83) modified (18.12.1996) by 1996 c. 61, **s. 21(6)**

C3 Pt. 1 (ss. 1-83) applied (S.) (27.4.2006) by Edinburgh Tram (Line Two) Act 2006 (asp. 6), **s.78** (with s.75)
Pt. 1 (ss. 1-83) applied (S.) (8.5.2006) by Edinburgh Tram (Line One) Act 2006 (asp. 7), **s.79** (with ss.76, 84)

Commencement Information

I1 Pt. I (ss. 1-83) applied (1.4.1994) by 1993 c. 43, **ss. 36(2)** (inserting s. 10(1)(viiia) in 1968 c. 73); S.I. 1994/571, **art. 5**
Pt. I (ss. 1-83) applied (18.12.1996) by 1996 c. 61, **s. 16(5)**

Introductory

1 The Rail Regulator. . ..

F1 . . . . . .

Textual Amendments

F1 S. 1 repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 2, **Sch. 8**; S.I. 2004/827, art. 4(g); S.I. 2004/1572, **art. 4**

2 [F2Passengers' Committees].

F3 . . . . . .

Textual Amendments

F2 Words in s. 2(2)-(6)(6A)(7)(8) and sidenote substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 Pt. I para. 2**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F3 S. 2 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

3 . . . . . .

F4 . . . . . .

Textual Amendments

F4 S. 3 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

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4 General duties of the Secretary of State and the Regulator.

(1) **[**[F5]the Office of Rail Regulation**]**[F6]shall**]** have a duty to exercise the functions assigned or transferred to **[**[F7]it**]** under or by virtue of this Part **[**[F8]or the Railways Act 2005 that are not safety functions**]** in the manner which **[**[F7]it**]** considers best calculated—

[[F9](zb) to promote improvements in railway service performance;

(a) otherwise to protect the interests of users of railway services;**]**

(b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that **[**[F7] it**]** considers economically practicable;

[[F10](ba) to contribute to the development of an integrated system of transport of passengers and goods;

(bb) to contribute to the achievement of sustainable development;**]**

(c) to promote efficiency and economy on the part of persons providing railway services;

(d) to promote competition in the provision of railway services **[**[F11]for the benefit of users of railway services**]**;

(e) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;

(f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of **[**[F12]its**]** functions under this Part **[**[F13]or the Railways Act 2005 that are not safety functions**]**;

(g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

(2) Without prejudice to the generality of subsection (1)(a) above, **[**[F5]the Office of Rail Regulation**]**[F14]shall**]** have a duty, in particular, to exercise the functions assigned or transferred to **[**[F7]it**]** under or by virtue of this Part **[**[F8]or the Railways Act 2005 that are not safety functions**]** in the manner which **[**[F7]it**]** considers is best calculated to protect—

(a) the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator otherwise than under a franchise agreement, in respect of—

(i) the prices charged for travel by means of those services, and

(ii) the quality of the service provided,

[F15]. . . ; and

(b) the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of—

(i) the prices charged for such use; and

(ii) the quality of the service provided.

(3) **[**[F5]the Office of Rail Regulation**]**[F16] shall**]** be under a duty in exercising the functions assigned or transferred to **[**[F7]it**]** under or by virtue of this Part **[**[F8] or the Railways Act 2005 that are not safety functions**]**—

(a) to take into account the need to protect all persons from dangers arising from the operation of railways, [F17]. . . ; and

(b) to have regard to the effect on the environment of activities connected with the provision of railway services.

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[[F18](3A) Subsections (1) to (3) above shall have effect in relation to the Secretary of State as in relation to **[**[F5]the Office of Rail Regulation**]** except that in their application to the Secretary of State—

(a) [F19]. . . . . .

(b) the references in each of the subsections to the functions transferred or assigned to the Secretary of State under or by virtue of this Part include only the functions transferred or assigned to him under or by virtue of sections 6 to 22 [F20]. . . below **[**[F21]and

(c) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to the Secretary of State under or by virtue of the provisions of Part 4 of that Act other than section 39.**]]**

[[F22](3B) Subsections (1) to (3) above shall have effect in relation to the Scottish Ministers as in relation to the Office of Rail Regulation except that, in relation to those Ministers—

(a) the references in each of the subsections to functions transferred or assigned to those Ministers under or by virtue of Part 1 of this Act include only the functions transferred or assigned under or by virtue of sections 16A to 16G of this Act; and

(b) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to those Ministers under or by virtue of Part 4 of that Act.

(3C) Subsections (1) to (3) above shall have effect in relation to the National Assembly for Wales as in relation to the Office of Rail Regulation except that, in relation to that Assembly, the references in each of the subsections to functions transferred or assigned under or by virtue of Part 1 of this Act or the Railways Act 2005 include only the functions transferred or assigned to the Assembly under or by virtue of the provisions of Part 4 of that Act of 2005 other than section 39.**]**

(4) The Secretary of State shall also be under a duty, in exercising the functions assigned or transferred to him under or by virtue of this Part **[**[F23]or the Railways Act 2005**]** , to promote the award of franchise agreements to companies in which qualifying railway employees have a substantial interest, "qualifying railway employees" meaning for this purpose persons who are or have been employed in an undertaking which provides or provided the services to which the franchise agreement in question relates at a time before those services begin to be provided under that franchise agreement.

(5) **[**[F5]the Office of Rail Regulation**]** shall also be under a duty in exercising the functions assigned or transferred to **[**[F7]it**]** under this Part **[**[F24]or the Railways Act 2005 that are not safety functions**]**—

[[F25](a) to have regard to any general guidance given to **[**[F7]it**]** by the Secretary of State about railway services or other matters relating to railways;

[[F26](aa) to have regard to any general guidance given to it by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or as regards Scotland that relate to railways;

(ab) in having regard to any guidance falling within paragraph (aa), to give what appears to it to be appropriate weight to the extent (if any) to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers;**]]**

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(b) to act in a manner which **[**[F7]it**]** considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which **[**[F5]the Office of Rail Regulation**]** has functions under or by virtue of this Part **[**[F27]or that Act**]** (whether or not the activities in question are, or are to be, carried on by those persons in their capacity as holders of such licences); [F28]. . .

[[F29](c) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services;

(ca) to have regard to any notified strategies and policies of the National Assembly for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;

(cb) to have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on it by or under any enactment;**]**

[[F30](d) to have regard to the ability of the Mayor of London, [F31]. . . and Transport for London to carry out the functions conferred or imposed on them by or under any enactment**]**

[[F32](5A) Before giving any guidance for the purposes of subsection (5)(a) above the Secretary of State must consult the National Assembly for Wales.

(5B) In exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc. Act 1974, the Office of Rail Regulation shall be under a duty to have regard to any general guidance given to it by the Secretary of State.

(5C) In performing its duties under subsections (1) to (5A) above in relation to—

(a) any matter affecting the interests of users or potential users of railway services,

(b) any matter affecting the interests of persons providing railway services, or

(c) any matter not falling within paragraph (a) or (b) but falling within subsection (5D),

the Office of Rail Regulation must have regard, in particular, to the interests, in securing value for money, of the persons mentioned in paragraphs (a) and (b) above, of the persons who make available the resources and other funds mentioned in that subsection and of the general public.

(5D) A matter falls within this subsection if the Office of Rail Regulation has been informed that—

(a) public financial resources (within the meaning of paragraph 1D of Schedule 4A to this Act), or

(b) funds that do not comprise such resources but are provided in whole or in part by Transport for London, the National Assembly for Wales, a Passenger Transport Executive or any other body in receipt of such resources,

are or are likely to become available to be applied for purposes connected with that matter.**]**

(6) In performing **[**[F12]its**]** duty under subsection (1)(a) above so far as relating to services for the carriage of passengers by railway or to station services, **[**[F5]the Office of Rail Regulation**]** shall have regard, in particular, to the interests of persons who are disabled.

(7) Without prejudice to the generality of paragraph (e) of subsection (1) above, any arrangements for the issue and use of through tickets shall be regarded as a measure falling within that paragraph.

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[[F33](7ZA) Where any general guidance is given to the Office of Rail Regulation for the purposes of subsection (5)(a) or (aa) or (5B)—

(a) it may be varied or revoked by the person giving it at any time; and

(b) the guidance, and any variation or revocation of the guidance, must be published by that person in such manner as he considers appropriate.**]**

[[F34](7A) Subsections (1) to (6) above do not apply in relation to anything done by **[**[F5]the Office of Rail Regulation**]** in the exercise of functions assigned to **[**[F7]it**]** by section 67(3) below ("Competition Act functions").

(7B) **[**[F5]the Office of Rail Regulation**]** may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which **[**[F35]the CMA**]** could have regard when exercising that function.**]**

(8) [F36]. . . . . .

(9) In this section—

[[F37]" the environment" means all , or any, of the following media, namely , the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground);**]**

[[F38]"notified strategies and policies", in relation to the National Assembly for Wales, means the strategies and policies of that Assembly that have been notified by that Assembly for the purposes of this section to the Office of Rail Regulation;**]**

"the passenger transport market" means the market for the supply of services for the carriage of passengers, whether by railway or any other means of transport;

[[F39]"railway service performance" includes, in particular, performance in securing each of the following in relation to railway services—

(a) reliability (including punctuality);

(b) the avoidance or mitigation of passenger overcrowding; and

(c) that journey times are as short as possible;

"safety functions" means functions assigned or transferred to the Office of Rail Regulation—

(a) under this Part,

(b) under or by virtue of the Railways Act 2005, or

(c) under or by virtue of the Health and Safety at Work etc. Act 1974,

so far as they are being exercised for the railway safety purposes (within the meaning of Schedule 3 to the Railways Act 2005) or for purposes connected with those purposes.**]**

[F40]. . .

Textual Amendments

F5 Words in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F6 Words in s. 4(1) substituted (1.2.2001) by 2000 c. 38, **s. 224(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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F7 Words in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F8 Words in s. 4(1)-(3) inserted (8.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(2)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1; S.I. 2006/266, **art. 2(2)**, Sch.

F9 S. 4(zb)(a) substituted (26.6.2005) for s.4(za)(a) by Railways Act 2005 (c. 14), **ss. 3(3)**, 60; S.I. 2005/1444, **art. 2(2)**, Sch. 2

F10 S. 4(1)(ba)(bb) inserted (1.2.2001) by 2000 c. 38, **s. 224(2)(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F11 Words in s. 4(1)(d) inserted (1.2.2001) by 2000 c. 38, **s. 224(2)(d)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F12 Word in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F13 Words in s. 4(1)-(3) inserted (8.6.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), **ss. 3(2)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F14 Words in s. 4(2) substituted (1.2.2001) by 2000 c. 38, **s. 224(3)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F15 Words in s. 4(2)(a) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(2)(a), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

F16 Words in s. 4(3) substituted (1.2.2001) by 2000 c. 38, **s. 224(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F17 Words in s. 4(3)(a) repealed (1.4.2006) by Railways Act 2005 (c. 14), ss. 3(4), 59, 60, **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/266, **art. 2(2)**, Sch.

F18 S. 4(3A) inserted (1.2.2001) by 2000 c. 38, **s. 224(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F19 S. 4(3A)(a) repealed (26.6.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1444, **art. 2(2)**, Sch. 2

F20 Words in s. 4(3A)(b) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F21 S. 4(3A)(c) and preceding word inserted (1.12.2006) by Railways Act 2005 (c. 14), **ss. 3(5)**, 60; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F22 S. 4(3B)(3C) inserted (16.10.2005 for certain purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(6)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F23 Words in s. 4(4) inserted (26.6.2005) by Railways Act 2005 (c. 14), **ss. 3(7)**, 60; S.I. 2005/1444, **art. 2(2)**, Sch. 2

F24 Words in s. 4(5) inserted (8.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(8)(a)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1; S.I. 2006/266, **art. 2(2)**, Sch.

F25 S. 4(5)(a) substituted (1.2.2001) by 2000 c. 38, **s. 224(6)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F26 S. 4(5)(aa)(ab) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 3(8)(b)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F27 Words in s. 4(5)(b) inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 3(8)(c)**, 60; S.I. 2005, 1444, {art. 2(1)}, Sch. 1

F28 Word in s. 4(5) omitted (3.7.2000) by virtue of 1999 c. 29, **s. 200(4)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(c), **Sch.**

F29 S. 4(5)(c)-(cb) substituted (24.7.2005) for s.4(5)(c) by Railways Act 2005 (c. 14), **ss. 3(8)(d)**, 60; S.I. 2005/1909, **art. 2**, Sch.

F30 S. 4(5)(d) and preceding word inserted (3.7.2000) by Greater London Authority Act 1999 (c. 29), **ss. 200**, 425(2)(3) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(c), **Sch.**

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F31 Words in s. 4(5)(d) repealed (8.6.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt.1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1444, **art. 2(1)**, Sch. 1

F32 S. 4(5A)-(5D) inserted (8.6.2005 for certain purposes and 1.4.2006 for certain further purposes and 29.1.2007 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(9)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1; S.I. 2006/266, **art. 2(2)**, Sch.; S.I. 2007/62, **art. 2**

F33 S. 4(7ZA) substituted (16.10.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(6)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/266, **art. 2(2)**, Sch.

F34 S. 4(7A)(7B) inserted (1.3.2000) by 1998 c. 41, ss. 9(3), 66(5), **Sch. 10 Pt. II para. 6(3)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F35 Words in s. 4(7B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 100** (with art. 3)

F36 S. 4(8) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(2)(c), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

F37 S. 4(9): definition of "the environment" substituted (14.12.1999) by 1999 c. 24, s. 6, **Sch. 2 para. 12**; S.I. 1999/3376, **art. 2**

F38 S. 4(9): definition of "notified strategies and policies" inserted (24.7.2005) by Railways Act 2005 (c. 14), **ss. 3(11)(a)**, 60; S.I. 2005/1909, **art. 2**, Sch.

F39 S. 4(9): definition of "railway service performance" and "safety functions" inserted (26.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(11)(b)**, 60; S.I. 2005/1444, **art. 2(2)**, Sch. 2; S.I. 2006/266, **art. 2(2)**, Sch.

F40 S. 4(9): definition of "through ticket" repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C4 S. 4(1) modified (temp.) (E.W.) (30.5.2006) by London Olympic Games and Paralympic Games Act 2006 (c. 12), **ss. 17(1)**, 40(6); S.I. 2006/1118, **art. 2(3)**

C5 S. 4(1) modified (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 22**

C6 S. 4(1)-(6) excluded (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), regs. 1(2), **13(3)**

Commencement Information

I2 S. 4 wholly in force at 21.3.1994; s. 4 not in force at Royal Assent see s. 154(2); s. 4(1)(3)(7)(9) in force for specified purposes at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; s. 4(1)-(3)(5)(6) in force for specified purposes at 22.2.1994 by S.I. 1994/447, **art. 2** and in force at 21.3.1994 insofar as not already in force by S.I. 1994/571, **art. 3**

F41 5 . . . . . .

Textual Amendments

F41 S. 5 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31**, Pt. IV; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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Licensing of operators of railway assets

6 Prohibition on unauthorised operators of railway assets.

(1) Any person who acts as the operator of a railway asset is guilty of an offence unless—

(a) he is authorised to be the operator of that railway asset by a licence; or

(b) he is exempt, by virtue of section 7 below, from the requirement to be so authorised.

[[F42](1A) This section does not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing **[**[F43]services for which a European licence is required**]]**

(2) In this Part—

[[F44] "European licence" means a licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose;**]**

[F45] . . . . . .

"operator", in relation to any railway asset, means the person having the management of that railway asset for the time being;

"railway asset" means—

(a) any train being used on a network, whether for the purpose of carrying passengers or goods by railway or for any other purpose whatsoever;

(b) any network;

(c) any station; or

(d) any light maintenance depot.

[[F46](2A) In subsection (2) above, "EEA State" means a member State, Norway, Iceland or Liechtenstein.**]**

(3) Any person who is guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or **[**[F47]the Office of Rail Regulation**]** .

Textual Amendments

F42 S. 6(1A) inserted (27.6.1998) by S.I. 1998/1340, **reg. 21(2)**

F43 Words in s. 6(1A) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(2)**

F44 S. 6(2): definition of "European license" substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(3)(a)**

F45 S. 6(2): definition of "international services" omitted (28.11.2005) by virtue of The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(3)(b)**

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F46 S. 6(2A) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(4)**

F47 Words in s. 6(4) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

Modifications etc. (not altering text)

C7 S. 6(1) excluded (18.12.1996) by 1996 c. 61, **s. 16(1)**

C8 S. 6(1) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 24**

Commencement Information

I3 S. 6 wholly in force at 1.4.1994; s. 6 not in force at Royal Assent see s. 154(2); s. 6(2) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**, s. 6 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

7 Exemptions from section 6.

(1) The Secretary of State may, after consultation with **[**[F48]the Office of Rail Regulation**]**[F49]. . . , by order grant exemption from the requirement to be authorised by licence to be the operator of such railway assets, or of railway assets of such a class or description, as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

(2) A licence exemption under subsection (1) above may be granted either—

(a) to persons of a particular class or description; or

(b) to a particular person;

and a licence exemption granted to persons of a particular class or description shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class or description.

(3) If any person makes an application under this subsection to **[**[F48]the Office of Rail Regulation**]** for the grant of an exemption from the requirement to be authorised by licence to be the operator of such railway assets, or of railway assets of such a class or description, as he may specify in the application, **[**[F48]the Office of Rail Regulation**]** , after consultation with the Secretary of State [F49]. . . —

(a) may either grant or refuse the exemption, whether wholly or to such extent as **[**[F50]it**]** may specify in the exemption; and

(b) if and to the extent that **[**[F50]it**]** grants **[**[F51]the exemption**]** , may do so subject to compliance with such conditions (if any) as **[**[F50]it**]** may so specify.

(4) Before granting a licence exemption under subsection (3) above, **[**[F48]the Office of Rail Regulation**]** shall give notice—

(a) stating that **[**[F50]it**]** proposes to grant the licence exemption,

(b) stating the reasons why **[**[F50]it**]** proposes to grant the licence exemption; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence exemption may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (4) above shall be given by publishing the notice in such manner as **[**[F48]the Office of Rail Regulation**]** considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence exemption.

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[F52](5A)

(6) If any condition (the "broken condition") of a licence exemption is not complied with—

(a) the Secretary of State, in the case of a licence exemption under subsection (1) above, or

(b) **[**[F48]the Office of Rail Regulation**]**, in the case of a licence exemption under subsection (3) above,

may give to any relevant person a direction declaring that the licence exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

[F52](6A)

(7) For the purposes of **[**[F53]this section**]**—

"condition", in relation to a licence exemption, means any condition subject to compliance with which the licence exemption was granted;

"relevant person", in the case of any licence exemption, means a person who has the benefit of the licence exemption and who—

(a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or

(b) is the operator of any of the railway assets in relation to which the broken condition is not complied with.

(8) Where the Secretary of State or **[**[F48]the Office of Rail Regulation**]** gives a direction under subsection (6) above to any person, he **[**[F54]or it**]** may also direct that person to refrain from being the operator of any railway assets or of such railway assets, or railway assets of such a class or description, as may be specified in the direction by virtue of this subsection.

[F52](8A)

(9) Subject to **[**[F55]subsection (6)**]** above, a licence exemption, unless previously revoked in accordance with any term contained in the licence exemption, shall continue in force for such period as may be specified in, or determined by or under, the licence exemption.

[F56](10) . . . . . .

(11) Any application for a licence exemption under subsection (3) above must be made in writing; and where any such application is made, **[**[F48]the Office of Rail Regulation**]** may require the applicant to furnish him with such information as **[**[F48]the Office of Rail Regulation**]** may consider necessary to enable **[**[F50]it**]** to decide whether to grant or refuse the licence exemption.

(12) Licence exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.

(13) In this Part "licence exemption" means an exemption, granted under any provision of this section in respect of a railway asset or in respect of railway assets of any class or description, from the requirement to be authorised by licence to be the operator of that railway asset or, as the case may be, railway assets of that class or description.

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Textual Amendments

F48 Words in s. 7 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F49 Words in s. 7(1)(3) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 1(1)(a), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F50 Words in s. 7 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), 22. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F51 Words in s. 7(3)(b) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 4(a)**; S.I. 2004/827, **art. 4(g)**

F52 S. 7(5A)(6A)(8A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 1(1)(b), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F53 Words in s. 7(7) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 2(6)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F54 Words in s. 7(8) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 4(b)**; S.I. 2004/827, **art. 4(g)**

F55 S. 7(9) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 1(2)**; S.I. 2005/1909, **art. 2**, Sch.

F56 S. 7(10) repealed (15.1.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV** and omitted (1.2.2001) by virtue of 2000 c. 38, s. 252, **Sch. 27 para. 18**; S.I. 2000/3376, **art. 2**; S.I. 2001/57, art. 3, **Sch. 2** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C9 S. 7(1) restricted (*prosp.*) by 1999 c. 29, ss. 199(1)(a)(2)(3), 425(2) (with **Sch. 12 para. 9(1)**)

7A Consumer protection conditions.

[F57] . . . . . .

Textual Amendments

F57 S. 7A repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 2, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

8 Licences.

(1) Subject to the following provisions of this section—

(a) the Secretary of State after consultation with **[**[F58]the Office of Rail Regulation**]**[F59]. . . , or

(b) **[**[F58]the Office of Rail Regulation**]** with the consent **[**[F60], or in accordance with a general authority, of the Secretary of State [F59]. . . ,**]**

may grant to any person a licence authorising the person to be the operator of such railway assets, or of railway assets of such a class or description, as may be specified in the licence.

(2) Any general authority given to **[**[F58]the Office of Rail Regulation**]** under subsection (1)(b) above

[[F61](a) [F62]. . . . . .

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(b) may include a requirement for **[**[F58]the Office of Rail Regulation**]** either to consult the Secretary of State, or a requirement to obtain his approval before granting a licence;

but a failure to comply with such a requirement shall not affect the validity of the licence.**]**

(3) Any application for a licence—

(a) shall be made in the prescribed manner;

(b) shall be accompanied by such fee (if any) as may be prescribed in the case of a licence of the description in question; and

(c) shall, if the Secretary of State so requires, be published by the applicant in the prescribed manner and within such period as may be notified to the applicant by the Secretary of State;

and, on any such application, the Secretary of State or, as the case may be, **[**[F58]the Office of Rail Regulation**]** may either grant or refuse the licence.

(4) Before granting a licence, the Secretary of State or **[**[F58]the Office of Rail Regulation**]** shall give notice—

(a) stating that he **[**[F63]or it**]** proposes to grant the licence,

(b) stating the reasons why he **[**[F63]or it**]** proposes to grant the licence, and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the Secretary of State or **[**[F58]the Office of Rail Regulation**]** considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.

(6) A licence shall be in writing and, unless previously revoked or surrendered in accordance with any terms contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence; and a licence shall not be capable of being surrendered **[**[F64]unless **[**[F58]the Office of Rail Regulation**]**[F65]consents**]** to the surrender**]** if it is—

(a) a passenger licence;

(b) a network licence;

(c) a station licence; or

(d) a light maintenance depot licence.

(7) As soon as practicable after the granting of a licence, the grantor shall send a copy—

(a) in the case of a licence granted by the Secretary of State, to **[**[F58]the Office of Rail Regulation**]**[F66]. . . ; or

(b) in the case of a licence granted by the **[**[F58]the Office of Rail Regulation**]**, **[**[F67]to the **[**[F68]Secretary of State**]]**. . . .

(8) Any power to make regulations by virtue of subsection (3) above shall only be exercisable by the Secretary of State after consultation with **[**[F58]the Office of Rail Regulation**]**[F69]. . .

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(9) Different fees may be prescribed under subsection (3) above in respect of licences authorising a person to be the operator of railway assets of different classes or descriptions.

[F70](10) . . . . . .

(11) Any sums received by the Secretary of State or **[**[F58]the Office of Rail Regulation**]** under this section shall be paid into the Consolidated Fund.

Textual Amendments

F58 Words in s. 8 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F59 Words in s. 8(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(1)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F60 Words in s. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(2)(b)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F61 S. 8(2)(a)(b) and words substituted for words (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F62 S. 8(2)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11); S.I. 2005/1909, **art. 2**, Sch.

F63 Words in s. 8(4)(a)(b) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 5**; S.I. 2004/827, **art. 4(g)**

F64 Words in s. 8(6) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(4)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F65 Word in s. 8(6) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 3(3)**; S.I. 2005/1909, **art. 2**, Sch.

F66 Words in s. 8(7)(a) repealed (24.7.2005 for certain purposes and 1.4.2006 otherwise) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.; S.I. 2006/266, **art. 2(2)**, Sch.

F67 Words in s. 8(7) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(5)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F68 Words in s. 8(7)(b) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 3(4)(b)**; S.I. 2005/1909, **art. 2**, Sch.

F69 Words in s. 8(8) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(5), **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F70 S. 8(10) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C10 S. 8 restricted (18.12.1996) by 1996 c. 61, **s. 16(3)**

9 Conditions of licences: general.

(1) A licence may include—

(a) such conditions (whether or not relating to the licence holder's being the operator of railway assets under the authorisation of the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by section 4 above; and

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(b) conditions requiring the rendering to—

(i) the Secretary of State,

(ii) **[**[F71]the Office of Rail Regulation**]**, or

(iii) any other person, or any other person of a class or description, specified in the licence, except a Minister of the Crown or Government department,

of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Conditions included in a licence by virtue of subsection (1)(a) above—

(a) may require the licence holder to enter into any agreement with any person for such purposes as may be specified in the conditions; and

(b) may include provision for determining the terms on which such agreements are to be entered into.

(3) Conditions included in a licence by virtue of subsection (1)(a) above may require the licence holder—

(a) to comply with any requirements from time to time imposed by a qualified person with respect to such matters as are specified in the licence or are of a description so specified;

(b) except in so far as a qualified person consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;

(c) to refer for determination by a qualified person such questions arising under the licence as are specified in the licence or are of a description so specified;

(d) to refer for approval by a qualified person such things falling to be done under the licence as are specified in the licence or are of a description so specified;

(e) to furnish to a qualified person such documents or other information as he may require for the purpose of exercising any functions conferred or imposed on him under or by virtue of the licence;

(f) to furnish to the Secretary of State or **[**[F71]the Office of Rail Regulation**]** such documents or other information as he **[**[F72]or it**]** may require for the purpose of exercising the functions assigned or transferred to him **[**[F72]or it**]** under or by virtue of this Part **[**[F73]or Part 4 of the Railways Act 2005**]** .

[[F74](3A) Conditions included in a licence by virtue of subsection (1)(a) above may include provision about any matter which is dealt with (whether in the same or a different manner) by an access agreement.**]**

(4) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions; and any provision included by virtue of this subsection in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(5) Subsections (2) to (4) above are without prejudice to the generality of subsection (1)(a) above.

(6) Any reference in subsection (3) above to a "qualified person" is a reference to—

(a) a person specified in the licence in question for the purpose in question, or

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(b) a person of a description so specified,

and includes a reference to a person nominated for that purpose by such a person pursuant to the licence.

(7) Any sums received by the Secretary of State or the **[**[F71]the Office of Rail Regulation**]** in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

Textual Amendments

F71 Words in s. 9 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F72 Words in s. 9 inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 6**; S.I. 2004/827, **art. 4(g)**

F73 Words in s. 9(3)(f) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 2**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F74 S. 9(3A) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 19**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

10 Conditions of licences: activities carried on by virtue of a licence exemption.

(1) If and so long as a person is a licence exempt operator—

(a) there shall not be included in any licence granted to him any condition which relates to his licence exempt activities, except to the extent permitted by virtue of subsection (2) below; and

(b) any such condition which is included in a licence which has been granted to him shall, except to that extent, be of no effect so far as so relating.

(2) A condition which relates to both—

(a) a licensed activity carried on by a person (“the licensee"), and

(b) a licence exempt activity carried on by him,

may be included in a licence, but only if and to the extent that, in the opinion of the person granting the licence, the condition must, in consequence of the licensee’s carrying on of a mixed activity, necessarily have effect in relation to the whole, or some part, of so much of the mixed activity as consists of the licence exempt activity if the condition is to have full effect in relation to so much of the mixed activity as consists of the licensed activity.

(3) There shall not be included in a licence any condition relating to the fares that may be charged in respect of train journeys involving licence exempt travel, other than train journeys which also involve—

(a) licensed travel; and

(b) at least two consecutive scheduled calls at stations during any one continuous spell of licensed operation.

(4) For the purposes of subsection (3) above and this subsection—

[F75] . . . . . .

“licence exempt travel” means travel by means of a train whose operator is, by virtue of a licence exemption, exempt from the requirement to be authorised by licence to be the operator of that train for the whole, or for some part, of the train journey in question;

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"licensed travel" means travel by means of a train whose operator is authorised by licence to be the operator of that train for some part of the train journey in question;

"spell of licensed operation", in the case of any train journey, means any part of the journey throughout which the operator of the train in question lawfully acts as such by virtue only of holding one or more licences;

"train journey" means a journey between any two stations which is scheduled to be made by means of one train (irrespective of where the train in question begins or ends its journey).

(5) Subsection (3) above has effect notwithstanding anything in subsection (1) or (2) above; and section 9 above is subject to the provisions of this section.

(6) In this section—

"licence exempt activity" means any activity which a person carries on in his capacity as a licence exempt operator;

"licence exempt operator" means an operator of railway assets, or railway assets of a class or description, who is, by virtue of a licence exemption, exempt from the requirement to be authorised by licence to be the operator of those railway assets or of railway assets of that class or description;

"licensed activity" means any activity which a person carries on in his capacity as a licence holder;

"mixed activity" means any activity which is carried on by a person who is both a licence holder and a licence exempt operator and which is carried on by him in part as a licensed activity and in part as a licence exempt activity.

Textual Amendments

F75 S. 10(4): definition of "call" repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

11 Assignment of licences.

(1) A licence shall be capable of being assigned, but only if it includes a condition authorising assignment.

(2) A licence shall not be capable of being assigned except with the consent of—

[[F76](a) the Secretary of State, if he is specified for the purpose in the licence; or

(b) **[**[F77]the Office of Rail Regulation**]**[F78]. . . , in any other case.**]**

[F79](3) . . . . . .

(4) Any consent under subsection (2) above may be given subject to compliance with such conditions as **[**[F80]are imposed by the person [F81]. . . giving the consent**]**, which may include conditions modifying, or requiring or otherwise providing for the making of modifications to, the conditions of the licence.

(5) A licence may include conditions which must be complied with before the licence can be assigned.

(6) An assignment, or purported assignment, of a licence shall be void—

(a) if the licence is not capable of assignment;

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(b) if the assignment, or purported assignment, is in breach of a condition of the licence; or

(c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by subsection (2) above is given.

(7) A licence shall not be capable of being assigned under or by virtue of any other provision of this Act, other than paragraph 4 of Schedule 7 to this Act.

(8) In this section "assignment" includes any form of transfer and cognate expressions shall be construed accordingly.

(9) Any reference in this section to "assignment" shall be construed in Scotland as a reference to assignation.

Textual Amendments

F76 S. 11(2)(a)(b) substituted for words (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 5(2)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F77 Words in s. 11 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F78 Words in s. 11(2)(b) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(a), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.

F79 S. 11(3) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 5(3), **Sch. 31 Pt. IV** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F80 Words in s. 11(4) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 5(4)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F81 Words in s. 11(4) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(b), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.

Modification of licences

12 Modification by agreement.

(1) Subject to the following provisions of this section, **[**[F82]the Office of Rail Regulation**]** may modify the conditions of a licence if the holder of the licence consents to the modifications.

(1A) [F83]. . . . . .

(1B) [F83]. . . . . .

(1C) [F83]. . . . . .

(2) Before making modifications **[**[F84]under this section**]** , **[**[F82]the Office of Rail Regulation**]** shall give notice—

(a) stating that **[**[F85]it**]** proposes to make the modifications and setting out their effect,

(b) stating the reasons why **[**[F85]it**]** proposes to make the modifications, and

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(c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall **[**[F86], before making the modifications,**]** consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection [F87]. . . (2) above shall be given—

(a) by publishing the notice in such manner as **[**[F88F89]. . . the Regulator,**]** considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the holder of the licence.

(4) [F90]. . . . . .

Textual Amendments

F82 Words in s. 12 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F83 S. 12 (1A)-(1C) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, **Sch. 1 para. 5(1)** {Sch. 13 Pt. I} (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.

F84 Words in s. 12(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 5(2)**; S.I. 2005/1909 {art. 2}, Sch.

F85 Words in s. 12 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F86 Words in s. 12(12) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 6(3)(b)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F87 Words in s. 12(3) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F88 Words in s. 12(3) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 6(4)(b)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F89 Words in s. 12(3) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F90 S.12(4) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

13 Modification references to the [[F91]CMA] .

(1) **[**[F92]the Office of Rail Regulation**]** may make to the Monopolies and Mergers Commission (in this Act referred to as the **[**[F93]CMA**]**) a reference which is so framed as to require **[**[F94]the CMA**]** to investigate and report on the questions—

(a) whether any matters which—

(i) relate to the provision of any railway services by means of a railway asset, or railway assets of a class or description, whose operator acts as such by virtue of a licence, and

(ii) are specified in the reference,

operate, or may be expected to operate, against the public interest; and

(b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.

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(1A) [F95]. . . . . .

(1B) [F95]. . . . . .

(1C) [F95]. . . . . .

(2) **[**[F92]the Office of Rail Regulation**]** may, at any time, by notice given to the **[**[F96]CMA**]** vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice **[**[F97]the CMA**]** shall give effect to the variation.

(3) **[**[F92]the Office of Rail Regulation**]** may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the **[**[F98]CMA**]** in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which, in **[**[F99]its**]** opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any modifications of the conditions of the licence by which, in **[**[F99]its**]** opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, **[**[F92]the Office of Rail Regulation**]**—

(a) shall serve a copy of the reference or variation on the holder of the licence; and

(b) shall publish particulars of the reference or variation in such manner as **[**[F100]it**]** considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) **[**[F92]the Office of Rail Regulation**]** shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the **[**[F101]CMA**]** not to proceed with the reference or, as the case may require, not to give effect to the variation, **[**[F102]the CMA**]** shall comply with the direction.

(6) It shall be the duty of **[**[F92]the Office of Rail Regulation**]** , for the purpose of assisting the **[**[F103]CMA**]** in carrying out an investigation on a reference under this section, to give to **[**[F104]the CMA**]** —

(a) any information in **[**[F105]the possession of **[**[F92]the Office of Rail Regulation**]]** which relates to matters falling within the scope of the investigation and—

(i) is requested by **[**[F104]the CMA**]** for that purpose; or

(ii) is information which, in **[**[F105]the opinion of **[**[F92]the Office of Rail Regulation**]]**, it would be appropriate for that purpose to give to **[**[F104]the CMA**]** without any such request; and

(b) any other assistance which **[**[F104]the CMA**]** may require, and which it is within **[**[F105]the power of **[**[F92]the Office of Rail Regulation**]]** to give, in relation to any such matters;

and **[**[F104]the CMA**]** , for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

(7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the **[**[F106]CMA**]** shall have regard to the matters as respects which duties are imposed on [F107]. . . **[**[F108]the Office of Rail Regulation**]** by section 4 above.

(8) [F109]. . . . . .

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(8A) [F109] . . . . . .

(9) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

[[F110](10) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 13B and 15C).**]**

Textual Amendments

F91 Word in s. 13 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(9)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F92 Words in s. 13 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 6(a)** (with para. 10); S.I. 2005/1909, **art. 2**, Sch.

F93 Word in s. 13(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F94 Words in s. 13(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F95 S. 13(1A)-(1C) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 paras. 6(b), 10, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F96 Word in s. 13(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F97 Words in s. 13(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F98 Word in s. 13(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F99 Words in s. 13(3) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(5)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F100 Words in s. 13(4) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(6)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F101 Word in s. 13(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F102 Words in s. 13(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F103 Word in s. 13(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F104 Words in s. 13(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F105 Words in s. 13(6) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(8)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F106 Word in s. 13(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F107 Words in s. 13(7) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F108 Words in s. 13 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

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F109 S. 13(8)(8A) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(3)(b), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

F110 S. 13(10) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 70(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

C11 S. 13 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

C12 S.13(1)(a)(i) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 3**

[F111 13A References under section 13: time limits

(1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the **[**F112CMA**]** on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by **[**F113the Office of Rail Regulation**]** under subsection (3) below.

(3) **[**F113the Office of Rail Regulation**]** may, if it has received representations on the subject from the **[**F112CMA**]** and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) **[**F113the Office of Rail Regulation**]** shall, in the case of an extension made by it under subsection (3) above—

(a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence.**]**

Textual Amendments

F111 Ss. 13A, 13B inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(4); S.I. 2003/1397, **art. 2(1)**, Sch.

F112 Word in s. 13A(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 71**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F113 Words in s. 13A substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 7** (with para. 10); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C13 S. 13A applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

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[F114]13B References under section 13: application of Enterprise Act 2002

(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections **[**[F115](1A),**]** (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);
(b) section 110 (enforcement of powers under section 109: general);
(c) section 111 (penalties);
(d) section 112 (penalties: main procedural requirements);
(e) section 113 (payments and interest by instalments);
(f) section 114 (appeals in relation to penalties);
(g) section 115 (recovery of penalties); and
(h) section 116 (statement of policy).

[[F116](1A) Section 109 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 13 of the Railways Act 1993.", and

(b) subsection (8A) were omitted.**]**

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; [F117]...

[[F118](aa) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part."; and**]**

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

[[F119](3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

"(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.".**]**

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the **[**[F120]CMA**]** in connection with references under section 13 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), **[**[F121]—

(a) the words ", OFCOM or the Secretary of State" were omitted; and
(b) for the words "their functions" there were substituted " its functions ".**]**

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders), shall, for the purposes of the application of those sections

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by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by those subsections.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.

Textual Amendments

F114 Ss. 13A, 13B inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(4); S.I. 2003/1397, **art. 2(1)**, Sch.

F115 Word in s. 13B(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(2)** (with art. 3, Sch. 2 para. 2)

F116 S. 13B(1A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(3)** (with art. 3, Sch. 2 para. 2)

F117 Word in s. 13B(2)(a) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(4)(a)** (with art. 3, Sch. 2 para. 2)

F118 S. 13B(2)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(4)(b)** (with art. 3, Sch. 2 para. 2)

F119 S. 13B(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(5)** (with art. 3, Sch. 2 para. 2)

F120 Word in s. 13B(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 72(1)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F121 Words in s. 13B(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 72(1)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

C14 S. 13B applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

14 Reports on modification references.

(1) In making a report on a reference under section 13 above, the **[**[F122]CMA**]**—

(a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;

(b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and

(c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

[[F123](1A) For the purposes of sections 15 to 15B below, a conclusion contained in a report of the **[**[F124]CMA**]** is to be disregarded if the conclusion is not that of at least two-thirds

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of the members of the group constituted **[**[F125]by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference**]**.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the **[**[F126]CMA**]**, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.**]**

(2) . . . . . .

[[F127](3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the **[**[F128]CMA**]** on a reference under section 13 above.

(3A) In making any report on a reference under section 13 above the **[**[F128]CMA**]** must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the **[**[F128]CMA**]** thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the **[**[F128]CMA**]** thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the **[**[F128]CMA**]** thinks might significantly harm the individual's interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.**]**

(4) A report of **[**[F129]the **[**[F130]CMA**]]** on a reference under section 13 above shall be made to **[**[F131]the Office of Rail Regulation**]**.

(5) Subject to subsection (6) below, **[**[F131]the Office of Rail Regulation**]**—

(a) shall, on receiving such a report, send a copy of it to the holder of the licence to which the report relates and to the Secretary of State; and

(b) shall, not less than 14 days after that copy is received by the Secretary of State, publish the report in such manner as **[**[F132]it**]** considers appropriate for bringing the report to the attention of persons likely to be affected by it.

[F133](5A) . . . . . .

(6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in paragraph (b) of subsection (5) above, direct **[**[F134]the Office of Rail Regulation**]** to exclude that matter from every copy of the report to be published by virtue of that paragraph.

(7) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

Textual Amendments

F122 Word in s. 14(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F123 S 14(1A)(1B) inserted (20.6.2003) by 2002 c. 40, ss 278, 279, Sch. 25 para. 30(5)(a); S.I. 2003/1397, **art. 2(1)**, Sch.

F124 Word in s. 14(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F125 Words in s. 14(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F126 Word in s. 14(1B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F127 S. 14(3)-(3D) substituted (20.6.2003) for s. 14(3) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(5)(b); S.I. 2003/1397, **art. 2(1)**, Sch.

F128 Words in s. 14(3)-(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F129 Words in s. 14(1)-(2) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**

F130 Word in s. 14(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 73(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F131 Words in s. 14 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 8(a)** (with para. 10); S.I. 2005/1909, **art. 2**, Sch

F132 Words in s. 14(5) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 8(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F133 S. 14(5A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 paras. 8(b), 10, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch

F134 Words in s. 14 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 8(a)** (with para. 10); S.I. 2005/1909, **art. 2**, Sch

Modifications etc. (not altering text)

C15 S. 14 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

15 Modification following report.

(1) **[**[F135]This section applies where**]** a report of the **[**[F136]CMA**]** on a reference under section 13 above—

(a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,

(b) specifies effects adverse to the public interest which those matters have or may be expected to have,

(c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence, and

(d) specifies modifications by which those effects could be remedied or prevented,

[F137] . . .

[[F138](1A) Where the report is made to **[**[F139]the Office of Rail Regulation**]****[**[F140]it**]** shall, subject to the following provisions of this section and to section 15A below, make such modifications of the conditions of the licence as appear to **[**[F140]it**]** requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(1B) [F141] . . . . . **]**

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(2) Before making **[**[F142], or requiring the making of,**]** modifications under this section, **[**[F139]the Office of Rail Regulation**]**, [F143]. . . , shall have regard to the modifications specified in the report.

(3) Before making modifications under **[**[F144]subsection (1A) above**]**, **[**[F139]the Office of Rail Regulation**]** shall give notice—

(a) stating that **[**[F140]it**]** proposes to make the modifications and setting out their effect,

(b) stating the reasons why **[**[F140]it**]** proposes to make the modifications, and

(c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3A) [F145]. . . . . .

(4) A notice under subsection (3) [F146]. . . above shall be given—

(a) by publishing the notice in such manner as **[**[F139]the Office of Rail Regulation**]**, [F146]. . . considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the holder of the licence.

[[F147](4A) Where (after considering any representations or objections which are duly made and not withdrawn) **[**[F139]the Office of Rail Regulation**]**[F143]. . . proposes to make or require the making of modifications under this section, [F148]. . . it shall give notice to the **[**[F149]CMA**]** —

(a) setting out the modifications **[**[F140]it**]** proposes to make or [F150]. . . require to be made; and

(b) stating the reasons why **[**[F140]it**]** proposes to make the modifications or [F150]. . . require the making of them.

(4B) **[**[F139]the Office of Rail Regulation**]**[F143]. . . shall include with the notice under subsection (4A) above a copy of any representations and objections which have been considered.

(4C) If the period within which a direction may be given by the **[**[F151]CMA**]** under section 15A below expires without such a direction being given, **[**[F139]the Office of Rail Regulation**]**[F143]. . . shall make, or require the making of, the modifications set out in the notice given under subsection (4A) above.

(4D) If a direction is given by the **[**[F151]CMA**]** under section 15A(1)(b) below, **[**[F139]the Office of Rail Regulation**]**[F143]. . . shall make, or require the making of, such of those modifications as are not specified in the direction.**]**

(5) [F152]. . . . . .

(6) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F135 Words in s. 15(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(2)(a)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F136 Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 74**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F137 Words in s. 15(1) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 9(2)(b), **Sch. 31 Pt. IV** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F138 S. 15(1A)(1B) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F139 Words in s. 15 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F140 Word in s. 15 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F141 S. 15(1B) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F142 Words in s. 15(2) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(4)(a)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F143 Words in s.15(2)(4A)(4B)(4C)(4D) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F144 Words in s. 15(3) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(5)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F145 S. 15(3A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F146 Words in s. 15(4) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(c) {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F147 S. 15(4A)-(4D) inserted (1.2.2001) by 2000 c. 38, **s. 242(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F148 Words in s. 15(4A) omitted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 7(a) Table}; S.I. 2004/827, **art. 4(g)**

F149 Word in s. 15(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 74**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F150 Words in s. 15(4A) omitted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 7(b) Table}; S.I. 2004/827, **art. 4(g)**

F151 Words in s. 15(4C)(4D) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 74**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F152 S. 15(5) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C16 Ss. 13-16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

C17 S. 15(1A) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 4**

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[F153 15A [F154 CMA's] power to veto modifications following report.

(1) The [F155 CMA] may, within the period of four weeks beginning with the day on which they are given notice under section 15(4A) above, give a direction to [F156 the Office of Rail Regulation] F157. . . —

(a) not to make, or require the making of, the modifications set out in the notice; or

(b) not to make such of those modifications as are specified in the direction.

(2) The Secretary of State may, if an application is made to him by the [F155 CMA] within that period of four weeks, extend the period within which a direction may be given under this section to one of six weeks beginning with the day on which the [F155 CMA] are given notice under section 15(4A) above.

(3) The [F155 CMA] may give a direction under this section only if the modifications to which it relates do not appear to them requisite for the purpose of remedying or preventing the adverse effects specified in their report on the reference under section 13 above.

(4) If the [F155 CMA] give a direction under this section, they shall give notice—

(a) setting out the modifications contained in the notice given under section 15(4A) above;

(b) setting out the direction; and

(c) stating the reasons why they are giving the direction.

(5) A notice under subsection (4) above shall be given—

(a) by publishing the notice in such manner as the [F155 CMA] consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the direction; and

(b) by serving a copy of the notice on the holder of the licence.]

Textual Amendments

F153 S. 15A inserted (1.2.2001) by 2000 c. 38, **s. 242(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F154 Word in s. 15A heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 75(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F155 Words in ss. 15A(1)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 75(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F156 Words in s. 15A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F157 Words in s.15(A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C18 S. 15A applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

F159 15B Making of modifications by [F158 CMA] .

(1) If the [F160 CMA] give a direction under section 15A above, they shall themselves make such modifications of the conditions of the licence as appear to them requisite for the purpose of remedying or preventing—

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(a) the adverse effects specified in their report on the reference under section 13 above; or

(b) such of those adverse effects as would not be remedied or prevented by the modifications made by **[**[F161]the Office of Rail Regulation**]** , [F162]. . . , under section 15(4D) above.

(2) In exercising the function conferred by subsection (1) above, the **[**[F160]CMA**]** shall have regard to the matters as respects which duties are imposed on **[**[F161]the Office of Rail Regulation**]** by section 4 above.

(3) Before making modifications under this section, the **[**[F160]CMA**]** shall give notice—

(a) stating that they propose to make the modifications and setting out their effect,

(b) stating the reasons why they propose to make the modifications, and

(c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) above shall be given—

(a) by publishing the notice in such manner as the **[**[F160]CMA**]** consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the holder of the licence.

(5) As soon as practicable after making any modifications under this section, the **[**[F160]CMA**]** shall send a copy of those modifications to **[**[F161]the Office of Rail Regulation**]** , **[**[F163]the Authority and the Health and Safety Executive**]** .

Textual Amendments

F158 Word in s. 15B heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 76(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F159 S. 15B inserted (1.2.2001) by 2000 c. 38, **s. 242(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F160 Words in ss. 15B(1)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 76(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F161 Words in s. 15B substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F162 Words in s. 15B(1)(b) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F163 Words in s. 15B(5) repealed (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 16), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C19 S. 15B applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

C20 S. 15B(2) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 5**

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[F164]15C Sections 15A and 15B: supplementary.

[[F165](1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.

(2) In giving any notice under section 15A(4) or 15B(3) above, the **[**[F166]CMA**]** must have regard to the following considerations before disclosing any information.

(2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the **[**[F166] CMA**]** thinks is contrary to the public interest.

(2B) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the **[**[F166]CMA**]** thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the **[**[F166]CMA**]** thinks might significantly harm the individual's interests.

(2C) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2B)(a) or (b) above is necessary for the purposes of the notice.

(2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections **[**[F167](2DA),**]** (2E) and (2F) below, for the purposes of any investigation by the **[**[F168]CMA**]** for the purposes of the exercise of its functions under section 15A or 15B above, as they apply for the purposes of any investigation on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (2D) above, have effect [F169](2DA) as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 15A or 15B of the Railways Act 1993.", and

(b) subsection (8A) were omitted.**]**

(2E) Section 110 shall, in its application by virtue of subsection (2D) above, have effect as if—

(a) subsection (2) were omitted;

[[F170](b) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the sending of a copy to the

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Office of Rail Regulation under section 15B(5) of the Railways Act 1993 of the modifications made by the CMA in connection with the reference concerned or, if no direction has been given by the CMA under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and**]**

(c) in subsection (9) the words from “or section" to “section 65(3))" were omitted.

(2F) Section 111(5)(b) shall, in its application by virtue of subsection (2D) above, have effect as if for sub-paragraph (ii) there were substituted—

(“) if earlier, the day on which a copy of the modifications made by the **[**[F171]CMA **]** in connection with the reference concerned is sent to **[**[F172]the Office of Rail Regulation**]** under section 15B(5) of the Railways Act 1993 or, if no direction is given by the **[**[F171]CMA**]** under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ".

(2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the **[**[F173]CMA**]** in connection with the exercise of its functions under section 15A and 15B above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), **[**[F174]—

(a) the words “, OFCOM or the Secretary of State” were omitted; and

(b) or the words “their functions” there were substituted “ its functions ”.**]**

(2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those subsections.

(2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.**]**

(2) The provisions are—

(a) sections 82(1) and (2) (general provisions as to reports), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the 1973 Act;

(b) Part II of Schedule 7 to the [M1]Competition Act 1998 (performance of the Competition Commission’s general functions); and

(c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(3) For the purpose of assisting the **[**[F175]CMA**]** in exercising their functions under sections 15A and 15B above, **[**[F172]the Office of Rail Regulation**]**[F176]. . . shall [F176]. . . give to the **[**[F175]CMA**]** any information in [F177]. . . its possession which relates to matters relevant to the exercise of those functions and—

(a) is requested by the **[**[F175]CMA**]** for that purpose; or

(b) is information which, in [F177]. . . its opinion, it would be appropriate for that purpose to give to the **[**[F175]CMA**]** without any such request;

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and any other assistance which the **[**[F175]CMA**]** may require, and which it is within [F177]. . . its power to give, in relation to any such matters.

(4) For the purpose of exercising those functions, the **[**[F175]CMA**]** shall take account of any information given to them for that purpose under subsection (3) above.

Textual Amendments

F164 S. 15C inserted (1.2.2001) by 2000 c. 38, **s. 242(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F165 S. 15C(1)-(2I) substituted for s. 15C(1)(2) (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(6)**; S.I. 2003, {art. 2(1)}, Sch.

F166 Words in ss. 15C(2)-(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F167 Word in s. 15C(2D) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 102(1)**(2)** (with art. 3, Sch. 2 para. 2)

F168 Word in s. 15C(2D) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F169 S. 15C(2DA) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 102(3)** (with art. 3, Sch. 2 para. 2)

F170 S. 15C(2E)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 102(4)(a)** (with art. 3, Sch. 2 para. 2)

F171 Word in s. 15C(2F) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F172 Words in s. 15C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F173 Word in s. 15C(2G) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F174 Words in s. 15C(2G) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F175 Word in s. 15C(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F176 Words in s. 15C(3) repealed (24.7.05) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F177 Words in s. 15C(3) omitted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 8(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

Modifications etc. (not altering text)

C21 Ss. 13-16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/2050), reg. 14, **Sch. 3 para. 1(b)**

Marginal Citations

M1 1998 c. 41.

16 Modification by order under other enactments.

[[F178](1) Where the **[**[F179]CMA**]** or (as the case may be) the Secretary of State (in this section "the relevant authority") makes a relevant order, the order may also provide for the

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modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the supply of services relating to railways; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the supply of services relating to railways; or

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market **[**[F180]or markets**]** in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the supply of services relating to railways.**]**

(3) As soon as practicable after making any modifications under this section, the **[**[F181]relevant authority**]** shall send a copy of those modifications to **[**[F182]the Office of Rail Regulation**]**, **[**[F183]the Authority and to the Health and Safety Executive**]** .

(4) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

[[F184](5) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part; and in subsection (2) above "services relating to railways" has the same meaning as in section 67(2A) of this Act.**]**

Textual Amendments

F178 S. 16(1)(2) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(2); S.I. 2003/1397, **art. 2(1)**, Sch.

F179 Word in s. 16(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 78**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F180 Words in s. 16(2)(b) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 103** (with art. 3)

F181 Words in s. 16(3) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(3); S.I. 2003/1397, **art. 2(1)**, Sch.

F182 Words in s. 16 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F183 Words in s. 16(3) repealed (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 16), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F184 S. 16(5) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(4); S.I. 2003/1397, **art. 2(1)**, Sch.

Modifications etc. (not altering text)

C22 S. 16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

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C23 S. 16(2)(a) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 16, **Sch. 4 para. 12(1)**

[F185] *Directions to provide, improve or develop railway facilities*

Textual Amendments

F185 S. 16A cross-heading inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, **art. 3**

[F186]16A Provision, improvement and development of railway facilities.

(1) **[**[F187]the Office of Rail Regulation**]** may, on an application—

(a) made by the **[**[F188]appropriate facilities authority**]** , or

(b) made by any other person with the consent of the **[**[F188]appropriate facilities authority**]** ,

give to the operator of a network, station or light maintenance depot a direction to provide a new railway facility if **[**[F187]the Office of Rail Regulation**]** considers him to be an appropriate person to provide the new railway facility.

(2) **[**[F187]the Office of Rail Regulation**]** may, on an application—

(a) made by the **[**[F188]appropriate facilities authority**]** , or

(b) made by any other person with the consent of the **[**[F188]appropriate facilities authority**]** ,

give to a person who has an estate or interest in, or right over, an existing railway facility a direction to improve or develop the railway facility if **[**[F187]the Office of Rail Regulation**]** considers him to be an appropriate person to improve or develop the railway facility.

(3) The **[**[F189]consent of the appropriate facilities authority**]** to the making by any other person of an application under subsection (1) or (2) above may be given subject to compliance with conditions (and may be withdrawn if any condition is not complied with before **[**[F187]the Office of Rail Regulation**]** decides whether to give the direction).

[[F190](3A) In this section and sections 16B to 16G below `the appropriate facilities authority'—

(a) in relation to facilities in Scotland, means the Scottish Ministers; and

(b) in relation to any other facilities, means the Secretary of State.**]**

Textual Amendments

F186 S. 16A inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F187 S. 16A: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F188 Words in s. 16A substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

F189 Words in s. 16A(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(2)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

F190 S.16A(3A) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(3)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

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[F191]16B Exemption of railway facilities from section 16A.

(1) The **[**[F192]appropriate facilities authority**]** may, after consultation with **[**[F193]the Office of Rail Regulation**]** , by order grant exemption from subsection (1) or (2) of section 16A above (or from both of those subsections) in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

(2) An exemption under subsection (1) above may be granted in respect of—

(a) railway facilities of a particular class or description, or

(b) a particular railway facility,

or in respect of part only of railway facilities of a particular class or description or a particular railway facility.

(3) An exemption under subsection (1) above may be granted generally, to persons of a particular class or description or to a particular person.

(4) If a person fails to comply with any condition subject to compliance with which an exemption was granted, the **[**[F194]appropriate facilities authority**]** may give a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

(5) Subject to subsection (4) above, an exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in, or determined by or under, the exemption.

(6) Exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.

[[F195](7) A statutory instrument containing an order made under this section by the Scottish Ministers shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

Textual Amendments

F191 S. 16B inserted (15.10.2005) by 2000 c. 38, **ss. 223**, 275(1); S.I. 2005/2862,{art. 3}

F192 Words in s. 16B(1) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(4)**(6): S.I. 2005/2812, **art. 2(1)**, Sch. 1

F193 S. 16B: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F194 Words in s. 16B(4) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(4)**(6): S.I. 2005/2812, **art. 2(1)**, Sch. 1

F195 S. 16(B)(7) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(5)**(6): S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F196]16C Making of applications for directions.

(1) An application for a direction under section 16A above must be made to **[**[F197]the Office of Rail Regulation**]** in writing.

(2) The application must—

(a) specify the person to whom the direction would be given;

(b) state what it would require him to do; and

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(c) give the applicant's reasons for considering that person to be an appropriate person to do what the direction would require him to do.

(3) The applicant may at any time vary what the direction would require that person to do by giving to **[**[F197]the Office of Rail Regulation**]** notice in writing of the variation; but if the applicant is a person other than the **[**[F198]appropriate facilities authority**]** such a notice may only be given with the consent of the Authority.

(4) The application or notice of a variation may be accompanied by any written representations which the applicant wishes to make in relation to the direction.

Textual Amendments

F196 S. 16C inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F197 S. 16C: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F198 Words in s. 16C(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F199]16D Procedure for considering applications.

(1) When **[**[F200]the Office of Rail Regulation**]** has received the application or notice of a variation, **[**[F201]it**]**

(a) send a copy to the person specified in the application, the **[**[F202]appropriate facilities authority**]** (if it is not the applicant) and any other persons who **[**[F200]the Office of Rail Regulation**]** considers ought to be sent one; and

(b) invite them to make written representations within a period specified in the invitation.

(2) If the person specified in the application makes representations that he is not an appropriate person to do what the direction would require him to do, **[**[F200]the Office of Rail Regulation**]** must decide that issue in advance of considering any other matters which may be relevant in deciding whether to give the direction.

(3) If that person makes such representations but **[**[F200]the Office of Rail Regulation**]** decides that he is an appropriate person to do what the direction would require him to do, **[**[F200]the Office of Rail Regulation**]** must—

(a) notify him of that decision; and

(b) invite him to make written representations within a period specified in the invitation about any other matters which may be relevant in deciding whether to give the direction.

(4) **[**[F200]the Office of Rail Regulation**]** must—

(a) send the applicant a copy of any representations received by **[**[F201]it**]** in response to any invitation under subsection (1) or (3) above; and

(b) invite him to make further written representations within a period specified in the invitation.

(5) Subject to subsection (6) below, **[**[F200]the Office of Rail Regulation**]** may substitute as the applicant any other person if—

(a) the applicant,

(b) the other person, and

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(c) the **[**[F202]appropriate facilities authority**]** (if it is neither the applicant nor the other person),

consent to the substitution.

(6) The applicant may, by giving notice in writing to **[**[F200]the Office of Rail Regulation**]** , withdraw or suspend the application at any time before **[**[F200]the Office of Rail Regulation**]** decides whether to give the direction.

(7) **[**[F200]the Office of Rail Regulation**]** may direct—

(a) the person specified in the application,

(b) the applicant, or

(c) any other person (apart from the **[**[F202]appropriate facilities authority**]**),

to provide him with any information required by him in order to decide whether to give the direction.

(8) If a person fails to comply with a direction under subsection (7) above, the High Court or the Court of Session may, on the application of **[**[F200]the Office of Rail Regulation**]** make such order as it thinks fit for requiring the failure to be made good.

(9) Such an order may provide that all the costs or expenses of and incidental to the application shall be borne by—

(a) the person who failed to comply; or

(b) in the case of a company or other association, any officers who are responsible for the failure to comply.

Textual Amendments

F199 S. 16D inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, **art. 3**

F200 S. 16D: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F201 S. 16D: word in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F202 Words in s. 16D substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F203]16E Decisions on applications: adequate reward.

(1) **[**[F204]the Office of Rail Regulation**]**may only give a direction to a person under section 16A above to provide, improve or develop a railway facility if he is satisfied that the person will be adequately rewarded for providing, improving or developing the railway facility in accordance with the direction.

(2) In considering whether he is so satisfied **[**[F204]the Office of Rail Regulation**]** shall take into account (in particular)—

(a) any receipts obtained or likely to be obtained by the person (from the **[**[F205]appropriate facilities authority**]** , passengers, operators of railway services or any other persons) in connection with, or as a result of, the provision, improvement or development of the railway facility; and

(b) any other benefit obtained or likely to be obtained by him in consequence of its provision, improvement or development.

(3) Representations made by the applicant for a direction—

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(a) under section 16C(4) above, or
(b) in response to an invitation under section 16D(4) above,

may, in particular, include representations as to matters which he considers **[**[F204]the Office of Rail Regulation**]** should take into account in deciding whether the person to whom the direction would be given would be adequately rewarded for doing what it would require him to do.

Textual Amendments

F203 S. 16E inserted (15.10.2005) by 2000 c. 38, **ss. 223**, 275(1); S.I 2005/2862, {art. 3}

F204 S. 16E: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F205 Words in s. 16E(2)(a) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F206]16F Other provisions about decisions.

(1) If **[**[F207]the Office of Rail Regulation**]** does not consider it right to give a direction under section 16A above in the terms applied for (or to reject the application), **[**[F208]it**]** may give a direction under that section in modified terms.

(2) **[**[F207]the Office of Rail Regulation**]** may include supplementary provisions in any direction under section 16A above, including (in particular)—
(a) provision adding detail (for instance, as to the time by which, or standard to which, the person to whom it is given is to do anything which it requires him to do); and
(b) provision imposing requirements on the applicant (for instance, to make arrangements for rewarding the person to whom the direction is given or to make payments to him).

(3) Before giving a direction under section 16A above which is in modified terms or includes supplementary provisions, **[**[F207]the Office of Rail Regulation**]** shall—
(a) notify **[**[F209]its**]** intention to give a direction to the applicant, the **[**[F210]appropriate facilities authority**]** (if it is not the applicant) and any other persons who the Regulator considers ought to be notified; and
(b) invite them to make written representations within a period specified in the invitation;

and if the applicant makes representations that the direction should not be given, **[**[F207]the Office of Rail Regulation**]** shall not give it.

(4) Whatever **[**[F207]the Office of Rail Regulation**]**'s decision on an application **[**[F208]it**]** shall notify the decision to—
(a) the person specified in the application;
(b) the applicant; and
(c) any other persons who **[**[F208]it**]** considers ought to be notified.

(5) **[**[F207]the Office of Rail Regulation**]** may direct the person specified in the application or the applicant to pay to—
(a) the other of those persons, or
(b) any other person directed to provide information under section 16D(7) above,

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any such amount as **[**[F208]it**]** considers appropriate in respect of costs incurred in connection with the application.

Textual Amendments

F206 S. 16F inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F207 S. 16F: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F208 S. 16F: word in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F209 S. 16F: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F210 Words in s. 16F(3)(a) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F211]16G Directions: compliance, variation and revocation.

(1) A person shall not be regarded as failing to comply with a direction under section 16A above if he has done everything which it is reasonably practicable to do in order to comply with the direction.

(2) If a person is unable to comply with such a direction because he does not have the necessary powers or rights (including rights over land), he shall not be taken to have done everything which it is reasonably practicable to do in order to comply with the direction unless he has done everything which it is reasonably practicable to do in order to obtain those powers or rights.

(3) A direction under section 16A above may only be revoked or varied by **[**[F212]the Office of Rail Regulation**]**—

(a) on the application of the person to whom the direction was given, the applicant for the direction or the Authority (if it was not the applicant); and

(b) after consultation with the other persons with power to apply for a revocation or variation.

(4) Such a direction may only be varied on an application by the applicant for the direction or the **[**[F213]appropriate facilities authority**]** if **[**[F212]the Office of Rail Regulation**]** is satisfied that the person to whom the direction was given will be adequately rewarded for providing, improving or developing the railway facility in accordance with the varied direction, taking into account (in particular) the matters specified in section 16E(2) above.

(5) **[**[F212]the Office of Rail Regulation**]** may grant an application for the variation or revocation of a direction under section 16A above by the applicant for the direction or the **[**[F213]appropriate facilities authority**]** on condition that he or it secures that any such compensation as **[**[F212]the Office of Rail Regulation**]** may specify is paid to the person to whom the direction was given in respect of any liabilities incurred, or other things done, by him in complying with the direction.

Textual Amendments

F211 S. 16G inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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F212 S. 16G: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F213 Words in s. 16G substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F214]16H Code of practice.

(1) **[**[F215]the Office of Rail Regulation**]** shall prepare, and from time to time revise, a code of practice supplementing sections 16A to 16G above and shall publish it in such manner as **[**[F216]it**]** considers appropriate.

(2) **[**[F215]the Office of Rail Regulation**]** shall have regard to the code of practice in the exercise of **[**[F217]its**]** functions under those sections.

(3) The code of practice may (in particular)—

(a) set out minimum periods to be specified in invitations to make representations;

(b) include provision about requesting the provision of information prior to giving a direction under section 16D(7) above;

(c) specify principles according to which directions to pay costs are to be given under section 16F(5) above; and

(d) make provision about the consultation required by section 16G(3)(b) above.

Textual Amendments

F214 S. 16H inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F215 S. 16H: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F216 S. 16H: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F217 S. 16H: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

[F218]16I Supplementary.

(1) References in sections 16A to 16H above and this section to a railway facility include part of a railway facility.

(2) Nothing in any of those sections or a direction under section 16A above—

(a) limits any power of **[**[F219]the Office of Rail Regulation**]** under any other provision of this Act; or

(b) affects any obligation to provide a new railway facility, or to improve or develop an existing railway facility, arising otherwise than from such a direction.

Textual Amendments

F218 S. 16I inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F219 S. 16I: words in prospectively inserted section substituted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

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Access agreements

17 Access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities.

(1) **[**[F220]the Office of Rail Regulation**]** may, on the application of any person, give directions to a facility owner requiring him to enter into an access contract with the applicant for the purpose specified in subsection (2) below; but no such directions shall be given if and to the extent that—

(a) the facility owner's railway facility is, by virtue of section 20 below, an exempt facility;

(b) performance of the access contract, if entered into, would necessarily involve the facility owner in being in breach of an access agreement [F221]. . . ; [F222]. . . **[**[F223]or**]**

(c) as a result of an obligation or duty owed by the facility owner which arose before the coming into force of this section, the consent of some other person is required by the facility owner before he may enter into the access contract; [F224]. . .

(d) [F224]. . . . . .

(2) The purpose for which directions may be given is that of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his)—

(a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains on that track by the beneficiary;

(b) from a facility owner whose railway facility is a station, permission to use that station for or in connection with the operation of trains by the beneficiary;

(c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;

(d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary; or

(e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network, station or light maintenance depot by the beneficiary;

but this subsection is subject to the limitations imposed by subsection (3) below.

(3) In subsection (2) above—

(a) paragraph (a) does not extend to obtaining permission to use track for the purpose of providing network services on that track;

(b) paragraph (b) does not extend to obtaining permission to use a station for the purpose of operating that station;

(c) paragraph (c) does not extend to obtaining permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance;

(d) if and to the extent that the railway facility mentioned in paragraph (e) is track, that paragraph does not extend to obtaining permission to use that track for the purpose—

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(i) of providing network services on that track, or

(ii) of operating any network in which that track is comprised,

except where the purpose for which directions are sought is to enable the beneficiary to operate on behalf of **[**[F225]the Secretary of State**]** a network in which the track in question is comprised;

(e) if and to the extent that the railway facility mentioned in that paragraph is a station, that paragraph does not extend to obtaining permission to use that station for the purpose—

(i) of providing station services at that station, or

(ii) of operating that station,

except where the purpose for which directions are sought is to enable the beneficiary to operate the station on behalf of **[**[F225]the Secretary of State**]** ;

(f) if and to the extent that the railway facility mentioned in that paragraph is a light maintenance depot, that paragraph does not extend to obtaining permission to use that light maintenance depot for the purpose—

(i) of carrying out light maintenance at that light maintenance depot, or

(ii) of operating that light maintenance depot,

except where the purpose for which directions are sought is to enable the beneficiary to operate the light maintenance depot on behalf of the **[**[F226]Authority**]**.

(4) Any reference in this section to a person operating a network, station or light maintenance depot "on behalf of the **[**[F227]Secretary of State**]** is a reference to his operating the network, station or light maintenance depot in pursuance of any agreement or other arrangements made by the **[**[F228]Secretary of State or the Scottish Ministers**]** for the purpose of performing a duty imposed upon **[**[F229]him or them**]** , or exercising a power conferred upon **[**[F229]him or them**]** , under or by virtue of this Part **[**[F230]or Part 4 of the Railways Act 2005 (network modifications etc.)**]** to secure the operation of that network, station or light maintenance depot.

(5) Nothing in this section authorises **[**[F220]the Office of Rail Regulation**]** to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility.

(6) In this Part—

"access contract" means—

(a) a contract under which—

(i) a person (whether or not the applicant), and

(ii) so far as may be appropriate, any associate of that person,

obtains permission from a facility owner to use the facility owner's railway facility; or

(b) a contract conferring an option, whether exercisable by the applicant or some other person, to require a facility owner to secure that—

(i) a person (whether or not the applicant or that other), and

(ii) so far as may be appropriate, any associate of that person,

obtains permission from the facility owner to use his railway facility;

and any reference to an "access option" is a reference to an option falling within paragraph (b) above;

"facility owner" means any person—

(a) who has an estate or interest in, or right over, a railway facility; and

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(b) whose permission to use that railway facility is needed by another before that other may use it;

[[F231]but also includes a person before he becomes a facility owner;**]**

and any reference to a facility owner's railway facility is a reference to the railway facility by reference to which he is a facility owner.

(7) In this section—

"the applicant" means the person making the application for directions;

"associate", in relation to any person, includes—

(a) any servant, agent or independent contractor of his;

(b) any passenger of his;

(c) any person engaged in the provision of goods or services to or for him; and

(d) any other person who deals or has business with him;

"the beneficiary" means the person mentioned in paragraph (a)(i) or, as the case may be, paragraph (b)(i) of the definition of "access contract" in subsection (6) above, according to the description of access contract in question;

"directions" means directions under this section;

[F232] . . . . . .

[F232] . . . . . .

[F232] . . . . . .

"lease" includes an underlease or sublease and an agreement for a lease, underlease or sublease.

[[F233](7A) Any reference in this section to obtaining permission to use a railway facility includes, where the facility is track, permission to connect other track to it.**]**

(8) Any reference in this section to obtaining permission to use a railway facility includes—

(a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that railway facility, whether the facility owner in question is to provide those services himself or to secure their provision by another; and

(b) a reference to obtaining permission—

(i) to enter upon the facility land, with or without vehicles,

(ii) to bring things on to that land and keep them there,

(iii) to carry out works on that land, and

(iv) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land,

"facility land" meaning in this paragraph the land which constitutes the railway facility in question;

and, in subsection (2)(c) above, the reference to obtaining permission to use a light maintenance depot includes a reference to obtaining power to obtain light maintenance services at that light maintenance depot, whether the facility owner is to provide those services himself or to secure their provision by another.

(9) Any reference in this section to a railway facility includes a reference to a part of a railway facility.

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(10) Schedule 4 to this Act shall have effect with respect to applications for directions.

[F234](11) . . . . . .

Textual Amendments

F220 Words in s. 17 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F221 Words in s. 17(1)(b) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(a)(i)**

F222 Word in s. 17(1)(b) deleted (27.6.1998) by virtue of S.I. 1998/1340, **reg. 21(5)**

F223 Word in s. 17(1)(b) inserted (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(b)**

F224 S. 17(1)(d) and preceding word omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(a)(ii)**

F225 Words in s. 17 substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(1)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F226 Words in s. 17(3)(4) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 11(2)(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F227 Words in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(2)(a)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F228 Words in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(2)(b)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F229 Word in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(2)(c)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F230 Words in s. 17(4) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 3(a)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F231 S. 17(6): words in definition of
"facility owner"
inserted (1.2.2001) by 2000 c. 38, **s. 233(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F232 Definitions in s. 17(7) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049, reg. 2(4), **Sch. 1 para. 4(a)(iii)**

F233 S. 17(7A) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 21**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F234 S. 17(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C24 S. 17 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**

C25 S. 17(1) restricted (18.12.1996) by 1996 c. 61, **s. 17(1)**

18 Access agreements: contracts requiring the approval of the Regulator.

(1) A facility owner shall not enter into an access contract to which this section applies unless—

(a) he does so pursuant to directions under section 17 above; [F235]. . .

(b) **[**[F236]the Office of Rail Regulation**]** has approved the terms of the access contract and the facility owner enters into the contract pursuant to directions under this section; **[**[F237]or

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(c) the access contract is of a class or description specified in a general approval given by **[**[F236]the Office of Rail Regulation**]** ;**]**

and any access contract to which this section applies **[**[F238]shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.**]**

(2) The access contracts to which this section applies are those under which the beneficiary obtains, or, in the case of an access contract conferring an access option, may obtain, (whether for himself alone or for himself and associates of his)—

(a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains on that track by the beneficiary;

(b) from a facility owner whose railway facility is a station, permission to use that station, for or in connection with the operation of trains by the beneficiary;

(c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;

(d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary; or

(e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network, station or light maintenance depot by the beneficiary;

but this subsection is subject to subsections (3) and (4) below.

(3) This section does not apply to an access contract—

(a) if and to the extent that the railway facility to which the access contract relates is, by virtue of section 20 below, an exempt facility; [F239]. . .

(b) [F239]. . . . . .

(4) In subsection (2) above—

(a) paragraph (a) does not extend to permission to use track for the purpose of providing network services on that track;

(b) paragraph (b) does not extend to permission to use a station for the purpose of operating that station;

(c) paragraph (c) does not extend to permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance;

(d) if and to the extent that the railway facility mentioned in paragraph (e) is track, that paragraph does not extend to obtaining permission to use that track for the purpose—

(i) of providing network services on that track, or

(ii) of operating any network in which that track is comprised,

unless the purpose of entering into the access contract is to enable the beneficiary to operate on behalf of **[**[F240]the Secretary of State**]** a network in which the track in question is comprised;

(e) if and to the extent that the railway facility mentioned in that paragraph is a station, that paragraph does not extend to obtaining permission to use that station for the purpose—

(i) of providing station services at that station, or

(ii) of operating that station,

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unless the purpose of entering into the access contract is to enable the beneficiary to operate the station on behalf of **[**[F240]the Secretary of State**]** ;

(f) if and to the extent that the railway facility mentioned in that paragraph is a light maintenance depot, that paragraph does not extend to obtaining permission to use that light maintenance depot for the purpose—

(i) of carrying out light maintenance at that light maintenance depot, or

(ii) of operating that light maintenance depot,

unless the purpose of entering into the access contract is to enable the beneficiary to operate the light maintenance depot on behalf of **[**[F240]the Secretary of State**]** .

(5) In any case where—

(a) a facility owner and another person (the "other party") have agreed the terms on which they propose to enter into an access contract to which this section applies, but

(b) the circumstances are such that, by virtue of subsection (1)(b) above, those terms must be approved, and directions must be given, by the Regulator before the facility owner may enter into the proposed access contract,

it shall be for the facility owner to submit the proposed access contract to **[**[F236]the Office of Rail Regulation**]** for approval of its terms.

(6) If, on the submission of a proposed access contract pursuant to subsection (5) above, **[**[F236]the Office of Rail Regulation**]** approves its terms, **[**[F241]it**]** shall issue directions to the facility owner—

(a) requiring him to enter into the proposed access contract within such period as may be specified for the purpose in the directions; but

(b) releasing him from his duty to do so if the other party fails to enter into the proposed access contract within such period as may be specified for the purpose in the directions;

and **[**[F236]the Office of Rail Regulation**]** shall send a copy of the directions to the other party.

[[F242](6A) The grounds on which **[**[F236]the Office of Rail Regulation**]** may reject, or approve subject to modifications, a proposed access contract submitted to **[**[F241]it**]** pursuant to subsection (5) above include that **[**[F241]it**]** considers that the use of the facility for which it provides might impede the provision of services—

(a) under a franchise agreement; or

(b) under an agreement entered into by **[**[F240]the Secretary of State**]** pursuant to **[**[F243]his**]** duty under section 30 below.**]**

(7) If, on the submission of a proposed access contract pursuant to subsection (5) above, **[**[F236]the Office of Rail Regulation**]** does not consider it appropriate to approve its terms without modification (or to reject it), **[**[F241]it**]** may, after consultation with the facility owner and the other party, issue directions to the facility owner—

(a) approving the terms of the proposed access contract, but subject to such modifications as may be specified in the directions; and

(b) requiring the facility owner to enter into the proposed access contract on those terms, as so modified; but

(c) releasing him from his duty to do so if either—

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(i) the facility owner gives **[**[F236]the Office of Rail Regulation**]** notice of objection before the expiration of the period of fourteen days beginning with the day after that on which the directions are issued; or

(ii) the other party fails to enter into the proposed access contract, on the terms as modified under this subsection, before the date specified for the purpose in the directions;

and **[**[F236]the Office of Rail Regulation**]** shall send a copy of the directions to the other party.

[[F244](7A) Where **[**[F236]the Office of Rail Regulation**]** gives or revokes a general approval under subsection (1)(c) above, **[**[F241]it**]** shall publish the approval or revocation in such manner as he considers appropriate.

(7B) The revocation of a general approval given under subsection (1)(c) above shall not affect the continuing validity of any access contract to which it applied.**]**

(8) In this section, "associate", "the beneficiary",[F245]. . . and "lease" have the same meaning as they have in section 17 above.

(9) The following provisions of section 17 above, that is to say—

(a) subsection (4),

[[F246](aa) subsection (7A),**]**

(b) subsection (8)(a) and (b), and

(c) subsection (9),

apply for the purposes of this section as they apply for the purposes of that section; and the words following paragraph (b) of subsection (8) of that section apply in relation to subsection (2)(c) of this section as they apply in relation to subsection (2)(c) of that section.

(10) This section shall not prevent a facility owner from granting a lease of any land which consists of or includes the whole or any part of his railway facility.

[F247](11) . . . . . .

Textual Amendments

F235 Word in s. 18(1)(a) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F236 Words in s. 18 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F237 S. 18(1)(c) and word "or" immediately preceding it inserted (1.2.2001) by 2000 c. 38, **s. 230(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F238 Words in s. 18(1) substituted (1.2.2001) by 2000 c. 38, **s. 230(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F239 S. 18(3)(b) and preceding word omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(c)(i)**

F240 Words in s.18 substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(1)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F241 Word in s. 18 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F242 S. 18(6A) inserted (1.2.2001) by 2000 c. 38, **s. 212(6)**(with Sch. 28 paras. 3, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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F243 Word in s. 18(6A)(b) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(3)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F244 S. 18(7A)(7B) inserted (1.2.2001) by 2000 c. 38, **s. 230(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F245 Words in s. 18(8) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(a)(ii)**

F246 S. 18(9)(aa) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 22**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F247 S. 18(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C26 S. 18 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**

C27 S. 18(1) excluded (18.12.1996) by 1996 c. 61, **s. 17(2)(3)**

19 Access agreements: contracts for the use, on behalf of [F248the Secretary of State], of installations comprised in a network.

(1) **[**F249the Office of Rail Regulation**]** may, on the application of any person, give directions to an installation owner requiring him to enter into an installation access contract with the applicant for the purpose of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his) permission to use the installation owner's network installation for the purpose of operating, on behalf of **[**F248the Secretary of State**]**, the network in which the network installation is comprised.

(2) Directions shall not be given under subsection (1) above in the case of any network installation if and to the extent that, as a result of an obligation or duty owed by the installation owner which arose before the coming into force of this section, the consent of some other person is required by the installation owner before he may enter into the installation access contract.

(3) An installation owner shall not enter into an installation access contract to which this subsection applies unless—

(a) he does so pursuant to directions under subsection (1) above; F250. . .

(b) **[**F249the Office of Rail Regulation**]** has approved the terms of the installation access contract and the installation owner enters into the contract pursuant to directions given by virtue of subsection (5) below; **[**F251or

(c) the installation access contract is of a class or description specified in a general approval given by the Regulator;**]**

and any installation access contract to which this subsection applies **[**F252shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.**]**

(4) The installation access contracts to which subsection (3) above applies are those under which the beneficiary obtains (whether for himself alone or for himself and associates of his) from an installation owner permission to use the installation owner's network installation for the purpose of operating, on behalf of **[**F248the Secretary of State**]** , the network in which the network installation is comprised.

(5) Subsections (5) to (7) of section 18 above shall apply in relation to installation access contracts to which subsection (3) of this section applies as they apply in relation to access contracts to which that section applies, but with the following modifications, that is to say—

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Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) for any reference to a facility owner there shall be substituted a reference to an installation owner;

(b) for any reference to an access contract to which that section applies there shall be substituted a reference to an installation access contract to which subsection (3) above applies;

(c) for the reference to subsection (1)(b) of that section there shall be substituted a reference to subsection (3)(b) of this section.

[[F253](5A) Where **[**[F249]the Office of Rail Regulation**]** gives or revokes a general approval under subsection (3)(c) above, **[**[F254]it**]** shall publish the approval or revocation in such manner as **[**[F254]it**]** considers appropriate.

(5B) The revocation of a general approval given under subsection (3)(c) above shall not affect the continuing validity of any installation access contract to which it applied.**]**

(6) Nothing in this section—

(a) authorises **[**[F249]the Office of Rail Regulation**]** to give directions to an installation owner requiring him to grant a lease of the whole or any part of his network installation; or

(b) prevents an installation owner from granting a lease of any land which consists of or includes the whole or any part of his network installation.

(7) Any reference in this section to a person operating a network "on behalf of **[**[F248]the Secretary of State**]**" is a reference to his operating the network in pursuance of any agreement or other arrangements made by **[**[F248]the Secretary of State**]** for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part **[**[F255]or Part 4 of the Railways Act 2005 (network modifications etc.)**]** to secure the operation of that network.

(8) Any reference in this section to obtaining permission to use a network installation includes—

(a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that network installation, whether the installation owner in question is to provide those services himself or to secure their provision by another; and

(b) a reference to obtaining permission—

(i) to enter upon the installation land, with or without vehicles,

(ii) to bring things on to that land and keep them there,

(iii) to carry out works on that land, and

(iv) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land;

and in paragraph (b) above "installation land" means the land which constitutes the network installation in question.

(9) In this Part—

"installation access contract" means a contract under which—

(a) a person (whether or not the applicant), and

(b) so far as may be appropriate, any associate of that person,

obtains permission from an installation owner to use the installation owner's network installation;

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"installation owner" means any person—

(a) who has an estate or interest in, or right over, a network installation; and

(b) whose permission to use that network installation is needed by another before that other may use it;

[[F256]but also includes a person before he becomes an installation owner;**]**

and any reference to an installation owner's network installation is a reference to the network installation by reference to which he is an installation owner.

(10) In this section—

"ancillary service" means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use a network installation;

"the applicant" means the person making the application for directions under subsection (1) above;

"associate" has the meaning given by section 17(7) above;

"the beneficiary" means the person mentioned in paragraph (a) of the definition of "installation access contract" in subsection (9) above;

"lease" includes an underlease or sublease and an agreement for a lease, underlease or sublease;

"network installation" means any installation (other than track) which is comprised in a network.

(11) Any reference in this section to a network installation includes a reference to a part of a network installation **[**[F257]and to one which is proposed to be constructed or is in the course of construction.**]**.

(12) Schedule 4 to this Act shall have effect with respect to applications for directions under subsection (1) above as it has effect with respect to applications for directions under section 17 above, but with the following modifications, that is to say—

(a) for any reference to an access contract, there shall be substituted a reference to an installation access contract;

(b) any reference to an application for directions under section 17 above shall be taken as a reference to an application for directions under subsection (1) above;

(c) for any reference to the facility owner, there shall be substituted a reference to the installation owner mentioned in subsection (1) above;

(d) for any reference to section 17 above (but not to any specific provision of that section) there shall be substituted a reference to this section.

[F258](13) . . . . . .

Textual Amendments

F248 Words in s. 19 substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(1)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F249 Words in s. 19 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F250 Words in s. 19(3) repealed (1.2.2001) by 2000 c. 38, s. 274, 275(1), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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F251 S. 19(1)(c) and word "or" immediately preceding it inserted (1.2.2001) by 2000 c. 38, **s. 230(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F252 Words in s. 19(3) substituted (1.2.2001) by 2000 c. 38, **s. 230(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F253 S. 19(5A)(5B) inserted (1.2.2001) by 2000 c. 38, **s. 230(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F254 Word in s. 19 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F255 Words in s. 19(7) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 3(b)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F256 S. 19(9): Words in definition of "installation owner" inserted (1.2.2001) by 2000 c. 38, **s. 233(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F257 Words in s. 19(11) inserted (1.2.2001) by 2000 c. 38, **s. 233(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F258 S. 19(13) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C28 S. 19(1) restricted (18.12.1996) by 1996 c. 61, **s. 17(4)**

[[F259]19A Review of access charges by Regulator.

Schedule 4A to this Act (which contains provision about the review of access charges by **[**[F260]the Office of Rail Regulation**]**) shall have effect.**]**

Textual Amendments

F259 S. 19A inserted (30.11.2000) by 2000 c. 38, **s. 231(1)**, 275(1) (with Sch. 28 paras. 11, 17)

F260 Words in s. 19A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

20 Exemption of railway facilities from sections 17 [[F261], 18 and 22A].

(1) The Secretary of State may, after consultation with **[**[F262]the Office of Rail Regulation**]** , by order grant exemption from sections 17 and 18 above **[**[F263]and section 22A below**]**in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

(2) A facility exemption under subsection (1) above may be granted—

(a) to persons of a particular class or description or to a particular person; and

(b) in respect of railway facilities of a particular class or description or a particular railway facility, or in respect of part only of any such railway facilities or facility;

[F264] . . .

(3) If a facility owner makes an application under this subsection to **[**[F262]the Office of Rail Regulation**]** for the grant of an exemption from sections 17 and 18 above **[**[F263]and section 22A below**]** in respect of the whole or any part of his railway facility, **[**[F262]the Office of Rail Regulation**]** , after consultation with the Secretary of State—

(a) may either grant or refuse the exemption, whether wholly or to such extent as **[**[F265]it**]** may specify in the exemption; and

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(b) if and to the extent that **[**[F265]it**]** grants **[**[F266]the exemption**]** , may do so subject to compliance with such conditions (if any) as **[**[F265]it**]** may so specify.

(4) Before granting a facility exemption under subsection (3) above, **[**[F262]the Office of Rail Regulation**]** shall give notice—

(a) stating that **[**[F265]it**]** proposes to grant the facility exemption,

(b) stating the reasons why **[**[F265]it**]** proposes to grant the facility exemption, and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed facility exemption may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (4) above shall be given by publishing the notice in such manner as **[**[F262]the Office of Rail Regulation**]** considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the facility exemption.

(6) If any condition (the "broken condition") of a facility exemption is not complied with—

(a) the Secretary of State, in the case of a facility exemption under subsection (1) above, or

(b) **[**[F262]the Office of Rail Regulation**]**, in the case of a facility exemption under subsection (3) above,

may give to any relevant person a direction declaring that the facility exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

(7) For the purposes of subsection (6) above—

"condition", in relation to a facility exemption, means any condition subject to compliance with which the facility exemption was granted;

"relevant person", in the case of any facility exemption, means a person who has the benefit of the facility exemption and who—

(a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or

(b) is the facility owner in the case of the railway facility in relation to which the broken condition is not complied with.

(8) Subject to subsection (6) above, a facility exemption, unless previously revoked in accordance with any term contained in the facility exemption, shall continue in force for such period as may be specified in, or determined by or under, the facility exemption.

[F267](9) . . . . . .

(10) Any application for a facility exemption under subsection (3) above must be made in writing; and where any such application is made, **[**[F262]the Office of Rail Regulation**]** may require the applicant to furnish **[**[F265]it**]** with such information as **[**[F262]the Office of Rail Regulation**]** may consider necessary to enable **[**[F265]it**]** to decide whether to grant or refuse the facility exemption.

(11) Facility exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.

[F268](12) . . . . . .

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(13) In this Part "facility exemption" means an exemption from sections 17 and 18 above **[**[F263]and section 22A below**]** granted under any provision of this section in respect of the whole or any part of a railway facility; and a railway facility is an "exempt facility" if and to the extent that it is the subject of such an exemption.

Textual Amendments

F261 Words in s. 20 sidenote substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 23(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F262 Words in s. 20 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F263 Words in s. 20(1)(3)(13) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 23(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F264 Words in s. 20(3) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 23(3), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F265 Word in s. 20 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F266 Words in s. 20(3)(b) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 9**; S.I. 2004/827, **art. 4(g)**

F267 S. 20(9) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F268 S. 20(12) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C29 S. 20 restricted (3.7.2000) by 1999 c. 29, **ss. 199(1)(b)(2)(3)**, 425(2) (with Sch. 12 para. 9(1)); S.I. 2000/801, **art. 2(c)**

21 Model clauses for access contracts.

(1) **[**[F269]the Office of Rail Regulation**]** may prepare and publish model clauses for inclusion in access contracts.

(2) Different model clauses may be prepared and published in relation to different classes or descriptions of railway facility.

(3) **[**[F269]the Office of Rail Regulation**]** may from time to time revise any model clauses published under this section and may publish those clauses as so revised.

(4) In preparing or revising any model clauses under this section, **[**[F269]the Office of Rail Regulation**]** may consult such persons as **[**[F270]it**]** thinks fit.

(5) **[**[F269]the Office of Rail Regulation**]** shall encourage, and may require, the use of any **[**[F271]of its**]** model clauses [F272]. . . in access contracts wherever **[**[F270]it**]** considers it appropriate.

Textual Amendments

F269 Words in s. 21 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F270 Word in s. 21 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

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F271 Words in s. 21(5) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 10(a)**; S.I. 2004/827, **art. 4(g)**

F272 Words in s. 21(5) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 10(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

22 Amendment of access agreements.

(1) Any amendment, or purported amendment, of an access agreement shall be void unless the amendment has been approved by **[**[F273]the Office of Rail Regulation**][**[F274]or is made pursuant to directions under section 22A or 22C below or Schedule 4A to this Act.**]**.

(2) **[**[F273]the Office of Rail Regulation**]** may, for the purposes of subsection (1) above, give the parties to any particular access agreement **[**[F275]its**]** general approval to the making to that access agreement of amendments of a description specified in the approval; and any approval so given shall not be revoked.

(3) **[**[F273]the Office of Rail Regulation**]**may, for the purposes of subsection (1) above, give **[**[F275]its**]** general approval to the making to access agreements, or to access agreements of a particular class or description, of amendments of a description specified in the approval.

(4) Where **[**[F273]the Office of Rail Regulation**]** gives or revokes a general approval under subsection (3) above, **[**[F276]it**]** shall publish the approval or revocation (as the case may be) in such manner as **[**[F276]it**]** considers appropriate.

(5) The revocation of a general approval given under subsection (3) above shall not affect the continuing validity of any amendment made in accordance with, and before the revocation of, that approval.

[F277](6) . . . . . .

[[F278](6A) Neither **[**[F279]the CMA**]** nor **[**[F273]the Office of Rail Regulation**]** may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.

[F278](6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—

(a) which is connected with an access agreement; and

(b) in respect of which section 35(1)(b) of that Act applies.**]**

Textual Amendments

F273 Words in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F274 Words in s. 22(1) inserted (1.2.2001) by 2000 c. 38, **s. 232(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F275 Word in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F276 Word in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F277 S. 22(6) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F278 S. 22 (6A)(6B) inserted (1.3.2000) by 1998 c. 41, ss. 66(5), **Sch. 10 Pt. IV para. 15(5)**; S.I. 2000/344, art. 2, **Sch.**

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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F279 Words in s. 22(6A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 104** (with art. 3)

[F280 22A Directions to require amendment permitting more extensive use.

(1) [F281 the Office of Rail Regulation] may, on the application of the person permitted by an access agreement to use the whole or part of a railway facility or network installation, give directions requiring the parties to the access agreement to make to the agreement—

(a) amendments permitting more extensive use of the railway facility or network installation by the applicant; and

(b) any amendments which [F281 the Office of Rail Regulation] considers necessary or desirable in consequence of those amendments.

(2) In subsection (1)(a) above "more extensive use" means—

(a) increased use for the purpose for which the applicant is permitted by the access agreement to use the railway facility or network installation, or

(b) (in the case of a railway facility) use for any other permitted purpose,

and if the applicant is permitted to use only part of the railway facility or network installation, includes use for the purpose for which he is permitted to use it, or (in the case of a railway facility) for any other permitted purpose, of any other part of the railway facility or network installation.

(3) In subsection (2) above "permitted purpose", in relation to a railway facility, means a purpose for which directions may be given in relation to the railway facility under section 17 above.

(4) No directions shall be given under this section in relation to a railway facility if and to the extent that—

(a) the railway facility is, by virtue of section 20 above, an exempt facility; or

(b) performance of the access agreement as amended would necessarily involve the facility owner in being in breach of another access agreement [F282] . . . .

(5) No directions shall be given under this section in relation to a railway facility or network installation if and to the extent that, as a result of an obligation or duty owed by the facility owner or installation owner which arose before the coming into force of section 17 or 19 above, the consent of some other person is required by him before he may make the amendments.

(6) Nothing in this section authorises [F281 the Office of Rail Regulation] to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility or network installation.

(7) In this section and section 22B below—

(a) [F283 "lease" has] the same meaning as in section 17 above; and

(b) "network installation" has the same meaning as in section 19 above.]

Textual Amendments

F280 S. 22A inserted (1.2.2001) by 2000 c. 38, **s. 232(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F281 Words in s. 22A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F282 Words in s. 22A(4)(b) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(d)(i)**

F283 Words in s. 22A(7)(a) substituted (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(d)(ii)**

[F284]22B Applications for directions under section 22A: procedure.

(1) Schedule 4 to this Act shall have effect with respect to applications for directions under section 22A above as it has effect with respect to applications for directions under section 17 above (but subject as follows).

(2) In its application by virtue of this section Schedule 4 to this Act has effect with the following modifications—

(a) in paragraph 1, in the definition of “the facility owner", for “17(1)" there shall be substituted “22A" and, in the definition of “interested person", for “enter into the required access contract" there shall be substituted “make the amendments";

(b) in paragraph 2(1), for “which the applicant proposes should be contained in the required access contract" and “to be contained in the required access contract" there shall be substituted “of the proposed amendments";

(c) in paragraph 5(2), for “to the facility owner requiring him to enter into an access contract" there shall be substituted “under section 22A of this Act";

(d) for paragraph 5(2)(a)(i) and (ii) there shall be substituted “the amendments to be made and the date by which they are to be made; and";

(e) in paragraph 6(2), for the words from “facility owner’s" to the end of paragraph (c) there shall be substituted “making of the amendments, the performance of the access agreement as amended or failing to take any step to protect the interests of the interested person in connection with the application for directions or the making of the amendments,"; and

(f) in paragraph 6(3), for “any access contract which is entered into" there shall be substituted “the amendments made";

and the definition of “the required access contract", and the words following that definition, in paragraph 1 and paragraph 5(4) shall be omitted.

(3) In its application by virtue of this section in relation to an application relating to an installation access contract Schedule 4 to this Act has effect with the following further modifications—

(a) references to the railway facility shall have effect as references to the network installation;

(b) references to the facility owner shall have effect as references to the installation owner; and

(c) in the definition of “interested person" in paragraph 1, for “17" there shall be substituted “19".

(4) The Regulator may determine that, in their application by virtue of this section in relation to any particular application, paragraphs 3 and 4 of Schedule 4 to this Act shall have effect as if for any of the numbers of days specified in them there were substituted the lower number specified by the Regulator.

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Textual Amendments

F284 S. 22B inserted (1.2.2001) by 2000 c. 38, **s. 232(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F285]22C Amendment: supplementary.

(1) **[**[F286]the Office of Rail Regulation**]** may give directions requiring the parties to an access agreement to make to the access agreement amendments which are, in **[**[F287]its**]** opinion, necessary to give effect to the conditions of a licence or otherwise required in consequence of the conditions of a licence.

(2) **[**[F286]the Office of Rail Regulation**]** shall not have power to direct or otherwise require amendments to be made to an access agreement except in accordance with section 22A above, subsection (1) above or Schedule 4A to this Act.

(3) If an access agreement includes provision for any of its terms to be varied—

(a) by agreement of the parties, or

(b) by direction or other requirement of **[**[F286]the Office of Rail Regulation**]** ,

a variation made pursuant to that provision shall not be regarded for the purposes of section 22 above or subsection (2) above as an amendment of the agreement.

Textual Amendments

F285 S. 22C inserted (1.2.2001) by 2000 c. 38, **s. 232(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F286 Words in s. 22C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F287 Word in s. 22C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

Modifications etc. (not altering text)

C30 S. 22C(1) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 9**

Franchising of passenger services

23 Passenger services to be subject to franchise agreements.

(1) It shall be the duty of the **[**[F288]appropriate designating authority**]** from time to time to designate **[**[F289]such services for the carriage of passengers by railway (other than services which are, by virtue of section 24 below, exempt from designation under this subsection) as it considers ought to be provided under franchise agreements.**]**.

(2) The **[**[F288]appropriate designating authority**]** may perform **[**[F290]its**]** duty under subsection (1) above by designating particular services or services of a class or description.

[[F291](2ZA) Where the Scottish Ministers designate Scotland-only services, they may also designate cross-border services which—

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(a) they consider should be provided under the same franchise agreement as particular Scotland-only services or a particular class of them; and
(b) are not exempt from designation under subsection (1) by virtue of section 24.

(2ZB) Nothing in this section requires the Secretary of State to designate a cross-border service already designated by the Scottish Ministers.

(2ZC) Before the Secretary of State or the Scottish Ministers designate a cross-border service he or they must consult the other.**]**

[[F292](2A) A designation may be varied or revoked; but a variation or revocation of the designation of particular services, or services of a class or description, shall not affect any franchise agreement previously entered into with respect to those services or services of that class or description.

(2B) [F293]. . . . . .**]**

(3) In this Part—

[[F294]"the appropriate designating authority"—
(a) in relation to Scotland-only services, means the Scottish Ministers; and
(b) in relation to all other services, means the Secretary of State;

"the appropriate franchising authority"—
(a) in relation to a Scottish franchise agreement, means the Scottish Ministers; and
(b) in relation to any other franchise agreement, means the Secretary of State;**]**

"franchise agreement" means an agreement **[**[F295]with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly,**]**under which another party undertakes either—
(a) to provide, or
(b) to secure that a wholly owned subsidiary of his provides,

throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

"franchise operator", in relation to any franchise agreement, means the person (whether the franchisee or, as the case may be, the wholly owned subsidiary of the franchisee) who is to provide the franchised services;

"franchise period", in relation to any franchise agreement, means the franchise term, except where the franchise agreement is terminated before the end of that term, in which case it means so much of that term as ends with that termination;

"franchise term", in relation to any franchise agreement, means the period specified in the franchise agreement as the period throughout which the franchisee is to provide, or secure that a wholly owned subsidiary of his provides, the franchised services, and includes any such extension of that period as is mentioned in section 29(3) below;

"franchised services", in relation to any franchise agreement, means the services for the carriage of passengers by railway which are to be provided under that franchise agreement;

"franchisee" means—
(a) in relation to a franchise agreement under which a party undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the party so undertaking; or

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(b) in relation to any other franchise agreement, the person who is to provide the franchised services.

(4) Any reference in this Part to the provision of services under a franchise agreement is a reference to the provision of those services by the franchise operator; and where the franchise operator is, or is to be, a wholly owned subsidiary of the franchisee, any reference to the provision of services by the franchisee under a franchise agreement shall accordingly be construed as a reference to his securing their provision by the franchise operator.

Textual Amendments

F288 Words in s. 23(1)(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(1)(5)**; S.I. 2005/1909, **art 2**, Sch.

F289 Words in s. 23(1) substituted (1.2.2001) by 2000 c. 38, **s. 212(1)** (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F290 Words in s. 23(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 14(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F291 S. 23(2ZA)-(2ZC) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(2)(5)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

F292 S. 23(2A)(2B) inserted (1.2.2001) by 2000 c. 38, **s. 212(2)** (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F293 S. 23(2B) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 13(3)(5), **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art 2**, Sch.

F294 Definitions of "appropriate designating authority" and "appropriate franchising authority" in s. 23(3) inserted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(4)(a)(5)**: S.I. 2005/1909, **art 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F295 Words in definition of "franchise agreement" in s. 23(3) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(4)(b)(5)**: S.I. 2005/1909, **art 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

Modifications etc. (not altering text)

C31 S. 23(1) excluded (1.4.1994) by S.I. 1994/606, **art. 6**
S. 23(1) excluded (13.12.1999) by S.I. 1999/3112, **art. 3**

Commencement Information

I4 S. 23 wholly in force at 1.4.1994; s. 23 not in force at Royal Assent see s. 154(2); s. 23(3)(4) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 23 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

24 Exemption of passenger services from section 23(1).

(1) The **[**[F296]appropriate designating authority**]** may by order grant exemption from designation under section 23(1) above in respect of such services for the carriage of passengers by railway as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

(2) A franchise exemption under subsection (1) above may be granted—

(a) to persons of a particular class or description or to a particular person; and

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(b) in respect of services generally, services of a particular class or description or a particular service, or in respect of part only of any such services or service;

and a franchise exemption granted to persons of a particular class or description shall be published in such manner as the **[**[F296]appropriate designating authority**]** considers appropriate for bringing it to the attention of persons of that class or description.

(3) If a person who provides, or who proposes to introduce, services for the carriage of passengers by railway makes an application to the **[**[F296]appropriate designating authority**]** under this subsection for the grant of an exemption from designation under section 23(1) above in respect of any such service which he provides or proposes to introduce, the **[**[F296]appropriate designating authority**]** , after consultation with **[**[F297]the Office of Rail Regulation**]**[F298]. . . —

(a) may either grant or refuse the exemption, whether wholly or to such extent as **[**[F299]the appropriate designating authority**]** may specify in the exemption; and

(b) if and to the extent that **[**[F299]the appropriate designating authority**]** grants it, may do so subject to compliance with such conditions (if any) as **[**[F299]the appropriate designating authority**]** may so specify.

[[F300](3A) Before granting a franchise exemption in respect of a cross-border service, the Secretary of State must consult the Scottish Ministers.**]**

(4) Before granting a franchise exemption under subsection (3) above, the **[**[F296]appropriate designating authority**]** shall give notice—

(a) stating that **[**[F301]it**]** proposes to grant the franchise exemption,

(b) stating the reasons why **[**[F301]it**]** proposes to grant the franchise exemption, and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed franchise exemption may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the **[**[F296]appropriate designating authority**]** considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the franchise exemption.

(6) If any condition (the “broken condition") of a franchise exemption **[**[F302]granted by the appropriate designating authority is not complied with, it**]** may give to any relevant person a direction declaring that the franchise exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

(7) For the purposes of subsection (6) above—

“condition”, in relation to a franchise exemption, means any condition subject to compliance with which the franchise exemption was granted;

“relevant person”, in the case of any franchise exemption, means a person who has the benefit of the franchise exemption and who—

(a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or

(b) provides any of the services in relation to which the broken condition is not complied with.

(8) Subject to subsection (6) above, a franchise exemption, unless previously revoked in accordance with any term contained in the franchise exemption, shall continue in

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force for such period as may be specified in, or determined by or under, the franchise exemption.

(9) Any application for a franchise exemption under subsection (3) above must be made in writing; and where any such application is made, the **[**[F296]appropriate designating authority**]** may require the applicant to furnish **[**[F303]it**]** with such information as the **[**[F296]appropriate designating authority**]** may consider necessary to enable **[**[F303]it**]** to decide whether to grant or refuse the franchise exemption.

(10) Any franchise exemption granted under subsection (3) above shall be in writing.

(11) Subsections (1) and (3) above apply in relation to the grant of a franchise exemption whether it is to become effective on, or after, the day on which section 23(1) above comes into force.

(12) Franchise exemptions may make different provision for different cases.

[[F304](12A) A statutory instrument containing an order under this section by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.**]**

(13) In this Part, "franchise exemption" means an exemption from designation under section 23(1) above granted under any provision of this section in respect of any service for the carriage of passengers by railway.

Textual Amendments

F296 Words in s. 24(1)-(5)(9) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(2)**; S.I. 2005/2812, **art 2(1)**, Sch. 1

F297 Words in s. 24 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F298 Words in s. 24(3) repealed (16.10.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13**; S.I. 2005/2812, **art 2(1)**, Sch. 1

F299 Words in s. 24(3)(a)(b) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(3)**; S.I. 2005/2812, **art 2(1)**, Sch. 1

F300 S. 24(3A) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(4)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

F301 Word in s. 24(4) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(5)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

F302 Words in s. 24(6) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(6)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

F303 Word in s. 24(9) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(7)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

F304 S. 24(12A) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 14(1)(8)**: S.I. 2005/2812, **art 2(1)**, Sch. 1

25 Public sector operators not to be franchisees.

(1) The following bodies and persons (in this Part referred to as "public sector operators") shall not be franchisees—

(a) any Minister of the Crown, Government department or other emanation of the Crown;

(b) any local authority;

[[F305](bb) the Greater London Authority;

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[F306](bc) Transport for London;**]**

(c) any **[**[F307]metropolitan county passenger transport authority**][**[F307]Integrated Transport Authority for an integrated transport area in England**]** ;

[[F308](ca) any combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;**]**

(d) any body corporate whose members are appointed by a Minister of the Crown, a Government department, a local authority **[**[F309], the Greater London Authority, Transport for London**]** or **[**[F310]a metropolitan county passenger transport authority**][**[F311], an Integrated Transport Authority for an integrated transport area in England or a combined authority**]** or by a body corporate whose members are so appointed;

(e) a company—

(i) a majority of whose issued shares are held by or on behalf of any of the bodies or persons falling within paragraphs (a) to (d) above;

(ii) in which the majority of the voting rights are held by or on behalf of any of those bodies or persons;

(iii) a majority of whose board of directors can be appointed or removed by any of those bodies or persons; or

(iv) in which the majority of the voting rights are controlled by any of those bodies or persons, pursuant to an agreement with other persons;

(f) a subsidiary of a company falling within paragraph (e) above.

[[F312](2) Expressions used in sub-paragraphs (i) to (iv) of subsection (1)(e) that are defined for the purposes of the Companies Acts (see section 1174 of, and Schedule 8 to, the Companies Act 2006) have the same meaning in those sub-paragraphs.**]**

[F313](3) . . . . . .

[F313](4) . . . . . .

[F313](5) . . . . . .

[F313](6) . . . . . .

[F313](7) . . . . . .

[F313](8) . . . . . .

[F313](9) . . . . . .

Textual Amendments

F305 S. 25(1)(bb) inserted (3.7.2000) by 1999 c. 29, **s. 202(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, **Sch Pt. 3**

F306 S. 25(1)(bc) inserted (3.7.2000) by 1999 c. 29, **s. 202(2)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, **Sch Pt. 3**

F307 Words in s. 25(1)(c) substituted (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), **Sch. 4 para. 58(2)(a)**; S.I. 2009/107, art. 2(1), Sch. 1 Pt. 1

F308 S. 25(1)(ca) inserted (17.12.2009) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), s. 148(6), **Sch. 6 para. 85(a)**; S.I. 2009/3318, art. 2(c)

F309 Words in s. 25(1)(d) inserted (3.7.2000) by 1999 c. 29, **s. 202(3)** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, **Sch Pt. 3**

F310 Words in s. 25(1)(d) repealed (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), Sch. 4 para. 58(2)(b); S.I. 2009/107, art. 2(1), **Sch. 1 Pt. 1**

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F311 Words in s. 25(1)(d) substituted (17.12.2009) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), s. 148(6), **Sch. 6 para. 85(b)**; S.I. 2009/3318, art. 2(c)

F312 S. 25(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(2)** (with art. 10)

F313 S. 25(3)-(9) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C32 S. 25 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 25**

Commencement Information

I5 S. 25 wholly in force at 1.4.1994; s. 25 not in force at Royal Assent see s. 154(2); s. 25(1)(2) in force at 6.1.1994 for specified purposes by S.I. 1993/3237, **art. 2(2)**; s. 25 in force at 1.4.1994 insofar as not alreday in force by S.I. 1994/571, **art. 5**

26 Invitations to tender for franchises.

(1) **[**[F314]The appropriate franchising authority may select the person who is to be the franchisee in relation to a franchise agreement**]**from among those who submit tenders in response to an invitation to tender under this section for the right to provide, or to secure that a wholly owned subsidiary provides, services for the carriage of passengers by railway under that franchise agreement.

(2) The **[**[F315]appropriate franchising authority**]** shall prepare any such invitation to tender and shall issue that invitation to such persons as **[**[F316]it**]** may, after consultation with **[**[F317]the Office of Rail Regulation**]** , think fit.

(3) The **[**[F315]appropriate franchising authority**]** shall not issue an invitation to tender under this section to (or entertain such a tender from) any person unless **[**[F316]it**]** is of the opinion that the person has, or is likely by the commencement of the franchise term to have, an appropriate financial position and managerial competence, and is otherwise a suitable person, to be the franchisee.

[[F318](4) [F319]. . . . . .

[[F320](4A) The Secretary of State and the Scottish Ministers shall each publish a statement of policy about how he proposes, or (as the case may be) they propose, to exercise the power under subsection (1) above.

(4B) The statement must in particular include the policy of the Secretary of State or the Scottish Ministers about—

(a) when his or their selection of the person to be a franchisee under a franchise agreement is likely to be from those submitting tenders in response to an invitation to do so;

(b) when it is likely such an invitation will not be issued; and

(c) the means by which he is, or they are, proposing that the selection will be made in cases where there is no such invitation.

(4C) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must have regard to its statement of policy.

(4D) The Secretary of State or Scottish Ministers—

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(a) may at any time alter or replace the statement of policy which he has made or (as the case may be) which they have made; and

(b) where that statement is altered or replaced, must publish the altered or replacement statement.

(4E) Before preparing, altering or replacing a statement of policy—

(a) the Secretary of State must consult the National Assembly for Wales and undertake such other consultation as he considers appropriate; and

(b) the Scottish Ministers must undertake such consultation as they consider appropriate.

(4F) Where a statement of policy is prepared, altered or replaced, a copy of it must be laid—

(a) in the case of a statement prepared, altered or replaced by the Secretary of State, before Parliament; and

(b) in the case of a statement prepared, altered or replaced by the Scottish Ministers, before the Scottish Parliament.**]]**

Textual Amendments

F314 Words in s. 26(1) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 15(2)(6)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F315 Words in s. 26(2)(3) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 15(3)(6)**; S.I. 2005/1909, **art 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F316 Words in s. 26(2)(3) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 16(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F317 Words in s. 26 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F318 S. 26(4)-(10) inserted (1.2.2001) by 2000 c. 38, **s. 212(3)** (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F319 S 26(4) repealed (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 15(4)(6), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art 2**, Sch.

F320 S. 26(4A)-(4F) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) for s. 26(5)-(10) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 15(5)(6)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F321 26ZA No adequate tender for franchise received.

(1) This section applies in the case of an invitation to tender under section 26 for the provision of services if—

(a) the appropriate franchising authority receives no tender in response to the invitation; or

(b) it receives a tender but considers that the services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement entered into in response to the tender.

(2) The appropriate franchising authority may —

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) issue a new invitation to tender under section 26 for the provision of the services;

(b) decide to secure the provision of the services under a franchise agreement with a person who did not submit a tender; or

(c) decide not to seek to secure the provision of the services under a franchise agreement.

(3) Nothing in this section prevents the appropriate franchising authority, where it has decided not to seek to secure the provision of services under a franchise agreement, from subsequently making a decision to issue a new invitation to tender for the provision of those services.**]**

Textual Amendments

F321 S. 26ZA substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) for ss. 26A, 26B, 26C by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 16**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

27 Transfer of franchise assets and shares.

(1) It shall be the duty of the **[**[F324]appropriate franchising authority**]** before entering into a franchise agreement to satisfy **[**[F325]itself**]** that if the franchise agreement is entered into—

(a) the initial franchise assets (if any) for that franchise agreement will be vested in the person who is to be the franchise operator; and

(b) if the franchise agreement is to be one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, that the franchise operator will be a wholly owned subsidiary of the franchisee.

(2) After a franchise agreement has been entered into, it shall be the duty of the **[**[F324]appropriate franchising authority**]**, before any property, rights or liabilities are subsequently designated as franchise assets in accordance with the terms of, or by amendment to, the franchise agreement, to satisfy **[**[F325]itself**]** that, if the property, rights or liabilities in question are so designated, they will be vested in the franchise operator.

(3) Without the consent of the **[**[F324]appropriate franchising authority**]**, the franchise operator shall not—

(a) if and to the extent that the franchise assets are property or rights—

(i) transfer or agree to transfer, or create or agree to create any security over, any franchise assets or any interest in, or right over, any franchise assets; or

(ii) create or extinguish, or agree to create or extinguish, any interest in, or right over, any franchise assets; and

(b) if and to the extent that the franchise assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged, or transferred to some other person.

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(4) Where the franchise agreement is one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the franchisee shall not, without the consent of the **[**[F324]appropriate franchising authority**]**, take any action which would result in the franchise operator ceasing to be a wholly owned subsidiary of his.

(5) Any transaction which is entered into in contravention of subsection (3) or (4) above shall be void.

(6) In England and Wales, no execution or other legal process may be commenced or continued, and no distress may be levied **[**[F326]and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 may be exercised **]**, against any property which is, or rights which are, franchise assets in the case of any franchise agreement.

(7) In Scotland, no diligence or other legal process may be carried out or continued against any property which is, or rights which are, franchise assets in the case of any franchise agreement.

(8) In any case where—

(a) there are to be initial franchise assets in relation to a franchise agreement,

(b) a franchise agreement is to be one which provides for subsequent designation of property, rights or liabilities as franchise assets, or

(c) property, rights or liabilities are to be designated as franchise assets by an amendment made to a franchise agreement,

the **[**[F324]appropriate franchising authority**]** shall ensure that the franchise agreement includes provision specifying, or providing for the determination of, amounts to be paid in respect of the property, rights and liabilities which, immediately before the end of the franchise period, constitute the franchise assets in relation to that franchise agreement if and to the extent that they are transferred by **[**[F327]a scheme under **[**[F328]section 12 of the Railways Act 2005**]]** at or after the end of that period.

(9) Without prejudice to the generality of the provisions that may be included in a franchise agreement with respect to the acquisition, provision, disposal or other transfer of property, rights or liabilities (whether franchise assets or not), the **[**[F324]appropriate franchising authority**]** may undertake in a franchise agreement to exercise **[**[F329]its**]** powers under **[**[F328]section 12 of the Railways Act 2005**]** to transfer franchise assets to **[**[F329]itself**]** or another in such circumstances as may be specified in the franchise agreement.

(10) The **[**[F324]appropriate franchising authority**]** shall ensure that every franchise agreement includes such provision (if any) as **[**[F330]it**]** may consider appropriate in the particular case for the purpose of securing—

(a) that the franchise assets are adequately maintained, protected and preserved; and

(b) that, at the end of the franchise period, possession of such of the franchise assets as may be specified for the purpose in the agreement, or by the Franchising Director in accordance with the agreement, is delivered up to the Franchising Director or such other person as may be so specified.

(11) In this Part, “franchise assets”, in relation to any franchise agreement, means—

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(a) any property, rights or liabilities which are designated as franchise assets in the franchise agreement as originally made (in this section referred to as the "initial franchise assets"), and

(b) any property, rights or liabilities which, after the making of the franchise agreement, are designated as franchise assets in accordance with the terms of, or by an amendment made to, the franchise agreement,

but does not include any property, rights or liabilities which, in accordance with the terms of, or by an amendment made to, the franchise agreement, have for the time being ceased to be designated as franchise assets.

(12) No rights or liabilities under contracts of employment shall be designated as franchise assets.

(13) In this section "security" has the meaning given by section 248(b) of the [M2]Insolvency Act 1986.

[F331](14) . . . . . .

[F331](15) . . . . . .

Textual Amendments

F324 Words in s. 27 substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 17(1)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F325 Words in s. 27(1)(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F326 Words in s. 27(6) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 112** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F327 Words in s. 27(8) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F328 Words in s. 27(8)(9) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 17(2)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F329 Words in s. 27(8) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F330 Words in s. 27(10) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F331 S. 27(14)(15) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

M2 1986 c. 45.

28 Fares and approved discount fare schemes.

(1) A franchise agreement may include provision with respect to the fares to be charged for travel by means of the franchised services.

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(2) Subject to the other provisions of this Act, if it appears to the **[**[F332]appropriate franchising authority**]** that the interests of persons who use, or who are likely to use, franchised services so require, **[**[F333]it**]** shall ensure that the franchise agreement in question contains any such provision as **[**[F333]it**]** may consider necessary for the purpose of securing that any fares, or any fares of a class or description, which are to be charged are, in **[**[F333]its**]** opinion, reasonable in all the circumstances of the case.

(3) Every franchise agreement shall include provision requiring the franchise operator—

(a) to participate in every approved discount fare scheme,

(b) to charge fares, in cases to which such a scheme applies, at rates which are not in excess of the levels or, as the case may be, the maximum levels set by the scheme, and

(c) otherwise to comply with the requirements of every such scheme,

if and to the extent that the franchised services are services, or services of a class or description, in relation to which the approved discount fare scheme in question applies.

(4) The discount fare schemes which are to be regarded **[**[F334], in relation to a franchise agreement,**]** for the purposes of this section as "approved" are those which are from time to time approved for the purposes of this section by the **[**[F335]appropriate franchising authority**]** .

(5) In this section—

"discount fare scheme" means any scheme for enabling persons who are young, elderly or disabled to travel by railway at discounted fares, subject to compliance with such conditions (if any) as may be imposed by or under the scheme;

"discounted fare" means a lower fare than the standard fare for the journey in question;

"scheme" includes any agreement or arrangements.

Textual Amendments

F332 Words in s. 28(2) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(1)(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F333 Words in s. 28(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 18(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F334 Words in s. 28(4) inserted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(2)(a)(3)**; S.I. 2005/1909, **art 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F335 Words in s. 28(4) substituted (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(2)(b)(3)**; S.I. 2005/1909, **art. 2**, Sch.

29 Other terms and conditions of franchise agreements.

(1) The **[**[F336]appropriate franchising authority**]** may enter into a franchise agreement on conditions requiring—

(a) the rendering to the Franchising Director by the franchisee or the franchise operator of payments of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement; [F337]. . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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[F337](b) . . . . . .

(2) A franchise agreement may include provision requiring the franchisee—

(a) to operate any additional railway asset; or

(b) to secure the operation of any additional railway asset by the franchise operator or any other wholly owned subsidiary of the franchisee.

(3) A franchise agreement shall include provision specifying the franchise term and may include provision enabling that term to be extended by such further term as may be specified in the franchise agreement.

(4) Without prejudice to the generality of the provisions relating to property, rights and liabilities that may be included in a franchise agreement, a franchise agreement may include provision requiring the franchise operator—

(a) to acquire from such person as may be specified in the franchise agreement, and to use, such property or rights as may be so specified; or

(b) to undertake such liabilities as may be so specified.

(5) Subject to any requirements imposed by or under this Act, a franchise agreement may contain any such provisions as the **[**[F336]appropriate franchising authority**]** may think fit.

[F338](6) . . . . . .

[F338](7) . . . . . .

(8) In this Part, "additional railway asset" means any network, station or light maintenance depot, and any reference to an additional railway asset includes a reference to any part of an additional railway asset.

Textual Amendments

F336 Words in s. 29 substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 19**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F337 S. 29(1)(b) and word "or" immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F338 S. 29(6)(7) repealed (1.2.2001) by 2000 c. 38, **s. 274 Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Commencement Information

I6 S. 29 wholly in force at 1.4.1994; s. 29 not in force at Royal Assent see s. 154(2); s. 29(8) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 29 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

[[F339]**30 Duty of Authority in absence of franchise.**

(1) The Authority shall provide, or secure the provision of, services for the carriage of passengers by railway where—

(a) a direction not to seek to secure the provision of the services under a franchise agreement has been given to the Authority under section 26A or 26B above (and not revoked); or

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(b) a franchise agreement in respect of the services is terminated or otherwise comes to an end but no further franchise agreement has been entered into in respect of the services (otherwise than because of such a direction).

(2) The duty in subsection (1) above in relation to any services ceases if the services begin (or again begin) to be provided under a franchise agreement.

(3) Subsection (1) above does not—

(a) require the Authority to provide or secure the provision of services if and to the extent that, in its opinion, adequate alternative railway passenger services are available;

(b) preclude it from giving notice under subsection (5) of section 38 below in relation to any of the services, in which case its duty under this section to secure the provision of the services to which the notice relates will (subject to subsections (5) and (6) of that section) terminate on the day specified in the notice in pursuance of paragraph (b) of that subsection; or

(c) preclude it from ceasing to provide or secure the provision of any of the services in any case falling within any of paragraphs (a) to (d) of subsection (2) of that section.**]**

Textual Amendments

F339 S. 30 substituted (1.2.2001) by 2000 c. 38, **s. 212(5)** (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

31 Leases granted in pursuance of franchise agreements: no security of tenure.

(1) In any case where—

(a) a franchise agreement makes provision for the franchisee, the franchise operator or a wholly owned subsidiary of the franchisee to enter into an agreement ("the contemplated agreement") with a person who has an interest in a network or a railway facility,

(b) the network or railway facility is to be used for or in connection with the provision of any of the franchised services, and

(c) the contemplated agreement creates a tenancy of any property which (whether in whole or in part) constitutes, or is comprised in, the network or railway facility,

neither Part II of the [M3]Landlord and Tenant Act 1954 (security of tenure of business premises) nor the [M4]Tenancy of Shops (Scotland) Act 1949 (security of tenure of shop premises in Scotland) shall apply to that tenancy.

(2) For the purposes of this section, a person shall be regarded as having an interest in a network or railway facility if he has an estate or interest in, or right over, any of the property which constitutes, or is comprised in, the network or railway facility.

(3) Any reference in this section to a network or a railway facility includes a reference to any part of a network or railway facility.

(4) In this section—

"agreement" includes a lease, underlease or sublease (as well as a tenancy agreement or an agreement for a lease, underlease or sublease);

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"tenancy" has the same meaning as it has in Part II of the [M5]Landlord and Tenant Act 1954 or, in Scotland, as it has in the [M6]Tenancy of Shops (Scotland) Act 1949.

Marginal Citations

M3 1954 c. 56.
M4 1949 c. 25.
M5 1954 c. 56.
M6 1949 c. 25.

Passenger Transport Authorities and Executives

[F340]**32** . . . . . .

Textual Amendments

F340 S. 32 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F341]**33** . . . . . .

Textual Amendments

F341 S. 33 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

34 Passenger Transport Authorities and Executives: franchising.

[F342] . . . . . .

Textual Amendments

F342 S. 34 repealed (24.7.2005 for E.W. and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 14(1)(c), 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.

Modifications etc. (not altering text)

C33 S. 34: certain functions transferred to the Scottish Ministers (28.11.2005) by The Transfer of Rail Functions To The Scottish Ministers Order 2005 (S.I. 2005/598), art. 3, **Sch. 1**
C34 S. 34: modified (28.11.2005) by The Transfer of Rail Functions To The Scottish Ministers Order 2005 (S.I. 2005/598), art. 4, **Sch. 2 para. 2**

35 Termination and variation of section 20(2) agreements by the [[F343]Authority].

[F344] . . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F343 Words in s. 35 and sidenote substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 21**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F344 S. 35 repealed (24.7.2005 for E.W. and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 14(1)(c), 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch

Modifications etc. (not altering text)

C35 S. 35: certain functions transferred to the Scottish Ministers (28.11.2005) by The Transfer of Rail Functions To The Scottish Ministers Order 2005 (S.I. 2005/598), art. 3, **Sch. 1**

36 Miscellaneous amendments of the Transport Act 1968.

(1) In section 10 of the [M7]Transport Act 1968, in subsection (1) (which specifies the powers of Passenger Transport Executives) after paragraph (vi) there shall be inserted—

> "(via) with the approval of the Authority, to enter into and carry out agreements with any person who is the operator of, or who has an estate or interest in, or right over, a network, station or light maintenance depot or some part of a network, station or light maintenance depot, in connection with the building, replacement, redevelopment, refurbishment, repair, maintenance, operation or staffing of the network, station or light maintenance depot or any part thereof;".

(2) After paragraph (viii) of that subsection there shall be inserted—

"(viiia) to let locomotives and other rolling stock on hire to any person who is (within the meaning of Part I of the Railways Act 1993) the franchisee or the franchise operator under a franchise agreement to which the Executive is a party;

(viiib) to let locomotives and other rolling stock on hire to a person not falling within paragraph (viiia) above—

(a) for or in connection with the provision of railway passenger services within that area or within the permitted distance; or

(b) with the written consent of the Secretary of State, for or in connection with the provision of railway passenger services outside that area and beyond the permitted distance;

(viiic) with the approval of the Authority, to enter into and carry out agreements with the owner of any locomotive or other rolling stock concerning the persons to whom, or the terms on which, the locomotive or other rolling stock may be let on hire;".

(3) In section 20(2) of that Act, in paragraph (a) (duty of Passenger Transport Executive to keep under review the railway passenger services provided by the Railways Board for meeting the needs of persons travelling between places in the Executive's passenger transport area etc) for the words "by the Railways Board" there shall be substituted the words " by passenger service operators (within the meaning of Part I of the Railways Act 1993) ".

(4) After section 23 of that Act there shall be inserted—

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"23A Interpretation of certain provisions of this Part relating to railways.

(1) For the purposes of sections 10, 15 and 20 of this Act—

(a) "light maintenance depot", "locomotive", "network", "railway passenger services", "rolling stock" and "station" have the meaning given in section 83(1) of the Railways Act 1993; and

(b) "operator" has the meaning given in section 6(2) of that Act.

(2) For the purposes of sections 10(1)(vi), 15(1)(d) and 20(2)(b), (4) and (6) of this Act "wholly-owned subsidiary" has the meaning given by section 736 of the [M8]Companies Act 1985.".

(5) In section 159(1) of that Act (general interpretation), in the definition of "subsidiary" and "wholly-owned subsidiary", for the words "subject to section 51(5)" there shall be substituted the words " subject to sections 23A(2) and 51(5) ".

Marginal Citations

M7 1968 c. 73.

M8 1985 c. 6.

Closures

37 Proposals to discontinue non-franchised etc. passenger services.

F345 . . . . . .

Textual Amendments

F345 S. 37 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

38 Proposals to discontinue franchised etc. passenger services.

F346 . . . . . .

Textual Amendments

F346 S. 38 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

39 Notification of proposals to close operational passenger networks.

F347 . . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F347 S. 39 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

40 Proposals to close passenger networks operated on behalf of theAuthority.

F348 . . . . . .

Textual Amendments

F348 S. 40 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

41 Notification of proposals to close railway facilities used in connection with passenger services.

F349 . . . . . .

Textual Amendments

F349 S. 41 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

42 Proposals to close passenger railway facilities operated on behalf of the Authority.

F350 . . . . . .

Textual Amendments

F350 S. 42 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

43 Notification to, and functions of, theSecretary of State and the relevantRail Passengers Committees.

F351 . . . . . .

Textual Amendments

F351 S. 43 repealed (1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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44 . . . . . .

F352 . . . . . .

Textual Amendments

F352 S. 44 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

45 Closure conditions: general.

F353 . . . . . .

Textual Amendments

F353 S. 45 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

46 Variation of closure conditions.

F354 . . . . . .

Textual Amendments

F354 S. 46 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

46A General determinations of minor closures.

F355 . . . . . .

Textual Amendments

F355 S. 46A repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

46B Notification of minor closures to Regulator.

F356 . . . . . .

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Textual Amendments

F356 S. 46B repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

47 Withdrawal of bus substitution service.

F357 . . . . . .

Textual Amendments

F357 S. 47 repealed (1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

47A Objections to withdrawal of bus substitution service.

F358 . . . . . .

Textual Amendments

F358 S. 47A repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

47B Revocation or variation of bus substitution conditions.

F359 . . . . . .

Textual Amendments

F359 S. 47B repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

48 Experimental railway passenger services.

F360 . . . . . .

Textual Amendments

F360 Ss. 37-49 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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49 Abolition of former closure procedures, exemptions from new procedures and imposition of alternative procedure.

[F361] . . . . . .

Textual Amendments

F361 S. 49 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

50 Exclusion of liability for breach of statutory duty.

(1) The obligations of the **[**[F362]Secretary of State and of the Scottish Ministers, so far as**]** imposed by or under any provision of this Part—

(a) [F363] . . . . . .

[F364](b) . . .

(c) to secure the provision of any services, or

(d) to secure the operation of any additional railway asset,

shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.

(2) [F363] . . . . . .

Textual Amendments

F362 Words in s. 50(1) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 5**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F363 S. 50(1)(a)(2) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F364 S. 50(1)(b) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C36 S. 50 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Supplementary powers of the Franchising Director etc.

[F365]51 . . . . . .

Textual Amendments

F365 S. 51 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F366]52 . . . . . .

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Textual Amendments

F366 S. 52 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F367]53 . . . . . .

Textual Amendments

F367 S. 53 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

54 Exercise of functions for purpose of encouraging investment in the railways.

(1) The **[**[F368]Secretary of State or the Scottish Ministers**]**—

(a) in exercising or deciding whether or not to exercise any of **[**[F369]his or**]** their franchising functions, may take into account the desirability of encouraging railway investment; and

(b) may exercise any such functions for the purpose of encouraging railway investment or for purposes which include that purpose.

[[F370](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 this section—

"franchising functions", in relation to the **[**[F371]Secretary of State or the Scottish Ministers**]**, means—

(a) any **[**[F372]of the functions of the Secretary of State or of the Scottish Ministers**]** under sections 17 to 19, 23, 24, 26 to **[**[F373]31**]**[F374]. . . above;

(b) any power conferred on the **[**[F371]Secretary of State or the Scottish Ministers**]** under or by virtue of **[**[F375]section 1(2) of the Railways Act 2005**]** ; and

(c) any other functions of the **[**[F371]Secretary of State or the Scottish Ministers**]** which relate to the provision of railway passenger services, or the operation of additional railway assets, under or by virtue of franchise agreements;

[[F376] "franchising functions", in relation to a Passenger Transport Authority or Passenger Transport Executive, means any functions conferred or imposed on the Authority or, as the case may be, the Executive under or by virtue of section 34 above;**]**

"railway investment" means investment in assets for use in the provision of railway services.

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Textual Amendments

F368 Words in s. 54(1) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(1)(a)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F369 Words in s. 54(1)(a) inserted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(1)(b)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F370 S. 54(2) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(2)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F371 Words in s. 54(1) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(a)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F372 Words in s. 54(3)(a) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(b)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F373 Word in s. 54(3)(a) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(c)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F374 S. 54(3): words in definition of
"franchising functions"
repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F375 Words in s. 54(3)(b) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(d)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F376 S. 54(3): definition omitted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by virtue of Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)**; S.I. 2005/1909 {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1and said definition repealed (24.7.2005 for E. W. and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5) Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Commencement Information

I7 S. 54 wholly in force at 1.4.1994; s. 54 not in force at Royal Assent see s. 154(2); s. 54(2)(3) in force for specified purposes at 21.3.1994 by S.I. 1994/571, **art. 3**; s. 54 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

*Enforcement by the Regulator and the **[**[F377]Authority**]***

Textual Amendments

F377 Words in the heading before section 55 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

55 Orders for securing compliance.

(1) Subject to subsections (2) to **[**[F378](5C)**]** and section 56 below, where the appropriate **[**[F379]authority**]** is satisfied that a relevant operator is contravening, or is likely to

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contravene, any relevant condition or requirement, **[**[F379]it**]** shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to **[**[F380]subsections (5) to**][**[F378](5C)**]** below, where it appears to the appropriate **[**[F379]authority**]**—

(a) that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, and

(b) that it is requisite that a provisional order be made,

[[F379]it**]** shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to **[**[F379]it**]** requisite for the purpose of securing compliance with that condition or requirement.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the appropriate **[**[F379]authority**]** shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made.

(4) Subject to **[**[F380]subsections (5) to**][**[F378](5C)**]** and section 56 below, the appropriate **[**[F379]authority**]** shall confirm a provisional order, with or without modifications, if—

(a) **[**[F379]it**]** is satisfied that the relevant operator to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) The appropriate **[**[F379]authority**]** shall not make a final order, or make or confirm a provisional order, in relation to a relevant operator if **[**[F379]it**]** is satisfied—

(a) that the duties imposed on **[**[F379]it**]** by section 4 **[**[F381]above [F382]. . . **]** preclude the making or, as the case may be, the confirmation of the order;

[F383](b) . . . . . .

[F383](c) . . . . . .

[[F384](5ZA) **[**[F385]Neither the Secretary of State nor the Scottish Ministers shall**]** make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions unless—

(a) **[**[F386]the Secretary of State has or (as the case may be) those Ministers have**]**given notice to **[**[F387]the Office of Rail Regulation**]** specifying a period within which **[**[F388]it**]** may give notice to **[**[F389]him or them**]** if **[**[F388]it**]** considers that the most appropriate way of proceeding is under the [M9]Competition Act 1998;

(b) that period has expired; and

(c) **[**[F387]the Office of Rail Regulation**]** has not given notice to **[**[F390]the Secretary of State or (as the case may be) the Scottish Ministers**]**within that period that **[**[F388]it**]** so considers (or, if **[**[F388]it**]** has, **[**[F388]it**]** has withdrawn it).**]**

[[F391](5A) Before making a final order or making or confirming a provisional order, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

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(5AA) The Office of Rail Regulation shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.**]**

[[F392](5B) If the appropriate authority is satisfied—

(a) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question, or

(b) that the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure,

it shall only make a final order, or make or confirm a provisional order, if it considers it appropriate to do so.**]**

[[F393](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), **[**[F394](5AA)**]** or (5B) above.**]**

[[F395](6) Where the appropriate authority must comply with this subsection, it must—

(a) serve notice of its decision on the relevant operator; and**]**

(b) publish the notice in such manner as **[**[F379]it**]** considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) A final or provisional order—

(a) shall require the relevant operator to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by the appropriate **[**[F379]authority**]**.

[[F396](7A) The provision that may be made in a final or provisional order includes, in particular, provision requiring the relevant operator to pay **[**[F397] 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,

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such**]** reasonable sum in respect of the contravention as is specified in, or determined in accordance with, the order in such manner, at such place and by such date as is so specified or determined.

(7B) The amount of the sum may not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.

(7C) If the whole or any part of the sum is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the [M10]Judgments Act 1838.**]**

(9) Without prejudice to **[**[F398]section 44 of the Railways Act 2005 (exclusion of liability for breach of statutory duty)**]** , nothing in this section or in sections 56 to 58 below shall exclude the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement.

(10) In this Part—

"the appropriate **[**[F399]authority**]**" means—

(a) in relation to any relevant condition or requirement in the case of a licence holder, [F400]. . . , [F401]. . . **[**[F387]the Office of Rail Regulation**]** ;

(aa) **[**[F402]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;**]**

"final order" means an order under this section, other than a provisional order **[**[F403]or an order under subsection (7B)**]**;

"provisional order" means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;

"relevant condition or requirement" means—

(a) in the case of a licence holder, any condition of his licence;

(b) in the case of a franchisee, or any franchise operator who is a party to the franchise agreement, any term of the franchise agreement;

(c) **[**[F404]in the case of a person under closure restrictions, any duty mentioned in subsection (11) to which he is subject;**]**

[[F405]"relevant operator" means—

(a) a licence holder;

(b) a franchisee;

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(c) a franchise operator who is a party to the franchise agreement;

(d) a person under closure restrictions.**]**

(11) In **[**[F406]subsections **[**[F407](5ZA)**]**and (10)**]**above, "person under closure restrictions" means a person**[**[F408] 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).**]**

[[F409](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.**]**

[F410](12) . . . . . .

Textual Amendments

F378 Words in s. 55(1)(2)(4) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(2)**; S.I. 2005/1909, **art. 2**

F379 Words in s. 55(1)-(7) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F380 Words in s. 55(2)(4) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 30(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F381 Words in s. 55(5)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 30(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F382 Words in s. 55(5) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 21(3), **Sch. 13 Pt. 1** (with s. 14(4)(5) Sch. 11 para. 11(2)); S.I 2006/2911, {art. 2} (subject to the transitional and saving provisions in arts. 3-7)

F383 S. 55(5)(b)(c) repealed (1.2.2001) by 2000 c. 38, ss. 226(1)(a), 274, **Sch. 31 Pt. IV** (with Sch. 28 paras. 9, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F384 S. 55(5ZA) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 11(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F385 Words in s. 55(5ZA) substituted 24.7.2005 for certain purposes and 16.10.2005 for certainh further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(4)(a)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F386 Words in s. 55(5ZA)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(4)(b)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts 3-7)

F387 Words in s. 55 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F388 Word in s. 55 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F389 Words in s. 55(5ZA(a)) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(4)(b)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, art. 2 Sch.; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F390 Words in s. 55(5ZA)(c) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(4)(c)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F391 S. 55(5A)(5AA) substituted for s. 55(5A) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 12(2)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F392 S. 55(5B) inserted (1.2.2001) by 2000 c. 38, **s. 226(1)(b)** (with Sch. 28 paras. 9, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F393 S. 55(5C)(5D) inserted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(5)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006./2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts, 3-7)

F394 Word in s. 55(5D)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 12(3)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F395 S. 55(6): "words from the beginning to the end of paragraph (a)" substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by virtue of Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(6)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F396 S. 55(7A)(7B)(7C) substituted (1.2.2001) for s. 55(8) by 2000 c. 38, **s. 225(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F397 Words in s. 55(7A) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(7)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F398 Words in s. 55(9) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(1)**; S.I 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F399 Words in s. 55(10) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

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F400 S.55(10): words in definition of "the appropriate authority" repealed (24.7.2005) by Railways Act 2005 (c. 14), **ss. 1**, 59 60, Sch. 1 para. 21(4)(b), {Sch. 13 Pt. 1} (with s. 14(4)(5) Sch. 11 para. 11(2)); S.I 2005/1909, {art. 2}, Sch.

F401 Words in s. 55(10) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 26(a), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F402 S. 55(10): paras. (aa)(b) in definition of "the appropriate authority" substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) for para. (b) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 21(8)(b)**; S.I. 2005/1909, **art. 1**, Sch. S.I. 2005/2812, {art. 2(1)}, Sch. 2; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F403 S. 55(10): words in definition of "final order" inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(2)**; S.I. 2005/1909, **art. 2**, Sch.

F404 S. 55(10): para. (c) in definition of "relevant condition or requirement" substituted (1.12.2006) for paras. (c)(d) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(3)**; S.I 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F405 S. 55(10): definition of "relevant operator" substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(4)**; S.I 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F406 Words in s. 55(11) substituted (1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 15(7)(b)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F407 Word in s. 55(11) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 11(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F408 S. 55(11)(a)-(c) and words substituted (1.12.2006) for s. 55(11)(a)(b) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(5)**; S.I 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F409 S. 55(11A)(11B) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 7(6)**; S.I 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F410 S. 55(12) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 30(5), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C37 S. 55 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C39 S. 55(5)(a) modified (28.1.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 6**

Marginal Citations

M9 1998 c. 41.

M10 1838 c. 110.

56 Procedural requirements [F411for section 55 orders].

(1) Before **[**F412it**]** makes a final order or confirms a provisional order, the appropriate **[**F413authority**]** shall give notice—

(a) stating that **[**F412it**]** proposes to make or confirm the order and setting out its effect,

(b) setting out—

(i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed,

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(ii) the acts or omissions which, in **[**[F414]its**]** opinion, constitute or would constitute contraventions of that condition or requirement, and

(iii) the other facts which, in **[**[F414]its**]** opinion, justify the making or confirmation of the order, and

(c) specifying the period (not being less than **[**[F415]21**]** days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—

(a) by publishing the notice in such manner as the appropriate **[**[F413]authority**]** considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the relevant operator to whom the order relates.

[[F416](2A) Where **[**[F417]the Office of Rail Regulation**]** serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the **[**[F418]Secretary of State and on the Scottish Ministers.**]** .**]**

(3) The appropriate **[**[F413]authority**]** shall not make a final order with modifications, or confirm a provisional order with modifications, except—

(a) with the consent to the modifications of the relevant operator to whom the order relates; or

(b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the appropriate **[**[F413]authority**]** shall—

(a) serve on the relevant operator to whom the order relates such notice as appears to him requisite of **[**[F414]its**]** proposal to make or confirm the order with modifications;

(b) **[**[F419]unless the proposed modifications are trivial, in that notice specify a period (not being less than seven**]** from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the appropriate **[**[F413]authority**]** shall—

(a) serve a copy of the order on the relevant operator to whom the order relates; and

(b) publish the order in such manner as **[**[F412]it**]** considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) Before revoking a final order or a provisional order which has been confirmed, the appropriate **[**[F413]authority**]** shall give notice—

(a) stating that **[**[F412]it**]** proposes to revoke the order and setting out the effect of its revocation, and

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(b) specifying the period (not being less than **[**[F420]21**]** days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving notice under subsection (6) above, the appropriate **[**[F413]authority**]** decides not to revoke the order to which the notice relates, **[**[F412]it**]** shall give notice of **[**[F414]its**]** decision.

(8) A notice under subsection (6) or (7) above shall be given—

(a) by publishing the notice in such manner as the appropriate **[**[F413]authority**]** considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the relevant operator to whom the order relates.

Textual Amendments

F411 Words in s. 56 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 31**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F412 Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F413 Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F414 Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F415 Word in s. 56(1)(c) substituted (1.2.2001) by 2000 c. 38, **s. 226(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F416 S. 56(2A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 12** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F417 Words in s. 56 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827,{art. 4(g)}

F418 Words in s. 56(2A) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 22**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F419 Words in s. 56(4)(b) substituted (1.2.2001) by 2000 c. 38, **s. 226(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F420 Words in s. 56(6)(b) substituted (1.2.2001) by 2000 c. 38, **s. 226(2)(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C40 S. 56 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

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57 Validity and effect of [[F421]section 55] orders.

(1) If the relevant operator to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of section 55 above, or

(b) that any of the requirements of section 56 above have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.

(2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the relevant operator have been substantially prejudiced by a failure to comply with those requirements—

(a) may quash the order or any provision of the order; [F422]. . .

[F423](b) . . . . . .

[[F424](2A) If such an application is made in relation to a provision of an order requiring the payment of a sum in the event of a contravention and the sum would be payable before the time when the application is determined, it need not be paid until that time.

(2B) Where such an application is so made the court, if satisfied as mentioned in subsection (2) above, may (instead of quashing the order or the provision of the order) make provision under either or both of paragraphs (a) and (b) of subsection (2C) below.

(2C) The provision referred to in subsection (2B) above is—

(a) provision substituting for the sum, or provision for determining a sum, specified in the order such lesser sum, or such other provision for determining a sum, as the court considers appropriate in all the circumstances of the case; and

(b) provision substituting for the date by which the sum is to be paid specified in or determined in accordance with the order such later date as the court considers appropriate in all the circumstances of the case.

(2D) Where the court substitutes a lesser sum, or different provision for determining a sum, it may require the payment of interest on the new sum at such rate, and from such date, as it determines; and where it specifies as the date by which the sum is to be paid a date before the determination of the application it may require the payment of interest on the sum from that date at such rate as it determines.]

(3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against a relevant operator in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

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(7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the appropriate **[**[F425]authority**]** for an injunction or for interdict or for any other appropriate relief or remedy.

(8) Where a relevant operator to whom a final or provisional order relates has made an application pursuant to subsection (1) above questioning the validity of that order, the making of that application shall not affect—

(a) his obligation to comply with the order, or

(b) the right which any person may have to bring civil proceedings against him in pursuance of subsection (5) or (7) above.

(9) In this section and **[**[F426]sections 57F and 58**]** below "the court" means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

Textual Amendments

F421 Words in s. 57 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F422 S. 57(2)(b) and word "or" immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F423 S. 57(2)(b) omitted (1.2.2001) by virtue of 2000 c. 38, s. 252, **Sch. 27 para. 32(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F424 S. 57(2A)-(2D) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F425 Word in s. 57(7) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 37**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F426 Words in s. 57(9) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C41 S. 57 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

[[F427]**57A Penalties.**

(1) If the appropriate authority is satisfied that a relevant operator has contravened or is contravening—

(a) a relevant condition or requirement, or

(b) a final or provisional order made by the appropriate authority,

the appropriate authority may impose on the relevant operator a penalty of such amount as is reasonable.

(2) A penalty is payable

[[F428](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.**]**

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(3) The amount of a penalty imposed on a relevant operator may not exceed 10 per cent. of his turnover determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.

(4) No penalty may be imposed in respect of any contravention of a final or provisional order if provision was made in the order by virtue of section 55(7A) above in relation to the contravention.

(5) **[**[F429]Neither the Secretary of State nor the Scottish Ministers shall**]** impose a penalty on a licence holder or person under closure restrictions unless—

(a) **[**[F430]the Secretary of State has or (as the case may be) those Ministers have**]** given notice to **[**[F431]the Office of Rail Regulation**]** specifying a period within which **[**[F432]it**]** may give notice to **[**[F433]him or them**]** if **[**[F432]it**]** considers that the most appropriate way of proceeding is under the [M11]Competition Act 1998;

(b) that period has expired; and

(c) **[**[F431]the Office of Rail Regulation**]**has not given notice to **[**[F434]the Secretary of State or (as the case may be) the Scottish Ministers**]** within that period that **[**[F432]it**]** so considers (or, if **[**[F432]it**]** has, **[**[F432]it**]** has withdrawn it).

[[F435](6) Before imposing a penalty under this section, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.**]**

[[F435](7) The Office of Rail Regulation shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.**]]**

Textual Amendments

F427 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F428 S. 57A(2)(a)(b) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) for words by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(2)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F429 Words in s. 57A(5) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(a)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F430 Words in s. 57A(5)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(b)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F431 Words in s. 57A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F432 Word in s. 57A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F433 Words in s. 57A(5)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(b)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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F434 Words in s. 57A(5)(c) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(c)**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F435 S. 57A(6)(7) substituted for s. 57A(6) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 13**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C42 S. 57A applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 15**,{Sch. 3 para. 1(c)}

Marginal Citations

M11 1998 c. 41.

[F436]57B Statement of policy.

(1) The **[**[F437]Secretary of State, the Scottish Ministers**]** and **[**[F438]the Office of Rail Regulation**]** shall each prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) A statement of policy may include provision for a decision whether to impose a penalty, or the determination of the amount of any penalty, in respect of the contravention of any relevant condition or requirement or order to be influenced by—

(a) the desirability of securing compliance with that relevant condition or requirement or order;

(b) the consequences or likely consequences of anything which has been or is being done or omitted to be done in contravention of that relevant condition or requirement or order; and

(c) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional orders.

(3) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the **[**[F437]Secretary of State, the Scottish Ministers**]** and Regulator shall have regard to any statement of **[**[F439]his, their or**]** its [F440]. . . policy published at the time when the contravention occurred.

(4) The **[**[F437]Secretary of State, the Scottish Ministers**]** and **[**[F438]the Office of Rail Regulation**]**—

(a) may at any time alter or replace a statement of **[**[F439]his, their or**]**[F441]. . . its policy; and**[**[F439] his, their or**]**

(b) shall publish the altered or replacement statement.

(5) The **[**[F437]Secretary of State, the Scottish Ministers**]** and **[**[F438]the Office of Rail Regulation**]** shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.

(6) The **[**[F437]Secretary of State, the Scottish Ministers**]** and **[**[F438]the Office of Rail Regulation**]** shall publish a statement of policy in the manner that appears most suitable for bringing it to the attention of those likely to be affected by it.

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(7) This section applies in relation to sums required to be paid by virtue of section 55(7A) above as to penalties, but as if—

(a) references to the imposition of penalties were to the inclusion in an order of a requirement to pay a sum;

(b) references to relevant conditions or requirements were omitted; and

(c) the reference in subsection (2)(b) above to anything which has been or is being done or omitted to be done included a reference to anything which is likely to be done or omitted to be done.

Textual Amendments

F436 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F437 Words in s. 57B substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 24(1)(a)(2)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F438 Words in s. 57B substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16**, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F439 Words in s. 57B(3)(4) inserted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 24(1)(b)(2)**; S.I 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F440 Words in s. 57B(3) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 13(a), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

F441 Words in s. 57B(4)(a) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 13(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C43 S. 57B applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 15, **Sch. 3 para. 1(c)**

[F442]57C Procedural requirements for penalties.

(1) Before it imposes a penalty on a relevant operator, the appropriate authority shall give notice—

(a) stating that it proposes to impose a penalty on the relevant operator and the amount of the penalty proposed,

(b) setting out the relevant condition or requirement or order in question,

(c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of a penalty and the amount of the penalty proposed,

(d) specifying the manner in which, and place at which, it is proposed to require the penalty to be paid, and

(e) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—
- (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
- (b) by serving a copy of the notice on the relevant operator.

(3) Where **[**[F443]the Office of Rail Regulation**]** serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the **[**[F444]Secretary of State and on the Scottish Ministers.**]**

(4) The appropriate authority shall not modify a proposal to impose a penalty except—
- (a) with the consent of the relevant operator;
- (b) where the modifications consist of a reduction of the amount of the penalty or a deferral of the date by which it is to be paid; or
- (c) after complying with the requirements of subsection (5) below.

(5) The requirements mentioned in subsection (4)(c) above are that the appropriate authority shall—
- (a) give to the relevant operator such notice as appears to it requisite of its modified proposal;
- (b) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
- (c) consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty, the appropriate authority shall give notice—
- (a) stating that it has imposed a penalty on the relevant operator and its amount;
- (b) setting out the relevant condition or requirement or order in question;
- (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of the penalty and its amount;
- (d) specifying the manner in which, and place at which, the penalty is to be paid; and
- (e) specifying the date (not being less than fourteen days from the date of publication of the notice) by which the penalty is to be paid.

(7) A notice under subsection (6) above shall be given—
- (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
- (b) by serving a copy of the notice on the relevant operator.

(8) The relevant operator may, within 21 days of the date of service on him of the notice under subsection (6) above, make an application to the appropriate authority for it to specify different dates by which different portions of the penalty are to be paid.

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Textual Amendments

F442 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F443 Words in s. 57C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F444 Words in s. 57C(3) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 25**; S.I 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C44 S. 57C applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

[F445]57D Time limits.

(1) No penalty may be imposed in respect of a contravention by a relevant operator—

(a) by virtue of paragraph (a) of subsection (1) of section 57A above in a case where no final or provisional order has been made in relation to the contravention, or

(b) by virtue of paragraph (b) of that subsection,

unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator within two years of the time of the contravention.

(2) No penalty may be imposed in respect of a contravention by a relevant operator by virtue of section 57A(1)(a) above in a case where a final or provisional order has been made in relation to the contravention unless a copy of the notice relating to the penalty under section 57C(1) above is served on the relevant operator—

(a) within three months of the confirmation of the provisional order or the making of the final order; or

(b) where the provisional order is not confirmed, within six months of the making of the provisional order.

Textual Amendments

F445 S. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C45 S. 57D applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

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[F446]57E Interest and payment of instalments.

(1) If the whole or any part of a penalty is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the [M12]Judgments Act 1838.

(2) If an application is made under subsection (8) of section 57C above in relation to a penalty, the penalty need not be paid until the application has been determined.

(3) If the appropriate authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the appropriate authority under that subsection, so much of the penalty as has not already been paid is to be paid immediately.

Textual Amendments

F446 S. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C46 S. 57E applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

Marginal Citations

M12 1838 c. 110.

[F447]57F Validity and effect of penalties.

(1) If the relevant operator to whom a **[**[F448]penalty notice**]** relates is aggrieved by a penalty and desires to question its validity on the ground—

(a) that it was not within the powers of section 57A above,

(b) that any of the requirements of section 57C above have not been complied with in relation to it and his interests have been substantially prejudiced by the non-compliance, or

(c) that it was unreasonable of the appropriate authority not to grant an application under section 57C(8) above;

he may make an application to the court under this section.

(2) An application under this section by a person shall be made—

(a) where it is on the ground mentioned in subsection (1)(c) above, within 42 days from the date on which he is notified of the decision not to grant the application under section 57C(8) above, and

(b) in any other case, within 42 days from the date of service on him of the notice under section 57C(6) above.

(3) If an application is made under this section in relation to a penalty, the penalty need not be paid until the application has been determined.

(4) On an application under this section on the ground mentioned in subsection (1)(a) or (b) above the court, if satisfied that the ground is established, may quash the penalty

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or (instead of quashing it) make provision under either or both of paragraphs (a) and (b) of subsection (5) below.

(5) The provision referred to in subsection (4) above is—

(a) provision substituting a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; and

(b) provision substituting as the date by which the penalty, or any portion of the penalty, is to be paid a date later than that specified in the notice under section 57C(6) above.

(6) On an application under this section on the ground mentioned in subsection (1)(c) above the court, if satisfied that the ground is established, may specify different dates by which different portions of the penalty are to be paid.

(7) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it determines; and where it specifies as the date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application it may require the payment of interest on the penalty, or portion, from that date at such rate as it determines.

(8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

Textual Amendments

F447 Ss. 57A-57F inserted (1.2.2001) by 2000 c. 38, **s. 225(1)** (with Sch. 28 paras. 6-8, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F448 Words in s. 57F(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 8**; S.I 2005/1909, {art. 1}, Sch.

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

C47 S. 57F applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 15**,{Sch. 3 para. 1(c)}

58 Power to require information etc [F449for purposes of sections 55 and 57A].

(1) Where it appears to the appropriate [F450authority] that a relevant operator [F451may have contravened or be contravening—

(a) a relevant condition or requirement, or

(b) a final or provisional order made by the appropriate authority,

the] appropriate [F450authority] may, for any purpose connected with such of [F450its] functions under section 55 [F452or 57A] above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.

(2) A notice under this subsection is a notice signed by the appropriate [F453authority] and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate [F453authority] or to any person appointed by the appropriate [F453authority] for the purpose, any documents

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which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the appropriate **[**[F453]authority**]** such information as may be specified or described in the notice.

(3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the appropriate **[**[F453]authority**]**, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(7) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Textual Amendments

F449 Words in s. 58 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F450 Word in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F451 Words in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F452 Words in s. 58(1) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F453 Word in s. 58(2)(6) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

Modifications etc. (not altering text)

C38 Ss. 55-58 applied (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 17**

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C48 S. 58 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

Railway administration orders, winding up and insolvency

59 Meaning and effect of railway administration order.

(1) A "railway administration order" is an order of the court made in accordance with section 60, 61 or 62 below in relation to a protected railway company and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the court,—

(a) for the achievement of the purposes of such an order; and

(b) in a manner which protects the respective interests of the members and creditors of the company.

(2) The purposes of a railway administration order made in relation to any company shall be—

(a) the transfer to another company, or (as respects different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the relevant activities may be properly carried on; and

(b) the carrying on of those relevant activities pending the making of the transfer.

(3) Schedule 6 to this Act shall have effect for applying provisions of the [M13]Insolvency Act 1986 where a railway administration order is made.

(4) Schedule 7 to this Act shall have effect for enabling provision to be made with respect to cases in which, in pursuance of a railway administration order, another company is to carry on all or any of the relevant activities of a protected railway company in place of that company.

(5) Without prejudice to paragraph 20 of Schedule 6 to this Act, the power conferred by section 411 of the [M14]Insolvency Act 1986 to make rules shall apply for the purpose of giving effect to the railway administration order provisions of this Act as it applies for the purpose of giving effect to Parts I to VII of that Act, but taking any reference in that section to those Parts as a reference to those provisions.

(6) For the purposes of this Part—

[[F454](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;**]**

(a) "protected railway company" means a company which is both a private sector operator and the holder of—

(i) a passenger licence **[**[F455]or a European licence which authorises the carriage of passengers by railway (or both)**]** ; or

(ii) a network licence, a station licence or a light maintenance depot licence; [F456]. . .

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(b) the "relevant activities", in relation to a protected railway company, are—

(i) in the case of a company which is the holder of a **[**[F455]or a European licence which authorises the carriage of passengers by railway (or both)**]** passenger licence, the carriage of passengers by railway; or

(ii) in the case of a company which is the holder of a network licence, a station licence or a light maintenance depot licence, the management of a network, a station or a light maintenance depot, according to the description of licence in question.

[[F457](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.**]**

(7) In this section—

"business" and "property" have the same meaning as they have in the [M15]Insolvency Act 1986;

[[F458]"the court", in relation to a protected railway company, means the court—

(a) having jurisdiction to wind up the company, or

(b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);**]**

"the railway administration order provisions of this Act" means this section, sections 60 to 65 below and Schedules 6 and 7 to this Act.

Textual Amendments

F454 S. 59(6)(za) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(1)(a)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F455 Words in s. 59(6) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(5)**

F456 Word in s. 59(6)(a) repealed (16.10.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/2812, **art. 2(1)**, Sch. 1

F457 S. 59(6)(c) inserted (16.10.2005) by Railways Act 2005 (c. 14), **s. 49(1)(b)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F458 Words in s. 59(7) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(3)** (with art. 10)

Modifications etc. (not altering text)

C49 S. 59(6) modified (18.12.1996) by 1996 c. 61, **s. 19(1)**

Marginal Citations

M13 1986 c. 45.

M14 1986 c. 45.

M15 1986 c. 45.

60 Railway administration orders made on special petitions.

[[F459](1) If, on an application relating to a protected railway company**]** the court is satisfied that either or both of the grounds specified in subsection (2) below is satisfied in relation

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to that protected railway company, the court may make a railway administration order in relation to that company.

(2) The grounds mentioned in subsection (1) above are, in relation to any company,—

(a) that the company is or is likely to be unable to pay its debts;

(b) that, in a case in which the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the company under section 124A of the 1986 Act (petition by the Secretary of State following inspectors' report etc), it would be just and equitable, as mentioned in that section, for the company to be wound up.

(3) Notice of any petition under this section for a railway administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the 1986 Act; and no such petition shall be withdrawn except with the leave of the court.

(4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a railway administration order in relation to any company as they apply on the hearing of a petition for an administration order.

(5) Subsections (1), (2), (4) and (5) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a railway administration order in relation to any company as if—

(a) the reference in subsection (1) to an administration order were a reference to a railway administration order;

(b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and

(c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 55 **[**[F460]or 57A**]** above.

(6) For the purposes of this section a company is unable to pay its debts if—

(a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or

(b) it is an unregistered company, within the meaning of Part V of the 1986 Act, which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

(7) In this section—

"the 1986 Act" means the [M16]Insolvency Act 1986;

"the court" has the same meaning as in section 59 above.

Textual Amendments

F459 S. 60(1): words substituted "for the words from the beginning to the end of paragraph (b)" (16.10.2005) by virtue of Railways Act 2005 (c. 14), **ss. 49(2)**, 60, Sch. 1; S.I. 2005/2812, **art. 2(2)**, Sch. 1

F460 Words in s. 60(5)(c) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 34**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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Modifications etc. (not altering text)

C50 S. 60 modified (18.12.1996) by 1996 c. 61, **s. 19(3)**
S. 60 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Marginal Citations

M16 1986 c. 45.

61 Restriction on making winding-up order in respect of protected railway company.

(1) Where a petition for the winding up of a protected railway company is presented by a person other than the Secretary of State, the court shall not make a winding-up order in relation to that company on that petition unless—

(a) notice of the petition has been served on—

(i) the **[**[F461]appropriate national authority**]** ; and

(ii) [F462]. . . . . .

(b) a period of at least fourteen days has elapsed since the service of that notice.

(2) Where a petition for the winding up of a protected railway company has been presented—

(a) the **[**[F461]appropriate national authority**]** , [F463]. . .

(b) [F463]. . . . . .

may, at any time before a winding-up order is made on the petition, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of a winding-up order.

(3) Where, on a petition for the winding up of a protected railway company, the court makes, or proposes to make, a railway administration order by virtue of subsection (2) above, subsections (4) and (5) of section 9 of the [M17]Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that petition as they apply on the hearing of a petition for an administration order.

(4) In this section "the court" has the same meaning as in section 59 above.

Textual Amendments

F461 Words in s. 61(1)(a)(i)(2)(a) substituted (16.10.2005) by Railways Act 2005 (c. 14), **s. 49(4)(a)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F462 S. 61(1)(a)(ii) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F463 S. 61(2)(b) and preceding word repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C51 S. 61 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Marginal Citations

M17 1986 c. 45.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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62 Restrictions on voluntary winding up and insolvency proceedings in the case of protected railway companies.

(1) No resolution for voluntary winding up shall be passed by a protected railway company without leave of the court granted on an application made for the purpose by the company.

(2) No such leave shall be granted unless—

(a) notice of the application has been served on—

(i) the **[**[F464]appropriate national authority**]** ; and

(ii) [F465]. . . . . .

(b) a period of at least fourteen days has elapsed since the service of that notice.

(3) Where an application for leave under subsection (1) above has been made by a protected railway company—

(a) the **[**[F464]appropriate national authority**]** , [F466]. . .

(b) [F466]. . . . . .

may, at any time before leave has been granted under subsection (1) above, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of granting leave under subsection (1) above.

(4) Where, on an application for leave under subsection (1) above, the court makes, or proposes to make, a railway administration order by virtue of subsection (3) above, subsections (4) and (5) of section 9 of the [M18]Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that application as they apply on the hearing of a petition for an administration order.

(5) No administration order under Part II of the [M19]Insolvency Act 1986 shall be made in relation to a protected railway company unless—

(a) notice of the application for the order has been served on—

(i) the **[**[F464]appropriate national authority**]** ; and

(ii) [F467]. . . . . .

(b) a period of at least fourteen days has elapsed since the service of that notice.

(6) Where an application for an administration order under Part II of the [M20]Insolvency Act 1986 has been made in the case of a protected railway company—

(a) the **[**[F464]appropriate national authority**]** , [F468]. . .

(b) [F468]. . . . . .

may, at any time before such an order has been made on that application, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of an administration order under Part II of the [M21]Insolvency Act 1986.

(7) No step shall be taken by any person to enforce any security over a protected railway company's property, except where that person has served fourteen days' notice of his intention to take that step on—

(a) the **[**[F464]appropriate national authority**]** ; [F469]. . .

(b) [F469]. . . . . .

(8) In this section—

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"the court" has the same meaning as in section 59 above;

"resolution for voluntary winding up" has the same meaning as in the [M22]Insolvency Act 1986;

"security" and "property" have the same meaning as in the [M23]Insolvency Act 1986.

Textual Amendments

F464 Words in s. 62(2)(a)(i)(3)(a)(5)(a)(i)(6)(a)(7)(a) substituted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(4)(b)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F465 S. 62(2)(a)(ii) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F466 S. 62(3)(b) and word repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1,59, 60, Sch. 1 para. 27(1)(b)(2), {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F467 S. 62(5)(a)(ii) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2)), {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F468 S. 62(6)(b) and word repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F469 S. 62(7)(b) and word repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C52 S. 62 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Marginal Citations

M18 1986 c. 45.
M19 1986 c. 45.
M20 1986 c. 45.
M21 1986 c. 45.
M22 1986 c. 45.
M23 1986 c. 45.

63 Government financial assistance where railway administration orders made.

(1) Where a railway administration order is for the time being in force in relation to a company **[**[F470]other than a Scottish protected railway company**]** , the Secretary of State may, with the consent of the Treasury—

(a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;

[[F471](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 Secretary of State may, with the consent of the Treasury, guarantee,[F472]. . . the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company **[**[F473] 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

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(b) is not a Scottish protected railway company.**]**

a railway administration order is in force at the time when the guarantee is given.

[[F474](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) Without prejudice to any provision applied in relation to the company by Schedule 6 to this Act—

(a) the terms and conditions on which a grant is made to any company under this section may require the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and

(b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest on the loans shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.

[[F475](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

(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) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.

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[[F476](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).**]**

(5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

Textual Amendments

F470 Words in s. 63(1) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 50(1)(a)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F471 S. 63(1)(b) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 9(1)**; S.I. 2005/1909, **art. 2**, Sch.

F472 Words in s. 63(2) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F473 Words in s. 63(2) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 50(1)(b)**, 60; S.I. 2005/2812 {art. 2(1)}, Sch. 1

F474 S. 63(2A) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 9(2)**; S.I. 2005/1909, **art. 2**, Sch.

F475 S. 63(3A)-(3C) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 9(3)**; S.I. 2005/1909, **art. 2**, Sch.

F476 S. 63(4A)-(4D) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 9(4)**; S.I. 2005/1909, **art. 2**, Sch.

Modifications etc. (not altering text)

C53 S. 63 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

64 Guarantees under section 63.

(1) This section applies in relation to any guarantee given by the Secretary of State under section 63 above.

(2) Immediately after a guarantee to which this section applies is given, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee to which this section applies, the Secretary of State shall, as soon as possible after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is

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finally discharged), lay before each House of Parliament a statement relating to that sum.

(4) Any sums required by the Secretary of State for fulfilling a guarantee to which this section applies shall be paid out of money provided by Parliament.

(5) Without prejudice to any provision applied in relation to the relevant company by Schedule 6 to this Act, if any sums are paid out in fulfilment of a guarantee to which this section applies, the relevant company shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
  (a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and
  (b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out;

  and the consent of the Treasury shall be required for the giving of a direction under this subsection.

(6) Any sums received by the Secretary of State under subsection (5) above shall be paid into the Consolidated Fund.

(7) In subsection (5) above "the relevant company" in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given.

Modifications etc. (not altering text)
C54 S. 64 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

[F477 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.

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(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.

(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.**]**

Textual Amendments

F477 S. 64A inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 50(2)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

65 Meaning of "company" and application of provisions to unregistered, foreign and other companies.

[[F478](1) In the railway administration order provisions of this Act—

"company" means—

(a) a company registered under the Companies Act 2006, or

(b) an unregistered company; and

"unregistered company" means a company that is not registered under that Act.**]**

(2) In the application of section 59(1) above in a case where the protected railway company there mentioned is a foreign company, the reference to the affairs, business and property of the company shall be taken as a reference to the affairs and business of the company, so far as carried on in Great Britain, and the property of the company within Great Britain.

(3) In the application of section 9(5) of the 1986 Act by virtue of subsection (4) of section 60 above or subsection (3) of section 61 above where the petition mentioned in the subsection in question relates to a company which is a foreign company, the reference to restricting the exercise of any powers of the directors or of the company shall be taken as a reference to restricting—

(a) the exercise within Great Britain of the powers of the directors or of the company; or

(b) any exercise of those powers so far as relating to the affairs, business or property of the company in Great Britain.

(4) In the application of provisions in section 10 of the 1986 Act by virtue of subsection (5) of section 60 above where the company mentioned in that subsection is a foreign company—

(a) paragraph (a) of subsection (1) shall be omitted;

(b) any reference in paragraph (b) or (c) of that subsection to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain;

(c) in paragraph (c) of that subsection—

(i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and

(ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales; and

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(d) any reference in subsection (2) to an administrative receiver shall be taken to include a reference to any person performing, in relation to the foreign company, functions equivalent to those of an administrative receiver, within the meaning of section 251 of the 1986 Act.

(5) Subsections (1) to (4) of section 62 above shall not have effect in relation to a protected railway company which is a foreign company.

(6) In the application of subsection (7) of that section where the protected railway company there mentioned is a foreign company, the reference to the company's property shall be taken as a reference to such of its property as is for the time being situated in Great Britain.

(7) In this section—

"the 1986 Act" means the [M24]Insolvency Act 1986;

"foreign company" means a company incorporated outside Great Britain;

"the railway administration order provisions of this Act" means sections 59 to 64 above, this section and Schedules 6 and 7 to this Act.

Textual Amendments

F478 S. 65(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(4)** (with art. 10)

Modifications etc. (not altering text)

C55 S. 65 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Marginal Citations

M24 1986 c. 45.

Consumer protection

66 Amendments of the Fair Trading Act 1973.

[F479](1) . . . . . .

[F479](2) . . . . . .

[[F480](3) For the purposes of Part 3 of the Enterprise Act 2002 (merger references), where a person enters into a franchise agreement as a franchisee, there shall be taken to be brought under his control an enterprise engaged in the supply of the railway services to which the agreement relates.**]**

(4) In section 137 of the 1973 Act, in subsection (3) (meaning of the expression "the supply of services"), after paragraph (f) there shall be inserted the words "and

(g) includes the supply of network services and station services, within the meaning of Part I of the Railways Act 1993;".

[F481](5) . . . . . .

[[F482](6) Expressions used in subsection (3) above and in Part 3 of the Enterprise Act 2002 have the same meaning in that subsection as they have in that Part.**]**

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Textual Amendments

F479 S. 66(1)(2) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2**, Sch. (with art. 10)

F480 S. 66(3) substituted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(8)(a); S.I. 2003/1397, **art. 2(1)**, Sch.

F481 S. 66(5) repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 21(2)**

F482 S. 66(6) substituted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(8)(b); S.I. 2003/1397, **art. 2(1)**, Sch.

Modifications etc. (not altering text)

C56 S. 66(3) amended (20.6.2003) byThe Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 16, **Sch. 4 para 12(2)**

67 [F483Competition functions of the Office of Rail Regulation]

F484(1) . . . . . .

[F485(2) The functions to which subsection (2A) below applies shall be concurrent functions of [F486the Office of Rail Regulation] and the [F487CMA].

(2A) This subsection applies to the functions of the [F488CMA] under Part 4 of the Enterprise Act 2002 (other than sections 166 [F489, 171 and 174E]) so far as [F490those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to] the supply of services relating to railways.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) [F491above—

(a) references] in Part 4 of the Act of 2002 to the [F492CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to [F486the Office of Rail Regulation] (except in sections 166 [F493, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [F494requires);

(b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to section 69(1) of this Act.]]

[F495(2C) Section 130A of the Act of 2002 is to have effect in its application in relation to the Office of Rail Regulation by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

"(1) Where the Office of Rail Regulation—

(a) is proposing to carry out its functions under section 69(1) of the Railways Act 1993 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for it to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Office of Rail Regulation must publish a notice under this section (referred to in this Part as a "market study notice").", and

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(b) as if in subsection (2)(a) of that section, for "the acquisition or supply of goods or services of one or more than one description in the United Kingdom" there were substituted "the supply of services relating to railways within the meaning of section 67(3ZA) of the Railways Act 1993".**]**

[[F496]**[**[F497](3) **[**[F486]the Office of Rail Regulation**]** shall be entitled to exercise, concurrently with the **[**[F498]CMA**]**, the functions of the **[**[F498]CMA**]** under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6)**[**[F499], 40B(1) to (4)**]** and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

(c) agreements, decisions or concerted practices of the kind mentioned in **[**[F500]Article 101(1) of the Treaty on the Functioning of the European Union**]**, or

(d) conduct which amounts to abuse of the kind mentioned in **[**[F501]Article 102 of the Treaty on the Functioning of the European Union**]**,

which relate to the supply of services relating to railways.**]**

[F502](3ZA) **[** In **[**[F503]subsections (2A) and (3)**]** above "services relating to railways" means—

(a) railway services;

(b) the provision or maintenance of rolling stock;

(c) the development, maintenance or renewal of a network, station or light maintenance depot; and

(d) the development, provision or maintenance of information systems designed wholly or mainly for facilitating the provision of railway services.

(3ZB) The Secretary of State may by order amend subsection (3ZA) above; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.**]**

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to **[**[F504]the CMA**]** are to be read as including a reference to **[**[F486]the Office of Rail Regulation**]** (**[**[F505]except in sections 31D(1) to (6), 38(1) to (6)**][**[F499], 40B(1) to (4)**]**, 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).**]**

[F506]**[**(4) Before the **[**[F498]CMA**]** or **[**[F486]the Office of Rail Regulation**]** first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(4A) Neither the **[**[F507]CMA**]** nor **[**[F486]the Office of Rail Regulation**]** shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.**]**

(5) It shall be the duty of **[**[F486]the Office of Rail Regulation**]** , for the purpose of assisting **[**[F508]a CMA group**]** in carrying out an investigation on a reference falling within subsection (6) below, to give to the **[**[F509]group**]** —

(a) any information which is in **[**[F510]its**]** possession and which relates to matters falling within the scope of the investigation and—

(i) is requested by the **[**[F509]group**]** for that purpose; or

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(ii) is information which in [F510its] opinion it would be appropriate for that purpose to give to the [F509group] without any such request; and

(b) any other assistance which the [F509group] may require and which it is within [F510its] power to give, in relation to any such matters;

and the [F509group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

(6) The references which fall within this subsection are—

(a) any [F511market investigation reference made by the Office of Rail Regulation (under section 131 of the Enterprise Act 2002)] by virtue of subsection (2) [F512or (3)] above; and

(b) any reference made to the [F513CMA] by the Secretary of State under section 11 of the 1980 Act, if the person who is the subject of the reference is—

(i) F514. . . . . .

(ii) a publicly owned railway company which supplies network services or station services.

[F515(6A) In subsection (5) "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

(7) A copy of any report of the [F516CMA][F517under section 136 or 142 of the Enterprise Act 2002] which relates to [F518the supply of services relating to railways] may be transmitted by the [F519CMA] to [F486the Office of Rail Regulation], notwithstanding that the reference F520. . . could not have been made by [F486the Office of Rail Regulation].

(8) [F521If any question arises as to whether subsection (2) or (3) above applies to any particular case], that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) [F522Part 4 of the Enterprise Act 2002], or

[F523(b) Part I of the Competition Act 1998 ([F524other than sections 31D(1) to (6), 38(1) to (6)][F525, 40B(1) to (4)] and 51),]

by or in relation to [F486the Office of Rail Regulation] on the ground that it should have been done by or in relation to [F526the CMA].

[F527(9) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by [F486the Office of Rail Regulation] by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [F528CMA] included references to [F486the Office of Rail Regulation] .]

(10) F529. . . . . .

Textual Amendments

F483 S. 67 heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(14)** (with art. 3)

F484 S. 67(1) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(9)(a), **Sch. 26**; S.I 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)

F485 S. 67(2)-(2B) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 2 para. 21(2); S.I. 2003/1397, **art. 2(1)**, Sch.

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F486 Words in s. 67 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F487 Word in s. 67(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(2)** (with art. 3)

F488 Word in s. 67(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(3)(a)** (with art. 3)

F489 Words in s. 67(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(3)(b)** (with art. 3)

F490 Words in s. 67(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(3)(c)** (with art. 3)

F491 Words in s. 67(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(a)** (with art. 3)

F492 Word in s. 67(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(b)** (with art. 3)

F493 Words in s. 67(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(c)** (with art. 3)

F494 Words in s. 67(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(d)** (with art. 3)

F495 S. 67(2C) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(5)** (with art. 3)

F496 S. 67(3)(3A) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) for s. 67(3) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 6(5)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, art. 2, **Sch.**

F497 S. 67(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), art. 1(b), **Sch. 2 para. 6(2)(a)**

F498 Word in s. 67(3)(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(6)** (with art. 3)

F499 Words in s. 67(3)(3A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 7**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

F500 Words in s. 67(3)(c) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F501 Words in s. 67(3)(d) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F502 S. 67(3ZA)(3ZB) inserted (1.2.2001) by 2000 c. 38, **s. 243(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F503 Words in s. 67(3ZA) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(3); S.I. 2003/1397, **art. 2**, Sch.

F504 Words in s. 67(3A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(7)** (with art. 3)

F505 Words in s. 67(3A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), art. 1(b), **Sch. 2 para. 6(2)(b)**

F506 S. 67(4)(4A) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(4); S.I. 2003/1397, **art. 2(1)**, Sch.

F507 Word in s. 67(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(6)** (with art. 3)

F508 Words in s. 67(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(8)(a)** (with art. 3)

F509 Word in s. 67(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(8)(b)** (with art. 3)

F510 Word in s. 67 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F511 Words in s. 67(6)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(9)(a)** (with art. 3)

F512 Words in s. 67(6)(a) repealed by 1998 c. 41, ss. 66(5), 74(3), Sch. 10 Pt. II para. 6(7), **Sch. 14 Pt. I** (with s. 73) (which repeal was brought into force at 26.11.1998 in so far as words in s. 67(6)(a) omitted for specified purposes by virtue of Sch. 10 Pt. II para. 6(7) of the repealing Act by S.I. 1998/2750, **art. 2** and was brought wholly into force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch**)

F513 Word in s. 67(6)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(9)(b)** (with art. 3)

F514 S. 67(6)(b)(i) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F515 S. 67(6A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(10)** (with art. 3)

F516 Word in s. 67(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(11)(a)** (with art. 3)

F517 Words in s. 67(7) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(5)(a); S.I. 2003/1397, **art. 2(1)**, Sch.

F518 Words in s. 67(7) substituted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 21(3)**

F519 Word in s. 67(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(11)(b)** (with art. 3)

F520 Words in s. 67(7) repealed (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 278, 279, Sch. 9 para. 21(5)(b), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

F521 Words in s. 67(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 14**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F522 Words in s. 67(8) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(6)(c); S.I. 2003/1397, **art. 2(1)**, Sch.

F523 S. 67(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 76(3), **Sch. 10 Pt. II para. 6(8)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, art. 2, **Sch.**

F524 Words in s. 67(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), art. 1(b), **Sch. 2 para. 6(2)(c)**

F525 Words in s. 67(8)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 7**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

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F526 Words in s. 67(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(12)** (with art. 3)

F527 S. 67(9) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 278, 279, **Sch. 9 para. 21(9)**; S.I 2003/1397, {art. 2(1)}, Sch.

F528 Word in s. 67(9) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(13)** (with art. 3)

F529 S. 67(10) repealed (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 278, 279, Sch. 9 para. 21(8), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

Modifications etc. (not altering text)

C57 S. 67(1) restricted (18.12.1996) by 1996 c. 61, **s. 22(1)**

C58 S. 67(2) applied (3.1.1995) by 1994 c. 40, s. 7(2), **Sch. 2 para. 11(2)**

C59 S. 67(4) restricted (18.12.1996) by 1996 c. 61, **s. 22(4)**

Other functions of the Regulator

68 Investigatory functions.

(1) Subject to subsection (2) below, it shall be the duty of **[**[F530]the Office of Rail Regulation**]** to investigate any alleged or apprehended contravention of—

(a) a condition of a licence [F531]. . . , [F532]. . .

[F533](b) . . . . . .

if the alleged or apprehended contravention is the subject of a representation (other than one appearing to him to be frivolous or vexatious) made to **[**[F534]it**]** by or on behalf of a person who appears to **[**[F530]the Office of Rail Regulation**]** to have an interest in the matter.

(2) **[**[F530]the Office of Rail Regulation**]** may, if **[**[F534]it**]** thinks fit, require **[**[F535]the **[**[F536]Passengers' Council**]]** to investigate and report to **[**[F534]it**]** on any matter falling within subsection (1) above which relates to—

(a) the provision of services for the carriage of passengers by railway, or

(b) the provision of station services,

and which it would otherwise have been **[**[F537]its**]** duty to investigate.

Textual Amendments

F530 Words in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F531 Words in s. 68(1)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F532 S. 68(1)(b) and word immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F533 S. 68(1)(b) omitted (1.2.2001) by virtue of 2000 c. 38, **s. 234(7)** (with Sch. 28 paras. 12, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F534 Words in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F535 Words in s. 68(2) substiuted (24.7.2005) by Railways Act 2005 (c. 14), **s. 21(2)**; S.I. 2005/1909, **art. 2**, Sch.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F536 Words in s. 68(2) substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(2)**

F537 Word in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

Modifications etc. (not altering text)

C60 S. 68 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(d)**

69 General functions.

(1) It shall be the duty of **[**[F538]the Office of Rail Regulation**]** , so far as it appears to **[**[F539]it**]** practicable from time to time to do so—

(a) to keep under review the provision, both in Great Britain and elsewhere, of railway services; and

(b) to collect information with respect to the provision of those services, with a view to facilitating the exercise of **[**[F540]its**]** functions under this Part.

(2) The Secretary of State may give general directions indicating—

(a) considerations to which **[**[F538]the Office of Rail Regulation**]** should have particular regard in determining the order of priority in which matters are to be brought under review in performing **[**[F540]its**]** duty under subsection (1)(a) or (b) above; and

(b) considerations to which, in cases where it appears to **[**[F538]the Office of Rail Regulation**]** that any of **[**[F540]its**]** functions under this Part are exercisable, **[**[F539]it**]** should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of **[**[F538]the Office of Rail Regulation**]** , where either **[**[F539]it**]** considers it expedient or **[**[F539]it**]** is requested by the Secretary of State or **[**[F541]the CMA**]** to do so, to give information, advice and assistance to the Secretary of State or **[**[F541]the CMA**]** with respect to any matter in respect of which any function of **[**[F538]the Office of Rail Regulation**]** under this Part is exercisable.

(4) [F542]. . . . . .

Textual Amendments

F538 Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F539 Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F540 Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F541 Words in s. 69(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 106** (with art. 3)

F542 S. 69(4) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F543]70 . . . . . .

Textual Amendments

F543 S. 70 repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 28(2), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

71 Publication of information and advice.

(1) **[**[F544]the Office of Rail Regulation**]** may arrange for the publication, in such form and in such manner as **[**[F545]it**]** considers appropriate, of such information and advice as it may appear to **[**[F545]it**]** expedient to give to users or potential users of railway services in Great Britain.

(2) In arranging for the publication of any such information or advice **[**[F544]the Office of Rail Regulation**]** shall have regard to the need for excluding, so far as that is practicable—

(a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of **[**[F544]the Office of Rail Regulation**]** , seriously and prejudicially affect the interests of that individual; and

(b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of **[**[F544]the Office of Rail Regulation**]** , seriously and prejudicially affect the interests of that body.

(3) **[**[F546]The CMA**]** shall consult **[**[F544]the Office of Rail Regulation**]** before publishing under **[**[F547]section 6 of the Enterprise Act 2002**]** any information or advice which may be published by **[**[F544]the Office of Rail Regulation**]** under this section.

Textual Amendments

F544 Words in s. 71 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F545 Word in s. 71 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F546 Words in s. 71(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 107** (with art. 3)

F547 Words in s. 71(3) substituted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(11)(b); S.I. 2003/1397, **art. 2(1)**, Sch.

[[F548] Other functions of the Authority]

Textual Amendments

F548 S. 71A and cross-heading inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 14** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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71A Investigatory functions.

F549 . . . . . .

Textual Amendments

F549 S. 71A repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

[F550 71B Code of practice for protection of interests of rail users who are disabled.

(1) The [F551 Secretary of State] shall—

(a) prepare and from time to time revise, and

(b) publish and otherwise promote the adoption and implementation of,

a code of practice for protecting the interests of users of railway passenger services or station services who are disabled

(2) In preparing or revising the code of practice, the [F551 Secretary of State] shall consult the Disabled Persons Transport Advisory Committee established under section 125 of the M25 Transport Act 1985.]

Textual Amendments

F550 S. 71B inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 28(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F551 Words in s. 71B substituted (26.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 29**; S.I. 2005/1444, **art. 2(2)**, Sch. 2

Marginal Citations

M25 1985 c. 67.

Registers and reports of the Regulator and the [F552 Authority]

Textual Amendments

F552 Word in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 43**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

72 Keeping of register by the Regulator.

(1) [F553 the Office of Rail Regulation] shall, at such premises and in such form as [F554 it] may determine, maintain a register F555 . . . .

(2) Subject to subsection (3) and to any direction given under subsection (4) below, [F553 the Office of Rail Regulation] shall cause to be entered in the register—

(a) in relation to licences [F556 and European licences] , the provisions of—

(i) every licence [F557 , every licence exemption and every European licence] ;

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(ii) every assignment of a licence of which notice is received by **[**[F553]the Office of Rail Regulation**]**;

(iii) every modification or revocation of a licence **[**[F558], every**]****[**[F559] requirement to modify conditions of a licence imposed on **[**[F553]the Office of Rail Regulation**]** by the Authority**]****[**[F560], and every modification or revocation of a European licence**]**;

(iv) every revocation of a licence exemption **[**[F561]and every requirement to revoke a licence exemption imposed on **[**[F553]the Office of Rail Regulation**]** by the Authority**]**;

(v) every requirement imposed, or consent or approval given, by **[**[F553]the Office of Rail Regulation**]** under a licence **[**[F562]or European licence**]** ;

(vi) every requirement imposed, or consent or approval given, under a licence by any person (other than **[**[F553]the Office of Rail Regulation**]**) who is a qualified person, within the meaning of section 9(3) above, for the purpose in question, being a requirement, consent or approval whose provisions have been notified to **[**[F553]the Office of Rail Regulation**]** pursuant to a condition of the licence;

(vii) every final or provisional order **[**[F563]made by **[**[F553]the Office of Rail Regulation**]** in relation**]** to a licence, every revocation of such an order and every notice given by **[**[F553]the Office of Rail Regulation**]** under section 55(6) above that he is satisfied that he does not need to make such an order;

[[F564](viii) every scheme made by the Secretary of State under section 7A(4) above or paragraph 2 of Schedule 28 to the Transport Act 2000;**]**

[[F565](ix) every penalty imposed by **[**[F553]the Office of Rail Regulation**]** under section 57A above;

(x) every statement of policy published by **[**[F553]the Office of Rail Regulation**]** under that section;**]**

and notice of every surrender of a licence **[**[F566]or European licence**]** ;

(b) in relation to access agreements, access contracts and installation access contracts, the provisions of—

(i) every facility exemption granted under section 20(3) above;

(ii) every direction to enter into an access contract or an installation access contract;

(iii) every access agreement;

(iv) every amendment (however described) of an access agreement;

(v) every general approval given under section **[**[F567]18(1)(c), 19(3)(c) or**]** 22(3) above which is for the time being in force;

[[F568](va) every direction under section 22A above;

(vb) every notice given by or to **[**[F553]the Office of Rail Regulation**]** or the **[**[F569]CMA**]** under Schedule 4A to this Act;**]**

(vi) every document issued or made by **[**[F553]the Office of Rail Regulation**]** under an access agreement;

[F570](c) . . . . . .

(d) in relation to experimental passenger services, within the meaning of **[**[F571]Part 4 of the Railways Act 2005**]** , the provisions of—

[[F572](i) every designation under section 36 of that Act of a service as experimental;

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(ii) every notice under section 37(1) or (2) of that Act of the proposed discontinuance of a service designated as experimental;**]**

[[F573](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;**]**

(e) the provisions of every railway administration order and of every discharge of such an order.

(3) In entering any provision in the register, **[**[F553]the Office of Rail Regulation**]** shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 71(2)(a) and (b) above.

(4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct **[**[F553]the Office of Rail Regulation**]** not to enter that provision in the register.

(5) Where an access agreement is entered into or amended, the facility owner or installation owner concerned shall send a copy of the access agreement or amendment to **[**[F553]the Office of Rail Regulation**]** not later than 14 days after the date on which the access agreement is entered into or the amendment is made, as the case may be.

(6) A person who fails to comply with subsection (5) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State.

(8) Any person may, on the payment of such fee as may be specified in an order so made, require **[**[F553]the Office of Rail Regulation**]** to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by **[**[F553]the Office of Rail Regulation**]** to be a true copy or extract.

(9) The contents of the register shall be available for inspection at any time by the **[**[F574]Authority**]**, without payment of any fee; and the **[**[F574]Authority**]** may require **[**[F553]the Office of Rail Regulation**]** , without payment of any fee, to supply **[**[F575]it**]**with a copy of, or extract from, any part of the register, being a copy or extract which is certified by **[**[F553]the Office of Rail Regulation**]** to be a true copy or extract.

(10) Any reference in this section to "assignment" shall be construed in Scotland as a reference to assignation.

(11) Any sums received by **[**[F553]the Office of Rail Regulation**]** under this section shall be paid into the Consolidated Fund.

Textual Amendments

F553 Words in s. 72 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F554 Word in s. 72 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F555 Words in s. 72(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F556 Words in s. 72(2)(a) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(a)**

F557 Words in s. 72(2)(a)(i) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(b)**

F558 Words in s. 72(2)(a)(iii) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(c)**

F559 Words in s. 72(2)(a)(iii) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(a)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F560 Words in s. 72(2)(a)(iii) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(c)}

F561 Words in s. 72(2)(a)(iv) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(b)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F562 Words in s. 72(2)(a)(v) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(d)}

F563 Words in s. 72(2)(a)(vii) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(c)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F564 S. 72(2)(a)(viii) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(d)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F565 S. 72(2)(a)(ix)(x) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 36(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F566 Words in s. 72(2)(a) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(e)}

F567 Words in s. 72(2)(b)(v) inserted (1.2.2001) by 2000 c. 38, **s. 230(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F568 S. 72(2)(b)(va)(vb) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 36(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F569 Word in s. 72(2)(b)(vb) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 108** (with art. 3)

F570 S. 72(2)(c) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 27(2), **Sch. 31 Pt. IV** (with Sch. 28 para. 14); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F571 Words in s. 72(2)(d) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(a)(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F572 S. 72(2)(d)(i)-(ii) substituted (1.12.2006) for s. 72(d)(i)-(iii) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(b)(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F573 S. 72(2)(da) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(c)(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F574 Words in s. 72(9) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 43(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F575 Word in s. 72(9) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 43(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

Modifications etc. (not altering text)

C61 S. 72(1) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

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C62 S. 72(2)(a) applied (in part) (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

C63 S. 72(2)(a)(i) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 7}

C64 S. 72(3) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

C65 S. 72(4) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

C66 S. 72(7) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

C67 S. 72(8) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

C68 S. 72(11) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

73 Keeping of register by the [F576Secretary of State].

(1) The [F576Secretary of State] shall, at such premises and in such form as [F577he] may determine, maintain a register F578. . . .

(2) Subject to [F579subsections (3) and (4)] below, the [F576Secretary of State] shall cause to be entered in the register [F580(except so far as they are required to be entered in the register maintained under section 73A below)] the provisions of—

(a) every franchise exemption;

(b) every franchise agreement;

F581(c) . . . . . .

(d) every amendment (however described) of a franchise agreement [F582other than any which are not likely to have a material effect on the provision of services under the agreement or on any sums payable under the agreement.];

[F583(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;]

(e) every final or provisional order [F584made by the [F576Secretary of State] in relation to F585. . .] a franchise agreement [F586or to any closure or proposed closure or to any closure requirement] , every revocation of such an order and every notice given by the [F576Secretary of State] under section 55(6) above that [F587he] is satisfied that [F587he] does not need to make such an order;

[F588(f) every penalty imposed by the [F576Secretary of State] under section 57A above;

(g) every statement of policy published by the [F576Secretary of State] under that section;

[F589(ga) every designation under section 23 and every variation or revocation of such a designation;]]

(h) F590. . . . . .

(i) F590. . . . . .

(j) F590. . . . . .

(k) F590. . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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(l) [F590] . . . . . .

(m) [F590] . . . . . .

and, without prejudice to the generality of paragraph (d) above, "amendment" in that paragraph includes any variation of the property, rights and liabilities which from time to time constitute the franchise assets in relation to the franchise agreement in question, whether the variation is effected in accordance with the terms of, or by an amendment made to, the franchise agreement.

[[F591](3) The Secretary of State may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as he considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

(a) matters relating to the affairs of an individual the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that individual; and

(b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that body.**]**

(4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest **[**[F592]he may decide**]** not to enter that provision in the register.

(5) [F593] . . . . . .

(6) [F593] . . . . . .

(7) The contents of the register shall be available for inspection at any time by **[**[F594]the Scottish Ministers or**][**[F595]the Office of Rail Regulation**]** , without payment of any fee; and **[**[F596]the Scottish Ministers and the Office of Rail Regulation may each**]** require the **[**[F576]Secretary of State**]** , without payment of any fee, to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the **[**[F576]Secretary of State**]** to be a true copy or extract.

[F581](8) . . . . . .

Textual Amendments

F576 Words in s. 73 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(1)**; S.I. 2005/1909, **art. 2**, Sch.

F577 Word in s. 73(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(2)**; S.I. 2005/1909, **art. 2**, Sch.

F578 Words in s. 73(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F579 Words in s. 73(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(a)**; S.I. 2005/1909, **art. 2**, Sch.

F580 Words in s. 73(2) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(b)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F581 S. 73(2)(c)(8) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F582 Words in s. 73(2)(d) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 37(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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F583 S. 73(da)-(dc) substituted (1.12.2006) for s. 73(da) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 11(1)(a)(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F584 Words in s. 73(2)(e) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 16(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F585 Words in s. 73(2)(e) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F586 Words in s. 73(2)(e) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 11(1)(b)(2)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F587 Word in s.73(2)(e) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(c)**; S.I. 2005/1909 {art. 2}, Sch.

F588 S. 73(2)(f)(g) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 37(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F589 S. 73(2)(ga) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(d)**; S.I. 2005/1909, **art. 2**, Sch.

F590 S. 73(2)(h)-(m) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F591 S. 73(3) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(4)**; S.I. 2005/1909, **art. 2**, Sch.

F592 Words in s. 73(4) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(5)**; S.I. 2005/1909, **art. 2**, Sch.

F593 S. 73(5)(6) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 30(6), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2); S.I. 2005/1909, **art. 2**, Sch.

F594 Words in s. 73(7) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(7)(a)**; S.I. 2005/1909, **art. 2**, Sch.

F595 Words in s. 73 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F596 Words in s.73(7) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(7)(b)**; S.I. 2005/1909 {art. 2}, Sch.

[F597 73A Keeping of register by the Scottish Ministers

(1) The Scottish Ministers must maintain a register.

(2) The register must be kept in such form and at such premises as the Scottish Ministers determine.

(3) Subject to subsections (4) and (5) below, the Scottish Ministers must cause the provisions of each of the following to be entered in the register—

(a) every designation made by them under section 23 of this Act, and every variation or revocation of such a designation;

(b) every franchise exemption granted by them;

(c) every franchise agreement to which they are a party;

(d) every amendment of such a franchise agreement, other than those that are unlikely to have a material effect on the provision of services under the agreement or on the sums payable under it;

(e) every determination made by them 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;

(f) every revocation of a determination made by them under that section in relation to a description of closures;

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(g) every condition agreed to under subsection (5) of that section in connection with a determination made by them;

(h) every final or provisional order made by them;

(i) every revocation by them of such an order;

(j) every notice given by them under section 55(6) of this Act of a decision not to make such an order;

(k) every penalty imposed by them under section 57A of this Act;

(l) every statement of policy published by them under section 57B of this Act.

(4) The Scottish Ministers may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as they consider it appropriate to exclude for the purpose of maintaining the confidentiality of—

(a) matters relating to the affairs of an individual the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that individual; and

(b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that body.

(5) If it appears to the Scottish Ministers that the entry of any provision in the register would be against the public interest, they may decide not to enter it in the register.

(6) The contents of the register must be available for inspection, at any time and free of charge, by the Secretary of State or the Office of Rail Regulation.

(7) The Secretary of State and the Office of Rail Regulation may each require the Scottish Ministers to supply him or (as the case may be) it free of charge with a certified copy of a part of the register or with a certified extract from it.

(8) The references in subsection (7) to a certified copy or a certified extract are references to a copy or extract that has been certified by the Scottish Ministers to be a true copy or extract.

(9) In subsection (3)(d) "amendment", in relation to a franchise agreement, means any amendment however described, including variations (whether or not effected in accordance with the terms of the agreement or by a modification of it) of the property, rights and liabilities which from time to time constitute the franchise assets.**]**

Textual Amendments

F597 S. 73A inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 31**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

74 Annual and other reports of [F598the Office of Rail Regulation].

(1) **[**F598the Office of Rail Regulation**]** shall, as soon as practicable **[**F599after the end of each financial year,**]**, make to the Secretary of State a report on—

(a) his activities during that year; and

(b) the **[**F600CMA's**]** activities during that year, so far as relating to references made by **[**F598the Office of Rail Regulation**]** .

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(2) Every such report shall include—

(a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of **[**[F601]its**]** functions;

[F602](b) . . . . . .

(c) a statement setting out any general directions given to **[**[F598]the Office of Rail Regulation**]** during that year under section 69(2) above; [F602]. . .

(d) . . . . . .

(3) The Secretary of State shall lay a copy of every report made by **[**[F598]the Office of Rail Regulation**]** under subsection (1) above before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he may consider appropriate.

[[F603](3A) Where a report is made by **[**[F598]the Office of Rail Regulation**]** under subsection (1) above to the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), the Scottish Ministers shall lay a copy of the report before the Scottish Parliament and shall arrange for copies to be published in such manner as they consider appropriate.**]**

(4) **[**[F598]the Office of Rail Regulation**]** may also prepare such other reports as **[**[F604]it**]** thinks fit with respect to any matter falling within the scope of **[**[F601]its**]** functions.

(5) **[**[F598]the Office of Rail Regulation**]**may arrange for copies of any report prepared under subsection (4) above to be published in such manner as **[**[F604]it**]** may consider appropriate.

(6) In making or preparing any report under this section, **[**[F598]the Office of Rail Regulation**]** shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 71(2)(a) and (b) above.

[F605](7) . . . . . .

(8) In this section—

"financial year" means a period of twelve months ending with 31st March; and

[F606] . . . . . .

Textual Amendments

F598 Words in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F599 Words in s. 74(1) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 14(a)**; S.I. 2004/827, **art. 4(g)**

F600 Word in s. 74(1)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 79(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F601 Word in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F602 S. 74(2)(b)(d) and the word "and" before s. 74(2)(d) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F603 S. 74(3A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(1), **Sch. 5 para. 13** (2); S.I. 1998/3178, **art. 3**

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F604 Word in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F605 S. 74(7) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 79(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F606 S. 74(8): definition of "first relevant financial year" repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 14(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

Modifications etc. (not altering text)

C69 S. 74(1)(3): certain functions made exercisable by the Scottish Ministers concurrently with the Ministers concerned (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2**; S.I. 1998/3178, **art. 3**

75 Annual reports of the Franchising Director.

F607 . . . . . .

Textual Amendments

F607 S. 75 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

The [F608[F609Passengers' Council] and Rail Passengers' Committees]

Textual Amendments

F608 Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 8(10)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F609 Words in s. 76 cross-heading substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(4)**

76 [F610General railway duties of Passengers' Council] .

(1) It shall be the duty of [F611the Passengers' Council] to investigate any matter which relates—

[F612(a) to the provision of railway passenger services, or]

(b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a licence to be the operator of that station,

if the condition specified in subsection (2) below is satisfied in relation to the matter in question.

(2) The condition mentioned in subsection (1) above is satisfied if—

(a) the matter is the subject of a representation made to [F611the Passengers' Council] by a user or potential user of railway passenger services and does not appear to [F611the Passengers' Council] to be frivolous or vexatious;

(b) the matter is referred to [F611the Passengers' Council] by the [F613Secretary of State] ; or

(c) the matter appears to [F611the Passengers' Council] to be one which it ought to investigate.

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[[F614](2A) If any matter falling within subsection (2)(a) appears to **[**[F611]the Passengers' Council**]** to relate only to—

(a) the provision of railway passenger services wholly within the London railway area (within the meaning of section 252A of the Greater London Authority Act 1999), or

(b) the provision of station services within that area,

that Council must refer the matter to the London Transport Users' Committee.**]**

(3) [F615]. . . . . .

(4) If, on investigating any matter, **[**[F611]the Passengers' Council**]** considers it appropriate to do so, **[**[F611]the Passengers' Council**]** shall make representations to the person providing the **[**[F616]secured service (within the meaning of Part 4 of the Railways Act 2005) which is**]** in question and—

(a) in the case of a service provided under a franchise agreement, to the franchisee, or

(b) in the case of a service provided on behalf of the **[**[F613]Secretary of State**]** , to the **[**[F613]Secretary of State**]** ,

about the matter, or any matter to which it relates or which appears to **[**[F611]the Passengers' Council**]** to be relevant to the subject of the matter investigated.

(5) Where **[**[F611]the Passengers' Council**]** —

(a) having made representations under subsection (4) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means, or

(b) on investigating any matter, has reason to believe that **[**[F617]a franchisee is contravening, or is likely to contravene, any term of the franchise agreement or that**]** the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,

[[F611]the Passengers' Council**]** shall **[**[F618], unless representations about the matter have been made to the **[**[F613]Secretary of State**]** by **[**[F611]the Passengers' Council**]** , refer it to the **[**[F613]Secretary of State**]** with a view to the **[**[F613]Secretary of State**]** exercising such of **[**[F619]his**]** powers as **[**[F620]he**]** considers appropriate in the circumstances of the case.**]**.

[[F621](5A) But if the **[**[F613]Secretary of State**]** considers that it would be more appropriate for a matter referred to it by **[**[F611]the Passengers' Council**]** to be considered by the Office of Rail Regulation , the **[**[F613]Secretary of State**]** shall refer it to **[**[F622]the Office of Rail Regulation**]** , with a view to **[**[F623]it**]** exercising such of **[**[F624]its**]** powers as **[**[F623]it**]** considers appropriate in the circumstances of the case.**]**

(6) Where **[**[F611]the Passengers' Council**]** investigates any matter—

(a) it may prepare, and send to the Secretary of State [F625]. . . , a report of its findings; and

(b) it may publish any such report, unless the matter in question is one which was referred to **[**[F611]the Passengers' Council**]** by the **[**[F613]Secretary of State**]** as mentioned in subsection (2)(b) above.

(7) Where **[**[F611]the Passengers' Council**]** has investigated any matter under this section, it shall neither—

(a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor

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(b) refer the matter to the **[**[F613]Secretary of State**]** under subsection (5)(a) above by reason only of the failure of any person to take any steps in relation to that matter,

unless, balancing the cost of taking those steps against the benefits which **[**[F611]the Passengers' Council**]** considers will be enjoyed by any person in consequence of the taking of those steps, **[**[F611]the Passengers' Council**]** is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

[[F626](7A) It shall also be the duty of **[**[F611]the Passengers' Council**]** , so far as it appears expedient from time to time to do so—

(a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services;

(b) to make representations to, and consult, such persons as they think appropriate about those matters; and

(c) to co-operate with other bodies representing the interests of users of public passenger transport services.

(7B) The Secretary of State may, after consultation with **[**[F611]the Passengers' Council**]** , make an order excluding services from the duties imposed by this section; and an order under this subsection—

(a) may exclude services of a particular class or description, particular services or services provided by a particular person;

(b) may provide that services are excluded subject to compliance with specified conditions; and

(c) may not revoke an exclusion except for breach of condition or in accordance with the order which made it.

(7C) The Secretary of State may, after consultation with **[**[F611]the Passengers' Council**]** , make an order providing that the duties imposed by this section apply to services of a particular class or description, particular services or services provided by a particular person—

(a) only to such extent as is specified by the order; or

(b) with such modifications as are so specified.**]**

(8) [F627]. . . . . .

(9) In this section, any reference to railway passenger services includes a reference to bus substitution services required to be provided in place of any such services; [F628]. . ..

Textual Amendments

F610 Words in s. 76 heading substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(3)(b)**

F611 Words in s. 76 substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(3)(a)**

F612 S. 76(1)(a) substituted (29.7.2003) by 2000 c. 38, ss. 228(2), 275(1); S.I. 2003/1694, **art. 2**

F613 Words in s. 76 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(1)**; S.I. 2005/1909, **art. 2**, Sch.

F614 S. 76(2A) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 21, 60, **Sch. 6 para. 5**; S.I. 2005/1909, **art. 2**, Sch.

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F615 S. 76(3) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F616 Words in s. 76(4) substituted (1.12.2006 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F617 Words in s. 76(5)(b) inserted (29.7.2003) by 2000 c. 38, ss. 228(3)(a), 275(1); S.I. 2003/1694, **art. 2**

F618 Words in s. 76(5) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 20(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F619 Word in s. 76(5) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(3)(a)**; S.I. 2005/1909, **art. 2**, Sch.

F620 Word in s. 76(5) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(3)(b)**; S.I. 2005/1909, **art. 2**, Sch.

F621 S. 76(5A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 20(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F622 Words in s. 76(5A) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 15**; S.I. 2004/827, **art. 4(g)**

F623 Word in s. 76 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F624 Word in s. 76 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

F625 Words in s. 76(6)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 32(4), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F626 S. 76(7A)-(7C) inserted (29.7.2003) by 2000 c. 38, ss. 228(4), 275(1); S.I. 2003/1694, **art. 2**

F627 S. 76(8) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 32(5), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F628 Words in s. 76(9) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Modifications etc. (not altering text)

C70 S. 76 excluded (30.11.2000) by 2000 c. 38, s. 253, **Sch. 28 para. 10**

C71 Ss. 76, 77 applied (1.4.1994) by 1993 c. 43, ss. 47(2)(d)(4)(d), 152(2), 154(2), **Sch. 13 para. 3(2)** (modifying 1985 c. 67, **s. 123**); S.I. 1994/571, **art. 5**

C72 S. 76 applied (with modifications) (29.7.2003) by The Merseyrail Electrics Network Order 2003 (S.I. 2003/1696), **art. 3**

C73 S. 76 modified (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), regs. 1(2), **18(2)**

C74 S. 76(5) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 17**

C75 S. 7(6)(a): certain functions made exercisable by the Scottish Ministers concurrently with the Minister concerned (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2**; S.I. 1998/3178, **art. 3**

[F629 76A Delegation of duties under section 76(7A)

(1) The [F630 Passengers' Council] and any other public body may enter into an agreement for that other body to be responsible, in accordance with the agreement, for —

(a) determining what is expedient for the purposes of subsection (7A) of section 76 above in relation to an area specified in the agreement; and

(b) otherwise performing that Council's duties under that subsection in relation to that area.

(2) So long as an agreement under this section is in force—

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(a) the duties of the **[**[F630]Passengers' Council**]** under subsection (7A) of section 76 above shall be deemed, in relation to the area specified in the agreement, to fall on the other party to it, instead of on that Council; but

(b) that Council is not to be prevented from doing anything mentioned in that subsection in relation to that area.

(3) An agreement under this section—

(a) may be entered into on such terms and conditions as the parties to it may agree; and

(b) may contain provision for determining for the purposes of this section in what circumstances things done under or for the purposes of section 76(7A) are to be treated as done in relation to the area specified in the agreement.

(4) The consent of the Secretary of State is required before the **[**[F630]Passengers' Council**]** and another public body may enter into an agreement under this section.

(5) In this section "public body" means any authority or other body on which functions are conferred by or under an enactment.

(6) In subsection (5) "enactment" includes an enactment comprised in an Act of the Scottish Parliament.**]**

Textual Amendments

F629 S. 76A inserted (24.7.2005) by Railways Act 2005 (c. 14), **ss. 20**, 60; S.I. 2005/1909, **art. 2**, Sch.

F630 Words in s. 76A substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(5)**

77 General duties of [[F631]Rail Passengers' Committees].

[F632] . . . . . .

Textual Amendments

F631 Words in the sidenote to s. 77 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 9(10)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F632 S.77 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5)); S.I. 2005/1909 {art. 2}, Sch.

78 Functions under section 56 of the Transport Act 1962.

[F633](1) . . . . . .

[F633](2) . . . . . .

[F633](3) . . . . . .

[F633](4) . . . . . .

(5) After subsection (6) of that section there shall be inserted—

"(6ZA) If the Secretary of State so directs in the case of any consultative committee, subsections (4) to (6) of this section shall have effect in relation to that

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committee and the Central Committee as if the reference in subsection (4) of this section to services and facilities provided by any of the Boards included a reference to any such ferry service as may be specified in the direction, whether provided by a Board or by some other person; and, in the application of subsections (4) to (6) of this section in relation to any such ferry service, any reference in those subsections to a Board shall be taken to include a reference to the person providing the ferry service."

[F633](6) . . . . . .

[F633](7) . . . . . .

Textual Amendments

F633 S. 78(1)-(4)(6)(7) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

79 Annual reports by the [[F634]Rail Passengers' Council and the Rail Passengers' Committees].

[F635] . . . . . .

Textual Amendments

F634 Words in the sidenote to s. 79 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 10(7)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F635 S. 79 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5)); S.I. 2005/1909, **art. 2**, Sch.

Information

80 Duty of certain persons to furnish information to the [[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation] on request.

(1) **[**[F637]Licence holders**]** shall be under a duty to furnish to the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]** in such form and manner as **[**[F638]he, they or it**]** may by notice request such information as **[**[F638]he, they or it**]** may so request, being information which the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]** considers necessary for the purpose of facilitating the performance of any **[**[F639]functions of the Secretary of State, the Scottish Ministers or (as the case may be) that Office**]** under this Part **[**[F640], 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**]**.

[[F641](1A) Holders of European licences shall be under a duty to furnish to the Office of Rail Regulation in such form and manner as it may by notice request such information as it may so request, being information which the Office of Rail Regulation considers necessary for the purpose of facilitating the performance of any of its functions under any instrument made for the purpose of implementing Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by

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Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council.**]**

(2) A request under subsection (1) **[**[F642]or (1A)**]** above must be complied with within such time (being not less than 28 days from the making of the request) as may be specified in the request.

(3) **[**[F643]If a request under subsection (1) above**]** is not complied with, the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]** may serve a notice under subsection (4) below on the person from whom the information was requested under subsection (1) above.

[[F644](3A) If a request under subsection (1A) above is not complied with, the Office of Rail Regulation may serve a notice under subsection (4) below on the person from whom the information was requested under subsection (1A) above.**]**

(4) A notice under this subsection is a notice signed by the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]** and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]** or to any person appointed by the Franchising Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the Franchising Director such information as may be specified or described in the notice. **[**[F645]In its application to a notice served by virtue of subsection (3A) above this subsection has effect with the omission of the references to the Secretary of State and the Scottish Ministers.**]**

(5) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

[F646](6) . . . . . .

(7) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (4) above to produce is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(8) If a person makes default in complying with a notice under subsection (4) above, the court may, on the application of the **[**[F636]Secretary of State, the Scottish Ministers or the Office of Rail Regulation**]****[**[F647]in the case of a request under subsection (1) above, or the Office of Rail Regulation in the case of a request under subsection (1A) above,**]** , make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference

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to destroying the means of reproducing information recorded otherwise than in legible form.

(10) In this section "the court" means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

Textual Amendments

F636 Words in s. 80 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 33(1)**; S.I. 2005/1909, **art. 2**, Sch

F637 Words in s. 80(1) substituted (1.2.2001) for s. 80(1)(a)-(c) by 2000 c. 38, s. 252, **Sch. 27 para. 38(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F638 Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 33(2)(a)**; S.I. 2005/1909, **art. 2**, Sch

F639 Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 33(2)(b)**; S.I. 2005/1909, **art. 2**, Sch

F640 Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 12**; S.I. 2005/1909 {art. 2}, Sch.

F641 S. 80(1A) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(a)**

F642 Words in s. 80(2) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(b)**

F643 Words in s. 80(3) isubstituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(c)**

F644 S. 80(3A) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(d)**

F645 Words in s. 80(4) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(e)**

F646 S. 80(6) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 38(b), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F647 Words in s. 80(8) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(f)**

Modifications etc. (not altering text)

C76 S. 80 applied (with modifications) (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), **reg. 31**

Interpretation

81 Meaning of "railway".

(1) Subject to subsection (2) below, the definition of "railway" in section 67(1) of the [M26]Transport and Works Act 1992 shall have effect for the purposes of this Part as it has effect for the purposes of that Act, and cognate expressions shall be construed accordingly.

(2) Where it is stated for the purposes of any provision of this Part that railway has its wider meaning, "railway" shall be taken, for the purposes of that provision, to mean—

(a) a railway,

(b) a tramway, or

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(c) a transport system which uses another mode of guided transport but which is not a trolley vehicle system,

and cognate expressions shall be construed accordingly.

(3) In paragraphs (a) to (c) of subsection (2) above "guided transport", "railway", "tramway" and "trolley vehicle system" have the meaning given by section 67(1) of the [M27]Transport and Works Act 1992.

Marginal Citations

M26 1992 c. 42.

M27 1992 c. 42.

82 Meaning of "railway services" etc.

(1) In this Part, "railway services" means services of any of the following descriptions, that is to say—

(a) services for the carriage of passengers by railway;

(b) services for the carriage of goods by railway;

(c) light maintenance services;

(d) station services;

(e) network services.

(2) In this Part—

"light maintenance services" means services of any of the following descriptions, that is to say—

(a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock;

(b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service;

"network services" means any service which consists of, or is comprised in, the provision or operation of a network (or of any of the track or other installations comprised in a network), but does not include any service which falls within paragraphs (a) to (d) of subsection (1) above;

"services for the carriage of passengers by railway" includes services for and in connection with the carriage of luggage, parcels or mail on trains which at the time are available, and primarily intended, for use by passengers; and references to carrying, or to the carriage of, passengers by railway shall be construed accordingly;

"station services" means any service which consists of, or is comprised in, the provision or operation of a station;

and, for the purposes of the above definitions of "network services" and "station services", where a person permits another to use any land or other property comprised in a network or station he shall be regarded as providing a service which falls within the meaning of "network services" or "station services", as the case may be.

(3) Without prejudice to the generality of the definition in subsection (2) above, "network services" includes services of any of the following descriptions, that is to say—

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(a) the construction, maintenance, re-alignment, re-configuration or renewal of track,

(b) the installation, operation, maintenance or renewal of a railway signalling system or of any other railway communication equipment,

(c) the construction, control, maintenance or renewal of electrical conductor rails or overhead lines, of any supports for such rails or lines, and of any electrical substations or power connections used or to be used in connection therewith, and the provision of electrical power by means thereof,

(d) the provision and operation of services for the recovery or repair of locomotives or other rolling stock in connection with any accident, malfunction or mechanical or electrical failure,

(e) the provision and operation of services for keeping track free from, or serviceable notwithstanding, obstruction (whether by snow, ice, water, fallen leaves or any other natural or artificial obstacle or hindrance) or for removing any such obstruction,

(f) the provision, operation, maintenance and renewal of any plant, equipment or machinery used in carrying on any of the activities specified in paragraphs (a) to (e) above,

(g) the exercise of day to day control over train movements over or along any track comprised in the network,

(h) the preparation of a timetable for the purposes of such control as is referred to in paragraph (g) above,

and it is immaterial for the purposes of this subsection and that subsection whether or not the person who provides the service in question also provides or operates a network, or any of the track or other installations comprised in a network, or provides the service on behalf of a person who does so.

(4) In determining whether any service is a station service, it is immaterial whether or not the person who provides the service also provides or operates a station, or any part of a station, or provides the service on behalf of a person who does so.

(5) In this section, "maintenance" includes the detection and rectification of any faults.

(6) "Railway" has its wider meaning in the application of this section in relation to any provision of this Part for the purposes of which "railway" has that meaning.

83 Interpretation of Part I.

(1) In this Part, unless the context otherwise requires—

"the 1973 Act" means the [M28]Fair Trading Act 1973;

"the 1980 Act" means the [M29]Competition Act 1980;

"access agreement" means—

(a) an access contract **[**[F648]which satisfies one of the conditions in paragraphs (a) to (c) of section 18(1)**]** above; or

(b) an installation access contract **[**[F649]which satisfies one of the conditions in paragraphs (a) to (c) of section 19(3)**]** above;

"access contract" has the meaning given by section 17(6) above;

"access option" shall be construed in accordance with section 17(6) above;

"additional railway asset" has the meaning given by section 29(8) above;

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"ancillary service" means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use any track, station or light maintenance depot;

[[F650]"appropriate authority" has the meaning given by section 55(10) above;**]**

[[F651]"appropriate designating authority" has the meaning given by section 23(3) above;

"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;**]**

[[F652]"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);**]**

F653
. . . . . .

[[F654]"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;**]**

F655
. . . . . .

[[F656]"the CMA" means the Competition and Markets Authority;**]**

[[F657]"cross-border service" means a railway passenger service starting either in England and Wales or in Scotland and ending, or otherwise making at least one scheduled call, in the other;**]**

F653
. . . . . .

F658
. . . . . .

[[F659]"European licence" has the meaning given by section 6(2) above;**]**

"exempt facility" shall be construed in accordance with section 20(13) above;

"experimental passenger service" has the meaning given by section 48(6) above;

"facility exemption" has the meaning given by section 20(13) above;

"facility owner" has the meaning given by section 17(6) above;

"final order" and "provisional order" have the meaning given by section 55(10) above;

"franchise agreement" has the meaning given by section 23(3) above;

"franchise assets" has the meaning given by section 27(11) above;

"franchise exemption" has the meaning given by section 24(13) above;

"franchise operator" has the meaning given by section 23(3) above;

"franchise period" has the meaning given by section 23(3) above;

"franchise term" has the meaning given by section 23(3) above;

"franchised services" has the meaning given by section 23(3) above;

"franchisee" has the meaning given by section 23(3) above;

"goods" includes mail, parcels, animals, plants and any other creature, substance or thing capable of being transported, but does not include passengers;

"information" includes accounts, estimates, records and returns;

"installation access contract" has the meaning given by section 19(9) above;

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"installation owner" has the meaning given by section 19(9) above;

[[F660]"international licence" has the meaning given by section 6(2) above;**]**

"licence" means a licence under section 8 above and "licence holder" shall be construed accordingly;

"licence exemption" has the meaning given by section 7(13) above;

"light maintenance" (without more) means—

(a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; or

(b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service;

and, for the purposes of paragraph (b) above, "maintenance work" includes the detection and rectification of any faults;

"light maintenance depot" means any land or other property which is normally used for or in connection with the provision of light maintenance services, whether or not it is also used for other purposes;

"light maintenance depot licence" means a licence authorising a person—

(a) to be the operator of a light maintenance depot; and

(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, the provision of light maintenance services;

"light maintenance services" has the meaning given by section 82 above;

"locomotive" means any railway vehicle which has the capacity for self-propulsion (whether or not the power by which it operates is derived from a source external to the vehicle);

"network" means—

(a) any railway line, or combination of two or more railway lines, and

(b) any installations associated with any of the track comprised in that line or those lines,

together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains;

"network licence" means a licence authorising a person—

(a) to be the operator of a network;

(b) to be the operator of a train being used on a network for any purpose comprised in the operation of that network; and

(c) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (b) above;

"network services" has the meaning given by section 82 above;

F655 . . . . . .

F661 . . . . . .

"operator", in relation to a railway asset, has the meaning given by section 6(2) above;

"passenger licence" means a licence authorising a person—

(a) to be the operator of a train being used on a network for the purpose of carrying passengers by railway; and

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(b) to be the operator of a train being used on a network for a purpose preparatory or incidental to, or consequential on, using a train as mentioned in paragraph (a) above;

"passenger service operator" means a person who provides services for the carriage of passengers by railway;

"premises" includes any land, building or structure;

"prescribed" means prescribed by regulations made by the Secretary of State;

"private sector operator" means any body or person other than a public sector operator;

"protected railway company" has the meaning given by section 59(6)(a) above;

"public sector operator" has the meaning given by section 25 above;

"railway" shall be construed in accordance with section 81 above;

"railway asset" has the meaning given by section 6(2) above;

"railway facility" means any track, station or light maintenance depot;

"railway passenger service" means any service for the carriage of passengers by railway;

"railway services" has the meaning given by section 82 above;

"railway vehicle" includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along track;

"records" includes computer records and any other records kept otherwise than in a document;

"relevant activities", in relation to a protected railway company, has the meaning given by section 59(6)(b) above;

"relevant condition or requirement" has the meaning given by section 55(10) above;

"relevant operator" has the meaning given by section 55(10) above;

"rolling stock" means any carriage, wagon or other vehicle used on track and includes a locomotive;

[[F662]"scheduled call", in relation to a service or journey, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends);

"Scotland-only service" means a railway passenger service which starts and ends in Scotland and is not a cross-border service;

"Scottish franchise agreement" means a franchise agreement the franchised services under which—

(a) consist of or include Scotland-only services; and

(b) so far as they include other services, include only cross-border services designated by the Scottish Ministers;**]**

"station" means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes;

"station licence" means a licence authorising a person to be the operator of a station;

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"station services" has the meaning given by section 82 above;

[[F663]"through ticket" means—

(a) a ticket which is valid for a journey which involves use of the services of more than one passenger service operator; or

(b) a combination of two or more tickets issued at the same time which are between them valid for such a journey;

and "through ticketing" shall be construed accordingly;**]**

"track" means any land or other property comprising the permanent way of any railway, taken together with the ballast, sleepers and metals laid thereon, whether or not the land or other property is also used for other purposes; and any reference to track includes a reference to—

(a) any level crossings, bridges, viaducts, tunnels, culverts, retaining walls, or other structures used or to be used for the support of, or otherwise in connection with, track; and

(b) any walls, fences or other structures bounding the railway or bounding any adjacent or adjoining property;

"train" means—

(a) two or more items of rolling stock coupled together, at least one of which is a locomotive; or

(b) a locomotive not coupled to any other rolling stock;

"vehicle" includes railway vehicle.

[[F664](1A) In sections 17 to 22C above (and Schedule 4 to this Act) references to a railway facility (including references to any track, station or light maintenance depot) or a network include references to a railway facility (or any track, station or light maintenance depot) or a network which is proposed to be constructed or is in the course of construction.**]**

(2) For the purposes of this Part, a person shall be regarded as providing or operating services for the carriage of goods by railway notwithstanding that he provides or operates the services solely for the carriage of his own goods or otherwise for his own benefit.

[F665](3) . . . . . .

Textual Amendments

F648 S. 83(1): words in para. (a) of the definition of "access agreement" substituted (1.2.2001) by 2000 c. 38, **s. 230(6)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F649 S. 83(1): words in para. (b) of the definition of "access agreement" substituted (1.2.2001) by 2000 c. 38, **s. 230(6)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F650 Definition of "appropriate authority" in s. 83(1) substituted for definition of "appropriate officer" (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 39(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F651 S. 83(1): definitions inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(a)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F652 S. 83(1): definition of "bus substitution service" substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(b)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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F653 Definitions of "the Central Committee" and "consultative committee" in s. 83(1) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F654 S. 83(1): definition of "closure" and "closure requirement" substituted for "closure" and "clsure conditions" (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(c)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F655 S.83(1)): definition of "closure consent" and "notice period" repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F656 Words in s. 83(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 80(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F657 S.83(1): definition of "cross-border service" inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 37(2)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F658 Definition of "the Director" in s. 83(1) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(13)(a), **Sch. 26**; S.I 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)

F659 S. 83(1): definition of "European license" inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(8)(a)}

F660 Definition of "international licence" inserted (27.6.1998) by S.I. 1998/1340, reg. 21(9)

F661 Words in s. 83(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 80(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F662 S. 83(1): definitions of "scheduled call", "Scotland-only service", and "Scottish franchise agreement" inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 37(3)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F663 Definition of "through ticket" in s. 83(1) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 39(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F664 S. 83(1A) inserted (1.2.2001) by 2000 c. 38, **s. 233(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F665 S. 83(3) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

Commencement Information

I8 S. 83 wholly in force at 1.4.1994; s. 83 not in force at Royal Assent see s. 154(2); s. 83(1) in force for specified purposes and s. 83(2) wholly in force at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; s. 83(1) in force for further specified purposes at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; S. 83(1) in force for specified purposes at 22.2.1994 by S.I. 1994/447, **art. 2**; S. 83 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

Marginal Citations

M28 1973 c. 41.

M29 1980 c. 21.

PART II

RE-ORGANISATION OF THE RAILWAYS

Modifications etc. (not altering text)

C77 Pt. II (ss. 84-116) excluded (retrospective to 5.11.1993) by 1994 c. 9, s. 252, **Sch. 24 para. 4(1)**
Pt. II (ss. 84-116) excluded (retrospective to 11.1.1994) by 1994 c. 9, s. 252, **Sch. 24 para. 8(4)**

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Pt. II (ss. 84-116) excluded (retrospective to 5.11.1993) by 1994 c. 9, s. 252, **Sch. 24 para. 17(2)** (with s. 252(2))

New companies, transfer schemes and disposals

84 Powers of the Board to form companies.

(1) The Board shall have power to form, or take part in forming, companies—
- (a) for the purposes of the Board's business;
- (b) for the purpose of facilitating the disposal of—
  - (i) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or
  - (ii) without prejudice to the generality of sub-paragraph (i) above, any securities of any subsidiary of the Board;
- (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above;
- (d) for such other purposes as may be specified by the Secretary of State in a direction to the Board.

(2) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by paragraph (a), (b), (c) or (d) of subsection (1) above; and, if he so directs, he may also give the Board directions with respect to—
- (a) the nature and objects of the company which is to be formed;
- (b) the manner in which, and time within which, it is to be formed.

(3) The Board shall not exercise any power conferred by subsection (1) above, except—
- (a) in the case of the power conferred by paragraph (a), with the consent of, or pursuant to a direction given under subsection (2) above by, the Secretary of State; or
- (b) in any other case, pursuant to such a direction.

(4) Each of the powers conferred on the Board by this section—
- (a) is in addition to, and not in derogation from, any other powers of the Board; and
- (b) relates only to the capacity of the Board as a statutory corporation;

and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.

85 Powers of the Board to make transfer schemes.

(1) The Board shall have power to make schemes for the transfer of the whole or any part of the undertaking, or any property, rights or liabilities, of—
- (a) the Board,
- (b) any wholly owned subsidiary of the Board,
- (c) any publicly owned railway company,
- (d) the Franchising Director, or
- (e) any company which is wholly owned by the Franchising Director,

to any other person falling within paragraphs (a) to (e) above or to a franchise company.

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(2) In relation to the transfer or disposal (or the proposed transfer or disposal) of the whole or any part of an undertaking, any reference in this Part to property, rights or liabilities includes a reference to the undertaking or part (and, accordingly, to the property, rights and liabilities comprised in that undertaking or part).

(3) The powers conferred on the Board by subsection (1) above shall only be exercisable—
   (a) for the purposes of the Board's business, or to facilitate a disposal in the ordinary course of that business;
   (b) for the purpose of effecting or facilitating the disposal of such property, rights or liabilities as the Secretary of State may direct; or
   (c) for the purpose of facilitating the performance by the Franchising Director of his functions under sections 23 to 36 above,

   and paragraph (a) above accordingly applies only in relation to transfers between the Board and any of its wholly owned subsidiaries or between two or more of its wholly owned subsidiaries.

(4) The Secretary of State may, after consultation with the Board, direct the Board to exercise any power conferred by subsection (1) above; and, if he does so, he may also give the Board directions with respect to—
   (a) the manner in which, and time within which, the power is to be exercised;
   (b) the property, rights or liabilities to be transferred;
   (c) the person to whom the transfer is to be made.

(5) The Board shall not exercise the power conferred by subsection (1) above—
   (a) for a purpose falling within paragraph (a) of subsection (3) above, except with the consent of, or pursuant to a direction given under subsection (4) above by, the Secretary of State; or
   (b) for a purpose specified in paragraph (b) or (c) of subsection (3) above, except pursuant to such a direction.

(6) Subject to the following provisions of this Part, on the day on which a scheme under subsection (1) above comes into force (in this Part referred to as the "transfer date") the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of, and in accordance with, the scheme.

(7) Each of the powers conferred on the Board by this section—
   (a) is in addition to, and not in derogation from, the other powers so conferred and the other powers of the Board; and
   (b) relates only to the capacity of the Board as a statutory corporation;

   and nothing in this section shall be construed as authorising the disregard by the Board of any enactment or rule of law.

(8) In this Part, "franchise company" means any body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement.

(9) Expressions used in subsection (8) above and in Part I above have the same meaning in that subsection as they have in that Part.

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Modifications etc. (not altering text)

C78 S. 85(6) applied (11.1.1994) by 1994 c. 9, s. 252(1), **Sch. 24 para. 1(1)**

86 Powers of the Franchising Director to make transfer schemes.

(1) The Franchising Director shall have power to make schemes for the transfer, at or after the end of the franchise period, of property, rights and liabilities which, immediately before the end of that period, are for the time being designated as franchise assets for the purposes of the franchise agreement in question to—

(a) the Franchising Director;

(b) a company which is wholly owned by the Franchising Director; or

(c) a franchise company.

(2) In the following provisions of this section—

(a) the "transferor" means the person from whom any such property, rights or liabilities as are mentioned in subsection (1) above are transferred by a scheme under this section; and

(b) the "transferee" means the person to whom any such property, rights or liabilities are so transferred.

(3) Subject to any contrary agreement or arrangements which may be made between the transferor and the transferee, where any property, rights or liabilities are transferred by a scheme under this section, there shall be paid by the transferee to the transferor or, as the case may require, by the transferor to the transferee, on the day on which the scheme comes into force such sums as may be specified in, or determined in accordance with, the franchise agreement mentioned in subsection (1) above.

(4) Subject to the following provisions of this Part, on the day on which a scheme under this section comes into force, the property, rights and liabilities affected by the scheme shall, subject to section 97 below, be transferred and vest by virtue of and in accordance with the scheme.

(5) Except as otherwise provided by this Act—

(a) any reference in this Act to a "transfer scheme" shall be taken as including a reference to a scheme under this section;

(b) in the application of any provision of this Act in relation to a scheme under this section, any reference to the "transfer date" shall be taken as a reference to the date on which the scheme comes into force.

(6) In this section "franchise agreement", "franchise period" and "designated as franchise assets" have the same meaning as they have in Part I above.

(7) Any sums required by the Franchising Director for the purpose of making payments in respect of property, rights or liabilities transferred by a scheme under this section shall be paid by the Secretary of State out of money provided by Parliament.

(8) Any sums received by the Franchising Director in respect of property, rights or liabilities so transferred shall be paid into the Consolidated Fund.

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87 Transfer to the Secretary of State or the Franchising Director of the Board's function of making transfer schemes.

(1) The Secretary of State may by order transfer any functions of the Board under section 85 above to himself or to the Franchising Director.

(2) An order under this section may provide for the transfer of the function in question for all purposes or for such purposes as may be specified in the order.

(3) Where any function is transferred to the Franchising Director under this section, the Secretary of State may, after consultation with the Franchising Director, direct the Franchising Director to exercise the function by making a scheme for the transfer of an undertaking or part of an undertaking, or any property, rights or liabilities, to a publicly owned railway company, a company wholly owned by the Franchising Director or a franchise company; and, if the Secretary of State gives such a direction, he may also—

(a) give the Franchising Director directions with respect to any matter specified in paragraph (a), (b) or (c) of section 85(4) above; or

(b) if the transfer is directed to be made to a publicly owned railway company which has not yet been formed, direct the Franchising Director to form, or take part in forming, a company for the purpose.

(4) In relation to any function transferred to the Franchising Director under this section, subsection (3) above shall have effect in substitution for subsection (4) of section 85 above and any reference in this Act to a direction under the said subsection (4) shall be construed accordingly.

(5) An order under this section may make such modifications of this Part as may be consequential upon, or incidental or supplemental to, the transfer effected by the order.

Commencement Information

I9 S. 87 wholly in force at 1.4.1994; s. 87 not in force at Royal Assent see s. 154(2); s. 87(1) in force for specified purpose and s. 87(2)(5) wholly in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 87 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

88 Transfers of interests in certain companies: provisions supplemental to sections 84 to 87.

(1) Where the Secretary of State gives the Board directions—

(a) under section 84 above, with respect to the formation of a wholly owned subsidiary of the Board, and

(b) under section 85 above, with respect to the making of a scheme for the transfer of anything to that wholly owned subsidiary,

the wholly owned subsidiary of the Board shall remain such until the transfer under the scheme has taken effect.

(2) Where the Secretary of State gives the Board directions under section 85 above with respect to the making of a scheme for the transfer of anything to a company which is wholly owned by the Crown, that company shall remain wholly owned by the Crown until the transfer under the scheme has taken effect.

(3) Where the Secretary of State gives the Franchising Director directions under or by virtue of section 87 above with respect to the making of a scheme for the transfer of

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anything to a publicly owned railway company, that company shall remain a publicly owned railway company until the transfer under the scheme has taken effect.

(4) Where a wholly owned subsidiary of the Board is formed pursuant to a direction under section 84 above, none of the following persons, that is to say, the Board, any wholly owned subsidiary of the Board or any person acting on behalf of the Board or its wholly owned subsidiaries, shall dispose of any interests in that subsidiary except—
   (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
   (b) pursuant to a direction of the Secretary of State under subsection (6) below or section 89 below.

(5) None of the following persons, that is to say, the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company, shall dispose of any interests in a company which is wholly owned by the Franchising Director except—
   (a) with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent; or
   (b) pursuant to a direction of the Secretary of State under subsection (7) below.

(6) The Secretary of State may at any time direct the Board to transfer, or arrange for there to be transferred, to him or such other person as may be specified in the direction any interests in a company so specified, being a wholly owned subsidiary of the Board formed pursuant to a direction under section 84 above, which are for the time being held by or on behalf of the Board.

(7) The Secretary of State may at any time direct the Franchising Director to transfer, or arrange for there to be transferred, to the Secretary of State or such other person as may be specified in the direction any interests in any company so specified which are for the time being held by the Franchising Director, any company which is wholly owned by the Franchising Director or any person acting on behalf of the Franchising Director or any such company.

(8) Where the Secretary of State gives a direction under subsection (6) or (7) above, it shall be the duty of the Board or, as the case may be, the Franchising Director to secure that the interests in question are transferred in accordance with the terms of the direction in such manner, and on or before such date, as may be specified for the purpose in the direction, and notwithstanding any duty imposed upon the Board by section 3(1) of the [M30]Transport Act 1962.

Marginal Citations
M30 1962 c. 46.

89 Disposals by the Board and its subsidiaries.

(1) If the Secretary of State, after consultation with the Board, so directs, the Board shall dispose or secure the disposal (whether by way of sale, lease or exchange and, if by way of sale or lease, whether for nominal or valuable consideration) of—
   (a) the whole or any part of the undertaking, or any property, rights or liabilities, of the Board or of any wholly owned subsidiary of the Board; or

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(b) without prejudice to paragraph (a) above, any securities of any subsidiary of the Board which are held by or on behalf of the Board or any other subsidiary of the Board.

(2) The directions that may be given under this section by the Secretary of State include directions specifying—

(a) the manner in which, and time within which, the disposal is to be effected;

(b) that which is to be disposed of;

(c) the person to whom the disposal is to be made.

(3) No disposal shall be made by the Board, or by any subsidiary of the Board, in pursuance of a direction under this section except with the consent of the Secretary of State and subject to compliance with such conditions (if any) as he may impose in connection with that consent.

(4) The powers of disposal conferred on the Board by virtue of this section are in addition and without prejudice to those conferred by section 14(1)(e) of the [M31]Transport Act 1962 (power to dispose of any part of the Board's undertaking, or any property, no longer required for the purposes of the Board's business) which shall accordingly also continue to be exercisable by the Board.

(5) In section 27 of the [M32]Transport Act 1962, in subsection (4) (which provides that the Secretary of State may direct the Board and the British Waterways Board to discontinue any of their activities, dispose of any part of their undertaking, dispose of any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) the words "dispose of any part of their undertaking, dispose of any assets held by them" shall cease to have effect in so far as relating to the Board.

Marginal Citations

M31 1962 c. 46.

M32 1962 c. 46.

90 Directions to the Board about the exercise of rights conferred by holdings in companies.

(1) The Secretary of State may, after consultation with the Board, give directions to the Board with respect to the exercise of any rights conferred on the Board by the holding of interests in companies.

(2) A direction under subsection (1) above may be general in character or may relate to the manner in which such rights as are mentioned in that subsection are to be exercised in a particular case.

(3) In section 27 of the [M33]Transport Act 1962, in subsection (1) (which provides that the Secretary of State may give general directions to the Board as to the exercise and performance of their functions in relation to matters appearing to him to affect the national interest, including the exercise of rights conferred by the holding of interests in companies) the words " (including the exercise of rights conferred by the holding of interests in companies) " shall cease to have effect so far as relating to the Board.

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(4) Subsection (5) of that section (which provides that the Secretary of State may, after consultation with the Board, direct the Board to exercise control over a subsidiary of the Board so as to require the subsidiary to discontinue any of their activities, dispose of any part of their undertaking, dispose of any assets held by them, call in any loan made by them or exercise any power they may possess to revoke any guarantees given by them) shall cease to have effect so far as relating to the Board.

Marginal Citations
M33 1962 c. 46.

Transfer schemes: supplemental provision

91 Transfer schemes: general.

(1) A transfer scheme may—
- (a) define the property, rights and liabilities to be transferred to the transferee—
  - (i) by specifying or describing the property, rights and liabilities in question;
  - (ii) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking; or
  - (iii) partly in the one way and partly in the other;
- (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against the transferor or transferee (or both of them);
- (c) impose on the transferor or transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, the transferor or transferee or such other person as may be specified in the scheme;
- (d) make such supplemental, incidental, consequential or transitional provision as the maker of the scheme considers appropriate.

(2) An obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above shall be enforceable by civil proceedings by the transferor or transferee or other person mentioned in that paragraph for an injunction or for interdict or for any other appropriate relief or remedy.

(3) A transaction of any description which is effected in pursuance of such a provision as is mentioned in subsection (2) above—
- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
- (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this subsection, have required the consent or concurrence of any other person.

(4) No right of reverter (or corresponding right in Scotland), right of pre-emption, right of forfeiture, right of re-entry, right of irritancy, option or similar right affecting land shall operate or become exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;

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(b) by or under an agreement or instrument made or executed pursuant to any provision of Schedule 8 to this Act or pursuant to any directions given, or requirement imposed, under that Schedule; or

(c) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above;

and, without prejudice to paragraph 8 of Schedule 8 to this Act, any such right or option shall accordingly have effect in the case of any such transfer as if the transferee in relation to that transfer were the same person in law as the transferor and as if no transfer of the land had taken place.

(5) Subsection (4) above shall have effect in relation to—

(a) the grant or creation of an estate or interest in, or right over, land, or

(b) the doing of any other thing in relation to land,

as it has effect in relation to a transfer of land; and any reference in that subsection or in the following provisions of this section to the transferor or the transferee shall be construed accordingly.

(6) In any case where—

(a) any such right or option as is mentioned in subsection (4) above would, apart from that subsection, have operated in favour of, or become exercisable by, a person, but

(b) the circumstances are such that, in consequence of the operation of that subsection, the right or option cannot subsequently operate in favour of that person or, as the case may be, become exercisable by him,

such compensation as may be just shall be paid to him by the transferor or the transferee (or by both) in respect of the extinguishment of the right or option.

(7) Any dispute as to whether any, and (if so) how much, compensation is payable under subsection (6) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—

(a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors; or

(b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session; or

(c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the **[**[F666]Chairman of the Royal Institution of Chartered Surveyors in Northern Ireland**]** .

(8) If it appears to the transferor that a person is or may be entitled to compensation under subsection (6) above, he shall—

(a) notify that person that he is or may be so entitled, and

(b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,

or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F666 Words in s. 91(7)(c) substituted (3.4.2006 with effect as mentioned in Sch. 4 para. 361) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 383(1)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(cc)

92 Functions under local or private legislation etc.

(1) A transfer scheme may provide that any functions of the transferor under a statutory provision—
- (a) shall be transferred to the transferee;
- (b) shall be concurrently exercisable by two or more transferees; or
- (c) shall be concurrently exercisable by the transferor and one or more transferees.

(2) Subsection (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—
- (a) relates to any part of the transferor's undertaking, or to any property, which is to be transferred by the scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such part of the transferor's undertaking or the acquisition of land for the purpose of carrying out any such works.

(3) Subsection (1) above does not apply to any function of the Board or of any of the Board's subsidiaries under any provision of this Act or of—
- (a) the [M34]Transport Act 1962;
- (b) the [M35]Transport Act 1968;
- (c) section 4 of the [M36]Railways Act 1974; or
- (d) sections 119 to 124 of the [M37]Transport Act 1985.

(4) A transfer scheme may define any functions of the transferor to be transferred or made concurrently exercisable by the scheme in accordance with subsection (1) above—
- (a) by specifying the statutory provisions in question;
- (b) by referring to all the statutory provisions (except those specified in subsection (3) above) which—
  - (i) relate to any part of the transferor's undertaking, or to any property, which is to be transferred by the scheme, or
  - (ii) authorise the carrying out of works designed to be used in connection with any such part of the transferor's undertaking or the acquisition of land for the purpose of carrying out any such works; or
- (c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.

(5) In this section "statutory provision" means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

Marginal Citations

M34 1962 c. 46.

M35 1968 c. 73.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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M36 1974 c. 48.
M37 1985 c. 67.

93 Assignment of employees to particular parts of undertakings.

(1) Schemes may be made—

(a) assigning such qualifying employees, or qualifying employees of such a class or description, as may be specified in the scheme to such part of their employer's undertaking as may be so specified;

(b) modifying the terms and conditions of employment of those employees; and

(c) providing for the payment of compensation to any of those employees by his employer in respect of any overall detriment incurred by the employee in consequence of any modifications made by the scheme to his terms and conditions of employment.

(2) A scheme shall be made only for the purpose of facilitating, or otherwise in contemplation of, or in connection with,—

(a) the disposal of the undertaking, or part of the undertaking, of the Board or of a wholly owned subsidiary of the Board;

(b) the transfer, by virtue of a transfer scheme, of any property, rights or liabilities—

(i) from the Board or a wholly owned subsidiary of the Board to any such subsidiary or to a publicly owned railway company or a company wholly owned by the Franchising Director; or

(ii) from a company wholly owned by the Franchising Director to another such company;

(c) the provision of railway passenger services, or the operation of additional railway assets, under a franchise agreement, in circumstances where a previous franchise agreement relating to the provision of those services or the operation of those assets comes, or has come, to an end;

(d) the performance of any duty imposed on the Franchising Director by any provision of Part I above to secure—

(i) the provision of any railway passenger services;

(ii) the operation of any network or part of a network;

(iii) the operation of any station or light maintenance depot, or any part of a station or light maintenance depot; or

(e) the exercise of the power conferred on the Franchising Director by section 30 above to secure the operation of any additional railway assets.

(3) The power to make a scheme shall be exercisable—

(a) by the Board, in respect of employees of the Board or of any wholly owned subsidiary of the Board; or

(b) by the Franchising Director, in respect of employees of any company which is wholly owned by the Franchising Director.

(4) Where a scheme modifies the terms and conditions of employment of any person, the person's terms and conditions of employment after the modification takes effect must overall, and taking account of the amount or value of any compensation payable to him by virtue of subsection (1)(c) above in respect of any such detriment as is there mentioned, be no less favourable to him than his terms and conditions of employment before the modification takes effect.

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(5) The duty imposed on an employer by section 4 of **[**[F667]the Employment Rights Act 1996**]** (requirement for written statement in respect of certain changes relating to an employee's employment) shall extend to all of the modifications made by a scheme to a qualifying employee's terms and conditions of employment, as if those modifications were changes required to be dealt with in a written statement under that section.

(6) If any qualifying employee whose terms and conditions of employment are modified by a scheme is aggrieved—

(a) at the provisions made by the scheme with respect to the payment of compensation, so far as applicable in his case, or

(b) at the fact that the scheme does not make any such provision,

he may make a written complaint to the maker of the scheme not later than twelve weeks after the date of issue of the written statement required by section 4 of **[**[F667]the Employment Rights Act 1996**]**in consequence of the modifications made by the scheme in the qualifying employee's terms and conditions of employment.

(7) Any complaint under subsection (6) above shall be referred to, and determined by, such arbitrator as may be agreed by the qualifying employee and the person to whom the complaint was made or, at the request of either of them, by a panel of three arbitrators appointed by the Secretary of State and consisting of—

(a) a person who appears to the Secretary of State to be representative of employers in the railway industry;

(b) a person who appears to the Secretary of State to be representative of employees in the railway industry; and

(c) an independent chairman.

(8) A scheme may make such incidental, consequential, supplemental or transitional provision as appears necessary or expedient to the person making the scheme.

(9) A scheme may make different provision for different qualifying employees or for qualifying employees of different classes or descriptions.

(10) A scheme shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may, after consultation with the maker of the scheme, specify for the purpose in giving his approval.

(11) In the application of this section in relation to Scotland, any reference to an arbitrator shall be taken as a reference to an arbiter.

(12) In the application of this section to Northern Ireland, for any reference to section 4 of **[**[F667]the Employment Rights Act 1996**]**there shall be substituted a reference to section 4(4) to (6B) of the [M38]Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.

(13) In this section—

"qualifying employee", in the case of any scheme, means a person who, immediately before the coming into force of that scheme—

(a) is an employee of—

(i) the Board;

(ii) a wholly owned subsidiary of the Board; or

(iii) a company which is wholly owned by the Franchising Director; and

(b) is not assigned solely to duties in that part of his employer's undertaking to which he is, or is to be, assigned by that scheme;

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"scheme" means a scheme under this section;

and expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

Textual Amendments

F667 Words in s. 93(5)(6)(12) substituted (22.8.1996) by 1996 c. 18, s. 240, **Sch. 1 para. 60(2)**

Commencement Information

I10 S. 93 wholly in force at 1.4.1994; s. 93 not in force at Royal Assent see s. 154(2); s. 93 (except subsection (3)(b)) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 93 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

Marginal Citations

M38 1965 c. 19 (N.I.).

94 Accounting provisions.

(1) This section applies where any property, rights or liabilities are transferred by virtue of a transfer scheme between—

(a) the Board and any company which, at the time of the transfer, is either—

(i) a wholly owned subsidiary of the Board; or

(ii) wholly owned by the Crown; or

(b) any two companies which, at the time of the transfer, fall within paragraph (a) above.

(2) Where this section applies, the transfer scheme may state—

(a) the value at which any asset transferred to the transferee by virtue of the scheme is to be entered in the opening accounts of the transferee; or

(b) the amount at which any liability so transferred is to be entered in those accounts.

(3) The value or amount (if any) stated by virtue of subsection (2) above shall be—

(a) in a case where the whole of the asset or liability in question is transferred by the transfer scheme, the value or amount at which the asset or liability appeared in the last full accounts of the transferor, or

(b) in a case where part only of the asset or liability is so transferred, such part of the value or amount at which the asset or liability appeared in the last full accounts of the transferor as may be determined by or in accordance with the transfer scheme,

unless the maker of the transfer scheme considers that some other amount or value is appropriate in all the circumstances of the case, in which case the amount or value stated by virtue of subsection (2) above shall be that other amount or value.

(4) Where this section applies, the transfer scheme may provide that the amount to be included in the opening accounts of the transferee in respect of any item shall be determined as if so much of anything done (or treated as done) by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) as may be determined by or in accordance with the transfer scheme had been done by the transferee.

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(5) Without prejudice to the generality of the preceding provisions of this section, where this section applies, the transfer scheme may provide—

(a) that the amount to be included from time to time in any reserves of the transferee as representing its accumulated realised profits shall be determined as if such proportion of any profits realised and retained by the transferor as may be determined by or in accordance with the transfer scheme, had been realised and retained by the transferee;

(b) that the amount to be included from time to time in the opening accounts and any subsequent statutory accounts of the transferee as representing its accumulated realised losses shall be determined as if such proportion of any accumulated realised losses of the transferor as may be determined by or in accordance with the transfer scheme had been losses realised by the transferee.

(6) In this section—

"accounting year" means—

(a) in the case of the Board, the period of twelve months ending with 31st March in any year; and

(b) in the case of any company, its financial year, within the meaning of **[**[F668]the Companies Act 2006**]**;

"the last full accounts", in connection with any transfer scheme, means—

(a) where the Board is the transferor, the annual accounts prepared by the Board in accordance with section 24 of the [M39]Transport Act 1962 for the accounting year last ended before the making of the transfer scheme; and

(b) where any other person is the transferor, the statutory accounts of that person for the accounting year last ended before the making of the transfer scheme;

"the opening accounts of the transferee" means any statutory accounts prepared by the transferee for the accounting year next ending after the transfer date;

"statutory accounts" means any accounts prepared by a company for the purpose of any provision of **[**[F669]the Companies Act 2006**]** (including group accounts).

Textual Amendments

F668 Words in s. 94(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 193(a)(i)** (with arts. 6, 11, 12)

F669 Words in s. 94(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 193(a)(ii)** (with arts. 6, 11, 12)

Marginal Citations

M39 1962 c. 46.

95 Power of the Secretary of State or the Franchising Director to require provision of information in connection with transfer schemes.

(1) Where, in exercise of any functions conferred on him by section 86 above or transferred to him by an order under section 87 above, the Franchising Director or the Secretary of State (in this section referred to as "the relevant authority") proposes to make a transfer scheme, he may direct any person to whom this section applies—

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(a) to furnish him with such information as the relevant authority considers necessary to enable him to make the scheme; and

(b) to do so within such time (being not less than 28 days from the giving of the direction) as may be specified in the direction;

and the persons to whom this section applies are **[**[F670]the Office of Rail Regulation**]** , the Board, any wholly owned subsidiary of the Board, any publicly owned railway company, any franchise company and any company which is wholly owned by the Franchising Director.

(2) If a person fails to comply with a direction under subsection (1) above, the relevant authority may serve a notice under subsection (3) below on that person.

(3) A notice under this subsection is a notice signed by the relevant authority and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the relevant authority or to any person appointed by the relevant authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the relevant authority such information as may be specified or described in the notice.

(4) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(5) A person who without reasonable excuse fails to do anything required of him by notice under subsection (3) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (3) above to produce is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(7) If a person makes default in complying with a notice under subsection (3) above, the court may, on the application of the relevant authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(8) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

(9) In this section "the court" means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

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Textual Amendments

F670 Words in s. 95 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

96 Functions of the Secretary of State in relation to transfer schemes.

(1) A transfer scheme made by the Board or the Franchising Director, otherwise than under section 86 above, shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may specify for the purpose in giving his approval.

(2) The Secretary of State shall not make a transfer scheme except after consultation with the transferor.

(3) Before approving a transfer scheme made by the Franchising Director or the Board, the Secretary of State, after consultation with the transferor and, in the case of a scheme made by the Franchising Director, with the Franchising Director, may modify the scheme.

(4) It shall be the duty of the transferor to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on him by this section.

97 Supplementary provisions as to transfers by transfer scheme.

The provisions of Schedule 8 to this Act shall apply to any transfer by virtue of a transfer scheme; and sections 85(6) and 86(4) above shall have effect subject to the provisions of that Schedule.

Ownership of successor companies

98 Initial share holding in successor companies.

(1) This section applies where any property, rights or liabilities are vested in accordance with a transfer scheme in a successor company which at the time of the vesting is either—
  (a) a wholly owned subsidiary of the Board; or
  (b) Government owned.

(2) Where this section applies, the successor company shall, as a consequence of the vesting referred to in subsection (1) above, issue to the appropriate person such securities of that company as may from time to time be directed—
  (a) by the Secretary of State, if the transfer scheme was made in pursuance of a direction given by him; or
  (b) in any other case, by the Board with the consent of the Secretary of State.

(3) The "appropriate person" for the purposes of subsection (2) above is—
  (a) the Board, in a case where the direction under that subsection is given at a time when the successor company is a wholly owned subsidiary of the Board; or

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(b) the Secretary of State, in a case where the direction under that subsection is given at a time when the successor company is Government owned.

(4) No direction shall be given under subsection (2) above to the successor company at any time after that company—

(a) has ceased to be Government owned, or

(b) has ceased to be a wholly owned subsidiary of the Board,

unless, in a case where paragraph (b) above would otherwise apply, the cessation mentioned in that paragraph occurs in consequence of the successor company's becoming Government owned pursuant to a direction under section 88(6) above, in which case directions under subsection (2) above may continue to be given until the company ceases to be Government owned.

(5) Securities required to be issued in pursuance of a direction under subsection (2) above shall be issued or allotted at such time or times, and on such terms, as may be specified in the direction.

(6) Shares of the successor company which are issued in pursuance of a direction under subsection (2) above—

(a) shall be of such nominal value as the Secretary of State may direct; and

(b) shall be issued as fully paid and treated for the purposes of the [M40]Companies Act 1985 as if they had been paid up by virtue of the payment to that company of their nominal value in cash.

(7) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities acquired by virtue of this section shall be paid into the Consolidated Fund.

(8) In this section, "Government owned", in relation to any successor company, means wholly owned by the Crown, but not wholly owned by the Franchising Director.

Marginal Citations

M40 1985 c. 6.

99 Government investment in securities of successor companies.

(1) The Treasury or, with the approval of the Treasury, the Secretary of State may at any time acquire securities of a successor company which at that time is—

(a) a wholly owned subsidiary of the Board; or

(b) wholly owned by the Crown.

(2) The Secretary of State shall not dispose of any securities acquired under this section without the approval of the Treasury.

(3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.

(4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities acquired under this section shall be paid into the Consolidated Fund.

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100 Exercise of functions through nominees.

(1) The Treasury or, with the approval of the Treasury, the Secretary of State may, for the purposes of section 98 or 99 above or section 106 below, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—

(a) securities of a successor company may be issued under section 98 above or section 106 below to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section, and

(b) any such nominee appointed for the purposes of section 99 above may acquire securities under that section,

in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

(2) Any person holding any securities as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

101 Target investment limit for Government shareholding in certain successor companies.

(1) As soon as he considers expedient and, in any case, not later than six months after any operating company ceases to be a public sector railway company, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Treasury and their nominees and by the Secretary of State and his nominees (in this section referred to as "the Government shareholding").

(2) The target investment limit for the Government shareholding in an operating company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (in this section referred to as "the ordinary voting rights").

(3) The first target investment limit fixed under this section for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.

(4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in an operating company in place of the one previously in force under this section; but—

(a) any new limit must be lower than the one it replaces; and

(b) an order under this section may only be revoked by an order fixing a new limit.

(5) It shall be the duty of the Treasury and of the Secretary of State so to exercise—

(a) their powers under section 99 above and any power to dispose of any shares held by virtue of any provision of this Part, and

(b) their power to give directions to their respective nominees,

as to secure in relation to each operating company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section in relation to that company.

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(6) Notwithstanding subsection (5) above but subject to subsection (7) below, the Treasury or the Secretary of State may take up, or direct any nominee of the Treasury or of the Secretary of State to take up, any rights which are for the time being available to them or him, or to the nominee, either—
  (a) as an existing holder of shares or other securities of an operating company; or
  (b) by reason of the rescission of any contracts for the sale of such shares or securities.

(7) If, as a result of anything done under subsection (6) above, the proportion of the ordinary voting rights carried by the Government shareholding in an operating company at any time exceeds the target investment limit for the time being in force under this section in relation to that company, it shall be the duty of the Treasury or, as the case may be, the Secretary of State to comply with subsection (5) above as soon after that time as is reasonably practicable.

(8) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

(9) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.

(10) In this section—

"operating company" means a successor company—
  (a) which is a company limited by shares and formed and registered under the [M41]Companies Act 1985 (or the former Companies Acts, as defined in section 735(1)(c) of that Act);
  (b) which was a public sector railway company at the time when any property, rights or liabilities of another public sector railway company were vested in it by a transfer scheme;
  (c) which has since ceased to be a public sector railway company; and
  (d) which at the time of the vesting referred to in paragraph (b) above was not, and at no time since has been, a franchise company;

"public sector railway company" means—
  (a) the Board;
  (b) any wholly owned subsidiary of the Board; or
  (c) any publicly owned railway company.

Marginal Citations
M41 1985 c. 6.

Finances of successor companies

102 Temporary restrictions on borrowings etc.

(1) If articles of association of a successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.

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(2) For the purposes of this section an alteration of the articles of association of a successor company shall be disregarded if the alteration—
  (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and
  (b) is made at a time when that company is neither a wholly owned subsidiary of the Board nor wholly owned by the Crown.

(3) In this section "group", in relation to a company, means that company and all of its subsidiaries taken together.

103 Government lending to certain successor companies.

(1) The Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Any loans which the Secretary of State makes under this section shall be repaid to him at such times and by such methods, and interest on any such loans shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.

(3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.

(4) Any sums received under subsection (2) above by the Secretary of State shall be paid into the National Loans Fund.

(5) It shall be the duty of the Secretary of State as respects each financial year—
  (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (3) above and of sums received by him under subsection (2) above and of the disposal by him of the sums so issued or received; and
  (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;

  and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

104 Treasury guarantees for loans made to certain successor companies.

(1) The Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.

(3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.

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(4) If any sums are issued in fulfilment of a guarantee given under this section, the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
   (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
   (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.

(5) Any sums received under subsection (4) above by the Treasury shall be paid into the Consolidated Fund.

105 Grants to certain successor companies.

(1) The Secretary of State may, with the approval of the Treasury, make to any successor company which is for the time being wholly owned by the Crown grants of such amounts, at such times and in such manner, as he may with the approval of the Treasury determine, towards the expenditure of that company.

(2) Grants under this section may be made subject to such conditions as the Secretary of State with the approval of the Treasury may determine.

(3) Any sums required by the Secretary of State for making grants under this section shall be paid out of money provided by Parliament.

106 Extinguishment of certain liabilities of successor companies.

(1) The Secretary of State may by order extinguish all or any of the liabilities of a successor company which is for the time being—
   (a) a wholly owned subsidiary of the Board, or
   (b) wholly owned by the Crown,

   in respect of the principal of such relevant loans as may be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.

(2) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to the company whose liabilities are extinguished by the order, or to a company or companies wholly owning the company whose liabilities are so extinguished; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—
   (a) to the Treasury or the Secretary of State; or
   (b) if it is the company whose liabilities are extinguished by the order, to a company or companies wholly owning that company.

(3) For the purposes of any statutory accounts of a company to whom securities are issued by virtue of subsection (2)(b) above, the value at the time of its issue of any such security shall be taken—
   (a) in the case of a share, to have been equal to its nominal value; and
   (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

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and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In subsection (3) above "statutory accounts of a company" means any accounts prepared by the company for the purpose of any provision of **[**[F671]the Companies Act 2006**]** (including group accounts).

(5) The Secretary of State—
   (a) shall not give a direction under subsection (2) above for the issue of securities except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue securities satisfies the condition in subsection (6) below; and
   (b) shall not give a direction under paragraph (b) of subsection (2) above except at a time when the company, or each of the companies, to whom the securities are to be issued satisfies that condition.

(6) The condition referred to in subsection (5) above is that the company is for the time being—
   (a) a wholly owned subsidiary of the Board; or
   (b) wholly owned by the Crown.

(7) Unless the Secretary of State otherwise determines in any particular case, where a company is directed to issue debentures in pursuance of this section—
   (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
   (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest on those principal sums, shall be the same as the corresponding terms of the loans specified in the order.

(8) For the purposes of subsection (7) above, any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(9) Subsections (5) to (7) of section 98 above shall apply for the purposes of this section as they apply for the purposes of that section.

(10) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.

(11) In this section "relevant loan", in relation to a successor company, means any loan made to the Board under section 20 of the [M42]Transport Act 1962, if and to the extent that the liability to repay that loan is transferred to and vested in that company by virtue of a transfer scheme.

(12) For the purposes of this section the company or companies wholly owning another company are—
   (a) any company of which that other is a wholly owned subsidiary, or
   (b) any two or more companies which between them hold all the issued securities of that other.

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Textual Amendments

F671 Words in s. 106(4) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 193(b)** (with arts. 6, 11, 12)

Marginal Citations

M42 1962 c. 46.

Provisions with respect to flotation

107 Responsibility for composite listing particulars of certain licensed successor companies.

(1) In any case where—

(a) the same document contains listing particulars for securities of two or more licensed successor companies, and

(b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) Sections 150 and 154 of the 1986 Act (advertisements etc in connection with listing applications) shall have effect in relation to any information issued for purposes connected with any securities of a licensed successor company as if any reference to a person's incurring civil liability included a reference to any other person being entitled, as against that person, to be granted a civil remedy or to rescind or repudiate any contract.

(3) Subsections (1) and (2) above have effect only in relation to licensed successor companies—

(a) which are wholly owned subsidiaries of the Board; or

(b) which are wholly owned by the Crown.

(4) In this section—

"the 1986 Act" means the [M43]Financial Services Act 1986;

"licensed successor company" means a successor company which is the holder of a licence under section 8 above;

"listing particulars" means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

"responsible" means responsible for the purposes of Part IV of the 1986 Act and "responsibility" shall be construed accordingly.

Marginal Citations

M43 1986 c. 60.

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108 Application of Trustee Investments Act 1961 in relation to investment in certain licensed successor companies.

(1) Subsection (2) below shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the [M44]Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment, during the first investment year or any following year, in shares or debentures of a licensed successor company—

(a) whose shares or debentures are included in the Official List, within the meaning of Part IV of the [M45]Financial Services Act 1986, in pursuance of that Part; and

(b) which, immediately before its shares or debentures were admitted to that Official List, was—

(i) a wholly owned subsidiary of the Board; or

(ii) a company wholly owned by the Crown.

(2) The licensed successor company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

(a) in every year preceding the first investment year which is included in the relevant five years; and

(b) in the first investment year, if that year is included in the relevant five years and that company does not in fact pay such a dividend in that year.

(3) In this section—

"the first investment year", in relation to a licensed successor company means the calendar year in which shares in that company are first issued in pursuance of section 98(2) above;

"licensed successor company" has the same meaning as it has in section 107 above;

"the relevant five years" means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

Marginal Citations

M44 1961 c. 62.

M45 1986 c. 60.

Other financial provisions

109 Grants to the Board.

After section 21 of the [M46]Transport Act 1962 (Treasury guarantees) there shall be inserted—

"**21A Grants to the Railways Board.**

(1) The Secretary of State may, with the approval of the Treasury, make to the Railways Board grants of such amounts, at such times and in such manner, as he may with the approval of the Treasury determine—

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(a) towards the expenditure of that Board; or

(b) without prejudice to paragraph (a) of this subsection, for the purpose of enabling that Board to make any payment (whether by way of repayment of principal or payment of interest or of any other description) in respect of any loan made to them under section twenty of this Act.

(2) Grants under this section may be made subject to such conditions as the Secretary of State may with the approval of the Treasury determine.

(3) Any sums required by the Secretary of State for making grants under this section shall be paid out of money provided by Parliament.

(4) This section is without prejudice to any other power to make grants to the Railways Board.”.

Marginal Citations

M46 1962 c. 46.

110 Application of sections 19 to 21A of the Transport Act 1962 to wholly owned subsidiaries of the Board.

(1) If the Secretary of State by order so provides, sections 19 to 21A of the [M47]Transport Act 1962 (which, among other things, make provision for and in connection with—

(a) the borrowing powers of the Board,

(b) the making by the Secretary of State of loans to the Board,

(c) the giving by the Treasury of guarantees in respect of sums borrowed by the Board from persons other than the Secretary of State, and

(d) the making by the Secretary of State of grants to the Board),

shall apply in relation to any wholly owned subsidiary of the Board designated in the order as they apply in relation to the Board, but with such modifications as may be specified in the order.

(2) Without prejudice to the generality of the modifications of those sections that may be specified in an order under this section, any such order may include provision imposing limits on the amounts that may be outstanding at any time in respect of the principal of any money borrowed by wholly owned subsidiaries of the Board under section 19 of the [M48]Transport Act 1962 in its application by virtue of this section.

Marginal Citations

M47 1962 c. 46.

M48 1962 c. 46.

111 Financial limits on loans.

In section 42 of the [M49]Transport Act 1968, in subsection (6) (limit on aggregate amount outstanding in respect of the principal of any money borrowed by the Board under section 19 of the [M50]Transport Act 1962 and the Board’s commencing capital

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debt), paragraph (b) (which relates to the Board's commencing capital debt, and which is spent) shall be omitted and after that paragraph there shall be inserted—

"(c) the principal of any money borrowed by wholly owned subsidiaries of the Board under that section in its application by virtue of section 110 of the Railways Act 1993,".

Marginal Citations
M49 1968 c. 73.
M50 1962 c. 46.

Stamp duty and stamp duty reserve tax

112 Stamp duty and stamp duty reserve tax.

Schedule 9 to this Act (which makes provision about stamp duty and stamp duty reserve tax in relation to or in connection with the other provisions of this Part) shall have effect.

Supplemental

[F672]113 . . . . . .

Textual Amendments
F672 S. 113 repealed (15.1.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2000/3376, **art. 2**

114 The Secretary of State, the Franchising Director and the Board not to be regarded as shadow directors of certain railway companies etc.

(1) None of the following persons, that is to say—
(a) the Secretary of State,
(b) the Franchising Director,
(c) the Board,
shall be regarded for any purpose of **[**[F673]the Companies Acts (as defined in section 2(1) of the Companies Act 2006)**]** as a shadow director, within the meaning of **[**[F674]those Acts (see section 251 of that Act)**]**, of any body falling within subsection (2) below.

(2) Those bodies are—
(a) any publicly owned railway company;
(b) any company which is wholly owned by the Franchising Director;
(c) any subsidiary of the Board;
(d) any franchise company;
(e) any company concerning which a direction (whether of a general or specific character) has been given under section 90 above to the Board with respect to the exercise by the Board of the rights conferred by their holding of interests in that company.

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Textual Amendments

F673 Words in s. 114(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(5)(a)** (with art. 10)

F674 Words in s. 114(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(5)(b)** (with art. 10)

115 Parliamentary disqualification.

In Part III of Schedule 1 to the [M51]House of Commons Disqualification Act 1975, the following entry shall be inserted at the appropriate place—

"Director of a company—

(a) which, within the meaning of Part II of the Railways Act 1993, is a successor company wholly owned by the Crown, or

(b) which, within the meaning of that Act, is wholly owned by the Director of Passenger Rail Franchising,

being a director nominated or appointed by a Minister of the Crown, the Director of Passenger Rail Franchising or any other person acting on behalf of the Crown ".

Marginal Citations

M51 1975 c. 24.

116 Interpretation of Part II.

(1) In this Part, unless the context otherwise requires—

"dispose", in relation to any land, includes the making of any disposition and "disposal" shall be construed accordingly;

"franchise company" has the meaning given by section 85(8) above;

"property", "rights" and "liabilities" shall be construed in accordance with section 85(2) above and subsection (2) below;

"successor company" means a company in which any property, rights or liabilities are vested by virtue of and in accordance with a transfer scheme;

"transfer date" has the meaning given by section 85(6) or, as the case may be, 86(5)(b) above;

"transferee" and "transferor", in relation to any transfer of property, rights or liabilities effected or proposed to be effected by virtue of a transfer scheme, mean respectively the person to whom and the person from whom they are, or are to be, so transferred.

(2) Any reference in this Part to property, rights or liabilities is a reference to property or (as the case may be) rights or liabilities—

(a) whether or not capable of being transferred or assigned otherwise than under or by virtue of this Act;

(b) whether situate or subsisting in the United Kingdom or elsewhere; and

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(c) whether the person entitled to the property or rights or, as the case may be, subject to the liabilities is so entitled or subject—
(i) under the law of the United Kingdom or of any part of the United Kingdom; or
(ii) under the law of any country or territory outside the United Kingdom;

and references to an undertaking or part of an undertaking shall be construed accordingly.

PART III

MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

Modifications etc. (not altering text)
C79 Pt. III (ss. 117-154) excluded (retrospective to 5.11.1993) by 1994 c. 9, s. 252, **Sch. 24 para. 4(1)**

Safety, emergencies, security etc.

117 Safety of railways and other guided transport systems.

(1) Part I of the [M52]Health and Safety at Work etc. Act 1974 (“the 1974 Act") shall have effect as if the provisions mentioned in subsection (4) below (which relate to the proper construction and safe operation of certain transport systems, and of the vehicles used on those systems, and the protection of railway employees or the general public from personal injury and other risks arising therefrom)—
(a) were existing statutory provisions, within the meaning of that Part; and
(b) in the case of the enactments mentioned in paragraphs (a) to (m) of that subsection, were specified in the third column of Schedule 1 to that Act.

(2) If to any extent they would not do so apart from this subsection, the general purposes of Part I of the 1974 Act shall include—
(a) securing the proper construction and safe operation of transport systems to which this section applies, and of any locomotives, rolling stock or other vehicles used, or to be used, on those systems; and
(b) protecting the public (whether passengers or not) from personal injury and other risks arising from the construction and operation of transport systems to which this section applies.

(3) Without prejudice to the generality of subsection (1) of section 15 of the 1974 Act (health and safety regulations), regulations under that section may—
(a) repeal or modify any of the provisions mentioned in subsection (4) below; and
(b) make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any enactment there mentioned.

(4) The provisions referred to in subsections (1) and (3) above are—
(a) the [M53]Highway (Railway Crossings) Act 1839;
(b) sections 9 and 10 of the [M54]Railway Regulation Act 1842;
(c) section 22 of the [M55]Regulation of Railways Act 1868;
(d) the [M56]Regulation of Railways Act 1871;

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(e) sections 1 and 4 of the [M57]Regulation of Railways Act 1889;
(f) the [M58]Railway Employment (Prevention of Accidents) Act 1900;
(g) section 42 of the [M59]Road and Rail Traffic Act 1933;
(h) section 40 of the [M60]British Transport Commission Act 1954;
(j) section 66 of the [M61]British Transport Commission Act 1957;
(k) sections 124 and 125 of the [M62]Transport Act 1968;
(l) the [M63]Level Crossings Act 1983;
(m) sections 41 to 45 of the [M64]Transport and Works Act 1992;
(n) any regulations made under section 2 of the [M65]European Communities Act 1972 for the purpose of implementing the Council 91/440/EEC. Directive of 29th July 1991 on the development of the Community's railways, so far as the regulations are made for safety purposes.

(5) In consequence of subsection (1) above and the resulting application of sections 38 and 50 of the 1974 Act (consent to prosecutions, and procedural requirements for making regulations)—
(a) in section 57 of the [M66]Transport and Works Act 1992 (duty to consult before making regulations under, among other provisions, section 38(2), 41 or 43 of that Act) for the words "38(2), 41 or 43" there shall be substituted the words " or 38(2) "; and
(b) in section 58 of that Act (which requires the consent of the Secretary of State or the Director of Public Prosecutions to a prosecution for an offence under Part II of that Act) after the words "offence under this Part" there shall be inserted the words " , other than an offence under section 41 or 43 above, ".

(6) This section applies to the following transport systems, that is to say—
(a) any railway, tramway or trolley vehicle system; or
(b) any transport system using any other mode of guided transport.

(7) The definitions of "guided transport", "railway", "tramway", "trolley vehicle system" and "vehicle" in section 67(1) of the [M67]Transport and Works Act 1992 shall have effect for the purposes of this section as they have effect for the purposes of that Act, but disregarding for the purposes of this section paragraph (b) of the definition of "railway" (which includes a condition as to the minimum gauge of the track).

Marginal Citations
M52 1974 c. 37.
M53 1839 c. 45.
M54 1842 c. 55.
M55 1868 c. 119.
M56 1871 c. 78.
M57 1889 c. 57.
M58 1900 c. 27.
M59 1933 c. 53.
M60 1954 c. lv.
M61 1957 c. xxxiii.
M62 1968 c. 73.
M63 1983 c. 16.
M64 1992 c. 42.
M65 1972 c. 68.

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M66 1992 c. 42.
M67 1992 c. 42.

118 Control of railways in time of hostilities, severe international tension or great national emergency.

(1) In time of hostilities, whether actual or imminent, severe international tension or great national emergency, the Secretary of State may give directions under this subsection to such of the following persons as he may consider appropriate, that is to say—

(a) **[**[F675]the Office of Rail Regulation**]**;

(b) [F676]. . . . . .

(c) any person who is the owner or operator of a relevant asset;

(d) any person who provides railway services.

(2) The Secretary of State may at any time give directions under this subsection to any person falling within paragraphs (a) to (d) of subsection (1) above whom he may consider appropriate, requiring that person to participate in the planning of steps that might be taken in time of actual or imminent hostilities, severe international tension or great national emergency.

(3) The power to give directions under subsection (1) above to **[**[F675]the Office of Rail Regulation**]**[F677]. . . includes power to direct **[**[F678]the carrying out of**]** functions in such manner or for such purposes as may be specified in the direction.

(4) The power to give directions under subsection (1) above to a person who is the owner or operator of a relevant asset or who provides railway services includes power—

(a) in the case of a person who is the owner of a relevant asset, to direct that person to permit the use of, or to exercise his rights over, the relevant asset in such manner or for such purposes as may be specified in the direction;

(b) in the case of a person who is the operator of a relevant asset, to direct that person to exercise his powers of management over the relevant asset in such manner or for such purposes as may be so specified; and

(c) in the case of a person who provides railway services, to direct that person to do so in such manner or for such purposes as may be so specified.

(5) **[**[F675]the Office of Rail Regulation**]**[F679]. . . shall [F679]. . . be under a duty to comply with a direction [F680]**[**. . .**]** under this section, notwithstanding the requirements of any other enactment or instrument **[**[F680]. . .**]**.

(6) A person who is the owner or operator of a relevant asset or who provides railway services shall be under a duty to comply with a direction given to him under this section, notwithstanding the requirements of any other enactment or instrument relating to him or to—

(a) the use of, or the exercise of rights over, the relevant asset,

(b) the management of the relevant asset, or

(c) the railway services,

as the case may be, and notwithstanding any other duty or obligation to which he may be subject.

(7) Any person who, without reasonable excuse, contravenes or fails to comply with a direction given to him under this section is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

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(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(8) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(9) Any person (other than **[**[F675]the Office of Rail Regulation**]**[F681]. . .) who suffers direct injury or loss arising from compliance with a direction under subsection (1) above shall be entitled to receive compensation from the Secretary of State of such amount as may be agreed by that person and the Secretary of State or, in default of agreement, of such amount as may be determined—

(a) where the proceedings are to be held in England and Wales, by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, or

(b) where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

(10) Any sums required by the Secretary of State for paying compensation under this section shall be paid out of money provided by Parliament.

(11) In this section—

"great national emergency" means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to give rise to such disruption of the means of transport that the population, or a substantial part of the population, of Great Britain is or may be likely to be deprived of essential goods or services ;

"operator", in relation to a relevant asset, means the person having the management of the relevant asset for the time being;

"owner", in relation to a relevant asset, means any person—

(a) who is the owner of, or who has any right over or interest in, the relevant asset; and

(b) whose consent is needed to the use of the relevant asset by any other person;

"relevant asset" means a network, a station, a light maintenance depot or any track or rolling stock;

and, subject to that, expressions used in this section and in Part I [F682]. . . above have the same meaning in this section as they have in that Part **[**[F683]with "railway"having its wider meaning for the purposes of this section.**]**.

[F684](12) . . . . . .

Textual Amendments

F675 Words in s. 118 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F676 S. 118(1)(b) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F677 Words in s. 118(3) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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F678 Words in s. 118(3) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 49(3)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F679 Words in s.118(5) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F680 Words in s. 118(5) repealed (1.2.2001) by 2000 c. 38, ss. 215, 274, Sch. 16 para. 49(4)(b), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

F681 Words in s. 118(9) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F682 Words in s. 118(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II))

F683 Words in s. 118(11) inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 54(1)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F684 S. 118(12) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II))

119 Security: power of Secretary of State to give instructions.

(1) The Secretary of State may from time to time give—

(a) to any person who is the owner or operator of a relevant asset, or

(b) to any person who provides railway services,

such instructions as the Secretary of State considers appropriate for the purpose of ensuring that relevant assets within Great Britain, or persons or property on or in any such relevant asset, are protected against acts of violence.

(2) An instruction may be given to any person who appears to the Secretary of State to be about to become such a person as is mentioned in paragraph (a) or (b) of subsection (1) above, but an instruction given to a person by virtue of this subsection shall not take effect until he becomes such a person and, in relation to an instruction so given, the provisions of this section shall apply with the necessary modifications.

(3) Without prejudice to the generality of subsection (1) above, an instruction may, in particular, require the person to whom it is given (“the recipient")—

(a) not to cause or permit any persons, or any designated persons, or more than a specified number of persons or designated persons, to enter any relevant asset or any designated relevant asset, or not to cause or permit them to do so unless they submit to a search or unless or until some other specified condition is complied with;

(b) not to cause or permit any goods, or any designated goods, or more than a specified quantity of goods or designated goods, to be brought or loaded on to or into any relevant asset or any designated relevant asset, or not to do so unless the goods in question are subjected to a search or unless or until some other specified condition is complied with;

(c) to run no trains, or to restrict the running of trains, or to run no train unless it is subjected to a search, or unless or until some other specified condition is complied with;

(d) to secure the carrying out of a search of—

(i) any designated relevant assets, or

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(ii) any persons or designated persons who, or any goods or designated goods which, are on or in any such assets;

(e) to furnish to the Secretary of State such information as he may require for the purpose mentioned in subsection (1) above;

(f) to prepare plans specifying action to be taken by the recipient and his servants or agents—

(i) in the event that an act of violence of a specified description occurs, or

(ii) in times when there is an increased likelihood of such acts occurring,

and to conduct, at specified intervals, exercises in connection with the implementation of such plans;

(g) to employ specified numbers of suitably trained staff for the purpose of preventing the occurrence of acts of violence;

(h) to meet specified requirements with respect to the construction of, or to make specified modifications to—

(i) any relevant assets, or any designated relevant assets, of which the recipient is the owner or operator, or

(ii) any apparatus or equipment, or any designated apparatus or equipment, on or in any such assets.

(4) Where an instruction requires the carrying out of a search, it may also specify—

(a) the kind of search which is to be carried out;

(b) the manner in which the search is to be carried out; and

(c) the persons, or the class or description of persons, who are to carry out the search.

(5) Where any person refuses to submit himself or any goods in his possession to a search required by an instruction, any person authorised to carry out that search may take any steps that are necessary, including the use of reasonable force—

(a) to prevent the person concerned from entering the relevant asset in relation to which the search is being carried out; or

(b) to eject him, and any goods in his possession, from that asset;

but this subsection is without prejudice to any other powers of the person carrying out the search.

[[F685](5A) The Secretary of State may give an instruction under this section for the protection of a relevant asset that is wholly in Scotland, or of persons or property on or in such an asset, only if—

(a) the asset would be a relevant asset even if railway did not have its wider meaning for the purposes of this section; or

(b) the instruction is given in the interests of national security.

(5B) In subsection (5A) the reference to an instruction given in the interests of national security includes a reference to any instruction given for the purpose of ensuring that protection against terrorism is provided to the asset, persons or property in question.**]**

(6) An instruction—

(a) shall be in writing;

(b) shall specify the time at which, or the period within which, it is to be complied with, and the period during which it is to have effect;

(c) may be varied or revoked by the Secretary of State.

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(7) No instruction shall have effect in relation to any rolling stock which is for the time being in use in police service or in the service of the armed forces of the Crown.

(8) A person who is the owner or operator of a relevant asset or who provides railway services shall be under a duty to comply with an instruction given to him under this section, notwithstanding the requirements of any other enactment or instrument relating to him or to—

(a) the use of, or the exercise of rights over, the relevant asset,

(b) the management of the relevant asset, or

(c) the railway services,

as the case may be, and notwithstanding any other duty or obligation to which he may be subject.

(9) A person who without reasonable excuse fails to do anything required of him by an instruction is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.

(10) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (9) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(11) In this section—

"act of violence" means—

(a) any act which constitutes, or

(b) any potential act which, if carried out, would constitute,

the offence of murder, attempted murder, manslaughter, culpable homicide, assault, real injury or malicious mischief, or an offence under section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the [M68]Person Act 1861, under section 2 of the [M69]Explosive Substances Act 1883 or under section 1 of the [M70]Criminal Damage Act 1971;

"designated" means specified in an instruction, or of a class or description so specified;

"instruction" means an instruction given under this section, and any reference to an instruction includes a reference to an instruction as varied under subsection (6)(c) above;

"operator" and "owner" have the same meaning as in section 118 above;

"relevant asset" has the same meaning as in section 118 above, and any reference to such an asset includes a reference to any part of any such asset;

"specified" means specified in an instruction;

[[F686]"terrorism" has the same meaning as in the Terrorism Act 2000 (c. 11) (see section 1 of that Act);**]**

and, subject to that, expressions used in this section and in Part I above have the same meaning in this section as they have in that Part**[**[F687] with "railway" having its wider meaning for the purposes of this section.**]**

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F685 S. 119(5A)(5B) inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 54(2)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F686 S. 119(11): definition of "terrorism" inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 54(3)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F687 Words in s. 119(11) inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 54(1)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

Marginal Citations

M68 1861 c. 100.

M69 1883 c. 3.

M70 1971 c. 48.

120 Security: enforcement notices.

(1) Where it appears to the Secretary of State that a person upon whom an instruction has been served has failed, is failing or is likely to fail to comply with that instruction, he may serve on that person a notice (in this section referred to as an "enforcement notice") containing such provision as the Secretary of State may consider requisite for the purpose of ensuring that the person complies with the instruction and specifying, in particular—

(a) the things, or the description of things, which the person is required to do, or refrain from doing, in order to comply with the instruction;

(b) the time within which, or after which, the person must do, or refrain from doing, those things; and

(c) the period during which the person is to do, or refrain from doing, those things.

(2) The Secretary of State may vary or revoke an enforcement notice, and any reference in this section to an enforcement notice includes a reference to such a notice as varied under this subsection.

(3) Where the Secretary of State varies or revokes an enforcement notice under subsection (2) above he shall serve notice of the variation or revocation on the person on whom the enforcement notice in question was served.

(4) A person who without reasonable excuse fails to do anything required of him by an enforcement notice is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.

(5) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (4) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(6) Section 119(8) above shall have effect in relation to an enforcement notice as it has effect in relation to an instruction.

(7) Expressions used in this section and in section 119 above have the same meaning in this section as they have in that section.

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121 Security: inspections.

(1) For the purpose of enabling the Secretary of State to determine whether to give an instruction to any person, or of ascertaining whether any instruction or enforcement notice is being or has been complied with, a person authorised for the purpose by the Secretary of State in writing (in this section referred to as "an authorised person") shall have power, on production (if required) of his credentials, to inspect any relevant asset.

(2) An authorised person inspecting a relevant asset under subsection (1) above shall have power—
- (a) to subject any property found by him on or in the relevant asset, or any apparatus or equipment installed in the relevant asset, to such tests as he considers necessary for the purpose for which the inspection is carried out;
- (b) to take such steps as he considers necessary for that purpose—
  - (i) to ascertain what practices or procedures are being followed in relation to security; or
  - (ii) to test the effectiveness of any practice or procedure relating to security; or
- (c) to require the owner or operator of the relevant asset to furnish to him such information as the authorised person considers necessary for that purpose;

but nothing in paragraph (a) above shall entitle an authorised person to subject any rolling stock, or any part of any rolling stock, to any test.

(3) An authorised person, for the purpose of exercising any power conferred on him by subsection (1) or (2) above in relation to any relevant asset, shall have power—
- (a) to board any rolling stock and to take all such steps as are necessary to ensure that it is not moved; or
- (b) to enter any land or other property comprised either in any track or in a network, station or light maintenance depot;

but nothing in this subsection authorises any use of force.

(4) A person is guilty of an offence if he—
- (a) intentionally obstructs an authorised person acting in the exercise of any power conferred on him by this section;
- (b) fails, without reasonable excuse, to comply with a requirement imposed on him under paragraph (c) of subsection (2) above to furnish information to an authorised person; or
- (c) in furnishing any information required under that paragraph, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

(5) A person guilty of an offence under subsection (4) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(6) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (4) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(7) Expressions used in this section and in section 119 or 120 above have the same meaning in this section as they have in that section.

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[F688 121A Railway security services: approved providers

(1) In this section "railway security service" means a process or activity carried out for the purpose of—
  (a) complying with a requirement of an instruction under section 119, or
  (b) facilitating a person's compliance with a requirement of an instruction under section 119.

(2) Regulations may provide for the Secretary of State to maintain a list of persons who are approved by him for the provision of a particular railway security service.

(3) The regulations may—
  (a) prohibit the provision of a railway security service by a person who is not listed in respect of that service;
  (b) prohibit the use or engagement for the provision of a railway security service of a person who is not listed in respect of that service;
  (c) create a criminal offence;
  (d) make provision about application for inclusion in the list (including provision about fees);
  (e) make provision about the duration and renewal of entries on the list (including provision about fees);
  (f) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess;
  (g) make provision about removal from the list which shall include provision for appeal;
  (h) make provision about the inspection of activities carried out by listed persons;
  (i) confer functions on the Secretary of State or on a specified person;
  (j) confer jurisdiction on a court.

(4) Regulations under subsection (3)(c)—
  (a) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum,
  (b) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine), and
  (c) may create a criminal offence of purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person.

(5) An instruction under section 119 may—
  (a) include a requirement to use a listed person for the provision of a railway security service;
  (b) provide for all or part of the instruction not to apply or to apply with modified effect where a listed person provides a railway security service.

(6) Regulations under this section—
  (a) may make different provision for different cases,
  (b) may include incidental, supplemental or transitional provision,
  (c) shall be made by the Secretary of State by statutory instrument,
  (d) shall not be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations, and

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(e) shall be subject to annulment in pursuance of resolution of either House of Parliament.**]**

Textual Amendments

F688 S. 121A inserted (30.3.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 106**, 120; S.I. 2004/827, **art. 3(aa)**

Statutory authority

122 Statutory authority as a defence to actions in nuisance etc.

(1) Subject to the following provisions of this section—

(a) any person shall have authority—

(i) to use, or to cause or permit any agent or independent contractor of his to use, rolling stock on any track, or

(ii) to use, or to cause or permit any agent or independent contractor of his to use, any land comprised in a network, station or light maintenance depot for or in connection with the provision of network services, station services or light maintenance services, and

(b) any person who is the owner or occupier of any land shall have authority to authorise, consent to or acquiesce in—

(i) the use by another of rolling stock on any track comprised in that land, or

(ii) the use by another of that land for or in connection with the provision of network services, station services or light maintenance services,

if and so long as the qualifying conditions are satisfied in the particular case.

(2) For the purposes of this section, the "qualifying conditions" are—

(a) in relation to any use of rolling stock on track—

(i) that the track is comprised in a network, station or light maintenance depot, and

(ii) that the operator of that network, station or light maintenance depot is the holder of an appropriate licence or has the benefit of an appropriate licence exemption; and

(b) in relation to any use of land for or in connection with the provision of network services, station services or light maintenance services, that the operator of the network, station or light maintenance depot in question is the holder of an appropriate licence or has the benefit of an appropriate licence exemption.

(3) The authority conferred by this section is conferred only for the purpose of providing a defence of statutory authority—

(a) in England and Wales—

(i) in any proceedings, whether civil or criminal, in nuisance; or

(ii) in any civil proceedings, other than proceedings for breach of statutory duty, in respect of the escape of things from land;

(b) in Scotland, in any civil proceedings on the ground of nuisance where the rule of strict liability applies, other than proceedings for breach of statutory duty.

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(4) Nothing in this section shall be construed as excluding a defence of statutory authority otherwise available under or by virtue of any enactment.

(5) The owner or occupier of any land shall be regarded for the purposes of this section as "acquiescing" in—

(a) any use by another of rolling stock on track comprised in that land, or

(b) any use of that land by another for or in connection with the provision of network services, station services or light maintenance services,

notwithstanding that it is not within his power to put an end to that use by that other.

(6) For the purposes of this section—

(a) any reference to the use of rolling stock on track includes a reference to the carriage of any passengers or other persons, or any goods, of any class or description for any purpose on or by means of that rolling stock on that track; and

(b) rolling stock shall be regarded as "used" on any track at any time when it is present on that track, irrespective of whether the rolling stock is comprised in a train or not, whether the rolling stock is moving or stationary and, if moving, irrespective of the means by which the motion is caused.

(7) In this section—

"appropriate licence", in relation to the operator of a network, station or light maintenance depot, means a licence which authorises him to be the operator of that network, station or light maintenance depot;

"appropriate licence exemption", in relation to the operator of a network, station or light maintenance depot, means any such licence exemption as exempts him from the requirement to hold the licence that would otherwise be the appropriate licence in his case;

and expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

Modifications etc. (not altering text)

C80 S. 122 modified (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 34**

Miscellaneous and general

123 No person to be common carrier by railway.

No person shall be regarded as a common carrier by railway.

124 Carriage of mail by railway.

Sections 33 to 42 of the [M71]Post Office Act 1953 (which make provision for and in connection with the power of the Post Office to compel railway undertakers to convey mail-bags on their trains) shall cease to have effect.

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Marginal Citations

M71 1953 c. 36.

[F689]125 . . . . . .

Textual Amendments

F689 S. 125 repealed and superseded (18.9.1996) by 1996 c. 42, **s. 8(2)**

[F690]126 . . . . . .

Textual Amendments

F690 S. 126 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F691]127 . . . . . .

Textual Amendments

F691 S. 127 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F692]128 . . . . . .

Textual Amendments

F692 S. 128 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II

129 Bye-laws.

[F693] . . . . . .

Textual Amendments

F693 S. 129 repealed (15.10.2005) by Transport Act 2000 (c. 38), ss. 274, 275(1), Sch. 31 Pt. IV (with Sch. 28 paras. 5(2), 17); S.I. 2005/2862, **art. 3**

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130 Penalty fares.

(1) **[**[F694]The Secretary of State and the Scottish Ministers shall each have power by regulations to**]** make provision for and in connection with—

(a) the imposition of requirements on persons travelling by, present on, or leaving trains or stations to produce, if required to do so in accordance with the regulations, a ticket or other authority authorising them to travel by, be present on, or leave the train or station in question; and

(b) the charging of persons in breach of such requirements to financial penalties (in this section referred to as "penalty fares") in such circumstances, and subject to compliance with such conditions (if any), as may be prescribed;

and in this section any reference to a ticket or other authority of any description includes a reference to any other document which, under the regulations, is required to be produced in conjunction with any such ticket or other authority, for the purpose of demonstrating that the ticket or other authority produced by a person is valid in his case.

[[F695](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.**]**

(2) Regulations may make provision for or with respect to—

(a) the persons who may be charged penalty fares;

(b) the persons by or on behalf of whom penalty fares may be charged;

(c) the trains and stations by reference to which penalty fares may be charged;

(d) the amount, or the greatest amount, which a person may be charged by way of penalty fare, whether a specified amount or one determined in a prescribed manner;

(e) the authorising of persons to be collectors;

(f) the manner in which charges to penalty fares may be imposed by collectors, including any requirements to be complied with by or in relation to collectors;

(g) the authorising of collectors in prescribed circumstances to require persons on trains or stations to furnish prescribed information;

(h) the display of prescribed notices in places of a prescribed description;

(j) the manner in which, and the period within which, any penalty fare charged to a person is to be paid;

(k) the issue of prescribed documents to persons who are charged, or who have paid, penalty fares;

(l) the recovery of any unpaid penalty fare as a civil debt, including provision—

(i) for or with respect to defences that are to be available in proceedings for the recovery of an unpaid penalty fare; or

(ii) for presumptions of fact to operate, in such proceedings, in favour of the person charged with the penalty fare, but subject to compliance with prescribed procedural requirements;

(m) the retention, by persons by or on behalf of whom charges to penalty fares are imposed, of sums paid by way of penalty fare;

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(n) the remission of liability to pay penalty fares and the repayment of sums paid by way of penalty fare;

(o) the prevention of a person's being liable both to payment of a penalty fare and to prosecution for a prescribed offence;

[[F696](p) the imposition by the Secretary of State or the Scottish Ministers of prohibitions on the charging of penalty fares by prescribed persons and in prescribed circumstances.**]**

(3) The documents mentioned in subsection (2)(k) above include any document which consists of or includes—

(a) notice of the imposition of a charge to a penalty fare;

(b) a receipt for the payment of a penalty fare; or

(c) a ticket or other authority to travel by, be present on, or leave a train or station.

(4) Regulations may impose, or make provision for and in connection with the imposition or enforcement of, prescribed requirements in prescribed circumstances on or against a holder of a passenger licence or station licence or a passenger service operator (whether or not one by or on behalf of whom penalty fares are or are to be charged); and, without prejudice to the generality of the foregoing, any such regulations may make provision with respect to—

(a) the display of notices relating to penalty fares;

(b) the provision of facilities for the issue of tickets or other authorities to travel by, be present on, or leave trains or stations;

(c) the provision of information to prescribed persons or persons of a prescribed class or description.

(5) [F697]. . . . . .

(6) [F697]. . . . . .

(7) Regulations may provide that where information is required to be furnished pursuant to the regulations—

(a) a refusal to furnish any such information, or

(b) the furnishing of information which is false in a material particular,

shall, in prescribed circumstances, be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

(8) Apart from subsection (7) above, nothing in this section creates, or authorises the creation of, any offence.

(9) Regulations may make provision for any area within Great Britain and may make different provision for or in relation to different areas.

[[F698](9A) Before making any regulations which have the effect of varying the amount, or the greatest amount, which a person within, or travelling to or from, Greater London may be charged by way of penalty fare, the Secretary of State must consult the Mayor of London.**]**

(10) [F697]. . . . . .

(11) Subsections (2) to (5) above are without prejudice to the generality of subsection (1) above.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F699(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.]

(12) In this section—

"collectors" means the individuals who perform the function (whether as servants or agents or otherwise) of imposing the charge of a penalty fare on the person liable to pay it under the regulations in each particular case;

"document", without prejudice to the generality of the expression, includes any badge, token, or photograph or any other form of identification, certification or authentication;

"prescribed" means specified in, or determined in accordance with, regulations;

"regulations" means regulations under subsection (1) above;

"station" includes a reference to a part of a station;

"ticket or other authority" shall be construed in accordance with subsection (1) above;

"train" includes a reference to a part of a train;

and, subject to that, expressions used in Part I above and in this section have the same meaning in this section as they have in that Part.

Textual Amendments

F694 Words in s. 130(1) substituted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 47(1)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F695 S. 130(1A) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 47(2)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F696 S. 130(2)(p) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60,{ Sch. 1 para. 34(a)}; S.I. 2006/2911, **art. 2**, Sch. (subject to the transtional and saving provisions in arts. 3-7)

F697 S.130(5)(6)(10) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 34(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F698 S. 130(9A) inserted (20.7.2000) by 1999 c. 29, **s. 206** (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 2(2)(c), **Sch. Pt. III**

F699 S. 130(11A) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 47(3)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

[F700131] . . . . . .

Textual Amendments

F700 S. 131 repealed (1.3.2000) by 1998 c. 41, s. 74(3), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

Transport police

132 Schemes for the organisation etc. of transport police.

F701
. . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F701 S. 132 repealed (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 118, 120, Sch. 5 para. 2, **Sch. 8**; S.I. 2004/1572, **art. 3(kkk)**

133 Terms and conditions of employment of transport police.

[F702] . . . . . .

Textual Amendments

F702 S. 133 repealed (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 118, 120, Sch. 5 para. 2, **Sch. 8**; S.I. 2004/1572, **art. 3(kkk)**

Pensions and other benefits

134 Pensions.

(1) Schedule 11 to this Act shall have effect.

(2) Section 74 of the [M72]Transport Act 1962 (power of Secretary of State to make orders about pensions) shall cease to have effect, so far as relating to the Board and (within the meaning of that section) its subsidiaries, on the coming into force of subsection (1) above.

(3) Subsection (2) above is without prejudice to the continuing validity of any orders made under that section.

Commencement Information

I11 S. 134 wholly in force; s. 134 not in force at Royal Assent see s. 154(2); s. 134(1) in force for specified purposes and s. 134(2)(3) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 134(1) in force at 16.8.1994 insofar as not already in force by S.I. 1994/2142, **art. 2**

Marginal Citations

M72 1962 c. 46.

135 Concessionary travel for railway staff etc.

(1) The conditions that may be included in a passenger licence include conditions in respect of arrangements for the provision of staff concessionary travel.

(2) The **[**[F703]Secretary of State and the Scottish Ministers may each**]** promote the provision of staff concessionary travel.

(3) The **[**[F703]Secretary of State and the Scottish Ministers may each**]** enter into agreements or other arrangements concerning the provision of staff concessionary travel.

(4) Franchise agreements may include conditions with respect to the provision of staff concessionary travel.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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[F704](5) . . . . . .

(6) The **[**[F705]The Secretary of State and the Scottish Ministers may exercise powers and perform duties conferred or imposed on him or them**]**—

(a) under or by virtue of subsections (2) to **[**[F706](4)**]** above, or

(b) under any agreements or arrangements entered into, or conditions or provisions included, by virtue of those subsections,

by entering into agreements or arrangements under which other persons (in this subsection referred to as "sub-contractors") are to perform the function in question; [F707]. . ..

(7) Without prejudice to the generality of subsection (3) above, the agreements or arrangements that may be made under that subsection include agreements or arrangements under which the **[**[F708]Secretary of State undertakes, or the Scottish Ministers undertake,**]** to secure the provision of staff concessionary travel (as well as agreements or arrangements under which some other person undertakes to provide, or to secure the provision of, staff concessionary travel).

(8) Subsection (7) above applies, with the necessary modifications, in relation to—

(a) the conditions mentioned in subsection (4) above, [F709]. . .

[F709](b) . . . . . .

as it applies in relation to the agreements and arrangements mentioned in subsection (3) above.

(9) This section is without prejudice to the generality of—

(a) the conditions which may be included in licences, or

(b) the provision which may be made in franchise agreements [F710]. . .,

whether or not with respect to free or concessionary travel; and **[**[F711]subsection (4) above is**]** without prejudice to the generality of subsection (3) above.

[F704](10) . . . . . .

[F704](11) . . . . . .

(12) Any reference in this section to the provision of "staff concessionary travel" is a reference to the provision of free travel, or travel at concessionary rates, for, or for some class or description of, persons, or dependants of persons, who are or have at any time been employed by—

(a) a person carrying on a business of providing railway services; or

(b) a person providing welfare or health care services to persons employed by a person falling within paragraph (a) above.

(13) In the application of subsection (12) above in relation to any such agreement, arrangements, conditions or provisions as are mentioned in this section, it is immaterial whether or not the provision of free travel, or travel at concessionary rates, mentioned in that subsection extends, in the case of the agreement, arrangements, conditions or provisions in question, only to persons falling within that subsection or to such persons and others; and the reference in subsection (2) above to promoting the provision of staff concessionary travel shall be construed accordingly.

(14) Expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

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Textual Amendments

F703 Words in s. 135(2)(3) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60,{ Sch. 1 para. 35(2)}; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F704 S. 135(5)(10)(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**

F705 Words in s. 135(6) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as it is not already in force) by Railways Act 2005 (c. 14), ss. 1, 60,{ Sch. 1 para. 35(3)}; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F706 Word in s. 135(6)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 40(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F707 Words in s. 135(6) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**

F708 Words in s. 135(7) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as it is not already in force) by Railways Act 2005 (c. 14), ss. 1, 60,{ Sch. 1 para. 35(4)}; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F709 S. 135(8)(b) and the word "and" immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F710 Words in s. 135(9)(b) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F711 Words in s. 135(9) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 40**(3; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

Financial provisions

136 Grants and subsidies.

(1) The Secretary of State **[**[F712]and the Scottish Ministers shall each**]** be the competent authority of Great Britain in relation to the railways financial status regulations.

(2) The Secretary of State**[**[F713], the Scottish Ministers and, to the extent specified in subsection (2A) below, the National Assembly for Wales shall each be**]** the competent authority of Great Britain, in relation to persons who operate services for the carriage of goods by railway, for the purposes of the public service obligations regulations.

[[F714](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.**]**

[[F715](2B) Subsections (2) and (2A) cease to have effect on 3rd December 2012.**]**

(3) The following persons, that is to say—

(a) the Secretary of State,

[[F716](aa) the Scottish Ministers,

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

(b) [F717] . . . . . .

(c) to the extent specified in subsection (4) below, every Passenger Transport Executive, and

(d) to the extent specified in subsection (5) below—

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(i) every non-metropolitan county or district council in England or in Wales and every **[**[F718]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]** in Scotland, and

(ii) every London borough council and the Common Council of the City of London,

shall each be the competent authority of Great Britain in relation to passenger service operators for the purposes of the public service obligations regulations.

[[F719](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.**]**

(4) For the purposes of subsection (3) above, a Passenger Transport Executive shall only be the competent authority in relation to those railway passenger services **[**[F720]which the Executive provide, or secure are provided, in exercise of their powers under section 10(1) of the Transport Act 1968 or section 13 of the Railways Act 2005**]**.

(5) For the purposes of subsection (3) above—

(a) a council falling within paragraph (d)(i) of that subsection shall only be the competent authority in relation to those railway passenger services whose provision the council secures under section 63 of the [M73]Transport Act 1985 (passenger transport in areas other than **[**[F721]integrated transport areas and**]** passenger transport areas); and

(b) a council falling within paragraph (d)(ii) of that subsection shall only be the competent authority in relation to those railway passenger services in respect of which the council enters into and carries out agreements under **[**[F722]section 177 of the Greater London Authority Act 1999**]** (provision of extra transport services in London).

(6) The Secretary of State [F723]... **[**[F724]may**]**[F723]... , as competent authority by virtue of subsection (3) above, give directions to any passenger service operator imposing on him obligations with respect to the provision or operation of railway passenger services.

(7) It shall fall to the Secretary of State [F725]. . . to make any payments of compensation which are required to be made to a passenger service operator by any provision of the public service obligations regulations in respect of any obligations imposed on that operator by directions under subsection (6) above, and the Secretary of State [F725]. . . may, subject to and in accordance with the provisions of those regulations, determine the manner of calculating, and the conditions applicable to, those payments.

(8) The power of giving directions under subsection (6) above shall be so exercised that the aggregate amount of any compensation payable under the public service obligations regulations, for periods ending after 1st April 1992, in respect of all obligations imposed by directions under that subsection shall not exceed £3,000 million or such greater sum not exceeding £5,000 million as the Secretary of State may by order specify.

(9) A statutory instrument containing an order under subsection (8) above shall not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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(10) Without prejudice to any right which the Secretary of State [F725]. . . may have under this Act to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under subsection (6) above, the obligations imposed by any such directions shall not give rise to any form of duty or liability enforceable against a passenger service operator by proceedings before any court to which the passenger service operator would not otherwise be subject.

(11) In this section—

[[F726]"the public service obligations regulations" means Regulation (EC) No. 1370/2007 save that before 3rd December 2012 it means—

(a) in respect of the carriage of goods by railway, Council Regulation (EEC) No. 1191/69 as amended by Council Regulation (EEC) No. 1893/91; and

(b) in respect of the carriage of passengers by railway, Regulation (EC) No. 1370/2007;**]**

"the railways financial status regulations" means Council Regulation (EEC) No. 1192/69 on common rules with respect to the financial status of railway undertakings.

(12) Expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

(13) Section 3 of the [M74]Railways Act 1974 (which is superseded by this section) shall cease to have effect.

Textual Amendments

F712 Words in s. 136(1) substituted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(1)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F713 Words in s. 136(2) substituted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(2)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F714 S. 136(2A)inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(3)**; S.I. 2005/1444 {art. 2(1)}, Sch. 1

F715 S. 136(2B) inserted (18.3.2010) by The Railways (Public Service Obligations) Regulations 2010 (S.I. 2010/402), regs. 1, **2(2)**

F716 S. 136(3)(aa)(ab) inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(4)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F717 S.136(3)(c) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F718 Words in s. 136(3)(d)(i) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 184(2)**; S.I. 1996/323, **art. 4(1)(c)**

F719 S. 136(3A) inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(5)**; S.I. 2005/1444 {art. 2(1)}, Sch. 1

F720 Words substituted (24.7.2005 for E.W. and otherwise prosp.) for s. 136(4)(a)(b) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 14(6)(7)**; S.I. 2005/1909, **art. 2**, Sch.

F721 Words in s. 136(5)(a) inserted (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), **Sch. 4 para. 58(3)**; S.I. 2009/107, art. 2(1), Sch. 1 Pt. 1

F722 Words in s. 136(5)(b) substituted (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), art. 2, **Sch. 1 para. 19**

F723 Words in s. 136(6) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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F724 Words in s. 136(6) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 51(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115)

F725 Words in s. 136(7)(10) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F726 Words in s. 136(11) substituted (18.3.2010) by The Railways (Public Service Obligations) Regulations 2010 (S.I. 2010/402), regs. 1, **2(3)**

Marginal Citations

M73 1985 c. 67.

M74 1974 c. 48.

F727 137 . . . . . .

Textual Amendments

F727 S. 137 repealed (1.2.2001) by 2000 c. 38, ss. 274, 275(1), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

138 Grants and other payments towards facilities for public passenger transport to and from airports, harbours etc.

(1) Section 56 of the M75 Transport Act 1968 (Ministerial grants and local authority payments towards capital expenditure incurred in the provision, improvement or development of facilities for public passenger transport) shall be amended in accordance with the following provisions of this section.

(2) After subsection (2) there shall be inserted—

"(2A) Where a relevant local authority proposes to make payments under subsection (2) of this section in respect of any facilities, that authority may enter into an agreement with the Franchising Director under which the Franchising Director undertakes to exercise franchising functions of his, to refrain from exercising such functions, or to exercise such functions in a particular manner, in relation to the use of the facilities in question.

(2B) In subsection (2A) of this section, the following expressions have the following meanings respectively, that is to say—

"the Franchising Director" means the Director of Passenger Rail Franchising;

"franchising functions", in relation to the Franchising Director, has the same meaning as it has in relation to him in section 54 of the Railways Act 1993;

"relevant local authority" means—

(a) a non-metropolitan county or district council in England or in Wales;

(b) a London borough council or the Common Council of the City of London; or

(c) a regional or islands council in Scotland;

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and any reference to a relevant local authority shall be taken to include a reference to any two or more such authorities acting jointly."

(3) That section shall have effect, and be taken always to have had effect, with the insertion after subsection (3) (which prevents the making of any such grants or payments for the purposes of the provision, improvement or development of an airfield, harbour, dock, pier or jetty) of the following subsection—

"(3A) Nothing in subsection (3) of this section precludes the making of grants under subsection (1) or payments under subsection (2) thereof for the purposes of the provision, improvement or development of facilities for or in connection with public passenger transport by land to or from an airfield, harbour, dock, pier or jetty."

Marginal Citations

M75 1968 c. 73.

[F728]139 . . . . . .

Textual Amendments

F728 S. 139 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F729]140 . . . . . .

Textual Amendments

F729 S. 140 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. V(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) and expressed to be repealed (S.) (1.4.2001) by 2001 asp 2, **s. 71(6)** (with s. 66); S.S.I. 2001/132, art. 2(2), **Sch. Pt. I**

[F730]141 . . . . . .

Textual Amendments

F730 S. 141 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

142 General financial provisions.

There shall be paid out of money provided by Parliament—

(a) any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of this Act; and

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(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Supplemental

143 Regulations and orders.

(1) Any power under this Act to make regulations, and any power of the Secretary of State **[**[F731]or the Scottish Ministers under this Act to make orders (except the power to make provisional or final orders under section 55)**]** , shall be exercisable by statutory instrument.

(2) Any statutory instrument—

(a) which contains (whether alone or with other provisions) regulations or an order under this Act made by the Secretary of State, other than an order under section 136(8) above or section 154(2) below, and

(b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power conferred by this Act to make regulations, and any power conferred by this Act on the Secretary of State **[**[F732]or the Scottish Ministers to make an order (other than a provisional or final order under section 55)**]** , includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the authority by whom the power to make the regulations or order is exercisable.

(4) Any power under this Act to make regulations, and any power of the Secretary of State **[**[F733]or the Scottish Ministers under this Act to make an order (other than a provisional or final order under section 55)**]** , may be exercised—

(a) in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes or descriptions of case;

(b) so as to make, as respects the cases in relation to which it is exercised, different provision for different cases or for different classes or descriptions of case.

Textual Amendments

F731 Words in s. 143(1) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 15(a)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F732 Words in s. 143(3) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 15(b)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F733 Words in s.143(4) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 15(c)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

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144 Directions.

(1) It shall be the duty of any person to whom a direction is given under this Act to comply with and give effect to that direction; [F734]. . . [F735]. . . .

(2) Without prejudice to any right which any person may have to bring civil proceedings in respect of any contravention or apprehended contravention of any direction given under this Act, compliance with any such direction shall be enforceable by civil proceedings, by the person by whom the direction was given, for an injunction or interdict or for any other appropriate relief.

(3) Any power conferred by this Act to give a direction shall, unless the context otherwise requires, include power to vary or revoke the direction.

(4) Any direction given under this Act shall be in writing.

Textual Amendments

F734 Words in s. 144(1) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F735 Words in s. 144(1) repealed (24.7.2005 for E.W. and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

145 General restrictions on disclosure of information.

(1) Subject to the following provisions of this section, no information with respect to any particular business which—

(a) has been obtained under or by virtue of any of the provisions of this Act; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) above does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the carrying out by the Secretary of State, **[**[F736]the Scottish Ministers,**]**[F737]the Office of Rail Regulation**]** , [F738]. . . or the **[**[F739]Competition and Markets Authority**]** of any of his or, as the case may be, their functions under this Act **[**[F740], the Transport Act 2000 or the Railways Act 2005**]** ;

[[F741](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;**]**

(b) for the purpose of facilitating the carrying out by—

(i) any Minister of the Crown,

[F742](ii) . . . . . .

(iii) the **[**[F743]Competition and Markets Authority**]** ,

[[F744](iv) the Office of Communications,**]**

(v) the Director General of Gas Supply,

(vi) the Director General of Water Supply,

(vii) the Director General of Electricity Supply,

(viii) the Civil Aviation Authority,

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(ix) the Insolvency Practitioners Tribunal, or

(x) a local weights and measures authority in Great Britain,

of any of his or, as the case may be, their functions under any of the enactments or instruments specified in subsection (3) below;

[[F745](c) for the purpose of enabling or assisting the Secretary of State, the Treasury **[**[F746] , the Financial Conduct Authority or the Prudential Regulation Authority **]** to exercise any powers conferred by or under the Financial Services and Markets Act 2000 **[**[F747], by or under the Consumer Credit Act 1974**]** or by the enactments relating to companies or insolvency;

(ca) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;**]**

(d) for the purpose of enabling or assisting an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the [M76]Insolvency Act 1986 to carry out its functions as such;

(e) for the purpose of facilitating the carrying out by [F748]... the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the [M77]Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;

[[F749](ea) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;**]**

(f) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;

(g) [F750] . . . . . .

[[F751](ga) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions under any instrument made for the purpose of implementing Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council;**]**

[[F752](gb) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions under any instrument made for the purpose of implementing Council Directive 91/440/EEC dated 29 July 1991 on the development of the Community's railways, as amended by Directive 2001/12/EC dated 26 February 2001 **[**[F753], Directive 2004/51/EC dated 29 April 2004 and Directive 2007/58/EC dated 23 October 2007, all**]** of the European Parliament and of the Council, and Directive 2001/14/EC dated 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2004/49/EC dated 29 April 2004 **[**[F754]and Directive 2007/58/EC dated 23 October 2007, all**]** of the European Parliament and of the Council;**]**

[[F755](gc) for the purpose of facilitating the carrying out by the Office of Rail Regulation of any of its functions, in respect of the tunnel system (within the meaning of the Channel Tunnel Act 1987), under any instrument made for the purpose of implementing Directive 2012/34/EU of the European Parliament and of the Council dated 21st November 2012 establishing a single European railway area, ;**]**

(h) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

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(j) for the purposes of any civil proceedings brought under or by virtue of this Act or any of the enactments or instruments specified in subsection (3) below; or

(k) in pursuance of **[**[F756]an**]**[F757]EU**]** obligation.

(3) The enactments and instruments referred to in subsection (2) above are—

(a) the [M78]Trade Descriptions Act 1968;

(b) the [M79]Fair Trading Act 1973;

(c) the [M80]Consumer Credit Act 1974;

[F758](d) . . . . . .

[F758](e) . . . . . .

(f) the [M81]Estate Agents Act 1979;

(g) the [M82]Competition Act 1980;

(h) the [M83]Telecommunications Act 1984;

(j) the [M84]Airports Act 1986;

(k) the [M85]Gas Act 1986;

(l) the [M86]Insolvency Act 1986;

(m) the [M87]Consumer Protection Act 1987;

(n) the [M88]Electricity Act 1989;

[F759](o) . . . . . .

(p) the [M89]Water Industry Act 1991;

(q) the [M90]Water Resources Act 1991;

[[F760](qq) the Competition Act 1998.**]**

[[F761](qr) Part I of the Transport Act 2000;**]**

[[F762](qs) the Enterprise Act 2002;**]**

[[F763](qt) the Communications Act 2003;**]**

[[F764](qu) any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market**]**

[[F765](r) any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.**]**

[[F766](s) Part 1 of the Civil Aviation Act 2012**]**

[[F767](t) Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013**]**

(4) The Secretary of State may by order provide that subsections (2) and (3) above shall have effect subject to such modifications as are specified in the order.

(5) Nothing in subsection (1) above shall be construed—

(a) as limiting the matters which may be published under section 71 above or may be included in, or made public as part of, a report of **[**[F737]the Office of Rail Regulation**]** , [F738]. . . , the **[**[F768]Competition and Markets Authority**]** , **[**[F769]or the **[**[F770]Passengers' Council**]]** under any provision of Part I above;

(b) as applying to any information—

(i) which has been so published or has been made public as part of such a report; or

(ii) which has otherwise been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

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[[F771](5A) Subsection (1) above does not prevent the transfer of records in accordance with section 3(4) of the [M91]Public Records Act 1958.**]**

(6) Any person who discloses any information in contravention of this section is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

[[F772](6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with **[**[F773]the Competition and Markets Authority**]** under Part I of the Competition Act 1998 is subject to **[**[F774]Part 9 of the Enterprise Act 2002 (Information)**]** (disclosure) and not to subsections (1) to (6) of this section.**]**

(7) [F775] . . . . . .

Textual Amendments

F736 Words in s. 145(2)(a) inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 16(1)(a)(i)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F737 Words in s. 145 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F738 Words in s. 145 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F739 Words in s. 145(2)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 109(2)(a)** (with art. 3)

F740 Words in s. 145(2)(a) substituted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 16(1)(a)(ii)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F741 S. 145(2)(aa) inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 16(1)(b)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1

F742 S. 145(2)(b)(ii) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 109(2)(b)(i)** (with art. 3)

F743 Words in s. 145(2)(b)(iii) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), **Sch. 1 para. 109(2)(b)(ii)** (with art. 3)

F744 S.145(2)(b)(iv) substituted (25.7.2003 for certain purposes and 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21) , ss. 406, 411(2)(3), {Sch. 17 para. 127(2)} (with transitional provisions in Sch. 18); S.I. 2003/1900, **art. 2(1)**, Sch. 1; S.I. 2003/3142, **art. 3**

F745 S. 145(2)(c)(ca) substituted (1.12.2001) for s. 145(2)(c) by S.I. 2001/3649, **arts. 1**, 343

F746 Words in s. 145(2)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 77(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F747 Words in s. 145(2)(c) inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), **Sch. para. 5**

F748 Words in s. 145(2)(e) omitted (1.4.2008) by virtue of The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)

F749 S. 145(2)(ea) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 69**; S.I. 2014/251, art. 4

F750 S. 145(2)(g) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(e)(i)**

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F751 S. 145(ga) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(9)**

F752 S. 145(gb) inserted (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(e)(ii)**

F753 Words in s. 145(2)(gb) substituted (3.6.2009) by The Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 (S.I. 2009/1122), reg. 1(1)(a), **Sch. para. 1(2)(a)(i)**

F754 Words in s. 145(2)(gb) substituted (3.6.2009) by The Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 (S.I. 2009/1122), reg. 1(1)(a), **Sch. para. 1(2)(a)(ii)**

F755 S. 145(2)(gc) inserted (24.3.2015 reg. 1(2)) by The Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 (S.I. 2015/786), **reg. 7(3)**

F756 Word in s. 145(2)(k) substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(3)** (with art. 3(2)art. 3(3) 4(2) 6(4)(5))

F757 Words in s. 145(2)(k) substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(1)(e)** (with art. 3(2)art. 3(3) 4(2) 6(4)(5))

F758 S. 145(3)(d)(e) repealed (1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), Sch. 10 Pt. IV para. 15(9)(a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F759 S. 145(3)(o) omitted (1.10.2013) by virtue of The Property Misdescriptions Act 1991 (Repeal) Order 2013 (S.I. 2013/1575), art. 1, **Sch. para. 1**

F760 S. 145(3)(qq) inserted (11.1.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 15(9)(b)** (with s. 73); S.I. 1998/3166, art. 2, **Sch.**

F761 S. 145(3)(qr) inserted (21.12.2001) by S.I. 2001/4050, art. 2, **Sch. Pt. IV para. 23**

F762 S. 145(3)(qs) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(14)(b)**; S.I 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)

F763 S.145(3)(qt) inserted (25.7.2003 for certain purposes and 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21) , ss. 406, 411(2)(3), {Sch. 17 para. 127(3)} (with transitional provisions in Sch. 18); S.I. 2003/1900, **art. 2(1)**, Sch. 1; S.I. 2003/3142, **art. 3**

F764 S. 145(3)(qu) inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 52(a)** (with reg. 28(2)(3))

F765 S. 145(3)(r) substituted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 52(b)** (with reg. 28(2)(3))

F766 S. 145(3)(s) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 8** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)

F767 S. 145(3)(t) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 109(3)** (with art. 3)

F768 Words in s. 145(5)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 109(4)** (with art. 3)

F769 Words in s. 145(5) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 16(2)**; S.I. 2005/1909 {art. 2}, Sch.

F770 Words in s. 145(5)(a) substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(6)**

F771 S. 145(5A) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 41(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F772 S. 145(6A) inserted (1.3.2000) by 1998 c. 41, ss. 66(5), **Sch. 10 Pt. IV para. 15(10)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

F773 Words in s. 145(6A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 109(5)** (with art. 3)

F774 Words in s. 145(6A) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(14)(c)(ii)**; S.I 2003/766, {art. 2}, (with transitional and transitory provision in art. 3), Sch.

F775 S. 145(7) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

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Modifications etc. (not altering text)

C81 S. 145 applied (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), **reg. 39**
S. 145 applied (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 18**

C82 S. 145 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **s. 115(2)(j)**; S.I. 2003/2681, **art. 2(b)**

C83 S. 145 modified (25.6.2010) by The Rail Passengers Rights and Obligations Regulations 2010 (S.I. 2010/1504), **reg. 19**

C84 S. 145(1) restricted (25.5.2005) by The Railways Act 2005 (Transitional Provisions and Savings) Order 2005 (S.I. 2005/1738), **art. 5**

C85 S. 145(2): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt. I para. 34**

C86 S. 145(3) modified by The Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006 (S.I. 2006/1391), art. 2, **Sch. para. 7(3)(d)** (coming into force in accordance with art. 1 of the amending S.I.)

Commencement Information

I12 S. 145 wholly in force at 1.4.1994; s. 145 not in force at Royal Assent see s. 154(2); s. 145(1)-(6) (except for the purposes of subsections 5(a) and 5(b)(i)) in force at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; s. 145 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

Marginal Citations

M76 1986 c. 45.
M77 1974 c. 37.
M78 1968 c. 29.
M79 1973 c. 41.
M80 1974 c. 39.
M81 1979 c. 38.
M82 1980 c. 21.
M83 1984 c. 12.
M84 1986 c. 31.
M85 1986 c. 44.
M86 1986 c. 45.
M87 1987 c. 43.
M88 1989 c. 29.
M89 1991 c. 56.
M90 1991 c. 57.
M91 1958 c. 51.

146 Making of false statements etc.

(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Act, or of any regulations made under this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

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(2) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

147 Offences by bodies corporate or Scottish partnerships.

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under this Act in Scotland and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Extent Information

E1 For extent of s. 147, see s.154(2)(f)(4)

148 Proceedings in Scotland.

(1) Subject to subsection (2) below, summary proceedings for an offence under this Act which is triable either on indictment or summarily may be commenced within a period of six months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant proceedings came to his knowledge.

(2) No such proceedings shall be commenced by virtue of this section more than three years after the commission of the offence.

(3) For the purposes of this section, a certificate signed by or on behalf of the procurator fiscal and stating the date on which evidence sufficient in his opinion to warrant proceedings came to his knowledge shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(5) Subsection (3) of **[**[F776]section 136 of the Criminal Procedure (Scotland) Act 1995**]** (which relates to the date of commencement of proceedings) shall apply for the purposes of this section as it applies for the purposes of that section.

(6) This section extends to Scotland only.

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Textual Amendments

F776 Words in s. 148(5) substituted (1.4.1996) by 1995 c. 40, s. 5, **Sch. 4 para. 88**

149 Service of documents.

(1) Any document required or authorised by virtue of this Act to be served (whether the expression "serve" or the expression "give" or "send" or any other expression is used) on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or

(b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body; or

(c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section and section 7 of the [M92]Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—

(a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, then, in relation to that document, that address shall be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section, instead of that determined in accordance with subsection (2) above.

(4) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

(5) In this section—

"local authority" includes **[**[F777]a metropolitan county passenger transport authority**][**[F777]an Integrated Transport Authority for an integrated transport area in England **][**[F778]and a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009**]**;

"secretary", in relation to a local authority, means the proper officer within the meaning of the [M93]Local Government Act 1972 or (in relation to a local authority in Scotland) the [M94]Local Government (Scotland) Act 1973;

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"serve" shall be construed in accordance with subsection (1) above.

Textual Amendments

F777 Words in s. 149(5) substituted (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), **Sch. 4 para. 58(4)**; S.I. 2009/107, art. 2(1), Sch. 1 Pt. 1

F778 Words in s. 149(5) inserted (17.12.2009) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), s. 148(6), **Sch. 6 para. 86**; S.I. 2009/3318, art. 2(c)

Modifications etc. (not altering text)

C87 S. 149 applied (31.5.1994) by S.I. 1994/1432, **art. 1(4)**
S. 149 applied (E.W.) (7.10.2001) by S.I. 2001/3352, **rule 9**.9

Marginal Citations

M92 1978 c. 30.
M93 1972 c. 70.
M94 1973 c. 65.

[F779 149A Service of documents under sections 118 to 120: additional provisions

(1) Any document required or authorised by virtue of sections 118 to 120 or this section of this Act to be given or served by the Secretary of State to or on any person may also be given or served, where—

(a) an address for service using electronic communications has been given by that person and not withdrawn in accordance with subsection (6), and

(b) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that subsection,

by using electronic communications to send the document in that form to that person at that address.

(2) A document given to or served on a person in accordance with subsection (1) must be in a form sufficiently permanent to be used for subsequent reference.

(3) Where a document is given to or served on a person in accordance with subsection (1), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it is to be taken to have been given or served on the next working day, and in this subsection, "working day" means any day other than—

(a) a Saturday or a Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(4) A document required or authorised by virtue of sections 118 to 120 of this Act to be given or served by the Secretary of State is also to be treated as given or served where—

(a) that person and the Secretary of State have agreed to his having access to documents of a particular description and in a certain form on a web site

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(instead of their being given to or served on him in any other way specified in this section or section 149);

(b) that person has not withdrawn his agreement in accordance with subsection (7);

(c) the document in question is a document to which the agreement applies;

(d) the Secretary of State has given that person a notice, in a manner agreed between them for the purpose—

(i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;

(ii) setting out the address of that web site; and

(iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and

(e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(5) Where a document is given to or served on a person in accordance with subsection (4), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under subsection (4)(d) is given.

(6) A person who has supplied the Secretary of State with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with subsection (1) may give notice to the Secretary of State withdrawing that address or that agreement or both.

(7) A person who has an agreement with the Secretary of State under subsection (4)(a) may give notice to the Secretary of State withdrawing that agreement.

(8) A withdrawal under subsection (6) or (7) shall take effect on the later of—

(a) the date specified by the person in the notice; and

(b) the date which is fourteen days after the date on which the notice is given.

(9) Oral notice is not sufficient for the purposes of subsection (6) or (7).

(10) This section shall not apply to any document in relation to the service of which provision is made by the rules of the court.

(11) In this section—

"address", in relation to electronic communications, means any number or address used for the purposes of such communications;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000 (c. 7).**]**

Textual Amendments

F779 S. 149A inserted (30.9.2006) by The Transport Security (Electronic Communications) Order 2006 (S.I 2006/2190), {art. 6}

150 Crown application.

(1) The following provisions of this Act bind the Crown—

(a) sections 17 to **[**[F780]22C**]**;

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(b) sections **[**[F781]55(1) to (7) and (9) to (11), sections 56 and 57 and section 58(1) to (3), (6) and (7);**]**;

(c) sections 59 to 62;

[F782](d) . . . . . .

(e) subject to, and in accordance with, section 48 of the [M95]Health and Safety at Work etc. Act 1974, section 117 (other than subsection (5)) so far as affecting or relating to provisions of, or regulations under, Part I of that Act which bind the Crown;

(f) section 118, except subsections (7) and (8);

(g) sections 119 to 121, except sections 120(4) and (5) and 121(4) to (6);

(h) section 122;

(j) section 144, so far as relating to other provisions of this Act which bind the Crown;

(k) Schedule 4;

(l) Schedule 6, to the extent that it applies, amends or modifies the operation of provisions of the [M96]Insolvency Act 1986 which bind the Crown so far as affecting or relating to the matters specified in paragraphs (a) to (e) of section 434 of that Act;

(m) Schedule 7;

[F782](n) . . . . . .

(o) the amendments and repeals made by Schedules 12 and 14, to the extent that the enactments to which they relate bind the Crown.

(2) Nothing in subsection (1) above so far as relating—

(a) to sections 55 to 58 above, or

(b) to section 144 above, so far as relating to those sections,

shall authorise proceedings to be brought against Her Majesty in her private capacity.

(3) Subsection (2) above shall be construed as if section 38(3) of the [M97]Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

[F782](4) . . . . . .

Textual Amendments

F780 Word in s. 150(1)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 42(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F781 Words in s. 150(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 42(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F782 S. 150(1)(d)(n)(4) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Commencement Information

I13 S. 150 wholly in force at 1.4.1994; s. 150 not in force at Royal Assent see s. 154(2); s. 150(1)-(3) in force at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; s. 150 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

Marginal Citations

M95 1974 c. 37.

M96 1986 c. 45.

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M97 1947 c. 44.

151 General interpretation.

(1) In this Act, unless the context otherwise requires—

[[F783]"the Authority" means the Strategic Rail Authority;**]**

"the Board" means the British Railways Board;

"body corporate" has the meaning given by **[**[F784]section 1173(1) of the Companies Act 2006**]**;

"company" means any body corporate;

"contravention", in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions shall be construed accordingly;

"debentures" includes debenture stock;

[[F785]"the Franchising Director" means the Director of Passenger Rail Franchising;**]**

"functions" includes powers, duties and obligations;

"local authority" means any county council, **[**[F786]county borough council,**]** district council, [F787]... or London borough council, the Common Council of the City of **[**[F788]London,**]** the Council of the Isles of Scilly **[**[F789]or any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

"modifications" includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

[F790] . . . . . .

"notice" means notice in writing;

"publicly owned railway company" means a company which is wholly owned by the Crown and which carries on, or is to carry on,—

(a) an undertaking derived, or to be derived, (whether wholly or partly and whether directly or indirectly) from, or from some part of, an undertaking carried on by the Board or a wholly owned subsidiary of the Board; or

(b) an undertaking in the course of which the company uses, or will use, any property, rights or liabilities acquired, or to be acquired, (whether directly or indirectly) from the Board or a wholly owned subsidiary of the Board;

[F791] . . . . . .

"securities" has the meaning given by **[**[F792]**[**[F793]section 102A(2) **]** of the Financial Services and Markets Act 2000**]**;

"shares" includes stock;

"subsidiary" has the meaning given by **[**[F794]section 1159 of the Companies Act 2006**]**;

[F785] . . . . . .

"wholly owned subsidiary" has the meaning given by **[**[F794]section 1159 of the Companies Act 2006**]**.

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(2) For the purposes of this Act, a company shall be regarded as "wholly owned by the Crown" at any time when it has no members other than—

(a) the Secretary of State, the **[**[F795]Authority**]** or a Government department,

(b) a company which is itself wholly owned by the Crown, or

(c) a person acting on behalf of the Secretary of State, the **[**[F795]Authority**]**, a Government department or such a company.

(3) **[**[F796]For the purposes of this Act, a company shall be regarded as "wholly owned by the **[**[F795]Authority**]**" at any time when it has no members other than—

(a) the **[**[F795]Authority**]**,

(b) a company which is itself wholly owned by the **[**[F795]Authority**]**, or

(c) a person acting on behalf of the **[**[F795]Authority**]** or such a company.**]**

(4) Any consent or approval under or by virtue of this Act shall be given in writing.

(5) For the purposes of this Act any class or description may be framed by reference to any matters or circumstances whatever.

(6) Nothing in this Act affects the operation of the [M98]Transfer of Undertakings (Protection of Employment) Regulations 1981, in their application in relation to the transfer of an undertaking, or part of an undertaking, within the meaning of those Regulations.

(7) Nothing in this Act, and nothing done under it, shall prejudice or affect the operation of any of the relevant statutory provisions (whenever made) as defined in Part I of the [M99]Health and Safety at Work etc. Act 1974.

(8) Subsection (7) above is without prejudice to section 117 above.

(9) The provisions of section 3 of the [M100]Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) shall not apply in relation to any determination under this Act made by an arbiter.

Textual Amendments

F783 S. 151: definition of "the Authority" repealed (E.W.S.) (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

F784 Words in s. 151(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(6)(a)** (with art. 10)

F785 Definitions of "the Franchising Director" and "transfer scheme" in s. 151(1) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F786 Words in definition of "local authority" in s. 151(1) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 107** (with s. 66(7), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, **art. 4**

F787 Words in definition of "local authority" in s. 151(1) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 184(3)(a), **Sch. 14**; S.I. 1996/323, **art. 4(1)(d)**

F788 Word in definition of "local authority" in s. 151(1) substituted (1.4.1994) by 1994 c. 39, s. 180(1), **Sch. 13 para. 184(3)(b)**

F789 Words in definition of "local authority" inserted (1.4.1994) by 1994 c. 39, s. 180(1), **Sch. 13 para. 184(3)(c)**

F790 S. 151: definition of "Monopolies Commission" repealed (1.4.1999) by S.I. 1999/506, **art. 33(c)**

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F791 S. 151(1): definition of "the Regulator" repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 17, **Sch. 8**; S.I. 2004/827, **art. 4(i)**

F792 Words in the definition of "securities" in s. 151(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 344

F793 Words in s. 151(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 77(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F794 Words in s. 151(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(6)(b)** (with art. 10)

F795 Words in s. 151(2)(a)(c)(3)(a)-(c) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 53**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115)

F796 S. 151(3) repealed (E.W.S.) (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

Commencement Information

I14 S. 151 wholly in force at 6.1.1994; s. 151 not in force at Royal Assent see s. 154(2); s. 151(1) in force for specified purposes and s. 151(5) wholly in force at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; S. 151 in force insofar as not already in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**

Marginal Citations

M98 S.I. 1981/1794.

M99 1974 c. 37.

M100 1972 c. 59.

152 Minor and consequential amendments, transitional provisions and repeals.

(1) The enactments mentioned in Schedule 12 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Act).

[F797](2) . . . . . .

(3) The enactments mentioned in Schedule 14 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

Textual Amendments

F797 S. 152(2) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Commencement Information

I15 S. 152 partly in force; s. 152 not in force at Royal Assent see s. 154(2); s. 152(1)(3) in force for specified purposes at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 152(3) in force for specified purposes at 8.3.1994 by S.I 1994/571, art. 2 ; s. 152(3) in force for further specified purposes at 31.3.1994 by S.I. 1994/571, **art. 4**; s. 152(1)-(3) in force for specified purposes at 1.4.1994 by S.I. 1994/571, **art. 5**; s. 152(3) in force for specified purposes at 15.7.1994 by S.I. 1994/1648, **art. 2**

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153 Power to make consequential modifications in other Acts etc.

(1) The Secretary of State may by order make such modifications of existing provisions as appear to him to be necessary or expedient in consequence of the provisions of this Act, or of any instrument made under or by virtue of this Act, being modifications in respect of—

(a) any reference in an existing provision to the Board or any subsidiary of the Board;

(b) any reference (in whatever terms) in an existing provision to any railway, railway service or railway undertaking;

(c) any reference (in whatever terms) in an existing provision to any person who—

(i) provides a railway service, or

(ii) carries on a railway undertaking,

or who is authorised to do so under or by virtue of any enactment;

(d) any reference in an existing provision to any enactment amended or repealed by or under this Act;

(e) any existing provision, so far as appearing to the Secretary of State to be of no further practical utility, having regard to the provisions of this Act;

(f) any other inconsistency between an existing provision and this Act.

(2) In this section—

"existing provision" means a provision contained in any Act (whether public general or local) passed, or in subordinate legislation made, before the relevant date;

"railway" has its wider meaning, within the meaning of Part I above;

"railway service" has the same meaning as in Part I above;

"the relevant date", in relation to any modification, means the date of the coming into force of the provision of this Act on which the modification is consequential;

"subordinate legislation" has the same meaning as in the [M101]Interpretation Act 1978.

Marginal Citations

M101 1978 c. 30.

154 Short title, commencement and extent.

(1) This Act may be cited as the Railways Act 1993.

(2) Except for section 1 and Schedule 1 (which come into force on the passing of this Act), this Act shall come into force on such day as may be specified in an order made by the Secretary of State; and different days may be so specified—

(a) for different provisions;

(b) for different purposes of the same provision; and

(c) for different areas within the United Kingdom.

(3) The following provisions of this Act extend to Northern Ireland—

[[F798](a) section 36(1), (4) and (5);**]**

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(b) subsections (1), (2), (4) and (5) of section 66;

[[F799](c) sections 124 and 129(3);]

(d) section 131;

(e) section 134;

(f) sections 143, 144, 146, 147(1) and (2) and 149 to 152, so far as relating to provisions of this Act which so extend;

(g) section 153;

(h) this section;

(j) paragraphs 6, 7 and 8 of Schedule 1, paragraph 10 of Schedule 2 and paragraph 9 of Schedule 3;

(k) Schedules 8 and 9;

(l) Schedule 11;

(m) the amendments and repeals made by Schedules 12 and 14, other than those relating to—

(i) section 6 of the [M102]Regulation of Railways Act 1889,

(ii) the [M103]Railway Fires Act 1905, and

(iii) the [M104]Railway Fires Act (1905) Amendment Act 1923,

to the extent that the enactments to which they relate so extend.

(4) Except as provided in subsection (3) above, this Act does not extend to Northern Ireland.

Textual Amendments

F798 S. 154(3)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 44(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F799 S. 154(3)(c) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 44(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

M102 1889 c. 57.

M103 1905 c. 11.

M104 1923 c. 27.

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SCHEDULES

[F800][F800]SCHEDULE 1

. . . . . .

Textual Amendments

F800 Sch. 1 repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 2, **Sch. 8**; S.I. 2004/827, **art. 4(i)**

SCHEDULE 2

Section 2.

RAIL [[F812] PASSENGERS]COMMITTEES

Textual Amendments

F812 Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Preliminary

[F813]1 . . . . . .

Textual Amendments

F813 Sch. 2 para. 1 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(2), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115)

Remuneration of, and allowances for, [[F814]members]

Textual Amendments

F814 Words in the cross-heading substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

2 There shall be paid to the chairman [[F815]and other members] of [[F816]a Rail Passengers' Committee] such remuneration, and such travelling and other allowances, as the [[F817]Authority] may [F818]. . . determine.

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Textual Amendments

F815 Words in Sch. 2 para. 2 inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F816 Words in Sch. 2 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F817 Words in Sch. 2 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 23(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F818 Words in Sch. 2 para. 2 repealed (1.2.2001) by 2000 c. 38, s. 251(3), 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[[F819]2A If a person ceases to hold office as chairman or another member of a Rail Passengers' Committee by reason of the abolition of the Committee before his term of office would otherwise have expired, the Authority may, if it determines that there are special circumstances which make it right that he should receive compensation, pay to him such compensation as may be determined by the Authority.**]**

Textual Amendments

F819 Sch. 2 para. 2A inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Allowances for other members

[F820]3 . . . . . .

Textual Amendments

F820 Sch. 2 para. 3 repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, Sch. 23 para. 2(4), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Administration etc.

4 The **[**[F821]Authority**]** shall make arrangements for **[**[F822]a Rail Passengers' Committee**]** to be provided with office accommodation and with such services as he considers appropriate to enable them to carry out their functions.

Textual Amendments

F821 Word in Sch. 2 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 23(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F822 Words in Sch. 2 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Proceedings

5 (1) Subject to the following provisions of this paragraph and paragraph 6 below, **[**[F823]a Rail Passengers' Committee**]** may regulate their own procedure, including quorum.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) **[**[F824]A Rail Passengers' Committee**]** shall meet when convened by the chairman, and in any case shall meet at least twice a year.

(3) Without prejudice to the discretion of the chairman to call a meeting whenever he thinks fit, he shall call a meeting when required to do so by any three members of **[**[F823]a Rail Passengers' Committee**]**.

(4) Minutes shall be kept of the proceedings at every meeting of **[**[F823]a Rail Passengers' Committee**]**; and copies of those minutes shall be sent to the **[**[F825]Rail Passengers' Council**]** and the **[**[F826]Authority**]**.

(5) **[**[F824]A Rail Passengers' Committee**]** shall have regard to any general recommendations which the **[**[F825]Rail Passengers' Council**]** may from time to time make with respect to any matter affecting the procedure or functions of **[**[F827]Rail Passengers' Committees**]**.

(6) The validity of any proceedings of **[**[F823]a Rail Passengers' Committee**]** shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Textual Amendments

F823 Words in Sch. 2 para. 5 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(4)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F824 Words in Sch. 2 para. 5(2)(5) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(4)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F825 Words in Sch. 2 para. 5(4)(5) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(4)(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F826 Words in Sch. 2 para. 5(4) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 17 para. 23(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F827 Words in Sch. 2 para. 5(5) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(4)(d)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Admission of public to meetings

6 (1) Subject to sub-paragraph (2) below, meetings of **[**[F828]a Rail Passengers' Committee**]** shall be open to the public.

(2) The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the committee by the **[**[F829]the Office of Rail Regulation**]** or the **[**[F830]Authority**]** would be disclosed in breach of the obligation of confidence;

(b) **[**[F828]a Rail Passengers' Committee**]** have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual, or

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(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, **[**[F831]or

(d) the circumstances are such as are specified in, or determined by resolution of a Rail Passengers' Committee in accordance with, an order made by the Secretary of State.**]**

where public disclosure of that matter would or might, in the opinion of **[**[F828]a Rail Passengers' Committee**]**, seriously and prejudicially affect the interests of that individual or body.

(3) **[**[F832]A Rail Passengers' Committee**]** shall give such notice—

(a) of any meeting of **[**[F828]a Rail Passengers' Committee**]** which is open to the public, and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded),

as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Textual Amendments

F828 Words in Sch. 2 para. 6(1)(2)(b)(3)(a) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(5)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F829 Words in Sch. 2 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F830 Words in Sch. 2 para. 6(2)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 46**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F831 Sch. 2 para. 6(2)(d) and the word "or" immediately preceding it inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 6**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F832 Words in Sch. 2 para. 6(3) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(5)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Sub-committees

7 (1) **[**[F833]A Rail Passengers' Committee**]** may, [F834]. . .—

(a) establish local and other sub-committees through which **[**[F835]a Rail Passengers' Committee**]** may carry out such of their functions as they may determine;

(b) appoint such persons (including persons who are not members of **[**[F835]a Rail Passengers' Committee**]**) to be members of any such sub-committee as they may determine; and

(c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) above who are not members of **[**[F835]a Rail Passengers' Committee**]** may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

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Textual Amendments

F833 Words in Sch. 2 para. 7(1) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(6)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F834 Words in Sch. 2 para. 7(1) repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, 275(1), Sch. 23 para. 8, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F835 Words in Sch. 2 para. 7(1)(a)(b)(2) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(6)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Financial provisions

8 (1) There shall be paid by the **[**[F836]Authority**]**—

(a) any sums payable to or in respect of any person under paragraph 2 [F837]. . . or 7 above; and

(b) any expenses incurred by **[**[F838]a Rail Passengers' Committee (provided that the Rail Passengers' Committee complied with their financial duties in incurring them)**]**.

[[F839](2) The Authority may determine the financial duties of Rail Passengers' Committees; and different determinations may be made for different functions of Rail Passengers' Committees.

(3) The Authority shall give a Rail Passengers' Committee notice of every determination of their financial duties; and such a determination may—

(a) relate to a period beginning before, on or after the date on which it is made;

(b) contain supplementary provisions; and

(c) be varied by a subsequent determination.**]**

Textual Amendments

F836 Words in Sch. 2 para. 8(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 23(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F837 Word in Sch. 2 para. 8(1)(a) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F838 Words in Sch. 2 para. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 4(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F839 Sch. 2 para. 8(2)(3) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 4(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Amendment of other Acts

[F840]9 . . . . . .

Textual Amendments

F840 Sch. 2 para. 9 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(7), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

[F841]10 . . . . . .

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Textual Amendments

F841 Sch. 2 para. 10 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(7), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

SCHEDULE 3

Section 3.

THE [F842RAIL PASSENGERS' COUNCIL]

Textual Amendments

F842 Words in heading to Sch. 3 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 13(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Preliminary

F843 1 . . . . . .

Textual Amendments

F843 Sch. 3 para. 1 repealed (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 13(2), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Remuneration of, and allowances for, [F844members]

Textual Amendments

F844 Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 3(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

2 There shall be paid to the chairman [F845and other members] of the [F846Rail Passengers' Council] such remuneration, and such travelling and other allowances, as the [F847Authority] may F848. . . determine.

Textual Amendments

F845 Words in Sch. 3 para. 2 inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 3(1)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F846 Words in Sch. 3 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 13(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F847 Word in Sch. 3 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F848 Words in Sch. 3 para. 2 repealed (1.2.2001) by 2000 c. 38, **ss. 251(4)**, 274 Sch. 31 Pt. IV; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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Allowances for other members

[F849]3 . . . . . .

Textual Amendments

F849 Sch. 3 para. 3 repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, Sch. 23 para. 3(3), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Administration etc.

4 The **[**[F850]Authority**]** shall make arrangements for the **[**[F851]Rail Passengers' Council**]** to be provided with office accommodation and with such services as he considers appropriate to enable them to carry out their functions.

Textual Amendments

F850 Word in Sch. 3 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F851 Words in Sch. 3 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 13(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Proceedings

5 (1) Subject to the following provisions of this paragraph and paragraph 6 below, the **[**[F852]Rail Passengers' Council**]** may regulate their own procedure, including quorum.

(2) The **[**[F852]Rail Passengers' Council**]** shall meet when convened by the chairman, and in any case shall meet at least twice a year.

(3) Without prejudice to the discretion of the chairman to call a meeting whenever he thinks fit, he shall call a meeting when required to do so by any three members of the **[**[F852]Rail Passengers' Council**]**.

(4) Minutes shall be kept of the proceedings at every meeting of the **[**[F852]Rail Passengers' Council**]**; and copies of those minutes shall be sent to the Secretary of State and the **[**[F853]Authority**]**.

(5) A person who is a member of the **[**[F852]Rail Passengers' Council**]** by virtue of being the chairman of a **[**[F854]Rail Passengers' Committee**]** may appoint another member of that **[**[F854]Rail Passengers' Committee**]** to attend any meeting of the committee in his stead.

(6) The validity of any proceedings of the committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Textual Amendments

F852 Words in Sch. 3 para. 5(1)-(5) substituted (1.2.2001) by 2000 c. 38, ss. 227, 275(1), **Sch. 22 para. 13(4)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F853 Word in Sch. 3 para. 5(4) substituted (1.2.2001) by 2000 c. 38, ss. 216, 275(1), **Sch. 17 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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F854 Words in Sch. 3 para. 5(5) substituted (1.2.2001) by 2000 c. 38, ss. 227, 275(1), **Sch. 22 para. 13(4)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Admission of public to meetings

6 (1) Subject to sub-paragraph (2) below, meetings of the **[**[F855]Rail Passengers' Council**]** shall be open to the public.

(2) The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the **[**[F855]Rail Passengers' Council**]** by the **[**[F856]the Office of Rail Regulation**]** or the **[**[F857]Authority**]** would be disclosed in breach of the obligation of confidence;

(b) the **[**[F855]Rail Passengers' Council**]** have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual, or

(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, **[**[F858]or

(d) the circumstances are such as are specified in, or determined by a resolution of the Rail Passengers' Council in accordance with, an order made by the Secretary of State.**]**

where public disclosure of that matter would or might, in the opinion of the **[**[F855]Rail Passengers' Council**]**, seriously and prejudicially affect the interests of that individual or body.

(3) The **[**[F855]Rail Passengers' Council**]** shall give such notice—

(a) of any meeting of the **[**[F855]Rail Passengers' Council**]** which is open to the public, and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded),

as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Textual Amendments

F855 Words in Sch. 3 para. 6(1)(2)(a)(b)(3)(a) substituted (1.2.2001) by 2000 c. 38, ss. 227, **Sch. 22 para. 13(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F856 Words in Sch. 3 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F857 Word in Sch. 3 para. 6(2)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 47**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F858 Sch. 3 para. 6(2)(d) and the word immediately preceding it inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 7**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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Sub-committees

7 (1) The **[**[F859]Rail Passengers' Council**]** may [F860]. . . —

(a) establish **[**[F861]committees**]** through which the **[**[F859]Rail Passengers' Council**]** may carry out such of their functions as they may determine;

(b) appoint such persons (including persons who are not members of the **[**[F859]Rail Passengers' Council**]**) to be members of any such **[**[F862]committee**]** as they may determine; and

(c) regulate the procedure of any such **[**[F862]committee**]**.

(2) Persons appointed under sub-paragraph (1) above who are not members of the **[**[F859]Rail Passengers' Council**]** may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Textual Amendments

F859 Words in Sch. 3 para. 7 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 13(6)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F860 Words in Sch. 3 para. 7(1) repealed (1.2.2001) by 2000 c. 38, s. 229, 275(1), Sch. 23 para. 9(a), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F861 Words in Sch. 3 para. 7(1)(a) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 9(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F862 Words in Sch. 3 para. 7(1)(b)(c) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 9(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Financial provisions

8 (1) There shall be paid by the **[**[F863]Authority**]**—

(a) any sums payable to or in respect of any person under paragraph 2 [F864]. . . or 7 above; and

(b) any expenses incurred by the **[**[F865]Rail Passengers' Council (provided that the Rail Passengers' Council complied with their financial duties in incurring them)**]**.

[[F866](2) The Authority may determine the financial duties of the Rail Passengers' Council; and different determinations may be made for different functions of the Rail Passengers' Council.

(3) The Authority shall give the Rail Passengers' Council notice of every determination of its financial duties; and such a determination may—

(a) relate to a period beginning before, on or after the date on which it is made;

(b) contain supplementary provisions; and

(c) be varied by a subsequent determination.**]**

Textual Amendments

F863 Words in Sch. 3 para. 8(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 24(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F864 Word in Sch. 3 para. 8(1)(a) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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F865 Words in Sch. 3 para. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 5(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F866 Sch. 3 para. 8(2)(3) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 5(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Amendment of other Acts

F867 9 . . . . . .

Textual Amendments

F867 Sch. 3 para. 9 repealed (1.2.2001) by 2000 c. 38, s. 227, 274, Sch. 22 para. 13(7), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

SCHEDULE 4

Sections 17 and 19.

ACCESS AGREEMENTS: APPLICATIONS FOR ACCESS CONTRACTS

Interpretation

1 In this Schedule—

"application for directions" means an application for directions under section 17 of this Act;

"the facility owner" means the facility owner mentioned in section 17(1) of this Act;

"interested person" means any person whose consent is required by the facility owner, as a result of an obligation or duty owed by the facility owner which arose after the coming into force of section 17 of this Act, before the facility owner may enter into the required access contract;

"the required access contract" means the access contract which the applicant seeks to obtain by virtue of the application for directions;

and, subject to that, expressions used in this Schedule and in section 17 of this Act have the same meaning in this Schedule as they have in that section.

Making and withdrawal of application

2 (1) Any application for directions must be made in writing to **[**F868the Office of Rail Regulation**]** and must—

(a) contain particulars of the required rights;

(b) specify the terms which the applicant proposes should be contained in the required access contract; and

(c) include any representations which the applicant wishes to make with regard to the required rights or the terms to be contained in the required access contract.

(2) The applicant may, by giving notice in writing to **[**F868the Office of Rail Regulation**]** , withdraw or suspend the application at any time.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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(3) In this paragraph "the required rights" means the permission to use the railway facility in question which it is sought to obtain by virtue of the application for directions.

Textual Amendments

F868 Words in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

Notifications, representations and information

3 (1) **[**[F869]the Office of Rail Regulation**]** shall—

(a) send a copy of any application for directions received by **[**[F870]it**]** to the facility owner; and

(b) invite the facility owner to make written representations to **[**[F869]the Office of Rail Regulation**]** within such period (being not less than 21 days from the date of issue of the invitation) as may be specified in the invitation.

(2) **[**[F869]the Office of Rail Regulation**]** shall send a copy of any such representations received by **[**[F870]it**]** to the applicant and invite him to make further written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.

(3) **[**[F869]the Office of Rail Regulation**]** may from time to time request or invite further information, clarification or representations from the applicant or the facility owner.

Textual Amendments

F869 Words in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F870 Word in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

Interested persons

4 (1) Where **[**[F871]the Office of Rail Regulation**]** receives an application for directions, **[**[F871]it**]** shall issue a direction to the facility owner requiring him to furnish the name and address of every interested person to **[**[F871]the Office of Rail Regulation**]** within such period (being not less than 14 days from the date of issue of that direction) as may be specified in that direction.

(2) Where the name and address of an interested person is furnished pursuant to sub-paragraph (1) above, **[**[F871]the Office of Rail Regulation**]** shall invite the interested person to make written representations to **[**[F871]it**]** within such period (being not less than 14 days from the date of issue of the invitation) as may be specified in the invitation.

(3) **[**[F871]the Office of Rail Regulation**]** shall send a copy of any such representations received by **[**[F872]it**]** to the applicant and to the facility owner and invite each of them

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to make written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.

(4) **[**[F871]the Office of Rail Regulation**]** may from time to time request or invite further information, clarification or representations from any interested person.

Textual Amendments

F871 Word in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

F872 Word in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

The decision and the directions

5 (1) **[**[F873]the Office of Rail Regulation**]** shall inform the applicant, the facility owner and any interested person of **[**[F874]its**]** decision on an application for directions.

(2) If t **[**[F873]the Office of Rail Regulation**]** decides to give directions to the facility owner requiring him to enter into an access contract—

(a) the directions shall specify—

(i) the terms of the access contract; and

(ii) the date by which the access contract is to be entered into; and

(b) **[**[F873]the Office of Rail Regulation**]** may also give directions to the applicant or the facility owner requiring him to pay compensation of such amount as may be specified in the directions to such interested person as may be so specified.

(3) Any compensation directed to be paid by virtue of sub-paragraph (2)(b) above shall be recoverable as a debt due.

(4) The facility owner shall be released from his duty to comply with the directions if the applicant fails to enter into an access contract on the terms required by the directions by the date specified for that purpose in the directions.

Textual Amendments

F873 Words in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

F874 Words in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

Effect of directions on facility owner and interested persons

6 (1) Any directions given on an application for directions or under this Schedule shall be binding on the person to whom they are given, notwithstanding any obligation or duty he may owe to an interested person and whether or not the interested person has had an opportunity to make representations.

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(2) No interested person, and no successor to an interested person, shall take any step for the purpose of enforcing or exercising any right he may have against the facility owner in respect of, or in consequence of, the facility owner's—

(a) entering into an access contract pursuant to directions under section 17 of this Act,

(b) performing such a contract in accordance with its terms, or

(c) failing to take any step to protect the interests of the interested person in connection with the application for directions, or the making of the access contract,

whether or not the interested person had, or has had, an opportunity to make representations.

(3) The duty of the facility owner to furnish **[**[F875]the Office of Rail Regulation**]** with the name and address of every interested person pursuant to a direction under paragraph 4 above is a duty owed to each interested person and (subject to the defences and incidents applying in actions for breach of statutory duty) any contravention of that duty shall be actionable at the suit or instance of the interested person and the facility owner shall be liable for any loss or damage suffered by the interested person as a result of any access contract which is entered into in consequence of the application for directions.

(4) It shall be a defence in any proceedings brought by virtue of sub-paragraph (3) above for the facility owner to show that he took all reasonable steps, and exercised all due diligence, to avoid contravening the duty in question.

(5) In this paragraph "successor", in relation to an interested person, means any person—

(a) who is a successor in title to the interested person; or

(b) whose rights derive directly or indirectly from the interested person.

Textual Amendments

F875 Words in Sch. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

Financial provision

[F876]7 . . . . . .

Textual Amendments

F876 Sch. 4 para. 7 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

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[F877]SCHEDULE 4A

REVIEW OF ACCESS CHARGES BY [[F878]THE OFFICE OF RAIL REGULATION]

Textual Amendments

F877 Sch. 4A inserted (30.11.2000) by 2000 c. 38, ss. 231(2), 275(1), Sch. 24, Sch. 28 paras. 11, **17**

F878 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

[[F879]Application of Schedule]

Textual Amendments

F879 Sch. 4A paras. 1-1H and cross-headings substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11)

[[F880]1 This Schedule applies where an access agreement provides, or is treated as providing, for the Office of Rail Regulation to undertake reviews of the terms of that agreement as to—

(a) the amounts payable under the agreement by one of the parties to the other; and

(b) the times at which, and the manner in which, those amounts are payable.]

Textual Amendments

F880 Sch. 4A para. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with para. 11); S.I. 2007/62, **art. 2**

[[F881]Scope of review

Textual Amendments

F881 Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1A (1) Where the Office of Rail Regulation undertakes such a review, it must, at the same time, review the conditions of every linked licence both—

(a) in relation to the matters mentioned in paragraph 1(a) and (b); and

(b) in relation to the matters about which that Office is provided with information under paragraph 1D.

(2) A review by that Office of both—

(a) the terms of an access agreement as to the matters mentioned in paragraph 1(a) and (b), and

(b) the conditions of a linked licence,

is referred to in this Schedule as an access charges review.

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(3) An access charges review must include a consideration of—

(a) the time at which the next access charges review is to be undertaken in relation to both the access agreement in question and every linked licence; and

(b) the circumstances in which it would be appropriate to undertake such a review before that time.

(4) In this Schedule "linked licence", in relation to an access agreement, means a licence of which the holder is—

(a) the facility owner, or installation owner, who is a party to the agreement; or

(b) a person other than that owner who has an estate or interest in the railway facility or network installation to which the agreement relates or who has a right over it.**]**

[F882 Response to request to carry out review

Textual Amendments

F882 Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1B Where—

(a) the Secretary of State or the Scottish Ministers suggest to the Office of Rail Regulation that an access charges review should be carried out in any case, but

(b) that Office decides not to carry out the suggested review,

that Office must provide the Secretary of State or Scottish Ministers with its reasons for that decision.**]**

[F883 Notice of access charges review

Textual Amendments

F883 Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1C (1) Before beginning an access charges review, the Office of Rail Regulation must give notice of its proposal to undertake the review to each of the following—

(a) the Secretary of State;

(b) the Scottish Ministers;

(c) the Treasury;

(d) the parties to the access agreement in question; and

(e) such other persons as that Office considers appropriate.

(2) No notice is required to be given under sub-paragraph (1) to the Secretary of State or the Scottish Ministers—

(a) in the case of the Secretary of State, if the facility or installation to which the relevant agreement relates is situated wholly in Scotland; or

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(b) in the case of the Scottish Ministers, if the facility or installation to which the relevant agreement relates is situated wholly in England and Wales.

(3) A notice under this paragraph must set out—

(a) the period to which the Office of Rail Regulation expects the review to relate ("the review period");

(b) the date by which the Secretary of State, the Scottish Ministers or (as the case may be) each of them needs to provide the information that has to be provided under paragraph 1D; and

(c) any conditions which that Office requires to be satisfied in the period ending with that date if it is to proceed with the review.

(4) The period set out under sub-paragraph (3)(a) must be the one which—

(a) begins with the time as from which the Office of Rail Regulation expects that any changes resulting from the review would fall to be implemented; and

(b) ends with the time as from which it thinks it likely (in the absence of special circumstances making an earlier review appropriate) that any changes resulting from the next access charges review in relation to the same agreement and licence would fall to be implemented.

(5) The date set out under sub-paragraph (3)(b) must be not less than the following period after the date of the notice—

(a) in a case which the Office of Rail Regulation is satisfied is a case of urgency, four weeks; and

(b) in any other case, three months.

(6) Before setting out a date under sub-paragraph (3)(b) that is less than three months after the date of the notice, the Office of Rail Regulation must consult each of the persons to whom the notice is to be given.**]**

[F884 Duty to notify ORR about desired outputs and finances

Textual Amendments

F884 Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1D (1) Where a notice under paragraph 1C is given to the Secretary of State, he must provide the Office of Rail Regulation with—

(a) information about what he wants to be achieved by railway activities in Great Britain as a whole during the review period; and

(b) such information as it is reasonable for him to provide about the public financial resources that are or are likely to become available to be applied during the review period for purposes that contribute (directly or indirectly) towards the achievement of what he wants.

(2) Where a notice under paragraph 1C is given to the Scottish Ministers (whether instead of or as well as to the Secretary of State), they must provide the Office of Rail Regulation with—

(a) information about what they want to be achieved by Scottish railway activities during the review period; and

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(b) such information as it is reasonable for them to provide about the public financial resources that are or are likely to become available to be applied during that period for purposes that contribute (directly or indirectly) towards the achievement of what they want.

(3) The information that may be provided as falling within sub-paragraph (1)(a) or (2)(a) includes objectives and standards to be achieved in the course of carrying on railway activities.

(4) Those objectives and standards may include, in particular, objectives and standards with respect to any of the following matters—

(a) the capacity (in terms of types and numbers of trains) of networks;
(b) the frequency of railway passenger services;
(c) journey times;
(d) reliability of railway services (both in terms of punctuality and otherwise);
(e) the taking of measures to prevent or mitigate overcrowding;
(f) levels and types of fares;
(g) the quality of information provided to passengers;
(h) the accessibility of railway services to people with disabilities;
(i) the carrying out of major projects to improve railway services;
(j) the protection of persons from dangers arising from the operation of railways.

(5) In a case where information is also required to be provided by the Scottish Ministers, the information that is required to be provided by the Secretary of State does not include—

(a) any information about what he wants to be achieved by Scottish railway activities not relating to cross-border services; or
(b) information about any public financial resources so far as they appear to him to be available, or to be likely to become available, to be applied for purposes relating only to such activities.

(6) An obligation of the Secretary of State or the Scottish Ministers to provide information under this paragraph—

(a) must be discharged before the date set out in the notice given under paragraph 1C or, if a later date is fixed under sub-paragraph (7), by that later date; but
(b) may be discharged by a notification that refers that Office to information previously provided under this paragraph.

(7) the Office of Rail Regulation may at any time, by notice to each of the persons to whom the notice under paragraph 1C was given, fix a later date for the provision of information under this paragraph.

(8) Neither—

(a) the Secretary of State, nor
(b) the Scottish Ministers,

are required to provide information for the purposes of a review at any time after a decision has been made by the Office of Rail Regulation not to proceed with the review because of an actual or expected failure of the conditions set out under paragraph 1C(3)(c) to be satisfied.

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(9) In this paragraph "railway activities" means activities consisting in, or involving, any of the following—
- (a) providing railway services;
- (b) making available railway facilities;
- (c) making use of such facilities;
- (d) using railway assets;
- (e) allowing others to use such assets.

(10) In this paragraph "Scottish railway activities" means activities which are railway activities by reference only to—
- (a) railway services which begin and end in Scotland;
- (b) railway services in relation to which financial assistance is provided by the Scottish Ministers and which (without falling within paragraph (a)) begin or end in Scotland;
- (c) railway facilities that are situated in Scotland; or
- (d) railway assets so situated.

(11) In this paragraph "public financial resources" means any of the following—
- (a) money charged on and payable out of the Consolidated Fund;
- (b) money provided by Parliament;
- (c) money payable out of the Scottish Consolidated Fund.**]**

[F885 Suggestions about future reviews

Textual Amendments

F885 Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1E Where the Secretary of State or the Scottish Ministers provide the Office of Rail Regulation with information under paragraph 1D, he or they may also, at the same time, make a suggestion to that Office setting out his or their opinion about—
- (a) when the next access charges review should be undertaken in relation to both the access agreement in question and every linked licence; and
- (b) the circumstances in which it would be appropriate to undertake such a review before that time.**]**

[F886 Revision of outputs and financial information

Textual Amendments

F886 Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1F (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that—
- (a) the information that has been provided to it by the Secretary of State or the Scottish Ministers under paragraph 1D, or

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(b) the information, taking it all together, that has been so provided by the Secretary of State and the Scottish Ministers,

shows that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of what he or they, or both of them, want to be achieved, that Office must so notify the Secretary of State or the Scottish Ministers or (as the case may be) each of them.

(2) The Office of Rail Regulation must send a copy of every notification under sub-paragraph (1) to the Treasury.

(3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—

(a) may revise any information provided to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and

(b) if the information or such a suggestion is revised, must notify the revisions to that Office.

(4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or Scottish Ministers in accordance with sub-paragraph (1).

(5) Where the Office of Rail Regulation has already given a notification under this paragraph with respect to any information, it is required to give a further notification under this paragraph with respect to that information, or any revision of it, only if—

(a) a revision has been made in response to its previous notification; and

(b) it has not previously given a notification in respect of an earlier revision of the information.**]**

[F887*Notification of likely adverse effect on interests of certain providers of railway services*

Textual Amendments

F887 Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1G (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that it is likely that the implementation of the review will adversely affect the interests of persons providing railway passenger services or of persons providing services for the carriage of goods by railway, that Office must so notify—

(a) the Secretary of State, in the case of a review notice of which was given to him under paragraph 1C; and

(b) the Scottish Ministers, in the case of a review notice of which was given to them under that paragraph.

(2) Where the Office of Rail Regulation gives a notification under sub-paragraph (1) in respect of a review relating to an access agreement to which a facility owner is a party, the notification must include—

(a) its assessment of the measures that the facility owner is likely to be required to take, as a consequence of the implementation of the review, in order to meet obligations of his arising under the access agreement in question or under any other access agreement to which he is a party; and

(b) its estimate of the cost to the facility owner of taking those measures.

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(3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
  (a) may revise any information provided under paragraph 1D to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
  (b) if the information or such a suggestion is revised, must notify the revisions to that Office.

(4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or the Scottish Ministers in accordance with sub-paragraph (1).

(5) Where the Office of Rail Regulation has already given a notification under this paragraph, it is required to give a further notification under this paragraph only if—
  (a) information provided to it has been revised in response to its notification; and
  (b) it has not previously given a notification in respect of an earlier revision of that information.**]**

[F888*Duty to have regard to information about desired outputs and finances etc.*

Textual Amendments
F888 Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 2** (with Sch. 4 para. 11); S.I. 2007/62, **art. 2**

1H (1) The Office of Rail Regulation must conduct an access charges review in the manner that it considers is most likely to secure that the implementation of the review will make the best and most practicable contribution to the achievement of—
  (a) what the Secretary of State wants to be achieved by railway activities in Great Britain as a whole; and
  (b) what the Scottish Ministers want to be achieved by Scottish railway activities.

(2) Where in the case of an access charges review the Office of Rail Regulation considers (notwithstanding any notification or revision under paragraph 1F or 1G) that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of, as the case may be—
  (a) everything that the Secretary of State wants to be achieved,
  (b) everything that the Scottish Ministers want to be achieved, or
  (c) everything that both the Secretary of State and the Scottish Ministers want to be achieved,

it is to be for that Office to determine, for the purposes of the review, how much of what is wanted should be achieved using (but only for the purposes for which they may be applied) all the public financial resources that it considers are or are likely to be available.

(3) In conducting an access charges review the Office of Rail Regulation must have regard to the consequences of compliance by a facility owner who is a party to the access agreement in question with any terms—
  (a) of that agreement, or
  (b) of any other access agreement to which that facility owner is a party,

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that it considers are relevant to a matter notified under paragraph 1G (including, in particular, a term requiring the facility owner to pay compensation or to take mitigatory measures).

(4) In considering the matters mentioned in paragraph 1A(3), the Office of Rail Regulation must have regard to any suggestion made under paragraph 1E, and to any revision of that suggestion.

(5) For the purposes of this paragraph—

(a) expressions used in this paragraph and in paragraph 1D have the same meanings in this paragraph as in that;

(b) what the Secretary of State or the Scottish Ministers want must be determined in every case in accordance with the information provided in that case under paragraph 1D, and with any revisions notified under paragraph 1F(3)(b) or 1G(3)(b); and

(c) the Office of Rail Regulation must have regard to the financial information so provided and revised whenever considering what is likely to make the best and most practicable contribution to the achievement of what the Secretary of State or the Scottish Ministers want.**]**

Main provisions

2 (1) The procedure for the implementation of an access charges review shall be as provided for by paragraphs 4 to 16 of this Schedule.

(2) And any procedure relating to the implementation of an access charges review for which the access agreement or any linked licence makes provision shall not apply.

[F889]3 . . . . . .

Textual Amendments

F889 Sch. 4A para. 3 repealed (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 59, 60, Sch. 4 para. 3, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2007/62, **art. 2**

Review notice

4 (1) The implementation of an access charges review shall be initiated by **[**[F890]the Office of Rail Regulation**]** giving notice (a "review notice")—

(a) stating **[**[F891]its**]** conclusions on the access charges review and the reasons why **[**[F892]it**]** reached those conclusions;

(b) specifying the relevant changes which **[**[F892]it**]** proposes to make for or in connection with giving effect to those conclusions;

(c) stating, in relation to each of the proposed relevant changes, the date on which **[**[F892]it**]** proposes that it should come into operation; and

(d) specifying the period (not being less than six weeks from the date of publication of the notice) within which objections with respect to any of the proposed relevant changes, or the date on which it is proposed that it should come into operation, may be made by a person within sub-paragraph (4)(a) or (b) below.

(2) In this Schedule "relevant changes", in relation to an access agreement, means—

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(a) amendments of the access agreement;
(b) modifications of the conditions of any linked licence; or
(c) both such amendments and such modifications;

and references to the making of relevant changes are, in the case of amendments of the access agreement, references to directing the parties to the access agreement to make the amendments to the access agreement.

[[F893](2A) Before giving a review notice specifying modifications of a linked licence that are proposed for purposes connected with securing—
(a) what the Secretary of State has informed the Office of Rail Regulation he wants to be achieved by any railway activities, or
(b) what the Scottish Ministers have informed that Office they want to be achieved by any such activities,

that Office must consult the Secretary of State or (as the case may be) those Ministers.**]**

(3) The review notice shall be given—
(a) by publishing it in such manner as **[**[F890]the Office of Rail Regulation**]** considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and
(b) by serving a copy on the persons specified in sub-paragraph (4) below.

(4) The persons referred to in sub-paragraph (3)(b) above are—
[[F894](za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
(zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;
(zc) the Treasury;**]**
(a) the facility owner, or installation owner, who is a party to the access agreement;
(b) any other person who has an estate or interest in, or right over, the railway facility or network installation to which the access agreement relates and who **[**[F890] the Office of Rail Regulation**]** considers ought to be given a copy; and
(c) the beneficiary.

(5) In this Schedule "the beneficiary"—
(a) in relation to an access contract, has the meaning given by section 17(7) of this Act; and
(b) in relation to an installation access contract, has the meaning given by section 19(10) of this Act.

Textual Amendments

F890 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F891 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**

F892 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(b)** Table; S.I. 2004/827, **art. 4(g)**

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Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F893 Sch. 4A para. 4(2A) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 4(1)**; S.I. 2007/62, **art. 2**

F894 Sch. 4A para. 4(4)(za)-(zc) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 4(2)**; S.I. 2007/62, **art. 2**

Notice of agreement

5 (1) If no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), **[**[F895]the Office of Rail Regulation**]** shall give notice (a "notice of agreement") stating that fact.

(2) The notice of agreement shall be given—

(a) by publishing it in such manner as **[**[F895]the Office of Rail Regulation**]** considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and

(b) by serving a copy on the beneficiary.

Textual Amendments

F895 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

Termination notice

6 (1) After a copy of a notice of agreement is served on the beneficiary, he may give notice (a "termination notice") terminating the access agreement.

(2) The termination notice shall specify the date on which the access agreement is to terminate.

(3) The termination notice shall be given by serving a copy on—

[[F896](za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;

(zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;**]**

(a) the facility owner or installation owner;

(b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and

(c) **[**[F897]the Office of Rail Regulation**]**.

(4) The date specified by the termination notice as that on which the access agreement is to terminate shall be neither—

(a) less than six months, nor

(b) more than one year,

after the copy of the termination notice is served on the facility owner or installation owner.

(5) The termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice of agreement is served on the beneficiary.

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Textual Amendments

F896 Sch. 4A para. 6(3)(za)(zb) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 5**; S.I. 2007/62, **art. 2**

F897 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

Review implementation notice

7 (1) After a copy of a notice of agreement is served on the beneficiary and the time within which a termination notice may be given by him has expired—

(a) if he has not given a termination notice (or has withdrawn any notice which he has given), **[**[F898]the Office of Rail Regulation**]** shall (unless **[**[F899]it**]** acts under paragraph 8(2) below) give a review implementation notice; or

(b) if he has given (and not withdrawn) a termination notice, **[**[F898]the Office of Rail Regulation**]** may give such a notice.

(2) A review implementation notice is a notice stating that **[**[F898]the Office of Rail Regulation**]**'s conclusions on the access charges review are to be implemented as proposed in the review notice.

(3) The review implementation notice shall—

(a) specify the relevant changes which **[**[F898]the Office of Rail Regulation**]** is making; and

(b) state, in relation to each of the relevant changes, the date on which it comes into operation.

(4) The review implementation notice shall be given—

(a) by publishing it in such manner as **[**[F898]the Office of Rail Regulation**]** considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the relevant changes; and

(b) by serving a copy on the persons on whom a copy of the review notice was served, [F900]. . . .

Textual Amendments

F898 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F899 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(b)** Table; S.I. 2004/827, **art. 4(g)**

F900 Words in Sch. 4A para. 7(4)(b) repealed (1.4.2006 for certain purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/266, **art. 2(2)**, Sch. ; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

New review notice or Competition Commission reference

8 (1) This paragraph applies if—

(a) objections are duly made by a person within paragraph 4(4)(a) or (b) above (and not withdrawn); or

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(b) although no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), relevant objections are duly made (and not withdrawn) in relation to a similar review notice relating to another access agreement.

(2) **[**[F901]the Office of Rail Regulation**]** may—

(a) give a new review notice under paragraph 4 above; or

(b) make a reference to the Competition Commission under paragraph 9 below.

(3) For the purposes of sub-paragraph (1) above—

(a) "relevant objections", in relation to another access agreement, means objections by a person who is within paragraph 4(4)(a) or (b) above in relation to that other access agreement; and

(b) one review notice is similar to another if they make provision which, in the opinion of **[**[F901]the Office of Rail Regulation**]** , is to broadly the same effect.

(4) Before acting under sub-paragraph (1) above, **[**[F901]the Office of Rail Regulation**]** shall consider the objections referred to in that sub-paragraph.

[[F902](4A) Paragraph 1H applies to the making of any determination by the Office of Rail Regulation of what should be included in a new review notice to be given under this paragraph as it applies to the conduct of an access charges review.**]**

(5) If **[**[F901]the Office of Rail Regulation**]** gives a new review notice under paragraph 4 above by virtue of sub-paragraph (2)(a) above, the references in that paragraph and paragraph 7(2) above to **[**[F903]its**]** conclusions on the access charges review shall be read in relation to the new notice as references to those conclusions as modified since the previous review notice (in particular as the result of any objections or representations made in relation to it).

Textual Amendments

F901 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F902 Sch. 4A para. 8(4A) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 6**; S.I. 2007/62, **art. 2**

F903 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**

Reference to Competition Commission

9 (1) A reference to the Competition Commission under this paragraph shall be so framed as to require them to investigate and report on the questions specified in sub-paragraph (2) below.

(2) Those questions are—

(a) whether the matters considered on the access charges review which are specified in the reference operate, or may be expected to operate, against the public interest; and

(b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the making of relevant changes.

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(3) **[**[F904]the Office of Rail Regulation**]** may, at any time, by notice given to the Competition Commission vary a reference under this paragraph—

(a) by adding to the matters specified in the reference; or

(b) by excluding from the reference some or all of the matters so specified.

(4) On receipt of such a notice the Competition Commission shall give effect to the variation.

(5) **[**[F904]the Office of Rail Regulation**]** may specify in a reference under this paragraph, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any relevant changes by which, in his opinion, those effects could be remedied or prevented.

(6) As soon as practicable after making a reference under this paragraph, or a variation of such a reference, the Regulator—

(a) shall serve a copy of the reference or variation on the persons on whom a copy of the review notice was served; and

(b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

[[F905](6A) A reference to the Competition Commission under this paragraph must be accompanied by—

(a) any information which in the case in question was provided to the Office of Rail Regulation by the Secretary of State or the Scottish Ministers under paragraph 1D;

(b) any information to which he or they referred in discharging the obligation imposed by that paragraph;

(c) any suggestion which in that case was made under paragraph 1E; and

(d) any revision of anything falling within paragraph (a) to (c) which has been notified to that Office under paragraph 1F or 1G.**]**

(7) For the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this paragraph, **[**[F904]the Office of Rail Regulation**]** shall give to the Competition Commission **[**[F906](in addition to the information and revisions mentioned in sub-paragraph (6A))**]** any information in **[**[F907]its**]** possession which relates to matters falling within the scope of the investigation and—

(a) is requested by the Competition Commission for that purpose; or

(b) is information which, in **[**[F907]its**]** opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;

and any other assistance which the Competition Commission may require, and which it is within **[**[F907]its**]** power to give, in relation to any such matters.

(8) For the purpose of carrying out such an investigation, the Competition Commission shall take account of any information given to them for that purpose under **[**[F908]sub-paragraphs (6A) and**]** (7) above.

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(9) In determining for the purposes of this paragraph whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on **[**[F904]the Office of Rail Regulation**]** by section 4 of this Act **[**[F909]and to the information, suggestions and revisions mentioned in sub-paragraph (6A)**]**

Textual Amendments

F904 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F905 Sch. 4A para. 9(6A) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(1)**; S.I. 2007/62, **art. 2**

F906 Words in Sch. 4A para. 9(7) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(2)**; S.I. 2007/62, **art. 2**

F907 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**

F908 Words in Sch. 4A para. 9(8) substituted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(3)**; S.I. 2007/62, **art. 2**

F909 Words in Sch. 4A para. 9(9) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(4)**; S.I. 2007/62, **art. 2**

References under paragraph 9: time limits

10 [F910] . . . . . .

Textual Amendments

F910 Sch. 4A para. 10 repealed (29.1.2007) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2007/62, **art. 2**

References under paragraph 9: application of Enterprise Act 2002

[[F911]10A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);
(b) section 110 (enforcement of powers under section 109: general);
(c) section 111 (penalties);
(d) section 112 (penalties: main procedural requirements);
(e) section 113 (payments and interest by instalments);
(f) section 114 (appeals in relation to penalties);
(g) section 115 (recovery of penalties); and
(h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of sub-paragraph (1) above, have effect as if—

(a) subsection (2) were omitted; and

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(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—

(a) for the words "published (or, in the case of a report under section 50 or 65, given)" there were substituted "made";

(b) for the words "published (or given)", in both places where they appear, there were substituted "made"; and

(c) the words "by this Part" were omitted.

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words **[**[F912] "the OFT, OFCOM,"**]** and "or the Secretary of State" were omitted.

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.**]**

Textual Amendments

F911 Sch. 4A paras. 10, 10A substituted (20.6.2003) for Sch. 4A para. 10 by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 8, 12)

F912 Words in Sch. 4A para. 10A(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389, 411(2)(3), **Sch. 16 para. 4(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), **Sch. 1** (subject to art. 3(3))

Report on reference

11 (1) In making a report on a reference under paragraph 9 above, the Competition Commission shall include in the report—

(a) definite conclusions on the questions comprised in the reference; and

(b) such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions.

(2) Where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, they shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have.

(3) Where they conclude that any adverse effects so specified could be remedied or prevented by the making of relevant changes, they shall in the report—

(a) specify the relevant changes by which those effects could be remedied or prevented; and

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(b) state, in relation to each of the relevant changes, the date on which it should come into operation.

(4) A date stated in the report as that on which a relevant change should come into operation may be a date before the report is made, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.

[F913(4A) For the purposes of paragraphs 12 to 14 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.]

[F913(4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

[F914(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.

(5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.

(5B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(5C) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.

(5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.]

(6) A report of the Competition Commission on a reference under paragraph 9 above shall be made to [F915the Office of Rail Regulation] .

(7) [F915the Office of Rail Regulation] shall, on receiving such a report, send a copy of it to the Secretary of State and the Authority.

(8) Not less than 14 days after that copy is received by the Secretary of State, [F915the Office of Rail Regulation] shall send a copy to each of the persons on whom a copy of the review notice was served.

(9) Not less than 24 hours after complying with sub-paragraph (8) above, [F915the Office of Rail Regulation] shall publish the report in such manner as [F916it] considers

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appropriate for bringing the report to the attention of persons likely to be affected by it.

(10) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days after he receives his copy of the report, direct **[**[F915]the Office of Rail Regulation**]** to exclude that matter from—

(a) every copy of the report sent under sub-paragraph (8) above, and

(b) the version of the report published under sub-paragraph (9) above.

Textual Amendments

F913 Sch. 4A para. 11(4A)(4B) inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(b)(i); S.I. 2003/1397, **art. 2(1)**, Sch.

F914 Sch. 4A para. 11(5)-(5D) substituted (20.6.2003) for Sch. 4A para. 11(5) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(15)(b)(ii)**; S.I. 2003/1397, art. 2(1), **Sch.**

F915 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F916 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(b)** Table; S.I. 2004/827, **art. 4(g)**

Changes following report

12 (1) Where a report of the Competition Commission on a reference under paragraph 9 above—

(a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,

(b) specifies effects adverse to the public interest which those matters have or may be expected to have,

(c) includes conclusions to the effect that those effects could be remedied or prevented by the making of relevant changes, and

(d) specifies relevant changes by which those effects could be remedied or prevented,

[[F917]the Office of Rail Regulation**]** shall, subject to the following provisions of this paragraph and paragraph 13 below, make such relevant changes as appear to **[**[F918]it**]** requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making relevant changes under this paragraph, **[**[F917]the Office of Rail Regulation**]** shall have regard to the relevant changes specified in the report.

(3) Before making relevant changes under this paragraph, **[**[F917]the Office of Rail Regulation**]** shall give notice—

(a) stating that **[**[F918]it**]** proposes to make the relevant changes and setting out their effect,

(b) stating the reasons why **[**[F918]it**]** proposes to make the relevant changes,

(c) stating, in relation to each of the proposed relevant changes, the date on which **[**[F918]it**]** proposes that it should come into operation, and

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(d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed relevant changes may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under sub-paragraph (3) above shall be given—

(a) by publishing the notice in such manner as **[**[F917]the Office of Rail Regulation**]** considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the relevant changes; and

(b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

[[F919](4A) Where (after considering any representations and objections which are duly made and not withdrawn) the Office of Rail Regulation proposes to make relevant changes under this paragraph, it must give a notice to the relevant authorities which—

(a) sets out everything that would have to be included in a notice under sub-paragraph (5) with respect to the proposed changes;

(b) specifies a period within which the Secretary of State, the Scottish Ministers or each of them has the opportunity of revising, in the light of those proposals, any information provided under paragraph 1D.

(4B) If in consequence of any revision of that information that is notified to the Office of Rail Regulation within the period specified in that notice, that Office decides to modify its proposals, it must—

(a) give a new notice with respect to the modified proposals under sub-paragraph (3); and

(b) comply again with sub-paragraph (4A) and this sub-paragraph before giving notice of the modified proposals to the Competition Commission.

(4C) The relevant authorities for the purposes of sub-paragraph (4A) are each of the following—

(a) where the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;

(b) where the Scottish Ministers were given notice of the review under that paragraph, those Ministers; and

(c) in each of those cases, the Treasury.**]**

(5) Where (after considering any representations or objections which are duly made and not withdrawn **[**[F920]and any revisions of information provided under paragraph 1D that were notified within the period specified under sub-paragraph (4A)**]**) **[**[F917]the Office of Rail Regulation**]** proposes to make relevant changes under this paragraph, **[**[F918]it**]** shall give notice to the Competition Commission—

(a) setting out the relevant changes **[**[F918]it**]** proposes to make;

(b) stating the reasons why **[**[F918]it**]** proposes to make the relevant changes; and

(c) stating, in relation to each of the proposed relevant changes, the date on which **[**[F918]it**]** proposes that it should come into operation.

(6) **[**[F917]the Office of Rail Regulation**]** shall include with the notice under sub-paragraph (5) above a copy of any representations and objections which have been

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considered **[**[F921]and a copy of any revisions of information provided under paragraph 1D that have been notified within the period specified in the notice under sub-paragraph (4A)**]**.

(7) A date stated in a notice under sub-paragraph (3) or (5) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.

(8) If the period within which a direction may be given by the Competition Commission under paragraph 13 below expires without such a direction being given, **[**[F917]the Office of Rail Regulation**]** shall make the relevant changes set out in the notice under sub-paragraph (5) above.

(9) If a direction is given by the Competition Commission under paragraph 13(1)(b) below, **[**[F917]the Office of Rail Regulation**]** shall make such of those relevant changes as are not specified in the direction.

(10) As soon as practicable after making relevant changes under this paragraph, **[**[F917]the Office of Rail Regulation**]** shall send a copy of the relevant changes

[[F922](a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State; and

(b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers.**]**

Textual Amendments

F917 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F918 Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(b)** Table; S.I. 2004/827, **art. 4(g)**

F919 Sch. 4A para. 12(4A)-(4C) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 8(1)**; S.I. 2007/62, **art. 2**

F920 Words in Sch. 4A para. 12(5) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 8(2)**; S.I. 2007/62, **art. 2**

F921 Words in Sch. 4A para. 12(6) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 8(4)**; S.I. 2007/62, **art. 2**

F922 Sch. 4A para. 12(10)(a)(b) substituted (29.1.2007) for words by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 8(5)**; S.I. 2007/62, **art. 2**

Competition Commission's power to veto changes

13 (1) The Competition Commission may, within the period of four weeks beginning with the day on which they are given notice under paragraph 12(5) above, give a direction to **[**[F923]the Office of Rail Regulation**]**—

(a) not to make the relevant changes set out in the notice; or

(b) not to make such of those relevant changes as are specified in the direction.

(2) The Secretary of State may, if an application is made to him by the Competition Commission within that period of four weeks, extend the period within which a direction may be given under this paragraph to one of six weeks beginning with the

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day on which the Competition Commission are given notice under paragraph 12(5) above.

(3) The Competition Commission may give a direction under this paragraph only if the relevant changes to which it relates do not appear to them requisite for the purpose of remedying or preventing the adverse effects specified in their report on the reference under paragraph 9 above.

(4) If the Competition Commission give a direction under this paragraph, they shall give notice—

(a) setting out the relevant changes contained in the notice given under paragraph 12(5) above;

(b) setting out the direction; and

(c) stating the reasons why they are giving the direction.

(5) A notice under sub-paragraph (4) above shall be given—

(a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the direction; and

(b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

Textual Amendments

F923 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

Making of changes by Competition Commission

14 (1) If the Competition Commission give a direction under paragraph 13 above, they shall themselves make such relevant changes as appear to them requisite for the purpose of remedying or preventing—

(a) the adverse effects specified in their report on the reference under paragraph 9 above; or

(b) such of those adverse effects as would not be remedied or prevented by the relevant changes made by **[**[F924]the Office of Rail Regulation**]** under paragraph 12(9) above.

(2) In exercising the function conferred by sub-paragraph (1) above, the Competition Commission shall have regard to the matters as respects which duties are imposed on **[**[F924]the Office of Rail Regulation**]** by section 4 of this Act.

(3) Before making relevant changes under this paragraph, the Competition Commission shall give notice—

(a) stating that they propose to make the relevant changes and setting out their effect,

(b) stating the reasons why they propose to make the relevant changes,

(c) stating, in relation to each of the proposed relevant changes, the date on which they propose that it should come into operation, and

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(d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A date stated in a notice under sub-paragraph (3) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.

(5) A notice under sub-paragraph (3) above shall be given—

(a) by publishing the notice in such manner as the Competition Commission consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the relevant changes; and

(b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

[[F925](6) As soon as practicable after making relevant changes under this paragraph, the Competition Commission must send a copy of those relevant changes—

(a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State;

(b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers; and

(c) in each of those cases, to the Office of Rail Regulation.**]**

Textual Amendments

F924 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F925 Sch. 4A: para. 14(6) substituted (29.1.2007) "for the last sub-paragraph of paragraph 14" by virtue of Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 9**; S.I. 2007/62, **art. 2**

Paragraphs 13 and 14: supplementary

15 **[**[F926](1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.

(2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.

(2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(2B) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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(b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.

(2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.

(2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);
(b) section 110 (enforcement of powers under section 109: general);
(c) section 111 (penalties);
(d) section 112 (penalties: main procedural requirements);
(e) section 113 (payments and interest by instalments);
(f) section 114 (appeals in relation to penalties);
(g) section 115 (recovery of penalties); and
(h) section 116 (statement of policy).

(2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—

(a) subsection (2) were omitted;
(b) in subsection (4), for the words "the publication of the report of the Commission on the reference concerned" there were substituted "the sending of a copy to **[**[F927]the Office of Rail Regulation**]** under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period"; and
(c) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—

(") if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to **[**[F927]the Office of Rail Regulation**]** under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ".

(2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a)**[**[F928] "the OFT, OFCOM,"**]** and (2), the words and "or the Secretary of State" were omitted.

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(2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.**]**

(3) For the purpose of assisting the Competition Commission in exercising their functions under paragraphs 13 and 14 above, **[**[F927]the Office of Rail Regulation**]** shall give to the Competition Commission **[**[F929](in addition to the information provided in accordance with paragraph 12(5) and (6))**]** any information in **[**[F930]its**]** possession which relates to matters relevant to the exercise of those functions and—

(a) is requested by the Competition Commission for that purpose; or

(b) is information which, in his opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;

and any other assistance which the Competition Commission may require, and which it is within **[**[F930]its**]** power to give, in relation to any such matters.

(4) For the purpose of exercising those functions, the Competition Commission shall take account of

[[F931](a) every revision of which they have been given notice under paragraph 12(6) of information provided under paragraph 1D; and

(b) all information**]**

given to them for that purpose under sub-paragraph (3) above.

Textual Amendments

F926 Sch. 4A para. 15(1)-(2I) substituted (20.6.2003) for Sch. 4 para. 15(1)(2) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(c); S.I. 2003/1397, **art. 2(1)**, Sch.

F927 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

F928 Words in Sch. 4A para. 15(2G) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389, 411(2)(3), **Sch. 16 para. 4(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to art. 3(3))

F929 Words in Sch. 4A para. 15(3) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 10(1)**; S.I. 2007/62, **art. 2**

F930 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**

F931 Sch. 4A para. 15(4)(a)(b) substituted (29.1.2007) for words by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 10(2)**; S.I. 2007/62, **art. 2**

Termination notice in response to proposals after reference

16 (1) Where a notice is served on the beneficiary under paragraph 12(3) or 14(3) above, he may give notice (a "post-reference termination notice") terminating the access agreement.

(2) The post-reference termination notice shall specify the date on which the access agreement is to terminate.

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(3) The post-reference termination notice shall be given by serving a copy on—

(a) the facility owner or installation owner;

(b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and

(c) **[**[F932]the Office of Rail Regulation**]**.

(4) The date specified by the post-reference termination notice as that on which the access agreement is to terminate shall be neither—

(a) less than six months, nor

(b) more than one year,

after the copy of the post-reference termination notice is served on the facility owner or installation owner.

(5) The post-reference termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice under paragraph 12(3) or 14(3) above is served on the beneficiary.

Textual Amendments

F932 Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**

[F933F933] SCHEDULE 5

. . . . . .

Textual Amendments

F933 Sch. 5 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1**; S.I. 2006/2911, **art. 2**, Sch. (subject to arts. 3-7)

SCHEDULE 6

Section 59.

RAILWAY ADMINISTRATION ORDERS

Modifications etc. (not altering text)

C89 Sch. 6 modified (18.12.1996) by 1996 c. 61, **s. 19(2)(b)(4)(5)**
Sch. 6 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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PART I

MODIFICATIONS OF THE 1986 ACT

General application of provisions of 1986 Act

1 Where a railway administration order has been made, sections 11 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—

(a) as if references in those sections to an administration order were references to a railway administration order and references to an administrator were references to a special railway administrator;

[[F952](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;**]** and

(b) where the company in relation to which the order has been made is a protected railway company which **[**[F953]is not a company registered under the Companies Act 2006 in England and Wales or Scotland**]**, as if references in those sections to a company included references to such a company.

Textual Amendments

F952 Sch. 6 para. 1(aa) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(5)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F953 Words in Sch. 6 para. 1(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(a)** (with art. 10)

Effect of order

2 In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule,—

(a) the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the railway administration order in a case where the order is made by virtue of section 61 of this Act; and

(b) the reference in subsection (3)(d) to proceedings shall include a reference to any proceedings under or for the purposes of section 55 **[**[F954]or 57A**]** of this Act.

Textual Amendments

F954 Words in Sch. 6 para. 2(b) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 48**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Appointment of special railway administrator

3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—

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"(3) An application for an order under subsection (2) may be made—

(a) by the **[**[F955]appropriate national authority**]** ;

(b) [F956] . . . . . .

(c) by any continuing special railway administrator of the company or, where there is no such special railway administrator, by the company, the directors or any creditor or creditors of the company."

Textual Amendments

F955 Words in Sch. 6 para. 3 substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. {49(4)(c)}, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F956 Sch. 6 para. 3: "in the substituted subsection (3), paragraph (b)" repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

General powers of special railway administrator

4 In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule,—

(a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be taken to include a reference to a power to act on behalf of the company for the purposes of this Act or any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and

(b) in subsection (4), the reference to a power conferred by the company's **[**[F957]articles of association**]** —

(i) shall be taken to include a reference to any power conferred by any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and

(ii) in the case of a company which is an unregistered company, shall be taken also to include a reference to any power conferred by the company's constitution.

Textual Amendments

F957 Words in Sch. 6 para. 4(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(b)** (with art. 10)

Power to deal with charged property

5 (1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.

(2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words "in the open market by a willing vendor" there shall be substituted the words " for the best price which is reasonably available on a sale which is consistent with the purposes of the railway administration order ".

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Duties of special railway administrator

6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect in accordance with the following provisions of this paragraph.

(2) For subsection (2) there shall be substituted the following subsection—

"(2) Subject to any directions of the court, it shall be the duty of the special railway administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his."

(3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors' meeting) shall be omitted.

Discharge of order

7 (1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.

(2) For subsections (1) and (2) there shall be substituted the following subsection—

"(1) An application for a railway administration order to be discharged may be made—

(a) by the special railway administrator, on the ground that the purposes of the order have been achieved; or

(b) by the **[**[F958]appropriate national authority**]**[F959]. . . on the ground that it is no longer necessary that the purposes of the order are achieved."

(3) In subsection (3), the words "or vary" shall be omitted.

[F960](4) In subsection (4), the words "or varied" and "or variation" shall be omitted and for the words " to the registrar of companies " there shall be substituted—

[[F961](a) where the company—

(i) is registered under the Companies Act 2006, or

(ii) is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies) to deliver any documents to the registrar of companies,

the words "to the Office of Rail Regulation, the appropriate national authority and the registrar of companies"; and

(b) where paragraph (a) above does not apply, the words "to the Office of Rail Regulation and the appropriate national authority".**]**

Textual Amendments

F958 Words in Sch. 6 para. 7 substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. {49(4)(c)}, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F959 Sch. 6 para. 7(2): "in the substituted section 18(1)(b)" words repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

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F960 By Railways Act 2005 (c. 14), **ss. 49(6)**, 60; S.I 2005/2812, {art. 2(1)}, Sch. 1 it is provided that for the words "the Strategic Rail Authority" the words "the appropriate national authority" are substituted in Sch. 6 para. 7(4) (16.10.2005)

F961 Sch. 6 para. 7(4)(a)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(c)** (with art. 10)

Notice of making of order

8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words "to the registrar of companies" there shall be substituted—

[[F962](a) where the company—

(i) is registered under the Companies Act 2006, or

(ii) is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies) to deliver any documents to the registrar of companies,

the words "to the Office of Rail Regulation, the appropriate national authority and the registrar of companies"; and

(b) where paragraph (a) above does not apply, the words "to the Office of Rail Regulation and the appropriate national authority".**]**

Textual Amendments

F962 Sch. 6 para. 8(a)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(c)** (with art. 10)

Statement of proposals

9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—

"(1) Where a railway administration order has been made, the special railway administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—

(a) to the Secretary of State ;

(b) to**[**[F963] the Office of Rail Regulation**]** ;

(c) [F964] . . . . . .

(d) so far as he is aware of their addresses, to all creditors of the company; and

(e) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the [M109]Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;

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and may from time to time revise those proposals.

(2) If at any time—

(a) the special railway administrator proposes to make revisions of the proposals for achieving the purposes of the railway administration order, and

(b) those revisions appear to him to be substantial,

the special railway administrator shall, before making those revisions, send a statement of the proposed revisions to the persons specified in subsection (2A).

(2A) The persons mentioned in subsection (2) are—

(a) the Secretary of State;

[[F963](b) the Office of Rail Regulation]

(c) [F964] . . . . . .

(d) all creditors of the company, so far as the special railway administrator is aware of their addresses; and

[[F965](e) where the company—

(i) is registered under the Companies Act 2006, or

(ii) is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies) to deliver any documents to the registrar of companies,

the registrar of companies.]

(2B) Where the special railway administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

Textual Amendments

F963 Words in Sch. 6 Pt. 1 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 18**; S.I. 2004/827, **art. 4(g)**

F964 Sch. 6 para. 9: words in subsections (1)(c)(2A)(c) "of the substituted section 23" repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F965 Words in Sch. 6 para. 9 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(d)** (with art. 10)

Marginal Citations

M109 1985 c. 6.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Applications to court

10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.

(2) After subsection (1) there shall be inserted the following subsections—

"(1A) At any time when a railway administration order is in force the Secretary of State [F966]. . . may apply to the High Court or the Court of Session by petition for an order under this section on the ground specified in subsection (1B).

(1B) The ground mentioned in subsection (1A) is that the special railway administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—

(a) will not best ensure the achievement of the purposes of the order; or

(b) without prejudice to paragraph (a) above, involves a contravention of any of the conditions of any licence under Part I of the Railways Act 1993 held by the company.

(1C) Where an application is made under subsection (1) in respect of a company in relation to which a railway administration order is in force—

(a) notice of the application shall be given to the Secretary of State; and

(b) he shall be entitled to be heard by the court in connection with that application."

(3) Subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator's proposals) shall be omitted.

(4) In subsection (4) (provision that may be made in an order), the words "Subject as above" shall be omitted and for paragraph (d) there shall be substituted—

"(d) without prejudice to the powers exercisable by the court in making a railway administration order—

(i) provide that the railway administration order is to be discharged as from such date as may be specified in the order unless, before that date, such measures are taken as the court thinks fit for the purpose of protecting the interests of creditors; and

(ii) make such consequential provision as the court thinks fit."

[F967](5) For subsection (6) there shall be substituted—

"(6) Where a railway administration order is discharged in consequence of such provision in an order under this section as is mentioned in subsection (4)(d)(i), the special railway administrator shall, within 14 days after the date on which the discharge takes effect, send **[**[F968]a copy**]** of the order under this section—

(a) to **[**[F969] the Office of Rail Regulation**]** ;

(b) to the Director of Passenger Rail Franchising; and

[[F970](c) where the company—

(i) is registered under the Companies Act 2006, or

(ii) is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies) to deliver any documents to the registrar of companies,

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to the registrar of companies.**]**

and if, without reasonable excuse, the special railway administrator fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine."

Textual Amendments

F966 Sch. 6 para. 10(2): words "in the substituted subsection 21(1A)" repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F967 By Railways Act 2005 (c. 14), **ss. 49(6)**, 60; S.I 2005/2812, {art. 2(1)}, Sch. 1 it is provided that for the words "the Strategic Rail Authority" the words "the appropriate national authority" are substituted in Sch. 6 para. 10(5) (16.10.2005)

F968 Words in Sch. 6 para. 10(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(e)(i)** (with art. 10)

F969 Words in Sch. 6 Pt. 1 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 18**; S.I. 2004/827, **art. 4(g)**

F970 Words in Sch. 6 para. 10(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 143(7)(e)(ii)** (with art. 10)

Particular powers of special railway administrator

11 In the application of Schedule 1 to the 1986 Act (which sets out certain powers of the administrator) by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a company which is an unregistered company, paragraph 22 shall be omitted.

PART II

FURTHER MODIFICATIONS OF THE 1986 ACT: APPLICATION IN RELATION TO FOREIGN COMPANIES

Introductory

12 (1) Where a railway administration order has been made in relation to a company which is a foreign company, sections 11 to 23 and 27 of the 1986 Act (as applied by Part I of this Schedule) shall apply in relation to that foreign company with the further modifications set out in the following provisions of this Part of this Schedule.

(2) In this Part of this Schedule, "foreign company" means a company incorporated outside Great Britain.

Effect of order

13 (1) Section 11 of the 1986 Act (effect of administration order), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.

(2) In subsection (1), paragraph (b) shall be omitted.

(3) Subsection (2) shall be omitted.

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(4) In subsection (3)—

(a) paragraphs (a) and (b) shall be omitted; and

(b) in paragraph (d)—

(i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and

(ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales;

and any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.

(5) Subsections (4) and (5) shall be omitted.

(6) At the end of that section there shall be added—

"(6) Where a railway administration order is in force in relation to a company which is a foreign company within the meaning of section 65 of the Railways Act 1993—

(a) any person appointed to perform functions equivalent to those of an administrative receiver, and

(b) if the special railway administrator so requires, any person appointed to perform functions equivalent to those of a receiver,

shall refrain from performing those functions in Great Britain in relation to the foreign company and any of the company's property for the time being situated in Great Britain, during the period for which that order is in force or, in the case of such a person as is mentioned in paragraph (b) above, during so much of that period as falls after the date on which he is required to do so."

Notification of order

14 In section 12 of the 1986 Act (notification of order), as applied by this Part of this Schedule in relation to a foreign company, the reference to a statement that the affairs, business and property of the company are being managed by the administrator shall be taken as a reference to a statement that—

(a) the affairs and business of the foreign company so far as carried on in Great Britain, and

(b) the property of the foreign company so far as that property is for the time being situated within Great Britain,

are being managed by the special railway administrator.

General powers of special railway administrator

15 (1) Section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.

(2) In subsection (1)(a), the reference to the affairs, business and property of the company shall be taken as a reference to—

(a) the affairs and business of the foreign company so far as carried on in Great Britain, and

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(b) the property of that company so far as that property is for the time being situated within Great Britain.

(3) Subsection (2)(a) shall be omitted.

(4) In subsection (4)—

(a) the reference to any power conferred on the company or its officers shall be taken to include any power conferred on the foreign company or its officers under the law under which the foreign company is incorporated; and

(b) any reference (however expressed) to the exercise of any power conferred on the company or its officers shall be taken as a reference to the exercise of that power so far as it relates to—

(i) the affairs and business of the foreign company so far as carried on in Great Britain, or

(ii) the property of that company so far as that property is for the time being situated within Great Britain.

Power to deal with charged property

16 In section 15 of the 1986 Act (power of administrator to deal with charged property etc), as applied by this Part of this Schedule in relation to a foreign company, any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.

Duties of special railway administrator

17 In section 17 of the 1986 Act (general duties of administrator), as applied by this Part of this Schedule in relation to a foreign company,—

(a) in subsection (1), the reference to property shall be taken as a reference to property for the time being situated within Great Britain; and

(b) in subsection (2), the reference to the affairs, business and property of the company shall be taken as a reference to—

(i) the affairs and business of the foreign company so far as carried on in Great Britain, and

(ii) the property of that company so far as that property is for the time being situated within Great Britain.

Statement as to company's affairs

18 In section 22(1) of the 1986 Act (power of administrator to require certain persons to provide him with a statement as to company's affairs), as applied by this Part of this Schedule in relation to a foreign company, the reference to the affairs of the company shall be taken as a reference to the affairs of the foreign company so far as they are carried on in Great Britain, or relate to property of that company for the time being situated within Great Britain.

Particular powers of special railway administrator

19 (1) The powers conferred on a special railway administrator by virtue of Schedule 1 to the 1986 Act (which sets out certain powers of an administrator), as that Schedule applies by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a foreign company, shall be exercisable only in relation to—

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(a) the affairs and business of that company, so far as carried on in Great Britain; and

(b) the property of that company, so far as that property is for the time being situated within Great Britain.

(2) In that Schedule, as it so applies,—

(a) without prejudice to sub-paragraph (1) above, references to the property of that company shall be taken as references to that property, so far as that property is for the time being situated within Great Britain; and

(b) paragraph 19 shall be omitted.

PART III

SUPPLEMENTAL

General adaptations and saving

20 (1) Subject to the preceding provisions of this Schedule, references in the 1986 Act (except in sections 8 to 10 and 24 to 26), or in any other enactment passed before this Act, to an administration order under Part II of that Act, to an application for such an order and to an administrator shall include references, respectively, to a railway administration order, to an application for a railway administration order and to a special railway administrator.

(2) Subject as aforesaid and to sub-paragraph (3) below, references in the 1986 Act, or in any other enactment passed before this Act, to an enactment contained in Part II of that Act shall include references to that enactment as applied by section 60, 61, 62 or 65 of this Act or Part I or II of this Schedule.

(3) Sub-paragraphs (1) and (2) above shall apply in relation to a reference in an enactment contained in Part II of the 1986 Act only so far as necessary for the purposes of the operation of the provisions of that Part as so applied.

(4) The provisions of this Schedule shall be without prejudice to the power conferred by section 411 of the 1986 Act (company insolvency rules), as modified by sub-paragraphs (1) and (2) above.

Interpretation

21 (1) In this Schedule "the 1986 Act" means the [M110]Insolvency Act 1986.

(2) In this Schedule, and in any modification of the 1986 Act made by this Schedule, "special railway administrator", in relation to a railway administration order, means any person appointed in relation to that order for the purposes of section 59(1) of this Act; and in any such modification "railway administration order" has the same meaning as in this Act.

Marginal Citations

M110 1986 c. 45.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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SCHEDULE 7

Section 59.

TRANSFER OF RELEVANT ACTIVITIES IN CONNECTION WITH RAILWAY ADMINISTRATION ORDERS

Modifications etc. (not altering text)
C90 Sch. 7 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Application of Schedule

1 (1) This Schedule shall apply in any case where—

(a) the court has made a railway administration order in relation to a protected railway company ("the existing appointee"); and

(b) it is proposed that, on and after a date appointed by the court, another company ("the new appointee") should carry on the relevant activities of the existing appointee, in place of the existing appointee.

(2) In this Schedule—

"the court", in the case of any protected railway company, means the court having jurisdiction to wind up the company;

"other appointee" means any company, other than the existing appointee or the new appointee, which is the holder of a licence under section 8 of this Act **[**[F971]or of a European licence**]** and which may be affected by the proposal mentioned in sub-paragraph (1)(b) above;

"the relevant date" means such day, being a day before the discharge of the railway administration order takes effect, as the court may appoint for the purposes of this Schedule; and

"special railway administrator", in relation to a company in relation to which a railway administration order has been made, means the person for the time being holding office for the purposes of section 59(1) of this Act.

(3) Any reference in this Schedule to "assignment" shall be construed in Scotland as a reference to assignation.

Textual Amendments
F971 Words in Sch. 7 para. 1(2) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(10)(a)**

Making and modification of transfer schemes

2 (1) The existing appointee, acting with the consent of the new appointee and, in relation to the matters affecting them, of any other appointees, may make a scheme under this Schedule for the transfer of property, rights and liabilities from the existing appointee to the new appointee.

(2) A scheme under this Schedule shall not take effect unless it is approved by **[**[F972]the appropriate national authority**]** .

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(3) Where a scheme under this Schedule is submitted to **[**[F973]"the appropriate national authority, it**]** may, with the consent of the new appointee, of the existing appointee and, in relation to the matters affecting them, of any other appointees, modify the scheme before approving it.

(4) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any company **[**[F972]the appropriate national authority**]** considers it appropriate to do so and the existing appointee, the new appointee and, in relation to the provisions of the order which affect them, any other appointees consent to the making of the order, **[**[F972]the appropriate national authority**]** may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.

(5) An order under sub-paragraph (4) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme and, in connection with giving effect to that provision from that time, may contain such supplemental, consequential and transitional provision as **[**[F972]the appropriate national authority**]** considers appropriate.

(6) In determining, in accordance with **[**[F974]the appropriate national authority's**]** duties under Part I of this Act, whether and in what manner to exercise any power conferred on him by this paragraph **[**[F972]the appropriate national authority**]** , shall have regard to the need to ensure that any provision for the transfer of property, rights and liabilities in accordance with a scheme under this Schedule allocates property, rights and liabilities to the different companies affected by the scheme in such proportions as appear to **[**[F972]the appropriate national authority**]** to be appropriate in the context of the different relevant activities of the existing appointee which will, by virtue of this Act, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.

(7) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide **[**[F972]the appropriate national authority**]** with all such information and other assistance as **[**[F972]the appropriate national authority**]** may reasonably require for the purposes of, or in connection with, the exercise of any power conferred [F975]. . . by this paragraph.

(8) Without prejudice to the other provisions of this Act relating to the special railway administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a railway administration order is in force, be effective only if it is done on the company's behalf by its special railway administrator.

[[F976](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.**]**

Textual Amendments

F972 Words in Sch. 7 para. 2 substituted (16.10.2005) by Railways Act 2005 (c. 14), **s. 49(7)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F973 Words in Sch. 7 para. 2(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(8)(a)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

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F974 Words in Sch. 7 para. 2(6) substituted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(8)(b)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F975 Words in Sch. 7 para. 2(7) omitted (1.2.2001) and repealed (*prosp.*) by 2000 c. 38, ss. 215, 274, Sch. 16 para. 54(5)(c), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in **Sch. 2 Pt. II**) (which S.I. was amended by S.I. 2001/115)

F976 Sch. 7 para. 2(9) inserted (26.10.2005) by Railways Act 2005 (c. 14), **ss. 49(9)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

Modifications etc. (not altering text)

C91 Sch. 7 para. 2 modified (18.12.1996) by 1996 c. 61, **s. 19(6)**

Transfers by scheme

3 (1) A scheme under this Schedule for the transfer of the existing appointee's property, rights and liabilities shall come into force on the relevant date and, on coming into force, shall have effect, in accordance with its provisions and without further assurance, so as to transfer the property, rights and liabilities to which the scheme relates to the new appointee.

(2) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—

(a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;

(b) create new rights and liabilities as between any two or more of those companies; and

(c) in connection with any provision made by virtue of paragraph (a) or (b) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.

(3) The property, rights and liabilities of the existing appointee that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—

(a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;

(b) such property, rights and liabilities to which the existing appointee may become entitled or subject after the making of the scheme and before the relevant date as may be described in the scheme;

(c) property situated anywhere in the United Kingdom or elsewhere;

(d) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(4) The provision that may be made by virtue of sub-paragraph (2)(b) above includes—

(a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies thereof;

(b) provision applying section 64 of the [M111]Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect; and

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(c) provision that where a scheme under this Schedule transfers any interest in land or other property situated in Scotland, subsections (1) and (2) of section 16 of the [M112]Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words "unless specially qualified" were omitted.

(5) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (3) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than in accordance with a scheme under this Schedule, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the existing appointee is entitled or subject to the property, right or liability in question.

Marginal Citations
M111 1925 c. 20.
M112 1979 c. 33.

Transfer of licences

4 (1) A scheme under this Schedule may provide for a licence held by the existing appointee to have effect as if it had been granted to the new appointee.

(2) Different schemes under this Schedule may provide for a licence held by the same existing appointee to have effect as if it had been granted as a separate licence to each of the new appointees under those schemes.

[[F977](3) Sub-paragraphs (1) and (2) have effect in relation to a European licence as they have effect in relation to a licence.**]**

Textual Amendments
F977 Sch. 7 para. 4(3) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(10)(b)**

Supplemental provisions of schemes

5 (1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the provision for the transfers or any other provision made by the scheme.

(2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—

(a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the new appointee is to be treated as the same person in law as the existing appointee;

(b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things

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done by or in relation to the existing appointee are to be treated as made, effected or done by or in relation to the new appointee;

(c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any officer of, the existing appointee are to have effect with such modifications as are specified in the scheme;

(d) that proceedings commenced by or against the existing appointee are to be continued by or against the new appointee;

(e) that the effect of any transfer under the scheme in relation to contracts of employment with the existing appointee is not to be to terminate any of those contracts but is to be that periods of employment with the existing appointee are to count for all purposes as periods of employment with the new appointee;

(f) that disputes as to the effect of the scheme between the existing appointee and the new appointee, between either of them and any other appointee or between different companies which are other appointees are to be referred to such arbitration as may be specified in or determined under the scheme;

(g) that determinations on such arbitrations and certificates given jointly by two or more such appointees as are mentioned in paragraph (f) above as to the effect of the scheme as between the companies giving the certificates are to be conclusive for all purposes.

Duties of existing appointee after the scheme comes into force

6 (1) A scheme under this Schedule may provide for the imposition of duties on the existing appointee and on the new appointee to take all such steps as may be requisite to secure that the vesting in the new appointee, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.

(2) The provisions of a scheme under this Schedule may require the existing appointee to comply with any directions of the new appointee in performing any duty imposed on the existing appointee by virtue of a provision included in the scheme under sub-paragraph (1) above.

(3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the existing appointee in the new appointee is effective under the relevant foreign law, it shall be the duty of the existing appointee to hold that property or right for the benefit of, or to discharge that liability on behalf of, the new appointee.

(4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the new appointee of any foreign property, right or liability.

(5) A scheme under this Schedule may provide that, in specified cases, foreign property, rights or liabilities that are acquired or incurred by an existing appointee after the scheme comes into force are immediately to become property, rights or liabilities of the new appointee; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the existing appointee when the scheme comes into force.

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(6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(7) Any expenses incurred by an existing appointee in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met by the new appointee.

(8) Duties imposed on a company by virtue of this paragraph shall be enforceable in the same way as if they were imposed by a contract between the existing appointee and the new appointee.

Functions under private and local legislation etc.

7 (1) A scheme under this Schedule may provide that any functions of the existing appointee under a statutory provision—

(a) shall be transferred to the new appointee or any of the other appointees;

(b) shall be concurrently exercisable by two or more companies falling within paragraph (a) above; or

(c) shall be concurrently exercisable by the existing appointee and one or more companies falling within paragraph (a) above;

and different schemes under this Schedule may provide for any such functions of the same existing appointee to have effect as mentioned in paragraphs (a) to (c) above in relation to each of the new appointees under those schemes or of all or any of the other appointees.

(2) Sub-paragraph (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—

(a) relates to any part of the existing appointee's undertaking, or to any property, which is to be transferred by the scheme; or

(b) authorises the carrying out of works designed to be used in connection with any such part of the existing appointee's undertaking or the acquisition of land for the purpose of carrying out any such works.

(3) Sub-paragraph (1) above does not apply to any function of the Board or of any of the Board's subsidiaries under any provision of this Act or of—

(a) the [M113]Transport Act 1962;

(b) the [M114]Transport Act 1968;

(c) section 4 of the [M115]Railways Act 1974; or

(d) sections 119 to 124 of the [M116]Transport Act 1985.

(4) A scheme under this Schedule may define any functions of the existing appointee to be transferred or made concurrently exercisable by the scheme in accordance with sub-paragraph (1) above—

(a) by specifying the statutory provisions in question;

(b) by referring to all the statutory provisions (except those specified in sub-paragraph (3) above) which—

(i) relate to any part of the existing appointee's undertaking, or to any property, which is to be transferred by the scheme, or

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(ii) authorise the carrying out of works designed to be used in connection with any such part of the existing appointee's undertaking or the acquisition of land for the purpose of carrying out any such works; or

(c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.

(5) In this paragraph "statutory provision" means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

Marginal Citations

M113 1962 c. 46.
M114 1968 c. 73.
M115 1974 c. 48.
M116 1985 c. 67.

SCHEDULE 8

Section 97.

TRANSFERS BY TRANSFER SCHEME

Allocation of property, rights and liabilities

1 (1) The provisions of this paragraph and paragraph 2 below shall have effect where a transfer to which this Schedule applies is a transfer of all (or of all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.

(2) Any property, right or liability comprised partly in the part of the transferor's undertaking which is transferred to the transferee and partly in the part of that undertaking which is retained by the transferor shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided—

(a) any rent payable under a lease in respect of that estate or interest, and

(b) any rent charged on that estate or interest,

shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(3) Sub-paragraph (2) above shall apply, with any necessary modifications, in relation to any feuduty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rents charged on an estate or interest in land.

(4) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to—

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(a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date the transferor or the transferee appears likely to make use of the land to the greater extent,

(b) in the case of any other property or any right or liability, whether on the transfer date the transferor or the transferee appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,

subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

2 (1) It shall be the duty of the transferor and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor and as will—

(a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and

(b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee.

(2) Any such agreement shall provide so far as it is expedient—

(a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;

(b) for the granting of indemnities in connection with the severance of leases and other matters; and

(c) for responsibility for registration of any matter in any statutory register.

(3) If the transferor or the transferee represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (1) above that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining that matter and may include in the direction any provision which might have been included in an agreement under sub-paragraph (1) above; and any property, rights or liabilities required by the direction to be transferred to the transferee shall accordingly be regarded as having been transferred to, and vested in, the transferee by virtue of the scheme.

Variation of transfers by agreement

3 (1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer by virtue of a transfer scheme made otherwise than under section 86 of this Act.

(2) At any time before the end of the period of twelve months beginning with the transfer date, the transferor and the transferee of the specified part may, with the approval of the Secretary of State, agree in writing that—

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(a) as from such date as may be specified in or determined under the agreement, and

(b) in such circumstances (if any) as may be so specified,

there shall be transferred from the transferee to, and vested in, the transferor any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(3) Subject to sub-paragraphs (4) and (5) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall be transferred and vest in accordance with the agreement.

(4) Any transfer effected in pursuance of an agreement under sub-paragraph (2) above shall have effect subject to the provisions of any enactment which provides for such transactions to be registered in any statutory register.

(5) The following provisions of this Schedule shall have effect as if—

(a) any reference to a transfer to which this Schedule applies included a reference to a transfer effected in pursuance of an agreement under sub-paragraph (2) above;

(b) any reference to a transaction effected in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above included a reference to such an agreement; and

(c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement.

Right to production of documents of title

4 (1) This paragraph applies where, on any transfer to which this Schedule applies, the transferor is entitled to retain possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee.

(2) Where the land or other property is situated in England and Wales—

(a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and

(b) section 64 of the [M117]Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

(3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the [M118]Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified" were omitted.

(4) Where the land or other property is situated in Northern Ireland—

(a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and

(b) section 9 of the [M119]Conveyancing Act 1881 (which corresponds to section 64 of the [M120]Law of Property Act 1925) shall have effect accordingly, and on

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the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

Marginal Citations

M117 1925 c.20.
M118 1979 c. 33.
M119 1881 c. 41.
M120 1925 c.20.

Perfection of vesting of foreign property, rights and liabilities

5 (1) This paragraph applies in any case where a transfer scheme provides for the transfer of any foreign property, rights or liabilities.

(2) It shall be the duty of the transferor and the transferee to take, as and when the transferee considers appropriate, all such steps as may be requisite to secure that the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law.

(3) Until the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the transferor to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.

(4) Nothing in sub-paragraphs (2) and (3) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the transferee by virtue of a transfer scheme of any foreign property, right or liability.

(5) The transferor shall have all such powers as may be requisite for the performance of his duty under this paragraph, but it shall be the duty of the transferee to act on behalf of the transferor (so far as possible) in performing the duty imposed on the transferor by this paragraph.

(6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(7) Duties imposed on the transferor or the transferee by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the transferor and the transferee.

(8) Any expenses incurred by the transferor under this paragraph shall be met by the transferee.

Proof of title by certificate

6 (1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor and the transferee that—

(a) any property specified in the certificate, or

(b) any such interest in or right over any such property as may be so specified, or

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(c) any right or liability so specified,

is property, or (as the case may be) an interest, right or liability which was intended to be, and was vested by virtue of the scheme in such one of them as may be so specified (and, if it is the transferee who is so specified, that the property, interest, right or liability has not been transferred back to the transferor by virtue of an agreement under paragraph 3(2) above) shall be conclusive evidence for all purposes of that fact.

(2) If on the expiration of one month after a request from either the transferor or the transferee for the preparation of such a joint certificate as respects any property, interest, right or liability they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as he may direct.

(3) This paragraph is without prejudice to paragraph 14(6) and (7) below.

Restrictions on dealing with certain land

7 (1) If the Secretary of State is satisfied on the representation of the transferor or the transferee—

(a) that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by the transferor and by the transferee, and

(b) that the circumstances are such that this paragraph should have effect,

the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction.

(2) While the direction mentioned in sub-paragraph (1) above remains in force—

(a) neither the transferor nor the transferee shall dispose of any interest to which they may respectively be entitled in any of the specified land, except with the consent of the Secretary of State;

(b) if, in connection with any proposal to dispose of any interest of either the transferor or the transferee in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—

(i) require either the transferor or the transferee to dispose of any interest to which he may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;

(ii) require either the transferor or the transferee to acquire from the other any interest in any of the specified land to which that other is entitled; or

(iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.

(3) A person other than the transferor and the transferee dealing with, or with a person claiming under, either the transferor or the transferee shall not be concerned—

(a) to see or enquire whether this paragraph applies, or has applied, in relation to any land to which the dealing relates; or

(b) as to whether the provisions of this paragraph have been complied with in connection with that, or any other, dealing with that land;

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and no transaction between a person other than the transferor or the transferee on the one hand, and the transferor, the transferee or a person claiming under either of them on the other, shall be invalid by reason of any failure to comply with those provisions.

Construction of agreements, statutory provisions and documents

8 (1) This paragraph applies where, in the case of any transfer to which this Schedule applies, any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities under the agreement could be assigned by the transferor.

(2) So far as relating to property, rights or liabilities transferred to the transferee, the agreement shall have effect on and after the transfer date as if—

(a) the transferee had been the party to it;

(b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;

(c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such a person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the first-mentioned person;

(d) any reference in general terms (however worded) to persons employed by, persons engaged in the business of, or agents of, the transferor were, as respects anything to be done on or after the transfer date, a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.

9 (1) Except as otherwise provided in any provision of this Act (whether expressly or by necessary implication), paragraph 8 above shall, so far as applicable, apply in relation to—

(a) any statutory provision,

(b) any provision of an agreement to which the transferor was not a party, and

(c) any provision of a document other than an agreement,

if and so far as the provision in question relates to any of the transferred property, rights and liabilities, as it applies in relation to an agreement to which the transferor was a party.

(2) In relation to any such statutory or other provision as is mentioned in sub-paragraph (1) above, references in sub-paragraph (2)(b), (c) and (d) of paragraph 8 above to the transferor and to any persons employed by, persons engaged in the business of, or agents of, the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.

10 On and after the transfer date for any transfer to which this Schedule applies, any statutory provision to which paragraph 2(3) of Schedule 6 to the [M121]Transport Act 1962 applies if and so far as the provision in question relates to any of the transferred property, rights and liabilities, shall have effect as if—

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(a) any of the references modified by paragraph (a) of the said paragraph 2(3) were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint; and

(b) any of the references modified by paragraph (b) of the said paragraph 2(3) were, as respects a period beginning with the transfer date, a reference to so much of the undertaking of the transferee as corresponds as mentioned in the said paragraph (b).

Marginal Citations

M121 1962 c. 46.

11 (1) The transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability vested in the transferee by virtue of the scheme as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate—

(a) to any property, right or liability vested in the transferee by virtue of the scheme, or

(b) to any agreement or enactment relating to any such property, right or liability,

shall be continued by or against the transferee to the exclusion of the transferor.

(3) This paragraph is without prejudice to the generality of the provisions of paragraphs 8 to 10 above.

12 If, in the case of any transfer to which this Schedule applies, the effect of any agreement (and, in particular, any agreement under the Railway Road Transport Acts of 1928 mentioned in paragraph 1 of Part II of Schedule 2 to the [M122]Transport Act 1962)—

(a) which was executed before the passing of this Act, and

(b) to which the transferee is by virtue of this Act a party,

depends on whether the transferee has power to carry on any activity, it shall be assumed for the purposes of the agreement that any activity which requires the consent of the Secretary of State under the Transport Act 1962 or the [M123]Transport Act 1968 has been authorised by such a consent.

Marginal Citations

M122 1962 c. 46.

M123 1968 c. 73.

13 (1) References in paragraphs 8 to 12 above to agreements to which the transferor was a party and to statutory provisions include, in particular, references to agreements to which the transferor became a party by virtue of the [M124]Transport Act 1962 and statutory provisions which applied to the transferor by virtue of that Act.

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(2) The provisions of paragraphs 8 to 12 above shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

Marginal Citations
M124 1962 c.46.

Third parties affected by vesting provisions

14 (1) Without prejudice to the provisions of paragraphs 8 to 13 above, any transaction effected between the transferor and the transferee in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) It shall be the duty of the transferor and the transferee, if they effect any transaction in pursuance of paragraph 2(1) above or a direction under paragraph 2(3) above, to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee; and if, within 28 days of being notified, such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—

(a) the rights or liabilities of any person other than the transferor and the transferee which are enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee, and

(b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by the transferor, the transferee or both.

(4) If it appears to the transferor that a person is or may be entitled to compensation under sub-paragraph (3) above, he shall—

(a) notify that person that he is or may be so entitled, and

(b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,

or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

(5) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph (3) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—

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(a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, or

(b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session, or

(c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the **[**[F978]Chairman for the time being of the Royal Institution of Chartered Surveyors in Northern Ireland**]** .

(6) Where, in the case of a transfer to which this Schedule applies, the transferor or the transferee purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or any other property transferred—

(a) which before the transfer date belonged to the transferor, or

(b) which is an interest in property which before that date belonged to the transferor,

the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interests in the property conveyed or transferred.

(7) Sub-paragraph (6) above applies in relation to the grant of any lease of, or any other estate or interest in, or right over any such land or other property as is there mentioned as it applies in relation to a transfer of any such land or other property; and references in that sub-paragraph to a conveyance or transfer shall be construed accordingly.

(8) If, in the case of any transfer to which this Schedule applies, it appears to the court at any stage in any court proceedings to which the transferor or the transferee and a person other than the transferor or the transferee are parties that the issues in the proceedings—

(a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or

(b) raise a question of construction on the relevant provisions of this Act which would not arise if the transferor and the transferee constituted a single person,

the court may, if it thinks fit on the application of a party to the proceedings other than the transferor and the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person, and any judgment or order given by the court shall bind both the transferor and the transferee accordingly.

(9) In the case of any transfer to which this Schedule applies, it shall be the duty of the transferor and the transferee to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (6), (7) or (8) above, and if either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a repayment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by him.

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Textual Amendments

F978 Words in Sch. 7 para. 14(5)(c) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 384(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(cc)

Interpretation

15 In this Schedule "statutory provision" means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

SCHEDULE 9

Section 112.

STAMP DUTY AND STAMP DUTY RESERVE TAX

Interpretation

1 (1) In this Schedule—

"the Inland Revenue" means the Commissioners of Inland Revenue;

"restructuring scheme" means a transfer scheme, if and to the extent that it provides for the transfer of property, rights or liabilities from a body or person falling within any of paragraphs (a) to (e) of section 85(1) of this Act to another such body or person.

(2) For the purposes of this Schedule a transfer, instrument or agreement shall be regarded as made in pursuance of Schedule 8 to this Act if the making of that transfer, instrument or agreement is required or authorised by or under paragraph 2 or 3 of that Schedule.

Stamp duty

2 (1) Stamp duty shall not be chargeable on any restructuring scheme which is certified to the Inland Revenue by the Secretary of State as made by him or as made pursuant to a direction given by him under this Act.

(2) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State as made in pursuance of Schedule 8 to this Act, in connection with a restructuring scheme made—

(a) by the Secretary of State; or

(b) pursuant to a direction given by him under this Act.

(3) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State—

(a) as made pursuant to an obligation imposed by any provision included, by virtue of section 91(1)(c) of this Act, in a restructuring scheme made by—

(i) the Secretary of State;

(ii) the Board, pursuant to a direction given by the Secretary of State under this Act; or

(iii) the Franchising Director, pursuant to a direction so given; and

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(b) as operating in favour of no person who does not fall within paragraphs (a) to (e) of section 85(1) of this Act.

(4) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State as being a transfer, or an agreement for the transfer, to the Board or any of the Board's subsidiaries of property, rights or liabilities of the Board or any such subsidiary, made for the purpose of facilitating a disposal required to be made pursuant to a direction given by him under this Act.

(5) No restructuring scheme or other instrument or agreement which is certified as mentioned in any of sub-paragraphs (1) to (4) above shall be taken to be duly stamped unless—

(a) it is stamped with the duty to which it would be liable, apart from the sub-paragraph in question; or

(b) it has, in accordance with section 12 of the [M125]Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.

(6) Section 12 of the Finance Act 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory power) shall not operate to require—

(a) the delivery to the Inland Revenue of a copy of this Act, or

(b) the payment of stamp duty under that section on any copy of this Act,

and shall not apply in relation to any instrument on which, by virtue of the preceding provisions of this paragraph, stamp duty is not chargeable.

Marginal Citations
M125 1891 c. 39.

Stamp duty reserve tax

3 (1) An agreement to transfer chargeable securities, as defined in section 99 of the [M126]Finance Act 1986, to a person falling within paragraphs (a) to (e) of section 85(1) of this Act shall not give rise to a charge to stamp duty reserve tax if the agreement is made for the purposes of, or for purposes connected with, a restructuring scheme made—

(a) by the Secretary of State;

(b) by the Board, pursuant to a direction given by the Secretary of State under this Act; or

(c) by the Franchising Director, pursuant to a direction so given.

(2) An agreement shall not give rise to a charge to stamp duty reserve tax if the agreement is made in pursuance of Schedule 8 to this Act in connection with a restructuring scheme made as mentioned in paragraph (a), (b) or (c) of sub-paragraph (1) above.

Marginal Citations
M126 1986 c. 41.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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[F979][F979]SCHEDULE 10

. . . . . .

Textual Amendments

F979 Sch. 10 repealed (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 118, 120, Sch. 5 para. 2, **Sch. 8**; S.I. 2004/1572, **art. 3(ddd)(hhh)(jjj)(kkk)**

SCHEDULE 11

Section 134.

PENSIONS

Modifications etc. (not altering text)

C92 Sch. 11 modifed (8.6.2005 for certain purposes and 24.7.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 12, 60, **Sch. 2 para. 9(1)(c)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1; S.I. 2005/1909, **art. 2**, Sch.

C93 Sch. 11: power to modify conferred (8.6.2005) by virtue of Railways Act 2005 (c. 14), **ss. 1(8)(b)**, 60; S.I. 2005/1444, **art. 2(1)**, Sch. 1

Interpretation

1 (1) In this Schedule—

"eligible persons", in the case of any pension scheme, means—

(a) any person who is an employee of—

(i) the Board or any subsidiary of the Board, or

(ia) [F982]. . . . . .

(ii) a publicly owned railway company or a **[**[F983]body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement**]**, and

(b) [F984]. . . . . .

but does not include any such person as is mentioned in paragraph (a) above who participates in the Transport Police scheme;

"employment" means employment under a contract of service or apprenticeship (whether express or implied and, if express, whether oral or in writing), and cognate expressions shall be construed accordingly;

"existing scheme" means any occupational pension scheme (other than a new scheme)—

(a) which is a scheme for the provision of pensions for or in respect of persons with service in the railway industry (whether or not pensions may also be provided under the scheme for or in respect of persons without such service); and

(b) which the Secretary of State by order designates as an existing scheme for the purposes of this Schedule;

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"the joint industry scheme" means such occupational pension scheme as the Secretary of State may by order designate as the joint industry scheme for the purposes of this Schedule;

"member", in relation to a pension scheme, means—

(a) any person who participates in that scheme;

(b) any pensioner under that scheme; and

(c) any other person who has pension rights under that scheme;

and "membership" shall be construed accordingly;

"new scheme" means an occupational pension scheme established under paragraph 2 below;

"occupational pension scheme" has the meaning given in section 1 of the [M131]Pension Schemes Act 1993;

"participant", in relation to a pension scheme or a section of a pension scheme, means a person to whom pension rights are accruing under the scheme or section by virtue of his employment in a class or description of employment to which the scheme or section relates; and cognate expressions shall be construed accordingly;

"pension", in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

"pension rights", in relation to any person, includes—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and

(b) a right of allocation in respect of the present or future payment of a pension;

"prescribed" means specified in, or determined in accordance with, an order made by the Secretary of State;

"protected person" has the meaning given by paragraph 5 below;

"the Transport Police scheme" means such one of the schemes for the provision of pensions for or in respect of persons with service as officers of the British Transport Police Force (whether or not pensions may also be provided under the scheme for or in respect of persons without such service) as the Secretary of State may by order designate as the Transport Police scheme for the purposes of this Schedule;

"trustees", in relation to any pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

(2) Any reference in this Schedule to a pension scheme includes a reference to the scheme as amended under or by virtue of this Schedule.

(3) Any power to make an order under or by virtue of this Schedule in relation to an existing scheme, the joint industry scheme, a new scheme, the Transport Police scheme, or a designated scheme within the meaning of paragraph 10 below shall be exercisable notwithstanding that the occupational pension scheme in question only becomes such a scheme by virtue of its establishment or designation as such in the instrument which contains the order in question; and references to such schemes shall be construed accordingly.

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(4) Subject to sub-paragraph (1) above, expressions used in this Schedule and in Part I [F985]. . . of this Act have the same meaning in this Schedule as they have in that Part.

Textual Amendments

F982 Sch. 11 para. 1(1): para. (a)(ia) in definition of "eligible persons" repealed (1.12.2006) by Railways Act 2005 (c. 14), s.s. 59, 60, {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch.

F983 Words in para. (a)(ii) in the definition of "eligible persons" in Sch. 11 para. 1(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F984 Sch. 11 para. 1(1): para. (b) in definition of "eligible persons" omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745, **art. 6(a)**

F985 Words in Sch. 11 para. 1(4) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

M131 1993 c. 48.

Establishment of new schemes

2 (1) The Secretary of State may by order provide for the establishment, administration and management of one or more occupational pension schemes for the provision of pensions and other benefits for or in respect of eligible persons.

(2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision with respect to—

(a) the persons who may participate in, or otherwise be members of, the scheme;
(b) the making of contributions by persons participating in the scheme;
(c) the making of contributions by employers of persons who participate in the scheme;
(d) the amendment of the scheme;
(e) the winding up of the scheme, whether in whole or in part;
(f) the persons by whom any function under or relating to the scheme is to be exercisable.

(3) Any occupational pension scheme established under this paragraph shall be treated for all purposes as if it were a pension scheme established under an irrevocable trust.

Amendment of existing schemes

3 (1) The Secretary of State may by order amend—

(a) the trust deed of any existing scheme;
(b) the rules of any such scheme; or
(c) any other instrument relating to the constitution, management or operation of any such scheme;

and any reference in this Schedule to amending an existing scheme accordingly includes a reference to amending any such trust deed, rules or other instrument.

(2) Without prejudice to the generality of sub-paragraph (1) above, an order under this paragraph may, in particular, amend an existing scheme so as to alter any provision,

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or so as to make provision, with respect to any of the matters specified in paragraphs (a) to (f) of paragraph 2(2) above.

(3) An order under this paragraph shall not make any amendment to a scheme—

[[F986](a) which would prejudice registration of that scheme for the purposes of Part 4 of the Finance Act 2004 (pension schemes etc);**]**

(b) which would prevent the scheme from being a contracted-out scheme for the purposes of Part III of the [M132]Pension Schemes Act 1993 or Part III of the [M133]Pension Schemes (Northern Ireland) Act 1993;

(c) which would to any extent deprive a member of the scheme of pension rights which accrued to him under the scheme before the coming into force of the amendment; or

(d) which would provide for persons who are not eligible persons to become members of the scheme.

(4) The Secretary of State shall not make an order under this paragraph except **[**[F987]with the consent of**]** the trustees of the occupational pension scheme to which the order relates.

Textual Amendments

F986 Sch. 11 para. 3(3)(a) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), **art. 6(b)**

F987 Words in Sch. 11 para. 3(4) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

M132 1993 c. 48.

M133 1993 c. 49.

Transfer of pension rights and corresponding assets and liabilities

4 (1) Where persons with pension rights under any existing or new scheme ("the transferor scheme") are eligible to be members of another scheme ("the transferee scheme") which is either—

(a) an existing or new scheme, or

(b) the Transport Police scheme,

the Secretary of State may by order make provision for those persons to be members of the transferee scheme instead of the transferor scheme and for their pension rights under the transferor scheme to be transferred so as to become pension rights under the transferee scheme.

(2) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order make provision for—

(a) such of the assets held for the purposes of the transferor scheme, and

(b) such of the liabilities under or in relation to that scheme of any employers or trustees,

as he may consider appropriate in consequence of that transfer to be correspondingly transferred so as to become assets or, as the case may be, liabilities in relation to the transferee scheme.

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(3) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order—

(a) impose on the trustees of the transferee scheme, or on the employer (if any) of the person whose pension rights are transferred, duties with respect to—

(i) the participation of that person or that employer in the scheme, or

(ii) the payment of contributions by that employer under the scheme,

in accordance with the rules of the scheme; and

(b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.

(4) The Secretary of State may by order make provision for the winding up of the transferor scheme, whether in whole or in part, in connection with, or in consequence of, any transfers under this paragraph.

(5) The Secretary of State shall not make an order under this paragraph except **[**[F988]with the consent of**]** the trustees of the occupational pension schemes which are, or are to be, the transferor scheme and the transferee scheme.

Textual Amendments

F988 Words in Sch. 11 para. 4(5) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Protection of pension rights: meaning of "protected perso"n

5 In this Schedule "protected person" means—

(a) any person who immediately before the passing of this Act—

(i) is an employee of the Board or of a subsidiary of the Board; and

(ii) is participating in an existing scheme;

(b) any person not falling within paragraph (a) above—

(i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;

(ii) who has participated in an existing scheme before the passing of this Act; and

(iii) who fulfils prescribed conditions;

(c) any person who, immediately before the passing of this Act, has pension rights under an existing scheme but is not participating in that scheme;

(d) any person who, after the passing of this Act, acquires pension rights—

(i) in consequence of the death of a person falling within paragraph (a), (b) or (c) above, and

(ii) by virtue of the participation of that other person in an existing scheme, or in an occupational pension scheme from which pension rights of that person have been transferred, whether directly or indirectly, to an existing scheme.

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The powers of protection

6 (1) The Secretary of State may by order make provision for the purpose of protecting the interests of protected persons in respect of their pension rights.

(2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision for the purpose of securing—

(a) that the relevant pension rights of protected persons are no less favourable as a result of—

(i) any amendment of an occupational pension scheme,

(ii) any transfer of pension rights **[**[F989](whether made between occupational pension schemes or sections of an occupational pension scheme or otherwise)**]**, or

(iii) any winding up of an occupational pension scheme, in whole or in part,

than they would have been apart from the amendment, transfer or winding up, as the case may be;

(b) that a person who is a protected person by virtue of paragraph (a) or (b) of paragraph 5 above is not prevented, otherwise than by reason of either of the following events, that is to say—

(i) the continuity of his period of employment is broken, or

(ii) he voluntarily withdraws from an occupational pension scheme,

from participating in some occupational pension scheme and acquiring pension rights under that scheme which are no less favourable than those which would have been provided under his former scheme in accordance with the rules of that scheme as in force immediately before the coming into force of the order; or

(c) that the employer of a person falling within paragraph (b) above is required to provide an occupational pension scheme in which the person may participate and to which pension rights of his, and assets and liabilities relating to, or representative of, those pension rights, may be transferred;

and in paragraph (b) above "former scheme", in relation to a protected person, means the existing scheme mentioned in paragraph (a) or (b), as the case may be, of paragraph 5 above.

(3) For the purposes of this paragraph, the "relevant pension rights" of a protected person are so much of his pension rights as consist of or otherwise represent—

(a) in the case of a person who is a protected person by virtue of paragraph (a), (b) or (c) of paragraph 5 above, any pension rights which, immediately before the passing of this Act, he had under the existing scheme mentioned in the paragraph in question;

(b) in the case of a person who is a protected person by virtue of paragraph 5(a) or (b) above, any pension rights which he acquires, or has acquired, by virtue of his participation in an occupational pension scheme during the protected period in his case; and

(c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, any pension rights which he acquires, or has acquired, after the passing of this Act and in consequence of the death of the other person mentioned in the said paragraph (d) ("the deceased"), being—

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(i) pension rights under the existing scheme mentioned in that paragraph, so far as referable to pension rights which the deceased had under that scheme before the passing of this Act;

(ii) pension rights under any occupational pension scheme, so far as referable to pension rights which, before the passing of this Act, the deceased had under the existing scheme mentioned in the said paragraph (d) and which have been transferred from that existing scheme, whether directly or indirectly; or

(iii) pension rights under any occupational pension scheme, so far as referable to the participation of the deceased in that or any other occupational pension scheme during the protected period.

(4) For the purposes of sub-paragraph (3) above, "the protected period" means—

(a) in the case of a person who is a protected person by virtue of paragraph (a) of paragraph 5 above, the period beginning with the passing of this Act and ending with whichever of the following events first occurs, that is to say—

(i) the continuity of the person's period of employment is broken; or

(ii) he voluntarily withdraws from an occupational pension scheme;

(b) in the case of a person who is a protected person by virtue of paragraph (b) of paragraph 5 above, a period beginning at such time as may be prescribed and ending with whichever of the following events first occurs, that is to say—

(i) the continuity of the person's period of employment is broken; or

(ii) he voluntarily withdraws from an occupational pension scheme; and

(c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, the period (if any) which is the protected period in the case of the other person mentioned in the said paragraph (d).

(5) In determining a person's relevant pension rights for the purposes of this paragraph, where the rules of a pension scheme make provision requiring pension rights which have accrued to a person to be enhanced in consequence of increases in remuneration after the accrual of the pension rights, that provision, and any enhancement resulting from it, shall be treated, so far as relating to any enhancement in consequence of increases in remuneration after the passing of this Act, as pension rights accruing at the time of the increase in remuneration in question.

(6) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by protected persons for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them or their surviving dependants except to such extent (if any) as may be specified in the election or subject to such conditions (if any) as may be so specified.

(7) In sub-paragraph (6) above "surviving dependant", in relation to a protected person, means any person who may acquire, in consequence of the death of the protected person, pension rights referable to relevant pension rights of the protected person.

(8) An order under this paragraph may make provision for such orders to cease to have effect in relation to a protected person if—

(a) the continuity of his period of employment is broken,

(b) he voluntarily withdraws from an occupational pension scheme, or

(c) he requests that his pension rights be transferred from an occupational pension scheme,

except in such circumstances or to such extent as may be prescribed.

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(9) Circumstances may be prescribed in which—

(a) a break in the continuity of a person's period of employment, or

(b) a person's voluntary withdrawal from an occupational pension scheme,

shall be disregarded for prescribed purposes of this paragraph.

[[F990](10) Chapter I of Part XIV of the Employment Rights Act 1996, except section 218(6), shall apply for the purposes of this paragraph as it applies for the purposes of that Act.**]**

Textual Amendments

F989 Words in Sch. 11 para. 6(2)(a)(ii) inserted (10.5.2000) by 2000 c. 38, **ss. 245(1)**, 275(5)

F990 Sch. 11 para. 6(10) substituted (22.8.1996) for Sch. 11 para. 6(10)-(12) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 60(3)**

Protection: supplementary provisions

7 (1) Without prejudice to the generality of paragraph 6 above, an order under that paragraph may impose on any person falling within sub-paragraph (2) below duties with respect to—

(a) the provision of a pension scheme,

(b) the terms of any pension scheme required to be provided by virtue of paragraph (a) above,

(c) the amendment, or the preservation from amendment, of a pension scheme,

(d) the acceptance of protected persons as members of a pension scheme,

(e) the acceptance (so as to become included among the property, rights and liabilities held for the purposes of a pension scheme or to which a pension scheme is subject) of property, rights and liabilities relating to, or representative of, pension rights of protected persons,

(f) the making or refunding of contributions,

(g) the purchase of annuities,

(h) the winding up of a pension scheme, in whole or in part,

and may make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of such an order, so far as relating to matters specified in paragraphs (a) to (h) above, to give that approval or consent.

(2) The persons mentioned in sub-paragraph (1) above are—

(a) any person who is or has been the employer of a protected person;

(b) any person who contributes to a pension scheme as an employer, whether or not he is or has been the employer of a protected person;

(c) the trustees of any pension scheme of which a protected person is a member or to which pension rights of a protected person may be transferred;

(d) any person who has power to amend or wind up a pension scheme under which a protected person has pension rights.

(3) An order under paragraph 5 or 6 above may include provision—

(a) for disputes arising under the order to be referred to arbitration; or

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(b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.

Entitlement to participate in the joint industry scheme

8 (1) The Secretary of State may by order make provision conferring upon any person to whom this paragraph applies—

(a) who is participating, or who at or after the making of the order begins to participate, in the joint industry scheme, and

(b) who fulfils the qualifying conditions,

the right to continue to participate in the joint industry scheme, in accordance with the rules of that scheme, unless and until the termination conditions become fulfilled in the case of that person.

(2) The persons to whom this paragraph applies are—

(a) any person who immediately before the passing of this Act—

(i) is an employee of the Board or of a subsidiary of the Board; and

(ii) is participating in an existing scheme; and

(b) any person not falling within paragraph (a) above—

(i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;

(ii) who has participated in an existing scheme before the passing of this Act; and

(iii) who fulfils prescribed conditions.

(3) For the purposes of this paragraph a person fulfils the "qualifying conditions" if—

(a) the continuity of his period of employment has not been broken during the intervening period;

(b) he has not withdrawn voluntarily from an occupational pension scheme during that period; and

(c) he has at all times during that period been in the employment of an employer engaged in the railway industry.

(4) In sub-paragraph (3) above, the "intervening period" means the period which begins at the passing of this Act and ends—

(a) at the time when the person in question begins to participate in the joint industry scheme, or

(b) at the coming into force of the order under this paragraph which confers upon that person the right mentioned in sub-paragraph (1) above (or which would have conferred that right upon him, had he satisfied the qualifying conditions),

whichever is the later.

(5) The "termination conditions" become fulfilled for the purposes of this paragraph in the case of any person if—

(a) the continuity of his period of employment is broken;

(b) he withdraws voluntarily from the joint industry scheme; or

(c) he is not in the employment of any employer engaged in the railway industry.

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(6) Circumstances may be prescribed in which—
- (a) a break in the continuity of a person's period of employment,
- (b) a person's voluntary withdrawal from an occupational pension scheme, or
- (c) a period during which a person is not in the employment of an employer engaged in the railway industry,

shall be disregarded for the purpose of determining whether the person fulfils the qualifying conditions or whether the termination conditions have become fulfilled in his case.

(7) The employers who are to be regarded for the purposes of this paragraph as "engaged in the railway industry" are those who carry on activities of a class or description specified for the purposes of this sub-paragraph by the Secretary of State in an order under this paragraph; and the Secretary of State may so specify any class or description of activity which, in his opinion, falls within, or is related to or connected with, the railway industry.

(8) An order under this paragraph may—
- (a) impose on the trustees of the joint industry scheme, or on the employer (if any) of a person for the time being entitled to the right conferred by virtue of sub-paragraph (1) above, duties with respect to—
  - (i) the participation of that person or that employer in the scheme, or
  - (ii) the payment of contributions by that employer under the scheme,

  in accordance with the rules of the scheme; and
- (b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.

(9) An order under this paragraph may make provision for the purpose of preventing a person who would otherwise be entitled to the right conferred by virtue of sub-paragraph (1) above from continuing to participate in the joint industry scheme in circumstances where his continued participation in that scheme would in the opinion of a prescribed person—
- (a) prejudice any approval of that scheme for the purposes of Chapter I of Part XIV of the [M134]Income and Corporation Taxes Act 1988 (retirement benefit schemes); or
- (b) prevent the scheme from being a contracted-out scheme for the purposes of Part III of the [M135]Pension Schemes Act 1993 or Part III of the [M136]Pension Schemes (Northern Ireland) Act 1993.

(10) An order under this paragraph may include provision—
- (a) for disputes arising under the order to be referred to arbitration; or
- (b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.

(11) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by persons who would otherwise be entitled by virtue of sub-paragraph (1) above to the right there mentioned for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(12) Sub-paragraph (10) of paragraph 6 above shall have effect for the purposes of this paragraph as it has effect for the purposes of that paragraph.

Marginal Citations

M134 1988 c. 1.
M135 1993 c. 48.
M136 1993 c. 49.

Payments in discharge of liabilities under s.52(1) of the Transport Act 1980

9 (1) In section 52 of the [M137]Transport Act 1980, in subsection (1) (which requires the Secretary of State to make payments each year to B.R. pension schemes in respect of unfunded pension obligations owed by the Board), for the words "Subject to the provisions of this section and section 58," there shall be substituted the words " Subject to the provisions of this section and sections 52A to 52D and 58, ".

(2) After that section there shall be inserted—

"**52A Power to make payments by way of final discharge of liabilities under s.52(1).**

(1) If the Minister is desirous of making to the persons administering a B.R. pension scheme one or more payments by way of final discharge of his liability to make payments to them under section 52(1) in relation to that scheme, to the extent that that liability relates to so much of the relevant pension obligations as are owed in respect of—

(a) all pension rights under the scheme,

(b) pension rights of some particular class or description under the scheme, or

(c) pension rights of persons of some particular class or description under the scheme,

he may give to the persons administering the scheme a notice identifying the pension rights in question and specifying in relation to those pension rights the matters set out in subsection (2), as determined in accordance with the following provisions of this section.

(2) The matters mentioned in subsection (1) are—

(a) the capital value of the attributable unfunded obligations in question, as at the beginning of the next financial year;

(b) the amount or amounts, or the method of determining the amount or amounts, of the payment or payments to be made under this section by way of final discharge of the Minister's liability to make payments under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1); and

(c) the date or dates on which that payment or those payments are to be made.

(3) In making any determination for the purposes of paragraph (b) of subsection (2), the amount or, as the case may be, the aggregate of the amounts mentioned in that paragraph shall be such as to include—

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(a) a sum equal to the capital value determined under paragraph (a) of that subsection; and

(b) interest, payable at such rate as may be determined by the Minister, on so much (if any) of that sum as may from time to time be outstanding after the beginning of the financial year mentioned in the said paragraph (a).

(4) For the purposes of this section, the capital value mentioned in paragraph (a) of subsection (2) shall either—

(a) be determined by the Minister, or

(b) if the Minister so requires in the particular case, be determined by the actuary to the scheme in question and approved by the Minister,

and it shall be for the Minister to determine the matters mentioned in paragraphs (b) and (c) of that subsection.

(5) Notice under subsection (1) above shall only be given after consultation—

(a) with the persons administering the scheme in question; and

(b) with the actuary to that scheme, except in a case where the capital value mentioned in subsection (2)(a) is determined by that actuary pursuant to subsection (4)(b);

and any such notice must be given not less than one month before the beginning of the financial year mentioned in subsection (2)(a).

(6) The giving of a notice under subsection (1) shall—

(a) terminate the liability of the Minister to make payments under section 52(1), so far as relating to the pension rights identified in the notice, for financial years beginning after the giving of the notice; and

(b) impose upon the Minister a duty—

(i) to make to the persons administering the scheme in question the payment or payments mentioned in subsection (2)(b); and

(ii) to do so at the time or times specified in pursuance of subsection (2)(c).

(7) Where notice has been given under subsection (1), the Minister may—

(a) at any time before the expiration of the period of eleven months beginning with the financial year mentioned in subsection (2)(a) as it applies in relation to that notice, and

(b) after consultation with the persons administering the scheme in question and the actuary to the scheme,

amend that notice by giving notice of the amendment to the persons administering the scheme.

(8) If notice is given under subsection (7) of an amendment affecting the amount of a payment which has been made pursuant to this section, the Minister may also give notice to the persons administering the scheme in question requiring them—

(a) to repay to him so much of the payment made as exceeds the amended amount; and

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(b) to pay interest to him, at such rate as he may determine, on the amount to be repaid, as from the date on which the payment in question was made by him;

and where notice is given under paragraph (a) or (b), the amount required to be repaid or, as the case may be, the amount of interest required to be paid from time to time, shall be treated as a debt due from those persons to the Minister.

(9) In any case where—

(a) notice has been given under subsection (1), the effect of which (whether taken alone or with other notices under that subsection) is that notice has been given under that subsection in respect of all pension rights under the scheme in question, and

(b) for that financial year in which the notice mentioned in paragraph (a) is given, the aggregate amount of the payments made under section 52(1) in relation to the scheme requires adjustment for the reason set out in section 52(3)(a) or (b), but

(c) the required adjustment cannot be made as mentioned in section 52(3), because (in consequence of the notice mentioned in paragraph (a)) no payments under section 52(1) fall to be made in relation to that scheme for subsequent financial years,

payments by way of adjustment, of an amount equal in the aggregate to the amount of the required adjustment, shall instead be made by the Minister to the persons administering the scheme or, as the case may require, by those persons to the Minister, before the expiration of the period of six months beginning with the date on which the amount of the required adjustment is determined.

(10) The Minister may give a direction to the persons administering a B.R. pension scheme requiring them to furnish to him—

(a) information from which the proportion mentioned in section 55(1)(a) can be finally determined for the financial year mentioned in subsection (9)(b) in the case of the scheme; or

(b) information about any such unforeseen increase or reduction in the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for that financial year as is mentioned in section 52(3)(b).

(11) Where payments by way of adjustment fall to be made under subsection (9), interest shall be payable from the end of the financial year in which the notice mentioned in subsection (9)(a) is given, by the person liable to make those payments, at such intervals and rates as may be determined by the Minister, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.

(12) So much of—

(a) any payment by way of adjustment under subsection (9) which falls to be made, or

(b) any interest accrued under subsection (11),

as has not been paid shall be treated as a debt due.

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(13) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.

(14) For the purposes of this section, the "capital value of the attributable unfunded obligations", in the case of any B.R. pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (4), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1), for the successive financial years beginning with the one mentioned in subsection (2)(a).

(15) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.".

(3) After the section 52A inserted by sub-paragraph (2) above, there shall be inserted—

"**52B Power to substitute obligations under this section for liabilities under s.52(1).**

(1) The Minister may make a substitution order in relation to any occupational pension scheme—

(a) which is a new scheme, within the meaning of Schedule 11 to the Railways Act 1993;

(b) which is designated under paragraph 10(1) of that Schedule (designation of schemes which are to be treated as B.R. pension schemes for certain purposes of this Part); and

(c) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;

and any reference in this section to a "guaranteed pension scheme" is a reference to such an occupational pension scheme.

(2) The Minister may also make a substitution order in relation to any section of a new scheme, within the meaning of Schedule 11 to the Railways Act 1993, if the section is one—

(a) which is designated under paragraph 10(1) of that Schedule; and

(b) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;

and the following provisions of this section (and sections 52C and 52D) shall apply in relation to any such section of a new scheme as if any reference to a guaranteed pension scheme included a reference to such a section.

(3) For the purposes of this section, a "substitution order" is an order under this section the effect of which is—

(a) to terminate, from the termination date, the Minister's liability to make to the persons administering the guaranteed pension scheme in question payments under section 52(1) in relation to the scheme; and

(b) to impose on the Minister, in substitution for that liability, an obligation to make to those persons, subject to and in accordance with the following provisions of this section, one or more other payments (the "substitution payments") in relation to that scheme.

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(4) Subject to the following provisions of this section, the amount of the substitution payments to be made in the case of a guaranteed pension scheme shall be equal in the aggregate to the sum of—

(a) the amount specified pursuant to subsection (5)(a) as the capital value of the unfunded obligations in the case of the scheme; and

(b) the aggregate amount of any interest which is dealt with as mentioned in subsection (8)(b)(ii) in the case of the scheme.

(5) A substitution order must specify—

(a) the capital value of the unfunded obligations in the case of the guaranteed pension scheme in question, as at the termination date; and

(b) the date which, for the purposes of this section, is to be the termination date in relation to that scheme, being a date not earlier than one month after the coming into force of the substitution order.

(6) Any determination for the purposes of this section of the capital value of the unfunded obligations in the case of a guaranteed pension scheme shall either—

(a) be made by the Minister; or

(b) if the Minister so requires in the particular case, be made by the actuary to the guaranteed pension scheme in question and approved by the Minister.

(7) A substitution order may specify—

(a) the amount or amounts, or the method of determining the amount or amounts, of the substitution payments,

(b) the date or dates on which the substitution payments are to be made,

(c) circumstances (which may, if the Minister so desires, be defined by reference to the opinion of any person) in which substitution payments are to be made,

and may provide for the obligation to make substitution payments to be discharged if the guaranteed pension scheme in question has, in the opinion of a person specified or described in, or nominated under, the order, been wound up.

(8) A substitution order must provide—

(a) for interest to accrue from the termination date on the outstanding balance of the capital value for the time being at such rate, and at such intervals, as may be specified in, or determined under or in accordance with, the order; and

(b) for any such interest which accrues—

(i) to be paid to the persons administering the guaranteed pension scheme in question, or

(ii) to be added to the outstanding balance of the capital value,

(or to be dealt with partly in one of those ways and partly in the other);

and the provision that may be made by virtue of paragraph (a) includes provision for the rate of interest to be calculated by reference to any variable or to be such rate as the Minister may from time to time determine and specify in a notice to the persons administering the scheme in question.

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(9) For the purposes of subsection (8), the "outstanding balance of the capital value", in the case of a guaranteed pension scheme, means the capital value of the unfunded obligations in the case of the scheme, as specified pursuant to subsection (5)(a),—

(a) reduced by the amount of any substitution payments made in relation to that scheme; and

(b) increased by any additions of accrued interest under or by virtue of subsection (8)(b)(ii) in relation to that scheme.

(10) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.

(11) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.

(12) In this section—

"the capital value of the unfunded obligations", in the case of any guaranteed pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (6), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1) in relation to that scheme after the termination date in the case of that scheme;

"occupational pension scheme" means an occupational pension scheme as defined in section 1 of the [M138]Pension Schemes Act 1993;

"the terminal period", in the case of any guaranteed pension scheme, means—

(a) if a financial year of the scheme ends with the termination date, that financial year; or

(b) in any other case, so much of the financial year of the scheme in which the termination date falls as ends with that date;

"the termination date", in the case of any guaranteed pension scheme, shall be construed in accordance with subsection (5)(b);

"the termination year", in the case of any guaranteed pension scheme, means the financial year of the scheme which consists of or includes the terminal period;

"trustees", in relation to a guaranteed pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

52C Adjustments arising in connection with orders under s.52B.

(1) As soon as practicable after the termination date in the case of any guaranteed pension scheme, there shall be determined, for the terminal period, what proportion of the pensions, increases and expenses payable under, or incurred in connection with, the scheme corresponds to the relevant pension obligations.

(2) Any determination under subsection (1) shall either—

(a) be made by the Minister; or

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(b) if the Minister so requires in the particular case, be made by the actuary or auditor to the guaranteed pension scheme in question and approved by the Minister.

(3) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for the terminal period or the termination year and to notify him in writing of their determination.

(4) As respects the termination year of a guaranteed pension scheme, the extent of the liability of the Minister to make payments under section 52(1) in relation to that scheme shall be restricted to a liability to make payments of an amount (the “termination year amount") equal in the aggregate to the product of—

(a) the proportion determined under section 54(1) for that scheme;

(b) the proportion determined pursuant to subsection (1) in the case of that scheme; and

(c) the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with that scheme in the terminal period;

and payments by way of adjustment shall be made by the Minister to the persons administering the scheme, or (as the case may be) by those persons to the Minister, before the expiration of the period of six months beginning with the date of the last of the determinations made under subsection (1) or (3) with respect to the scheme.

(5) Where, in the case of a guaranteed pension scheme, the funding of the relevant pension obligations has, by virtue of subsection (3) of section 54, been left out of account in making a determination under subsection (1) of that section, the termination year amount in the case of that scheme shall be the difference between—

(a) what that amount would have been, apart from this subsection; and

(b) the amount of any income accruing for the terminal period which may be applied towards the payment of such of the pensions, increases and expenses payable under or incurred in connection with the scheme as correspond to those obligations.

(6) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the amount mentioned in subsection (5)(b) and to notify him in writing of their determination.

(7) Where payments by way of adjustment fall to be made, interest shall be payable, as from the termination date, by the person liable to make those payments, at the rates and intervals from time to time applicable for the purposes of section 52B(8)(a) in the case of the scheme in question, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.

(8) So much of—

(a) any payment by way of adjustment which falls to be made, or

(b) any interest accrued under subsection (7),

as has not been paid shall be treated as a debt due.

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(9) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.

(10) In this section, "payments by way of adjustment", in the case of a guaranteed pension scheme, means—

(a) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, exceed the termination year amount, payment to the Minister by the persons administering the scheme of an amount equal to the excess;

(b) if the Minister has made no payments under section 52(1) in relation to that scheme for the termination year, payment by the Minister to those persons of the termination year amount; or

(c) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, fall short of the termination year amount, payment by the Minister to those persons of an amount equal to the shortfall.

(11) Expressions used in this section and in section 52B have the same meaning in this section as they have in that section.

52D Orders and directions under sections 52A to 52C: supplemental.

(1) Any power to make an order under section 52B shall be exercisable by statutory instrument made by the Minister after consultation with the trustees of the guaranteed pension scheme to which the order relates.

(2) A statutory instrument containing an order under section 52B shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) At the time when a statutory instrument containing an order under section 52B is laid before each House of Parliament pursuant to subsection (2), the Minister shall, if he has not already done so, also lay before each House of Parliament a copy of the guarantee mentioned in subsection (1)(c) of that section; but this subsection is without prejudice to the validity of the order in question.

(4) Any power to make an order under section 52B includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the Minister.

(5) Any order under section 52B may make different provision for different cases or for different classes or descriptions of case.

(6) It shall be the duty of any person to whom a direction is given under section 52A or 52C to comply with and give effect to that direction; and compliance with any such direction shall be enforceable by civil proceedings by the Minister for an injunction or interdict or for any other appropriate relief.

(7) Any power to give a direction under section 52A or 52C includes power to vary or revoke the direction.

(8) Any direction under section 52A or 52C shall be given in writing.

(9) In this section—

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"guaranteed pension scheme" has the same meaning as in section 52B;

"trustees", in relation to a guaranteed pension scheme, has the same meaning as in section 52B."

(4) In section 70 of that Act, in subsection (2) (interpretation), for the definition of "the Minister" there shall be substituted—

" "the Minister means the Secretary of State;" ".

Commencement Information

I17 Sch. 11 para. 9 wholly in force at 16.8.1994; para. 9 not in force at Royal Assent see s. 154(2); para. 9(3) in force for specified purpose and para. 9(1)(2)(4) wholly in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; Sch. 11 para. 9 in force at 16.8.1994 insofar as not already in force by S.I. 1994/2142, **art. 2**

Marginal Citations

M137 1980 c. 34.

M138 1993 c. 48.

Application and modification of Part III of the 1980 Act

10 (1) The Secretary of State may by order designate—

(a) any occupational pension scheme which would not, apart from this paragraph, be included among the pension schemes which are B.R. pension schemes for the purposes of Part III of the 1980 Act, or

(b) any section of an occupational pension scheme, being a section which would not, apart from this paragraph, be included among those schemes,

as a pension scheme which is to be treated as included among those schemes for the purpose of requiring or enabling him to make to the persons administering the scheme payments under section 52(1), 52A, 52B or 52C of that Act in respect of qualifying pension rights transferred (whether under paragraph 4 above or otherwise) so as to become pension rights under that scheme.

(2) An order under sub-paragraph (1) above may make provision, in any case where qualifying pension rights of any persons are, or are to be, transferred as mentioned in that sub-paragraph, for treating those persons as constituting a section of the occupational pension scheme to which those qualifying pension rights are, or are to be, so transferred.

(3) No order shall be made under sub-paragraph (1) above except after consultation with the trustees of the occupational pension scheme to which the qualifying pension rights are, or are to be, transferred.

(4) Subject to the following provisions of this paragraph, Part III of the 1980 Act shall have effect as if any reference in that Part to a B.R. pension scheme included a reference to a designated scheme.

(5) Where qualifying pension rights are transferred to a designated scheme as mentioned in sub-paragraph (1) above, the proportion referred to in section 52(1)(a) of the 1980 Act in its application by virtue of this paragraph in relation to the designated scheme shall, instead of being determined under section 54 of that Act, be taken to be the proportion which has been determined under that section in relation to the

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B.R. pension scheme from which the qualifying pension rights are transferred; and references in Part III of that Act to that proportion shall be construed accordingly.

(6) In the application of Part III of the 1980 Act in relation to a designated scheme, references in that Part to "the relevant pension obligations" shall, in relation to the designated scheme, be construed—

(a) as if the reference in section 53(1)(a) of that Act to obligations of the Board which were owed on 1st January 1975 in connection with the scheme were a reference to so much of the obligations of the Board which were owed on that date in connection with a B.R. pension scheme as are obligations in respect of qualifying pension rights transferred to the designated scheme; and

(b) as if the reference in section 53(1)(c) of that Act to an obligation [F991]. . . arising after that date to pay or secure the payment of increases payable under the scheme included a reference to so much of any such obligation [F991]. . . in respect of a B.R. pension scheme as is an obligation in respect of qualifying pension rights transferred to the designated scheme.

(7) In the application of section 55 of the 1980 Act in relation to a designated scheme, paragraph (a) of subsection (1) (which requires the proportion of the scheme's outgoings which corresponds to the relevant pension obligations to be determined before the beginning of each financial year or, in the case of the first financial year, as soon as practicable after the passing of that Act) shall be taken to require the proportion mentioned in that paragraph to be determined—

(a) before the beginning of the financial year in question, or

(b) as soon as practicable after the coming into force of the order under sub-paragraph (1) above by virtue of which the scheme in question is a designated scheme,

and paragraph (b) of that subsection shall be construed accordingly.

(8) The power to give a direction under section 57 of the 1980 Act (which provides for certain determinations to be made as if no transfer had taken place and as if no payment representing the pension rights in question had been made) shall be exercisable in any case where the whole or any part of a person's accrued pension rights under a B.R. pension scheme or a designated scheme are transferred (whether under paragraph 4 above or otherwise) to—

(a) a designated scheme, or

(b) a pension scheme established by the Board,

as it is in the case of any such transfer as is mentioned in that section.

(9) Without prejudice to sub-paragraph (8) above, where in any financial year the whole or any part of a person's accrued pension rights under a B.R. pension scheme are transferred to a designated scheme, it shall be assumed, for the purposes of any determination of the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the B.R. pension scheme in that financial year, that the payment of any sum representing those pension rights had not been made.

(10) Without prejudice to section 59(1) of the 1980 Act (which provides that the making of payments under section 52(1) does not discharge certain relevant pension obligations), the making of any payment under section 52(1) of the 1980 Act to the persons administering a designated scheme shall not discharge any relevant pension obligation, so far as it is an obligation to pay pensions or increases of pensions

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under that or any other designated scheme, or under a B.R. pension scheme, or is an obligation to secure the payment of those pensions or increases.

(11) Without prejudice to section 59(2) of the 1980 Act (power to amend pension scheme for certain purposes), if the persons administering an occupational pension scheme would not otherwise have power to do so, they may amend the scheme by instrument in writing for the purpose of enabling persons to be admitted as members of the scheme on the basis that payments will fall to be made under Part III of the 1980 Act in respect of qualifying pension rights of theirs which are transferred so as to become pension rights under the scheme.

(12) Where the persons administering an occupational pension scheme have power, apart from sub-paragraph (11) above, to amend the scheme for the purpose mentioned in that sub-paragraph, they may exercise that power for that purpose without regard to any limitations on the exercise of the power and without compliance with any procedural provisions applicable to its exercise.

(13) Any reference in Part III of the 1980 Act to a “financial year" shall, in relation to a designated scheme, be taken as a reference—

(a) to such period as—

(i) begins with the transfer of the qualifying pension rights in question, and

(ii) ends with the last day of an accounting year of the scheme,

and is a period of not less than twelve months and less than two years; and

(b) to each successive accounting year of that scheme.

(14) Where any provision of Part III of the 1980 Act requires anything to be done in, or in relation to, the first financial year of a B.R. pension scheme, that provision shall (so far as so requiring) be disregarded in the application of that Part in relation to a designated scheme.

(15) In any case where—

(a) the whole or any part of a person’s accrued pension rights under a B.R. pension scheme are transferred so as to become pension rights under a designated scheme, and

(b) immediately before that transfer takes effect, relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded are owed in respect of those pension rights by the **[**[F992]Authority**]** to the persons administering the pension scheme from which the pension rights are so transferred,

an order under sub-paragraph (1) above may provide for the benefit of that proportion of so much of those relevant pension obligations as are owed in respect of those pension rights to be transferred, so as to become relevant pension obligations owed by the **[**[F992]Authority**]** to the persons administering the pension scheme to which the pension rights are transferred.

(16) Where the benefit of any relevant pension obligations is transferred by virtue of sub-paragraph (15) above, the persons administering the pension scheme to which the benefit of those obligations is transferred shall have, in relation to the relevant pension obligations the benefit of which is so transferred, all the rights of the persons administering the pension scheme from which the benefit of those obligations is transferred.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(17) In this paragraph—

"the 1980 Act" means the [M139]Transport Act 1980;

"designated scheme" means an occupational pension scheme or, as the case may be, a section of any such scheme, which is designated under sub-paragraph (1) above;

"pension scheme" includes a section of a pension scheme;

"qualifying pension rights" means any pension rights as respects the whole or some part of which there are subsisting relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded;

and, subject to that, expressions used in this paragraph and in Part III of the 1980 Act have the same meaning in this paragraph as they have in that Part.

Textual Amendments

F991 Words in Sch. 11 para. 10(6)(b) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F992 Words in Sch. 11 para. 10(15) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

M139 1980 c. 34.

Government guarantees to trustees of certain new schemes

11 (1) Subject to the following provisions of this paragraph, the Secretary of State—

(a) shall give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (3) below, and

(b) may give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (4) below,

a guarantee in respect of their liabilities to make payments in respect of pension rights under the scheme.

(2) This paragraph applies in relation to a section of a new scheme as it applies in relation to a new scheme; and any reference in this paragraph to a new scheme, a closed scheme, a pension scheme or a member shall be construed accordingly.

(3) A new scheme satisfies the conditions in this sub-paragraph if—

(a) all the members of the scheme are persons whose pension rights under the scheme are pension rights which have been transferred, so as to become pension rights under that scheme, pursuant to an order under paragraph 4 above; and

(b) the rules of the scheme prevent any member of the scheme from being a participant in the scheme.

(4) A new scheme satisfies the conditions in this sub-paragraph if—

(a) the scheme is a closed scheme; and

(b) at the date on which the scheme becomes a closed scheme, all the members of the scheme are—

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) participants in the scheme to whom pension rights under the scheme are accruing by virtue of their employment with a relevant employer; or

(ii) pensioners or deferred pensioners under the scheme whose pension rights under the scheme derive in whole or in part from their, or some other person's, participation in an occupational pension scheme as an employee of a relevant employer.

(5) Classes or descriptions of person may be prescribed whose membership of, or participation in, a new scheme is to be disregarded for the purpose of determining whether the new scheme satisfies the conditions in sub-paragraph (3) or (4) above.

(6) The power to give a guarantee under sub-paragraph (1)(b) above becomes exercisable in the case of any new scheme if the Secretary of State is of the opinion that it is desirable to give such a guarantee for the purpose of ensuring that the trustees of the scheme are, or will be, able to meet their liabilities to make payments in respect of pension rights under the scheme as those liabilities fall to be met.

(7) The Secretary of State shall consider any representations made by the trustees of a new scheme which satisfies the conditions in sub-paragraph (4) above concerning their ability to meet their liabilities to make payments in respect of pension rights under the scheme.

(8) Any guarantee under this paragraph shall be given in such manner, and on such terms and conditions, as the Secretary of State may, after consultation with the trustees of, and the actuary to, the scheme in question, think fit; and, without prejudice to the generality of the foregoing provisions of this sub-paragraph, the terms and conditions on which a guarantee under this paragraph may be given include terms and conditions—

(a) with respect to any matter relating to payment under the guarantee, including—

(i) the circumstances in which payment under the guarantee falls to be made;

(ii) the amounts, or the method of determining the amounts, of any payments that fall to be so made;

(iii) the persons to whom any such payments are to be made;

(b) with respect to any matter relating to the management, affairs or winding up of the scheme, including—

(i) the policy to be followed in relation to the investment of assets held for the purposes of the scheme; and

(ii) the distribution of any surplus which may arise under the scheme; or

(c) requiring or precluding, or otherwise with respect to, amendment of the rules of the scheme;

and the sub-paragraphs of paragraphs (a) and (b) above are without prejudice to the generality of the preceding provisions of the paragraph in question.

(9) Any sums required by the Secretary of State to fulfil a guarantee given under this section shall be paid out of money provided by Parliament.

(10) In this paragraph—

"closed scheme" means a pension scheme—

(a) to which no new members are to be admitted; but

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) under which pensions and other benefits continue to be provided;

"deferred pensioner", in the case of any pension scheme, means a person who has pension rights under the scheme but who (so far as relating to those pension rights) is neither a participant in the scheme nor a pensioner under the scheme;

"relevant employer" means—

(a) the Board;

(b) a wholly owned subsidiary of the Board; [F993]. . .

(c) a publicly owned railway company [F993]. . ..

[[F994](d) the Authority; or

(e) a wholly owned subsidiary of the Authority.**]**

Textual Amendments

F993 Words in paras. (b)(c) in the definition of "relevant employer" in Sch. 11 para. 11(10) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

F994 Paras. (d)(e) in the definition of "relevant employer" in Sch. 11 para. 11(10) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Supplementary

12 If it appears to the Secretary of State necessary or expedient to do so, in consequence of any provision made by order under this Schedule, he may by provision made in the same manner—

(a) repeal or amend, or modify the operation of, any private or local Act of Parliament; or

(b) revoke or amend, or modify the operation of, any statutory instrument (whether local or general).

Parliamentary procedure

13 (1) A statutory instrument containing an order under this Schedule, other than an order under paragraph 11 above, shall not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

(2) At or before the time when a draft of a statutory instrument containing an order under paragraph 3 or 4 above is laid before each House of Parliament pursuant to sub-paragraph (1) above, the Secretary of State shall also lay before each House of Parliament a copy of any comments on the order in question—

(a) which have been made in writing to the Secretary of State by the trustees mentioned in paragraph 3(4) or, as the case may be, paragraph 4(5) above;

(b) which are designated by those trustees as comments which they wish the Secretary of State to consider as comments on that order; and

(c) which have been received by the Secretary of State before the expiration of such period as has been notified by him to those trustees as being the consultation period in relation to the order in question;

but this sub-paragraph is without prejudice to the validity of the order in question.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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(3) If, apart from the provisions of this sub-paragraph, the draft of an instrument containing an order under this Schedule would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

Transitory provision

14 In this Schedule, and in any amendment made by this Schedule to any other enactment,—

(a) any reference to section 1 of the [M140]Pension Schemes Act 1993 shall, until the coming into force of that section, be construed as a reference to section 66(1) of the [M141]Social Security Pensions Act 1975;

(b) any reference to Part III of the Pension Schemes Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part III of the [M142]Social Security Pensions Act 1975; and

(c) any reference to Part III of the [M143]Pension Schemes (Northern Ireland) Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part IV of the [M144]Social Security Pensions (Northern Ireland) Order 1975.

Marginal Citations

M140 1993 c. 48.
M141 1975 c. 60.
M142 1975 c. 60.
M143 1993 c. 49.
M144 S.I. 1975/1503 (N.I. 15).

SCHEDULE 12

Section 152.

MINOR AND CONSEQUENTIAL AMENDMENTS

Commencement Information

I18 Sch. 12 is partly in force; Sch. 12 not in force at Royal Assent, see s. 154(2); Sch. 12 n force at 6.1.1994 for specified purposes by S.I. 1993/3237, **art.1**; Sch. 12 in force at 1.4.1994 for specified purposes by S.I. 1994/571, **art. 5**

The Regulation of Railways Act 1889

1 Section 6 of the [M145]Regulation of Railways Act 1889 (which provides that every passenger ticket issued by any railway company in the United Kingdom shall show on its face the fare chargeable for the journey for which it was issued) shall cease to have effect.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M145 1889 c. 57.

The Railway Fires Act 1905

2 (1) In section 1 of the [M146]Railway Fires Act 1905 (liability of railway companies to make good damage to crops caused by their engines), after subsection (2) there shall be inserted—

"(2A) Any reference in subsection (2) above to a "company" includes a reference to any person—

(a) who holds a network licence, station licence or light maintenance depot licence under Part I of the Railways Act 1993; or

(b) who is exempt, by virtue of a licence exemption under section 7 of that Act, from the requirement to be authorised by licence under that Part to be the operator of a network, station or light maintenance depot.

(2B) A person such as is mentioned in subsection (2A) above shall be regarded for the purposes of subsection (2) above as working a railway which consists of the track (if any) comprised in any network, station or light maintenance depot of which he lawfully acts as the operator by virtue of the licence or licence exemption in question."

(2) In section 4 of that Act (definitions and application) after the definition of " railway " there shall be inserted—

"The expression "railway company" includes any person—

(a) who holds a licence under Part I of the Railways Act 1993; or

(b) who is exempt, by virtue of a licence exemption under section 7 of that Act, from the requirement to be authorised by licence under that Part to be the operator of a railway asset;

The expressions "light maintenance depot", "network", "operator", "railway asset", "station" and "track" have the same meaning as they have in Part I of the Railways Act 1993."

Marginal Citations
M146 1905 c. 11.

The Railway Fires Act (1905) Amendment Act 1923

3 In section 2 of the [M147]Railway Fires Act (1905) Amendment Act 1923 (conditions precedent to application of the Act of 1905) after the words "any railway company" there shall be inserted the words " (as defined in section 4 of that Act) ".

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M147 1923 c. 27.

The British Transport Commission Act 1950

4 Section 43 of the [M148]British Transport Commission Act 1950 (power to supply railway equipment to the Ulster Transport Authority) shall cease to have effect.

Marginal Citations
M148 1950 c. liii.

The Transport Act 1962

5 (1) The [M149]Transport Act 1962 shall be amended in accordance with this paragraph.

(2) The following provisions shall cease to have effect, that is to say—

(a) section 4(1)(b), (2) and (7) (which relate to the provision by the Board of certain services for the carriage of goods by road),

(b) section 5 (which gives the Board power to provide certain air transport services),

(c) section 13(3) (saving for section 43 of the British Transport Commission Act 1950), and

(d) section 53 (complaints by operators of coastal shipping about the Board's railway charges).

(3) In section 12 (power of the Boards to construct and operate pipe-lines), in subsection (1), after the words "the Boards" there shall be inserted the words " , other than the Railways Board, ".

(4) In section 14(4), after the words "Each of the Boards" there shall be inserted the words " , except the Railways Board, ".

Marginal Citations
M149 1962 c. 46.

The Transport Act 1968

6 (1) The [M150]Transport Act 1968 shall be amended in accordance with this paragraph.

(2) In section 42 of that Act, subsection (3) (which confers power to vary commencing capital debt of the Board to take account of transfers under section 7(5) or (6) or 8(4) of that Act and which is spent) shall be omitted.

(3) Section 45 of that Act (duty of the Board periodically to review its organisation) shall cease to have effect.

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Section 48 of that Act (which confers power on the Boards and the new authorities to undertake activities including manufacture for sale) shall cease to have effect in relation to the Board.

(5) In section 50 of that Act—

(a) subsection (2) (power of the Board to provide and manage hotels) shall cease to have effect;

(b) in subsection (4), for the words "In subsections (2) and (3) of this section the references to hotels include references" there shall be substituted the words " In subsection (3) of this section the reference to hotels includes a reference "; and

(c) subsection (7) (which confers power on the Boards and the new authorities to provide technical advice and assistance and which is superseded, in the case of the Board, by section 127 of this Act) shall cease to have effect in relation to the Board.

(6) In section 55 of that Act (amendments concerning Transport Consultative Committees under section 56 of the [M151]Transport Act 1962), in subsection (1) (services and facilities in relation to which Consultative Committees' duties are to apply)—

[F995](a) . . . . . .

(b) the following shall be omitted, namely—

(i) in paragraph (a), the words from "or provided" onwards,

(ii) paragraph (b),

(iii) paragraphs (i) and (iii), and

(iv) the words from "and for the purposes" onwards,

and subsections (2), (3) and (4) (duties of Consultative Committees in relation to certain services and facilities provided in Scotland, and provision as to office accommodation for, defrayment of expenditure incurred by, and certain payments to members of, Consultative Committees) shall cease to have effect.

[F995](7) . . . . . .

Textual Amendments

F995 Sch. 12 para. 6(6)(a)(7) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Commencement Information

I19 Sch. 12 para. 6 wholly in force at 1.4.1994; para. 6 not in force at Royal Assent see s. 154(2); para. 6(1)-(5)(7) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; Sch. 12 para. 6 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

Marginal Citations

M150 1968 c. 73.

M151 1962 c. 46.

The Fair Trading Act 1973

7 [F996] . . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F996 Sch. 12 para. 7 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

The Consumer Credit Act 1974

8 [F997] . . . . . .

Textual Amendments

F997 Sch. 12 para. 8 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

The Railways Act 1974

9 In the [M152]Railways Act 1974, section 9 (which provides for an alternative basis of remuneration for chairmen of Consultative Committees set up under section 56 of the [M153]Transport Act 1962) shall cease to have effect.

Marginal Citations

M152 1974 c. 48.
M153 1962 c. 46.

The Restrictive Trade Practices Act 1976

10 In section 41(1) of the [M154]Restrictive Trade Practices Act 1976 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of that Act), in paragraph (a)—

(a) after the words "the Director General of Electricity Supply for Northern Ireland" (which were inserted by paragraph 16(a) of Schedule 12 to the [M155]Electricity (Northern Ireland) Order 1992) there shall be inserted the words " the Rail Regulator "; and

(b) after the words "Courts and Legal Services Act 1990" there shall be inserted the words " or the Railways Act 1993 ".

Marginal Citations

M154 1976 c. 34.
M155 S.I. 1992/231 (N.I. 1).

The Estate Agents Act 1979

11 [F998] . . . . . .

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F998 Sch. 12 para. 11 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

The Competition Act 1980

12 (1) In section 11 of the [M156]Competition Act 1980, in subsection (3) (public bodies and other persons who may be the subject of a reference to the Monopolies Commission under that section), after paragraph (a) there shall be inserted—

"(aa) any publicly owned railway company, within the meaning of the Railways Act 1993, which supplies network services or station services, within the meaning of Part I of that Act; or".

(2) [F999] . . . . . .

(3) [F999] . . . . . .

Textual Amendments

F999 Sch. 12 para. 12(2)(3) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

Marginal Citations

M156 1980 c. 21.

The Telecommunications Act 1984

13 (1) In subsection (2) of section 101 of the [M157]Telecommunications Act 1984 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after the words "the Director General of Electricity Supply for Northern Ireland" (which were inserted by paragraph 29(a) of Schedule 12 to the [M158]Electricity (Northern Ireland) Order 1992) there shall be inserted the words " the Rail Regulator ".

(2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (l) (which was inserted by paragraph 29(b) of Schedule 12 to the [M159]Electricity (Northern Ireland) Order 1992) there shall be added—

"(m) the Railways Act 1993".

Marginal Citations

M157 1984 c. 12.
M158 S.I. 1992/231 (N.I. 1).
M159 S.I. 1992/231 (N.I. 1).

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The London Regional Transport Act 1984

14 (1) Section 2 of the [M160]London Regional Transport Act 1984 (provision of passenger transport services for Greater London) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (1) (which requires London Regional Transport, in conjunction with the Board, to provide or secure the provision of public passenger transport services in Greater London), before the words "in conjunction with the Railways Board" there shall be inserted the words " (if and to the extent that the Railways Board continues to be under a duty by virtue of section 3 of the [M161]Transport Act 1962 to provide railway services in Greater London) ".

(3) At the beginning of subsection (3) (duty of London Regional Transport and the Board to co-operate for the purpose of co-ordinating services etc) there shall be inserted the words " If and so long as the Railways Board continues to be under a duty by virtue of section 3 of the [M162]Transport Act 1962 to provide railway services in Greater London, ".

(4) After that subsection there shall be inserted—

"(3A) It shall be the duty of London Regional Transport (either acting directly, or acting indirectly through subsidiaries of theirs) and the Franchising Director to co-operate with one another in the exercise and performance of their respective functions for the purpose—

(a) of co-ordinating the passenger transport services for persons travelling within, to, or from Greater London—

(i) which are provided by London Regional Transport or their subsidiaries; and

(ii) which are provided under franchise agreements, or whose provision is secured by the Franchising Director pursuant to section 30, 37 or 38 of the Railways Act 1993; and

(b) of securing or facilitating the proper discharge of London Regional Transport's duty under subsection (1) above;

and to afford to one another such information as to the services mentioned in paragraph (a) above as may reasonably be required for those purposes."

(5) In subsection (4) (power of London Regional Transport and the Board to enter into arrangements for the purposes of the co-operation required by the section)—

(a) for the words "subsection (3) above" there shall be substituted the words "subsection (3) or, as the case may be, subsection (3A) above—

(a)";

and

(b) after the words "the Railways Board" there shall be inserted the words "or

(b) London Regional Transport and the Franchising Director,".

(6) After that subsection there shall be inserted—

"(4A) The references in subsections (3A) and (4) above to the respective functions of London Regional Transport and the Franchising Director shall be taken, in the case of the functions of the Franchising Director, as a reference to—

(a) his functions under sections 23 to 31 of the Railways Act 1993 (franchising of passenger services); and

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(b) the duties imposed upon him by sections 37 and 38 of that Act (discontinuance of railway passenger services) to secure the provision of services."

Commencement Information

I20 Sch. 12 para. 14 wholly in force at 1.4.1994; para. 14 not in force at Royal Assent see s. 154(2); para. 14(1)-(3) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; Sch. 12 para. 14 in force at 1.4.1994 insofar as not already in force by S.I. 1994/ 571, art. 5

Marginal Citations

M160 1984 c. 32.
M161 1962 c. 46.
M162 1962 c. 46.

15 In section 7 of that Act (planning of passenger transport services for Greater London) in subsection (4) (which specifies the persons with whom London Regional Transport are to consult in preparing statements under that section)—

(a) after paragraph (a), there shall be inserted—

"(aa) the Franchising Director;"; and

(b) for the word "and" at the end of paragraph (c) there shall be substituted—

"(cc) such other persons as the Secretary of State may specify in a direction given to London Regional Transport; and".

16 In section 31 of that Act (duty of Board to consult London Regional Transport as to fares and services in London) for the words "The Railways Board shall" there shall be substituted the words " If and so long as the Railways Board continues to be under a duty by virtue of section 3 of the [M163]Transport Act 1962 to provide railway services in Greater London, the Board shall ".

Marginal Citations

M163 1962 c. 46.

17 After that section there shall be inserted—

"**31A Duty of Franchising Director to consult London Regional Transport as to fares and services in London.**

The Franchising Director shall from time to time consult with London Regional Transport as to—

(a) the general level and structure of the fares to be charged for the carriage of passengers by railway on journeys wholly within Greater London on services—

(i) which are, or are to be, provided under franchise agreements; or

(ii) whose provision the Franchising Director is under a duty to secure, by virtue of section 30, 37 or 38 of the Railways Act 1993; and

(b) the general level of the provision to be made for such journeys."

Status: *Point in time view as at 24/03/2015. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Railways Act 1993 is up to date with all changes known to be in force on or before 01 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

18 (1) Section 40 of that Act shall have effect with the following amendments.

(2) Without prejudice to the continuing validity of appointments made before the coming into force of this sub-paragraph, for subsection (2) (appointment of chairman and members by the Secretary of State) there shall be substituted—

"(2) The Committee shall consist of—

(a) a chairman, appointed by the Secretary of State after consultation with the Rail Regulator; and

(b) such other members (not exceeding thirty) as the Secretary of State may appoint after consultation with the Rail Regulator and the chairman."

(3) In subsection (4), there shall be omitted—

(a) the words " Subject to subsection (6) below, "; and

(b) paragraph (c) (which confers functions with respect to matters affecting the services and facilities provided by the Board or any subsidiary of theirs) and the word " or " immediately preceding it.

(4) In subsection (5)—

(a) in paragraph (b) (which provides that a matter falls to be considered by the committee if it has been referred to it by certain persons or bodies), for the words "by London Regional Transport or by the Railways Board" there shall be substituted the words " or by London Regional Transport "; and

(b) the words following paragraph (c) (which relate to services provided by the Board or its subsidiaries) shall be omitted.

(5) Subsection (6) (which precludes the committee from considering charges for services and questions relating to the discontinuance or reduction of railway services) shall be omitted.

(6) In subsection (7), paragraph (b) (which requires copies of the committee's minutes, requirements and recommendations in the case of certain matters affecting the Board to be sent to the Board) shall be omitted.

(7) In subsection (8) (power of the Secretary of State to give directions to certain bodies) the words "or (as the case may require) to the Railways Board" shall be omitted.

(8) In subsection (9) (requirement for certain bodies and persons to give notice of certain decisions to the committee) the words "the Railways Board" shall be omitted.

(9) In subsection (10) (committee to make annual report to the Secretary of State), after the words "Secretary of State" where first occurring there shall be inserted the words " and the Rail Regulator ".

(10) In subsection (11) (certain companies not to be treated as subsidiaries of certain bodies), the words "or the Railways Board" shall be omitted.

19 Section 41 of that Act (which provides for the committee to be treated as an Area Transport Users' Consultative Committee for certain purposes and which makes other provision in connection therewith) shall cease to have effect.

20 In section 59 of that Act (which confers power on London Borough Councils and the Common Council to enter into certain agreements with the Board) for the words "the Railways Board" there shall be substituted—

"(a) the Railways Board,

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(b) the Franchising Director, or

(c) any person who is the holder of a passenger licence, a network licence or a station licence, within the meaning of Part I of the Railways Act 1993,".

21 In section 68 of that Act (interpretation) the following definitions shall be inserted at the appropriate places—

(a) " "franchise agreement" has the same meaning as in Part I of the Railways Act 1993; "; and

(b) " "the Franchising Director" means the Director of Passenger Rail Franchising; ".

22 (1) In Schedule 3 to that Act, in paragraph 5 (Secretary of State to provide the committee with funds with which to meet certain expenses) after sub-paragraph (2) there shall be added—

"(3) The Committee shall prepare and send to the Secretary of State not less than two months, or such other period as the Secretary of State may specify, before the beginning of each financial year a statement of the expenses which they expect to incur in respect of that year for the purposes of, or in connection with, the carrying on of their functions.

(4) The Secretary of State shall consider any statement sent to him under sub-paragraph (3) above and shall either approve the statement or approve it with such modifications as he considers appropriate."

(2) In paragraph 9 of that Schedule, at the end of sub-paragraph (3) (which requires minutes to be kept of the proceedings of every meeting of the committee) there shall be added the words " ; and copies of those minutes shall be sent to the Secretary of State, the Rail Regulator and the Central Rail Users' Consultative Committee. "

(3) In sub-paragraph (4) of that paragraph (power of committee to determine own procedure) after the words "Subject to the preceding provisions of this paragraph" there shall be inserted the words " and the provisions of paragraph 11A below " and after paragraph 11 of that Schedule there shall be inserted—

" Admission of public to meetings

11A (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.

(2) The public shall be excluded during any item of business where—

(a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Rail Regulator or the Franchising Director would be disclosed in breach of the obligation of confidence;

(b) the Committee have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded; or

(c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—

(i) any matter which relates to the affairs of an individual, or

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(ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate,

where public disclosure of that matter would or might, in the opinion of the committee, seriously and prejudicially affect the interests of that individual or body.

(3) The Committee shall give such notice—

(a) of any meeting of the Committee which is open to the public, and

(b) of the business to be taken at that meeting (other than items during which the public is to be excluded),

as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.”.

The Airports Act 1986

23 (1) In subsection (2) of section 74 of the [M164]Airports Act 1986 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (a), after the words “the Director General of Electricity Supply for Northern Ireland" (which were inserted by paragraph 30(a) of Schedule 12 to the [M165]Electricity (Northern Ireland) Order 1992) there shall be inserted the words “ the Rail Regulator ”.

(2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (m) (which was inserted by paragraph 30(b) of Schedule 12 to the [M166]Electricity (Northern Ireland) Order 1992) there shall be added—

“(n) the Railways Act 1993”.

Marginal Citations

M164 1986 c. 31.

M165 S.I. 1992/231 (N.I. 1).

M166 S.I. 1992/231 (N.I. 1).

The Gas Act 1986

24 (1) In subsection (2) of section 42 of the [M167]Gas Act 1986 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after the words “the Director General of Electricity Supply" there shall be inserted the words “ the Rail Regulator ”.

(2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (m) there shall be added—

“(n) the Railways Act 1993”.

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Marginal Citations
M167 1986 c. 44.

The Insolvency Act 1986

25 In section 413 of the [M168]Insolvency Act 1986, at the end of subsection (2) (which imposes a requirement to consult with the Insolvency Rules Committee, except in the case of certain provisions there specified) there shall be added the words " or by any of sections 59 to 65 of, or Schedule 6 or 7 to, the Railways Act 1993. "

Marginal Citations
M168 1986 c. 45.

The Consumer Protection Act 1987

26 [F1000] . . . . . .

Textual Amendments
F1000 Sch. 12 para. 26 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

The Channel Tunnel Act 1987

27 In Schedule 6 to the [M169]Channel Tunnel Act 1987, in paragraph 2 (sections 4 and 6 of the [M170]Regulation of Railways Act 1889 not to apply to Concessionaires and through service operators, within the meaning of that Act), for the word "Sections" there shall be substituted the word " Section ".

Marginal Citations
M169 1987 c. 53.
M170 1889 c. 57.

The Electricity Act 1989

28 (1) In subsection (2) of section 57 of the [M171]Electricity Act 1989 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after sub-paragraph (vii) there shall be inserted—

"(viia) the Rail Regulator;".

(2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (n) there shall be added—

"(nn) the Railways Act 1993".

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Marginal Citations
M171 1989 c. 29.

The New Roads and Street Works Act 1991

29 In section 10 of the [M172]New Roads and Street Works Act 1991 (application of the [M173]Fair Trading Act 1973 etc in relation to persons authorised by virtue of that Act to charge tolls for the use of roads), in subsection (2), paragraph (b) (which provides that, for certain purposes, section 51(3) of the [M174]Fair Trading Act 1973 is to have effect as if the Secretary of State for Transport were among the Ministers listed in that provision, and which is superseded by the amendment made by section 66(2) of this Act), and the word "and" immediately preceding it, shall cease to have effect.

Marginal Citations
M172 1991 c. 22.
M173 1973 c. 41.
M174 1973 c. 41.

The Water Industry Act 1991

30 In the [M175]Water Industry Act 1991 (subsection (3)(d) of section 206 of which provides that the general restriction contained in subsection (1) of that section on the disclosure of certain information obtained under or by virtue of that Act does not apply in relation to disclosures facilitating the performance by persons mentioned in Part I of Schedule 15 to that Act of their functions under the provisions listed in Part II of that Schedule), in Schedule 15—

(a) in Part I, after the entry relating to the Director General of Electricity Supply, there shall be inserted the entry—

"The Rail Regulator"; and

(b) in Part II, after the entry relating to the Electricity Act 1989, there shall be inserted the entry—

"The Railways Act 1993".

Marginal Citations
M175 1991 c. 56.

The Water Resources Act 1991

31 In the [M176]Water Resources Act 1991 (subsection (2)(d) of section 204 of which provides that the general restriction contained in subsection (1) of that section on the disclosure of certain information obtained under or by virtue of that Act does not apply in relation to disclosures facilitating the performance by persons mentioned in Part I of Schedule 24 to that Act of their functions under the provisions listed in Part II of that Schedule), in Schedule 24—

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(a) in Part I, after the entry relating to the Director General of Electricity Supply, there shall be inserted the entry—

"The Rail Regulator"; and

(b) in Part II, after the entry relating to the Electricity Act 1989, there shall be inserted the entry—

"The Railways Act 1993".

Marginal Citations

M176 1991 c. 57.

PROSPECTIVE

The British Coal and British Rail (Transfer Proposals) Act 1993

32 The [M177]British Coal and British Rail (Transfer Proposals) Act 1993 (which provides for the Board and the British Coal Corporation to have certain powers to act to facilitate the implementation of proposals of the Secretary of State to transfer property, rights, liabilities or functions of the Board or that Corporation to other persons or bodies) shall cease to have effect, so far as relating to the Board.

Marginal Citations

M177 1993 c. 2.

[F1001]SCHEDULE 13

Section 152.

. . . . . .

Textual Amendments

F1001 Sch. 13 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

SCHEDULE 14

Section 152.

REPEALS

Commencement Information

I21 Sch. 14 partly in force; Sch. 14 not in force at Royal Assent see s. 154(2); Sch. 14 in force in relation to specified repeals at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; Sch. 14 in force in relation to specified repeals at 8.3.1994 by S.I. 1994/571, **art. 2**; Sch. 14 in force in relation for specified repeals at 31.3.1994 by S.I.

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1994/571, **art. 4**; Sch. 14 in force in relation to specified repeals at 1.4.1994 by S.I. 1994/571, **art. 5**; Sch. 14 in force in relation to specified repeals at 15.7.1994 by S.I. 1994/1648, **art. 2**

Chapter	Short title	Extent of repeal
52 & 53 Vict. c. 57.	The Regulation of Railways Act 1889.	Section 6.
18 & 19 Geo. 5 c. ci.	The London Midland and Scottish Railway (Road Transport) Act 1928.	The whole Act.
18 & 19 Geo. 5 c. cii.	The Great Western Railway (Road Transport) Act 1928.	The whole Act.
18 & 19 Geo. 5 c. ciii.	The London and North Eastern Railway (Road Transport) Act 1928.	The whole Act.
18 & 19 Geo. 5 c. civ.	The Southern Railway (Road Transport) Act 1928.	The whole Act.
19 & 20 Geo. 5 c. liv.	The Great Western Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lv.	The London and North Eastern Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lvi.	The London Midland and Scottish Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lvii.	The Southern Railway (Air Transport) Act 1929.	The whole Act.
14 Geo. 6 c. liii.	The British Transport Commission Act 1950.	Section 43.
1 & 2 Eliz. 2 c. 36.	The Post Office Act 1953.	In section 29(1), the words "Without prejudice to section forty-two of this Act" Sections 33 to 42. In section 87(1), the definitions of "railway undertakers", "regular mail train services" and "sorting carriage".
10 & 11 Eliz. 2 c. 46.	The Transport Act 1962.	In section 4, subsections (1)(b), (2) and (7). Section 5. Section 13(3).
10 & 11 Eliz. 2 c. 46.—*contd.*	The Transport Act 1962.—*contd.*	Section 53. Section 54(1)(b) and (2). In section 56, subsections (1) to (3), in subsection (5), the

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		words from the beginning to “section; and", and subsections (7) to (10), (12) to (15) and (17). Section 56A. Sections 69, 70 and 71. In section 92(1), in the definition of “subsidiary", the words “(taking references in that section to a company as being references to any body corporate)". Schedule 2, Part II.
1968 c. 73.	The Transport Act 1968.	Sections 7 and 8. Section 40. In section 42, subsections (3) to (5) and (6)(b). Section 45. Section 50(2). Section 54. In section 55, in subsection (1), in paragraph (a), the words from “or provided" onwards, paragraph (b), paragraphs (i) and (iii) and the words from “and for the purposes" onwards, and subsections (2) to (4) In section 135(1)(a), the words “7, 8,". In section 136(4)(a), the words “7(5) or (6), 8(4)," In section 137, in subsection (1)(a), the words “the Railways Board,". In section 159(1), in the definition of “the Minister", the words “7(7), 8(5),". In section 160(5), the words “otherwise than by virtue of section 7(7)(b) thereof". In Schedule 17, in Part I, in the entry relating to Part IV, the word “40,".
1969 c. 48.	The Post Office Act 1969.	In section 20, subsection (1) (b) and (d), and, in subsection (2), in paragraph (a), the words

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1969 c. 48.—*contd.*	The Post Office Act 1969. —*contd.*	"33 to 36, 38", paragraph (b) and the word "and" immediately preceding it. In Schedule 4, in paragraph 2(1), in the Table, the entries relating to sections 33, 34, 38, 41 and 42 of the [M186]Post Office Act 1953.
1971 c. xlv.	The British Railways Act 1971.	Section 34.
1974 c. 48.	The Railways Act 1974.	Section 3. In section 4(5)(b), the words "section 3 of the Transport Act 1981". Section 8. Section 9. In section 10(2), the definition of "the relevant transport regulations".
1977 c. 20.	The Transport (Financial Provisions) Act 1977.	The whole Act.
1978 c. 55.	The Transport Act 1978.	Section 16.
1980 c. 34.	The Transport Act 1980.	In Schedule 7, paragraphs 1, 2 and 4.
1981 c. 32.	The Transport Act 1962 (Amendment) Act 1981.	The whole Act.
1981 c. 56.	The Transport Act 1981.	Part I. Section 36. Schedule 1.
1982 c. 6.	The Transport (Finance) Act 1982.	Section 2.
1984 c. 32.	The London Regional Transport Act 1984.	Part II.
		In section 40, in subsection (4), paragraph (c) and the word "or" immediately preceding it; in subsection (5), the words following paragraph (c); subsection (6); in subsection (7), paragraph (b); in subsection (8), the words "or (as the case may require) to the Railways Board"; in subsection (9), the words "the Railways Board"; in

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		subsection (11), the words “or the Railways Board" Section 41. In section 42, subsections (3), (4) and (5). In Schedule 6, paragraph 2.
1985 c. 67.	The Transport Act 1985.	Section 118(2)(a)(ii).
1987 c. 53.	The Channel Tunnel Act 1987.	Section 33(11). In section 41, in subsection (3)(b), the words “and section 41(3) and (5) to (7)", and subsection (5). In Schedule 6, in paragraph 2, the words from “and 6" to “the fare)".
1991 c. 22.	The New Roads and Street Works Act 1991.	In section 10(2), paragraph (b) and the word “and" immediately preceding it.
1991 c. 63.	The British Railways Board (Finance) Act 1991.	Section 2.

Marginal Citations

M186 1953 c. 36.

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