Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Modifications etc. (not altering text)

C1 Pt. I (ss. 1-83) modified (18.12.1996) by 1996 c. 61, **s. 21(6)**

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 and the Director of Passenger Rail Franchising.

(1) The Secretary of State shall appoint—

(a) an officer to be known as "the Rail Regulator" (in this Act referred to as "the Regulator"), and

(b) an officer to be known as "the Director of Passenger Rail Franchising" (in this Act referred to as "the Franchising Director"),

for the purpose of carrying out the functions assigned or transferred to the Regulator, or (as the case may be) the Franchising Director, by or under this Act.

(2) An appointment of a person to hold office as the Regulator or the Franchising Director shall be for a term not exceeding five years; but previous appointment to either of those offices shall not affect eligibility for re-appointment (or for appointment to the other of them).

(3) The Secretary of State may remove any person from office as the Regulator or the Franchising Director on the ground of incapacity or misbehaviour.

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(4) Subject to subsections (2) and (3) above, a person appointed as the Regulator or the Franchising Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The Franchising Director shall be a corporation sole by the name of "The Director of Passenger Rail Franchising".

(6) The provisions of Schedule 1 to this Act shall have effect with respect to the Regulator and the Franchising Director.

2 Rail users' consultative committees.

(1) The Area Transport Users Consultative Committees established under section 56 of the [M1]Transport Act 1962 are hereby abolished and the London Regional Passengers' Committee established under section 40 of the [M2]London Regional Transport Act 1984 (which is treated by virtue of section 41 of that Act as such a committee for certain purposes) shall accordingly cease to be treated as one of those committees for any purpose.

(2) The Regulator shall establish a number of committees, not exceeding nine at any one time, to be known as Rail Users' Consultative Committees (in this Part referred to as "consultative committees").

(3) There shall be one consultative committee for Scotland, and one for Wales.

(4) In addition to the consultative committees established under subsection (2) above, the London Regional Passengers' Committee shall be treated as the consultative committee for the Greater London area for all purposes of this Part other than—
   (a) subsections (2) and (3) above and subsections (6) to (8) below;
   (b) section 79 below; and
   (c) Schedule 2 to this Act;

   and references in this Part to a consultative committee shall be construed accordingly.

(5) Subject to subsections (3) and (4) above—
   (a) each consultative committee shall be appointed for such area as the Regulator may from time to time assign to it; and
   (b) the Regulator shall so assign areas to consultative committees as to secure that every place in Great Britain forms part of the area of a consultative committee, and that no place forms part of the area of two or more consultative committees.

(6) Each consultative committee established under subsection (2) above shall consist of—
   (a) a chairman appointed by the Secretary of State after consultation with the Regulator; and
   (b) such other members, being not less than ten nor more than twenty in number, as the Regulator may from time to time appoint, after consultation with the Secretary of State and the chairman.

(7) The chairman and other members of a consultative committee established under subsection (2) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

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(8) The provisions of Schedule 2 to this Act shall have effect with respect to each of the consultative committees established under subsection (2) above.

(9) Unless the Secretary of State, after consultation with the Regulator, otherwise directs, "the Greater London area" means, for the purposes of this section, the area for which, immediately before the coming into force of this section, the London Regional Passengers' Committee was treated, by virtue of section 41(1) of the [M3]London Regional Transport Act 1984, as the Area Transport Users Consultative Committee for the purposes there mentioned.

Marginal Citations

M1 1962 c. 46.
M2 1984 c. 32.
M3 1984 c. 32.

3 The Central Rail Users' Consultative Committee.

(1) The Central Transport Consultative Committee for Great Britain, established under section 56 of the Transport Act 1962, is hereby abolished.

(2) There shall be a committee, to be known as the Central Rail Users' Consultative Committee (in this Part referred to as "the Central Committee").

(3) The Central Committee shall consist of—
- (a) a chairman, appointed by the Secretary of State after consultation with the Regulator;
- (b) every person who for the time being holds office as chairman of a consultative committee established under section 2(2) above or as chairman of the London Regional Passengers' Committee; and
- (c) not more than six other members, appointed by the Regulator after consultation with the Secretary of State and the chairman.

(4) The chairman of the Central Committee and any members appointed under subsection (3)(c) above shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(5) The provisions of Schedule 3 to this Act shall have effect with respect to the Central Committee.

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

(1) The Secretary of State and the Regulator shall each have a duty to exercise the functions assigned or transferred to him under or by virtue of this Part in the manner which he considers best calculated—
- (a) 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 he considers economically practicable;
- (c) to promote efficiency and economy on the part of persons providing railway services;

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(d) to promote competition in the provision 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 his functions under this Part;

(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, the Secretary of State and the Regulator shall each have a duty, in particular, to exercise the functions assigned or transferred to him under or by virtue of this Part in the manner which he 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,

in cases where the circumstances appear to the Secretary of State or, as the case may be, the Regulator to be such as to give rise, or be likely to give rise, to a monopoly situation in the passenger transport market; 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) The Secretary of State and the Regulator shall each be under a duty in exercising the functions assigned or transferred to him under or by virtue of this Part—

(a) to take into account the need to protect all persons from dangers arising from the operation of railways, taking into account, in particular, any advice given to him in that behalf by the Health and Safety Executive; and

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

(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, 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) The Regulator shall also be under a duty in exercising the functions assigned or transferred to him under this Part—

(a) until 31st December 1996, to take into account any guidance given to him from time to time by the Secretary of State;

(b) to act in a manner which he 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 the Regulator has functions under or by virtue of this Part (whether or not the activities in question are,

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or are to be, carried on by those persons in their capacity as holders of such licences); and

(c) to have regard to the financial position of the Franchising Director in discharging his functions under this Part.

(6) In performing his duty under subsection (1)(a) above so far as relating to services for the carriage of passengers by railway or to station services, the Regulator 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.

(8) For the purposes of this section, "monopoly situation" has the same meaning as it has in the [M4]Fair Trading Act 1973 (in this Part referred to as "the 1973 Act"), except that in relation to the passenger transport market—

(a) the expression includes a monopoly situation which is limited to the passenger transport market in some part of the United Kingdom; and

(b) in the application of section 7 of the 1973 Act (monopoly situation in relation to the supply of services) for the purposes of paragraph (a) above, references in that section to the United Kingdom shall accordingly be taken to include references to a part of the United Kingdom.

(9) In this section—

"environment" has the meaning given by section 1(2) of the [M5]Environmental Protection Act 1990;

"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;

"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.

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**

Marginal Citations

M4 1973 c. 41.

M5 1990 c. 43.

5 General duties of the Franchising Director.

(1) It shall be the duty of the Franchising Director to exercise any functions assigned or transferred to him under or by virtue of this Act in the manner which he considers best calculated—

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(a) to fulfil, in accordance with such instructions and guidance as may be given to him from time to time by the Secretary of State, any objectives given to him from time to time by the Secretary of State with respect to—
(i) the provision of services for the carriage of passengers by railway in Great Britain; or
(ii) the operation of additional railway assets under or by virtue of any franchise agreement or any provision of sections 30 and 37 to 49 below;

(b) to ensure that any payments to which this paragraph applies are such as he reasonably considers will achieve economically and efficiently any objectives given to him by the Secretary of State under paragraph (a) above.

(2) The payments to which paragraph (b) of subsection (1) above applies are—
(a) any payments which the Franchising Director may be required to make pursuant to a franchise agreement;
(b) any payments which the Franchising Director may make with a view to securing—
(i) the provision of any services, or
(ii) the operation of any network, station or light maintenance depot, or any part of a network, station or light maintenance depot,
in pursuance of any provision of sections 30, 37 to 42 and 52 below; and
(c) any payments which it falls to the Franchising Director to make to passenger service operators as mentioned in section 136(7) below.

(3) Where the Secretary of State gives the Franchising Director any objectives under subsection (1)(a) above, the Secretary of State shall—
(a) lay a copy of a statement of those objectives before each House of Parliament; and
(b) arrange for copies of that statement to be published in such manner as he may consider appropriate.

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.

(2) In this Part—
"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.

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(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 the Regulator.

Modifications etc. (not altering text)

C2 S. 6(1) excluded (18.12.1996) by 1996 c. 61, **s. 16(1)**

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 the Regulator, 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 the Regulator 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, the Regulator, after consultation with the Secretary of State—
- (a) may either grant or refuse the exemption, whether wholly or to such extent as he may specify in the exemption; and
- (b) if and to the extent that he grants it, may do so subject to compliance with such conditions (if any) as he may so specify.

(4) Before granting a licence exemption under subsection (3) above, the Regulator shall give notice—
- (a) stating that he proposes to grant the licence exemption,
- (b) stating the reasons why he 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.

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

(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) the Regulator, 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.

(7) For the purposes of subsection (6) above—

"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 the Regulator gives a direction under subsection (6) above to any person, he 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.

(9) Subject to 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.

(10) A licence exemption may be granted under subsection (1) above only if—

(a) the licence exemption is to come into force on the day on which section 6(1) above comes into force; or

(b) the licence exemption is to be granted on or before that day but is not to come into force until after that day;

and a licence exemption may be granted under subsection (3) above only if the licence exemption is not to come into force until after that day.

(11) Any application for a licence exemption under subsection (3) above must be made in writing; and where any such application is made, the Regulator may require the applicant to furnish him with such information as the Regulator may consider necessary to enable him 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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VALID FROM 01/02/2001

[F1 7A Consumer protection conditions.

(1) For the purposes of this Part conditions of a licence or licence exemption relate to consumer protection if they are—
- (a) conditions about fares, other than conditions about predatory fare pricing;
- (b) conditions about complaints against the operator by members of the public or liabilities of the operator to members of the public;
- (c) conditions about insurance;
- (d) conditions about policing or security;
- (e) conditions for facilitating the use of railway services by members of the public (for instance, conditions about timetable information, enquiries, sale of tickets, through ticketing and conditions of carriage);
- (f) conditions about liaison with the Rail Passengers' Council or Rail Passengers' Committees; or
- (g) conditions for protecting the interests of persons who are disabled.

(2) The Secretary of State may make regulations providing that for the purposes of this Part—
- (a) further prescribed descriptions of conditions of licences or licence exemptions are conditions which relate to consumer protection; or
- (b) conditions of any description within subsection (1) above are not conditions which so relate.

(3) Only conditions for protecting the interests of the public may be prescribed under subsection (2)(a) above and conditions of the following descriptions may not be so prescribed—
- (a) conditions about technical standards or procedures (including safety standards or procedures);
- (b) conditions about the protection of the environment;
- (c) conditions about responsibility for, or access to, the railway assets to which the licence or licence exemption relates;
- (d) conditions relating to the development, improvement or maintenance of the network; and
- (e) conditions about anti-competitive practices (including predatory fare pricing and cross-subsidy), investment, financial standards or auditing (including efficiency audits).

(4) The Secretary of State may make in relation to any licence or licence exemption granted before the coming into force of regulations under subsection (2) above a scheme making such provision as appears to him to be appropriate in consequence of the provision made by the regulations.

(5) A scheme under subsection (4) above may include modifications of—
- (a) the licence or licence exemption, and
- (b) any agreements or other arrangements or other documents relating to the person (or any of the persons) to whom it was granted,

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(in particular so that references to the Regulator have effect as references to the Authority or that references to the Authority have effect as references to the Regulator).

(6) The scheme may include provision—

(a) for things done by the Regulator before the time when the scheme comes into force to be treated after that time as if done by the Authority; or

(b) for things done by the Authority before the time when the scheme comes into force to be treated after that time as if done by the Regulator.

(7) Before making a scheme under subsection (4) above the Secretary of State must consult—

(a) the Authority;

(b) the Regulator;

(c) the person or persons to whom the licence or licence exemption was granted; and

(d) any such other persons as the Secretary of State considers appropriate.

(8) The provision made by regulations under subsection (2) above applies in relation to any licence or licence exemption granted before the coming into force of the regulations only from the coming into force of a scheme made under subsection (4) above in relation to the licence or licence exemption.

(9) In the case of the exercise by the Authority of any function in relation to conditions of a licence or licence exemption which relate to consumer protection—

(a) section 207 of the Transport Act 2000 shall not apply; but

(b) section 4 above shall apply (as if the Authority were the Regulator).**]**

Textual Amendments

F1 S. 7A inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 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)

8 Licences.

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

(a) the Secretary of State after consultation with the Regulator, or

(b) the Regulator with the consent of, or in accordance with a general authority given by, the Secretary of State,

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 the Regulator under subsection (1)(b) above may include a requirement for the Regulator to consult with, or obtain the approval of, the Secretary of State before granting a 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

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(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, the Regulator may either grant or refuse the licence.

(4) Before granting a licence, the Secretary of State or the Regulator shall give notice—

(a) stating that he proposes to grant the licence,

(b) stating the reasons why he 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 the Regulator 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 without the consent of the Regulator 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 the Regulator and to the Health and Safety Executive; or

(b) in the case of a licence granted by the Regulator, to the Health and Safety Executive.

(8) Any power to make regulations by virtue of subsection (3) above shall only be exercisable by the Secretary of State after consultation with the Regulator and the Franchising Director.

(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.

(10) None of the following, that is to say—

(a) the requirement to consult imposed by subsection (1) above,

(b) the requirements of paragraphs (a) to (c) of subsection (3) above, and

(c) subsections (4) and (5) above,

shall apply to applications for, or the grant of, any licences which, having regard to the provisions of section 6 above, need to be granted before the coming into force of that section.

(11) Any sums received by the Secretary of State or the Regulator under this section shall be paid into the Consolidated Fund.

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Modifications etc. (not altering text)

C3 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

(b) conditions requiring the rendering to—

(i) the Secretary of State,

(ii) the Regulator, 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 the Regulator such documents or other information as he may require for the purpose of exercising the functions assigned or transferred to him under or by virtue of this Part.

(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

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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
  (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 Regulator in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

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—

"call" means any stop at a station for the purpose of allowing passengers to board or leave the train (including the stops at the stations at the beginning and end of the train journey in question);

"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;

"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;

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"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.

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 that one of the relevant authorities who is specified for the purpose in the licence.

(3) The "relevant authorities" for the purposes of this section are—

(a) the Secretary of State; and

(b) the Regulator.

(4) Any consent under subsection (2) above may be given subject to compliance with such conditions as the person giving the consent thinks fit to impose, 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;

(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.

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(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.

Modification of licences

12 Modification by agreement.

(1) Subject to the following provisions of this section, the Regulator may modify the conditions of a licence if the holder of the licence consents to the modifications.

(2) Before making modifications under this section, the Regulator shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect,
- (b) stating the reasons why he 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.

(3) A notice under subsection (2) above shall be given—
- (a) by publishing the notice in such manner as 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) As soon as practicable after making any modifications under this section, the Regulator shall send a copy of those modifications to the Health and Safety Executive.

13 Modification references to the Monopolies Commission.

(1) The Regulator may make to the Monopolies and Mergers Commission (in this Act referred to as the "Monopolies Commission") a reference which is so framed as to require the Commission 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.

(2) The Regulator may, at any time, by notice given to the Monopolies Commission 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 the Commission shall give effect to the variation.

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(3) The Regulator may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies 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 modifications of the conditions of the licence by which, in his 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, the Regulator—

(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 he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Regulator 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 Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(6) It shall be the duty of the Regulator, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—

(a) any information in his possession which relates to matters falling within the scope of the investigation and—

(i) is requested by the Commission for that purpose; or

(ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and

(b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, 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 Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Regulator by section 4 above.

(8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 (modifications of provisions about performance of such functions) of the [M6]Competition Act 1980 (in this Part referred to as "the 1980 Act") shall apply in relation to references under this section as if—

(a) the functions of the Commission in relation to those references were functions under the 1973 Act;

(b) the expression "merger reference" included a reference under this section;

(c) in the said section 70, references to the Secretary of State were references to the Regulator and the reference to three months were a reference to six months;

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(d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and

(e) paragraph 16(2) of that Schedule were omitted.

(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.

Marginal Citations

M6 1980 c. 21.

VALID FROM 20/06/2003

[F2 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 Competition Commission 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 the appropriate authority under subsection (3) below.

(3) The appropriate authority may, if it has received representations on the subject from the Competition Commission 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) The appropriate authority 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

F2 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.

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VALID FROM 20/06/2003

[F3]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 (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).

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

(a) subsection (2) were omitted; and
(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 subsection (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 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), the words “the OFT," 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 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

F3 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.

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Modifications etc. (not altering text)

C4 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 Monopolies Commission—

(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.

(2) Where, on a reference under section 13 above, the Monopolies Commission conclude that the holder of the licence is a party to an agreement to which the [M7]Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 13 above as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under section 13 above shall be made to the Regulator.

(5) Subject to subsection (6) below, the Regulator—

(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 he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(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 the Regulator 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.

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Marginal Citations

M7 1976 c. 34.

15 Modification following report.

(1) Where a report of the Monopolies Commission 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,

the Regulator shall, subject to the following provisions of this section, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this section, the Regulator shall have regard to the modifications specified in the report.

(3) Before making modifications under this section, the Regulator shall give notice—

(a) stating that he proposes to make the modifications and setting out their effect,

(b) stating the reasons why he 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.

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

(a) by publishing the notice in such manner as the Regulator 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.

(5) As soon as practicable after making any modifications under this section, the Regulator shall send a copy of those modifications to the Health and Safety Executive.

(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.

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VALID FROM 01/02/2001

[F4 15A Competition Commission's power to veto modifications following report.

(1) The Competition Commission 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 the Regulator or Authority—

(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 Competition Commission 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 Competition Commission are given notice under section 15(4A) above.

(3) The Competition Commission 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 Competition Commission 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 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 holder of the licence.**]**

Textual Amendments

F4 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)

VALID FROM 01/02/2001

F5 15B Making of modifications by Competition Commission.

(1) If the Competition Commission 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—

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

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(b) such of those adverse effects as would not be remedied or prevented by the modifications made by the Regulator, or required to be made by the Authority, under section 15(4D) above.

(2) In exercising the function conferred by subsection (1) above, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Regulator by section 4 above.

(3) Before making modifications under this section, the Competition Commission 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 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 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 Competition Commission shall send a copy of those modifications to the Regulator, the Authority and the Health and Safety Executive.

Textual Amendments

F5 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)

VALID FROM 01/02/2001

[F6]15C Sections 15A and 15B: supplementary.

(1) The provisions mentioned in subsection (2) below are to apply in relation to the exercise by the Competition Commission of their functions under sections 15A and 15B above as if—

(a) in section 82(1) and (2) of the 1973 Act references to a report of the Competition Commission under that Act were references to a notice under section 15A(4) or 15B(3) above;

(b) in section 85 of that Act references to an investigation on a reference made to the Competition Commission were references to an investigation by the Competition Commission for the purposes of the exercise of their functions under those sections; and

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(c) in section 93B of that Act references to the functions of the Competition Commission under that Act were references to their functions under those sections.

(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 [M8]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 Competition Commission in exercising their functions under sections 15A and 15B above, the Regulator and the Authority shall give to the Competition Commission any information in his or 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 or 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 his or 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 any information given to them for that purpose under subsection (3) above.

Textual Amendments

F6 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)

Marginal Citations

M8 1998 c. 41.

16 Modification by order under other enactments.

(1) Where, in the circumstances mentioned in subsection (2) below, the Secretary of State by order exercises any of the powers specified in—

(a) Parts I and II of Schedule 8 to the 1973 Act, or

(b) section 10(2)(a) of the 1980 Act,

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

(2) Subsection (1) above shall have effect where—

(a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and either—

(i) the monopoly situation exists in relation to the supply of any railway service; or

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(ii) the monopoly situation exists in relation to the supply of transport services and at least one of the persons in whose favour the monopoly situation exists has been engaged in the supply of railway services;

(b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and at least one of the two or more enterprises which ceased, or (in the application of that provision as it has effect by virtue of section 75(4)(e) of that Act) which would cease, to be distinct enterprises was or, as the case may be, is engaged in the supply of railway services; or

(c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the supply of any railway service.

(3) As soon as practicable after making any modifications under this section, the Secretary of State shall send a copy of those modifications to the Regulator 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.

(5) In this section expressions which are also used in the 1973 Act or the 1980 Act have the same meaning as in that Act.

VALID FROM 15/10/2005

[F7] Directions to provide, improve or develop railway facilities

Textual Amendments

F7 S. 16A cross-heading inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, **art. 3**

[F8]16A Provision, improvement and development of railway facilities.

(1) **[**[F9]the Office of Rail Regulation**]** may, on an application—

(a) made by the Authority, or

(b) made by any other person with the consent of the Authority,

give to the operator of a network, station or light maintenance depot a direction to provide a new railway facility if **[**[F9]the Office of Rail Regulation**]** considers him to be an appropriate person to provide the new railway facility.

(2) **[**[F9]the Office of Rail Regulation**]** may, on an application—

(a) made by the Authority, or

(b) made by any other person with the consent of the 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 **[**[F9]the Office of Rail Regulation**]** considers him to be an appropriate person to improve or develop the railway facility.

(3) The Authority's consent 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

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may be withdrawn if any condition is not complied with before **[**[F9]the Office of Rail Regulation**]** decides whether to give the direction).

Textual Amendments

F8 S. 16A inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F9 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)**

[F10]16B Exemption of railway facilities from section 16A.

(1) The Secretary of State may, after consultation with **[**[F11]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 Secretary of State 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.

Textual Amendments

F10 S. 16B inserted (15.10.2005) by 2000 c. 38, **ss. 223**, 275(1); S.I. 2005/2862,{art. 3}

F11 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)**

[F12]16C Making of applications for directions.

(1) An application for a direction under section 16A above must be made to **[**[F13]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 **[**[F13]the Office of Rail Regulation**]** notice in writing of the variation; but if the applicant is a person other than the 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

F12 S. 16C inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F13 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)**

[F14]16D Procedure for considering applications.

(1) When **[**[F15]the Office of Rail Regulation**]** has received the application or notice of a variation, **[**[F16]it**]** must—

(a) send a copy to the person specified in the application, the Authority (if it is not the applicant) and any other persons who **[**[F15]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, **[**[F15]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 **[**[F15]the Office of Rail Regulation**]** decides that he is an appropriate person to do what the direction would require him to do, **[**[F15]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) **[**[F15]the Office of Rail Regulation**]** must—

(a) send the applicant a copy of any representations received by **[**[F16]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, **[**[F15]the Office of Rail Regulation**]** may substitute as the applicant any other person if—

(a) the applicant,

(b) the other person, and

(c) the Authority (if it is neither the applicant nor the other person),

consent to the substitution.

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(6) The applicant may, by giving notice in writing to **[**[F15]the Office of Rail Regulation**]** , withdraw or suspend the application at any time before **[**[F15]the Office of Rail Regulation**]** decides whether to give the direction.

(7) **[**[F15]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 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 **[**[F15]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

F14 S. 16D inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, **art. 3**

F15 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)**

F16 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)**

[F17]16E Decisions on applications: adequate reward.

(1) **[**[F18]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 **[**[F18]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 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—

(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 **[**[F18]the Office of Rail Regulation**]** should take into account in deciding whether the person

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to whom the direction would be given would be adequately rewarded for doing what it would require him to do.

Textual Amendments

F17 S. 16E inserted (15.10.2005) by 2000 c. 38, **ss. 223**, 275(1); S.I 2005/2862, {art. 3}

F18 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)**

[F19]16F Other provisions about decisions.

(1) If **[**[F20]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), **[**[F21]it**]** may give a direction under that section in modified terms.

(2) **[**[F20]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, **[**[F20]the Office of Rail Regulation**]** shall—

(a) notify **[**[F22]its**]** intention to give a direction to the applicant, the 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, **[**[F20]the Office of Rail Regulation**]** shall not give it.

(4) Whatever **[**[F20]the Office of Rail Regulation**]**'s decision on an application **[**[F21]it**]** shall notify the decision to—

(a) the person specified in the application;

(b) the applicant; and

(c) any other persons who **[**[F21]it**]** considers ought to be notified.

(5) **[**[F20]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,

any such amount as **[**[F21]it**]** considers appropriate in respect of costs incurred in connection with the application.

Textual Amendments

F19 S. 16F inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

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F20 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)**

F21 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)**

F22 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)**

[F23]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 **[**[F24]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 Authority if **[**[F24]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) **[**[F24]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 Authority on condition that he or it secures that any such compensation as **[**[F24]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

F23 S. 16G inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F24 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)**

[F25]16H Code of practice.

(1) **[**[F26]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 **[**[F27]it**]** considers appropriate.

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(2) **[**[F26]the Office of Rail Regulation**]** shall have regard to the code of practice in the exercise of **[**[F28]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

F25 S. 16H inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F26 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)**

F27 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)**

F28 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)**

[F29]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 **[**[F30]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

F29 S. 16I inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**

F30 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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VALID FROM 02/04/1994

Access agreements

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

(1) The Regulator 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 or an international railway access contract; 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.

(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;

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(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—

(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 the Franchising Director 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 the Franchising Director;

(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 Franchising Director.

(4) Any reference in this section to a person operating a network, station or light maintenance depot "on behalf of the Franchising Director" is a reference to his operating the network, station or light maintenance depot in pursuance of any agreement or other arrangements made by the Franchising Director for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part to secure the operation of that network, station or light maintenance depot.

(5) Nothing in this section authorises the Regulator 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;

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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

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

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;

"the Directive" means the Directive 91/440/EEC. of the Council of the European Communities dated 29th July 1991 on the development of the Community's railways;

"implementing regulation" means a provision contained in subordinate legislation made for the purpose of implementing the Directive;

"international railway access contract" means an access contract entered into as a result of—

(a) an application made under an implementing regulation by an international grouping to an infrastructure manager for access and transit rights, or for transit rights, for the provision of international services between the member States where the undertakings constituting the international grouping are established; or

(b) an application made under an implementing regulation by a railway undertaking established, or to be established, in a member State other than the United Kingdom to an infrastructure manager for the grant of access for the purpose of the operation of international combined transport goods services;

and expressions used in paragraph (a) or (b) above and in the Directive have the same meaning in that paragraph as they have in the Directive;

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

(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,

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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.

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

(11) Any sums required for the making by the Franchising Director of payments in respect of an access contract entered into pursuant to directions under this section shall, if the access contract is one—

(a) in relation to which the Franchising Director is the person who made the application under this section, or

(b) under which an access option is exercisable by the Franchising Director,

be paid by the Secretary of State out of money provided by Parliament.

Modifications etc. (not altering text)

C5 S. 17 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**

C6 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; or

(b) the Regulator has approved the terms of the access contract and the facility owner enters into the contract pursuant to directions under this section;

and any access contract to which this section applies which is entered into otherwise than in compliance with paragraph (a) or (b) above shall be void.

(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;

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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; or

(b) if and to the extent that the access contract is an international railway access contract.

(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 the Franchising Director 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,

unless the purpose of entering into the access contract is to enable the beneficiary to operate the station on behalf of the Franchising Director;

(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,

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

unless the purpose of entering into the access contract is to enable the beneficiary to operate the light maintenance depot on behalf of the Franchising Director.

(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 the Regulator for approval of its terms.

(6) If, on the submission of a proposed access contract pursuant to subsection (5) above, the Regulator approves its terms, he 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 the Regulator shall send a copy of the directions to the other party.

(7) If, on the submission of a proposed access contract pursuant to subsection (5) above, the Regulator does not consider it appropriate to approve its terms without modification (or to reject it), he 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—

(i) the facility owner gives the Regulator 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 the Regulator shall send a copy of the directions to the other party.

(8) In this section, "associate", "the beneficiary", "international railway access contract" 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),

(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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(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.

(11) Any sums required for the making by the Franchising Director of payments in respect of an access contract entered into pursuant to directions under this section shall, if the access contract is one—

(a) to which the Franchising Director is a party, but in relation to which he is not the facility owner, or

(b) under which the Franchising Director is the person by whom an access option is exercisable,

be paid by the Secretary of State out of money provided by Parliament.

Modifications etc. (not altering text)

C7 S. 18 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**

C8 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 the Franchising Director, of installations comprised in a network.

(1) The Regulator 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 the Franchising Director, 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; or

(b) the Regulator 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;

and any installation access contract to which this subsection applies which is entered into otherwise than in compliance with paragraph (a) or (b) above shall be void.

(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 the Franchising Director, 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—

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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.

(6) Nothing in this section—

(a) authorises the Regulator 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 the Franchising Director" is a reference to his operating the network in pursuance of any agreement or other arrangements made by the Franchising Director for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part 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;

"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;

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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(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.

(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.

(13) There shall be paid by the Secretary of State out of money provided by Parliament any sums required for the making by the Franchising Director of payments in respect of—

(a) an installation access contract—

(i) which is entered into pursuant to directions under subsection (1) above; and

(ii) in relation to which the Franchising Director is the person who made the application under this section; and

(b) an installation access contract—

(i) which is entered into pursuant to directions given by virtue of subsection (5) above; and

(ii) to which the Franchising Director is a party, but in relation to which he is not the installation owner.

Modifications etc. (not altering text)

C9 S. 19(1) restricted (18.12.1996) by 1996 c. 61, **s. 17(4)**

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

VALID FROM 30/11/2000

[F31 19A Review of access charges by Regulator.

Schedule 4A to this Act (which contains provision about the review of access charges by the Regulator) shall have effect.**]**

Textual Amendments

F31 S. 19A inserted (30.11.2000) by 2000 c. 38, **s. 231(1)**, 275(1) (with Sch. 28 paras. 11, 17)

20 Exemption of railway facilities from sections 17 and 18.

(1) The Secretary of State may, after consultation with the Regulator, by order grant exemption from sections 17 and 18 above 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;

and a facility 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 a facility owner makes an application under this subsection to the Regulator for the grant of an exemption from sections 17 and 18 above in respect of the whole or any part of his railway facility, the Regulator, after consultation with the Secretary of State—

(a) may either grant or refuse the exemption, whether wholly or to such extent as he may specify in the exemption; and

(b) if and to the extent that he grants it, may do so subject to compliance with such conditions (if any) as he may so specify.

(4) Before granting a facility exemption under subsection (3) above, the Regulator shall give notice—

(a) stating that he proposes to grant the facility exemption,

(b) stating the reasons why he 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 the Regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the facility exemption.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(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) the Regulator, 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.

(9) Subsection (1) above applies in relation to the grant of any facility exemption which is to become effective on the day on which sections 17 and 18 above come into force; and subsection (3) above applies in relation to the grant of any facility exemption which is not to become effective until after that day.

(10) Any application for a facility exemption under subsection (3) above must be made in writing; and where any such application is made, the Regulator may require the applicant to furnish him with such information as the Regulator may consider necessary to enable him 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.

(12) A facility exemption may be granted in respect of the whole or any part of a railway facility notwithstanding that the railway facility or the part is one which—

(a) is proposed to be constructed; or

(b) is in the course of construction;

and any reference in this section to a railway facility or part of a railway facility shall be construed accordingly.

(13) In this Part "facility exemption" means an exemption from sections 17 and 18 above 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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

21 Model clauses for access contracts.

(1) The Regulator 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) The Regulator 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, the Regulator may consult such persons as he thinks fit.

(5) The Regulator shall encourage, and may require, the use of any model clauses of his in access contracts wherever he considers it appropriate.

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 the Regulator.

(2) The Regulator may, for the purposes of subsection (1) above, give the parties to any particular access agreement his 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) The Regulator may, for the purposes of subsection (1) above, give his 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 the Regulator gives or revokes a general approval under subsection (3) above, he shall publish the approval or revocation (as the case may be) in such manner as he 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.

(6) The Regulator shall not have power to direct or otherwise require amendments to be made to an access agreement.

VALID FROM 01/02/2001

[F32 22A Directions to require amendment permitting more extensive use.

(1) The Regulator 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 the Regulator considers necessary or desirable in consequence of those amendments.

(2) In subsection (1)(a) above "more extensive use" means—

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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 or an international railway access contract.

(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 the Regulator 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) "international railway access contract" and "lease" have the same meaning as in section 17 above; and

(b) "network installation" has the same meaning as in section 19 above.**]**

Textual Amendments

F32 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)

VALID FROM 01/02/2001

[F33]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

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"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.

Textual Amendments

F33 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)

VALID FROM 01/02/2001

[F34]22C Amendment: supplementary.

(1) The Regulator may give directions requiring the parties to an access agreement to make to the access agreement amendments which are, in his opinion, necessary to give effect to the conditions of a licence or otherwise required in consequence of the conditions of a licence.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) The Regulator 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 the Regulator,

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

F34 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)

Franchising of passenger services

23 Passenger services to be subject to franchise agreements.

(1) It shall be the duty of the Franchising Director from time to time to designate as eligible for provision under franchise agreements such services for the carriage of passengers by railway as he may determine (other than services which are, by virtue of section 24 below, exempt from designation under this subsection).

(2) The Franchising Director may perform his duty under subsection (1) above by designating particular services or services of a class or description.

(3) In this Part—

"franchise agreement" means an agreement with the Franchising Director 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;

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"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

(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.

Modifications etc. (not altering text)

C10 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 Secretary of State 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

(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 Secretary of State 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 Secretary of State 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 Secretary of State, after consultation with the Regulator and the Franchising Director—

(a) may either grant or refuse the exemption, whether wholly or to such extent as he may specify in the exemption; and

(b) if and to the extent that he grants it, may do so subject to compliance with such conditions (if any) as he may so specify.

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(4) Before granting a franchise exemption under subsection (3) above, the Secretary of State shall give notice—

(a) stating that he proposes to grant the franchise exemption,

(b) stating the reasons why he 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 Secretary of State 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 is not complied with, the Secretary of State 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 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 Secretary of State may require the applicant to furnish him with such information as the Secretary of State may consider necessary to enable him 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.

(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.

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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;
- (c) any metropolitan county passenger transport authority;
- (d) any body corporate whose members are appointed by a Minister of the Crown, a Government department, a local authority or a metropolitan county passenger transport 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.

(2) Expressions used in sub-paragraphs (i) to (iv) of subsection (1)(e) above and in section 736 of the [M9]Companies Act 1985 have the same meaning in those sub-paragraphs as they have in that section.

(3) Subject to the following provisions of this section, subsection (1) above shall not prevent—
- (a) the British Railways Board (in this Act referred to as "the Board"), or
- (b) a wholly owned subsidiary of the Board,

from being a franchisee.

(4) Subject to the following provisions of this section, whenever the Franchising Director proposes to issue invitations to tender under section 26 below in respect of any particular services for the carriage of passengers by railway, he may, after consultation with the Board and the Regulator, determine that neither the Board nor any wholly owned subsidiary of the Board shall be eligible for inclusion among the persons to whom the invitations are to be issued or who may be selected as the franchisee.

(5) The Franchising Director shall not make a determination under subsection (4) above unless he considers that it is desirable to do so—
- (a) for the purpose of promoting competition for franchises;
- (b) for the purpose of promoting the award of franchise agreements to companies in which qualifying railway employees have a substantial interest;
- (c) for the purpose of encouraging new entry to the passenger railway industry; or
- (d) for the purpose of preventing or reducing the dominance of any person or persons in the market for the provision in Great Britain, or in a part of Great Britain, of services for the carriage of passengers by railway.

(6) The Franchising Director shall—
- (a) give notice of any determination under subsection (4) above to the Board; and

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(b) publish notice of the determination in such manner as he thinks fit.

(7) Nothing in subsection (5) above shall be taken to affect the matters which the Franchising Director may take into account in determining the other persons whom he invites to tender for franchise agreements or whom he selects as franchisees.

(8) No objectives, instructions or guidance shall be given under section 5 above by the Secretary of State to the Franchising Director with respect to the exercise of his functions under this section.

(9) In this section—

"competition for franchises" means competition to become franchisees under franchise agreements;

"encouraging new entry to the passenger railway industry" means encouraging private sector operators who do not currently provide services for the carriage of passengers by railway to commence doing so;

"qualifying railway employees", in the case of any franchise agreement, means persons who are or have been employed in an undertaking which provides or provided the services to which the franchise agreement relates at a time before those services begin to be provided under that franchise agreement.

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**

Marginal Citations

M9 1985 c. 6.

26 Invitations to tender for franchises.

(1) Unless the Secretary of State otherwise directs, the person who is to be the franchisee under any franchise agreement shall be selected by the Franchising Director 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 Franchising Director shall prepare any such invitation to tender and shall issue that invitation to such persons as he may, after consultation with the Regulator, think fit.

(3) The Franchising Director shall not issue an invitation to tender under this section to (or entertain such a tender from) any person unless he 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.

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VALID FROM 01/02/2001

[F35 26A No tenders for franchise.

(1) The Authority shall give notice to the Secretary of State if it has—

(a) issued an invitation to tender for the provision of any services under section 26 above (otherwise than in compliance with a direction under section 26B(3)(b) below); but

(b) received no tenders in response to the invitation.

(2) On receipt of the notice under subsection (1) above the Secretary of State shall (after considering the matter) give to the Authority—

(a) a direction to issue new invitations to tender for the provision of the services under section 26 above, or

(b) a direction not to seek to secure the provision of the services under a franchise agreement,

as he considers appropriate.

(3) The Secretary of State may at any time—

(a) revoke a direction under subsection (2)(b) above; and

(b) instead direct the Authority to issue new invitations to tender for the provision of the services under section 26 above.**]**

Textual Amendments

F35 S. 26A inserted (1.2.2001) by 2000 c. 38, **s. 212(4)** (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)

VALID FROM 01/02/2001

F36 26B No adequate tenders for franchise.

(1) The Authority shall give notice under subsection (2) below if—

(a) it has issued an invitation to tender for the provision of any services under section 26 above (otherwise than in compliance with a direction under subsection (3)(b) below); but

(b) although it has received a tender or tenders in response to the invitation, it considers that the services would be provided more economically and efficiently than under a franchise agreement entered into pursuant to the tender or any of the tenders if the Authority provided them or secured their provision otherwise than under a franchise agreement.

(2) The notice shall be given to—

(a) the Secretary of State; and

(b) the person, or each of the persons, who submitted a tender.

(3) On receipt of the notice under paragraph (a) of subsection (2) above the Secretary of State shall (after considering the matter and any representations duly made in

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response to a notice under paragraph (b) of that subsection and not withdrawn) give to the Authority—

(a) a direction to reconsider the tender or tenders with a view to selecting a franchisee, or

(b) a direction to issue new invitations to tender for the provision of the services under section 26 above,

as he considers appropriate.

(4) The Authority shall give notice under subsection (5) below if it has issued an invitation to tender for the provision of any services under section 26 above in compliance with a direction under subsection (3)(b) above but either—

(a) it has received no tenders in response to the invitation; or

(b) although it has received a tender or tenders in response to the invitation, it considers that the services would be provided more economically and efficiently than under a franchise agreement entered into pursuant to the tender or any of the tenders if the Authority provided them or secured their provision otherwise than under a franchise agreement.

(5) The notice shall be given to—

(a) the Secretary of State; and

(b) if the Authority received a tender or tenders, the person, or each of the persons, who submitted a tender.

(6) In a case where the Authority has received no tenders, on receipt of the notice under subsection (5)(a) above the Secretary of State shall give to the Authority a direction not to seek to secure the provision of the services under a franchise agreement.

(7) In a case where the Authority has received a tender or tenders, on receipt of the notice under paragraph (a) of subsection (5) above the Secretary of State shall (after considering the matter and any representations duly made in response to a notice under paragraph (b) of that subsection and not withdrawn) give to the Authority—

(a) a direction to reconsider the tender or tenders with a view to selecting a franchisee, or

(b) a direction not to seek to secure the provision of the services under a franchise agreement,

as he considers appropriate.

(8) Any notice under subsection (2)(b) or (5)(b) above shall specify a period (not being less than 28 days from the date of the service of the notice) within which representations may be made to the Secretary of State.

(9) The Secretary of State may at any time—

(a) revoke a direction under subsection (6) or (7)(b) above; and

(b) instead direct the Authority to issue new invitations to tender for the provision of the services under section 26 above.

Textual Amendments

F36 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

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VALID FROM 01/02/2001

[F37]26C Review of directions.

(1) If the Secretary of State gives a direction under section 26B(3) or (7) above, he shall give notice to the person or persons who submitted the tender or tenders that he has done so.

(2) An application for the review of a decision of the Secretary of State to give a direction under section 26B(3) or (7) above may be made to the court by any person who submitted a tender within 42 days from the date of service on him of the notice under subsection (1) above.

(3) Except as provided by subsection (2) above, a direction under section 26A or 26B above shall not be questioned by any legal proceedings whatever.

(4) In subsection (2) above "the court" means—
- (a) the High Court in relation to England and Wales; and
- (b) the Court of Session in relation to Scotland.

Textual Amendments

F37 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 Franchising Director before entering into a franchise agreement to satisfy himself 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 Franchising Director, 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 himself 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 Franchising Director, 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

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(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.

(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 Franchising Director, 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, 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 Franchising Director 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 transfer scheme 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 Franchising Director may undertake in a franchise agreement to exercise his powers under Part II below to transfer franchise assets to himself or another in such circumstances as may be specified in the franchise agreement.

(10) The Franchising Director shall ensure that every franchise agreement includes such provision (if any) as he 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—

(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

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(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 [M10]Insolvency Act 1986.

(14) Any sums required by the Franchising Director for making payments for or in connection with the acquisition, transfer or disposal of property, rights or liabilities in pursuance of provisions contained in a franchise agreement shall be paid by the Secretary of State out of money provided by Parliament.

(15) Any sums received by the Franchising Director for or in connection with the acquisition, transfer or disposal of property, rights or liabilities in pursuance of provisions contained in a franchise agreement shall be paid into the Consolidated Fund.

Marginal Citations

M10 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.

(2) Subject to the other provisions of this Act, if it appears to the Franchising Director that the interests of persons who use, or who are likely to use, franchised services so require, he shall ensure that the franchise agreement in question contains any such provision as he 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 his 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 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 Franchising Director.

(5) In this section—

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"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.

29 Other terms and conditions of franchise agreements.

(1) The Franchising Director 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; or

(b) the payment to the franchisee or the franchise operator of grants of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement.

(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 Franchising Director may think fit.

(6) Any sums received by the Franchising Director in consequence of the conditions of a franchise agreement shall be paid into the Consolidated Fund.

(7) Any sums required by the Franchising Director for the payment of any grant, or for the making of any other payment, in consequence of any condition or other provision of a franchise agreement shall be paid by the Secretary of State out of money provided by Parliament.

(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.

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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**

30 Failure to secure subsequent franchise agreement.

(1) In any case where—

(a) a franchise agreement is terminated or otherwise comes to an end, but

(b) no further franchise agreement has been entered into in respect of services for the carriage of passengers by railway formerly provided under that franchise agreement,

it shall, subject to subsection (3) below, be the duty of the Franchising Director to secure the provision of those services until such time as they again begin to be provided under a franchise agreement.

(2) In any case where a franchise agreement which includes provision in respect of the operation of any additional railway assets is terminated or otherwise comes to an end, but—

(a) no further franchise agreement has been entered into which makes provision in respect of the operation of the additional railway assets formerly operated under or by virtue of that franchise agreement, or

(b) such further franchise agreement as has been entered into in respect of the operation of those additional railway assets makes provision in respect of the operation of some but not all of those additional railway assets,

the Franchising Director shall, subject to subsection (4) below, have the power to secure the operation of any additional railway asset with respect to the operation of which no further franchise agreement has been entered into, until such time as it again begins to be operated under or by virtue of a franchise agreement.

(3) Subsection (1) above does not—

(a) require the Franchising Director to secure the provision of any services, if and to the extent that, in his opinion, adequate alternative railway passenger services are available;

(b) preclude him from giving notice under subsection (5) of section 38 below in relation to any of the services in question, in which case his 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 him from ceasing to secure the provision of any of the services in question in any case falling within any of paragraphs (a) to (d) of subsection (2) of that section.

(4) The Franchising Director's power under subsection (2) above to secure the operation of any additional railway asset shall come to an end—

(a) where the Franchising Director publishes a notice under subsection (5) of section 40 or subsection (4) of section 42 below in respect of the additional railway asset in question, on the date mentioned in paragraph (b) of the subsection in question;

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(b) where the Franchising Director discontinues the operation of the additional railway asset in question in circumstances in which he is entitled to do so without notice under or by virtue of subsection (2) of section 40 or 42 below, on the date on which that discontinuance takes place;

(c) where the operator of the additional railway asset in question gives notice to the Franchising Director in respect of that additional railway asset under section 39 or 41 below, on the date specified by the operator pursuant to subsection (4)(b) of section 39 or subsection (3)(b) of section 41 below, as the case may be; or

(d) where the operator of the additional railway asset in question discontinues the operation of that additional railway asset in circumstances in which he is entitled to do so without notice, under or by virtue of subsection (1), (2) or (3) of section 39 or subsection (1) or (2) of section 41 below, on the date on which that discontinuance takes place.

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 [M11]Landlord and Tenant Act 1954 (security of tenure of business premises) nor the [M12]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);

"tenancy" has the same meaning as it has in Part II of the [M13]Landlord and Tenant Act 1954 or, in Scotland, as it has in the [M14]Tenancy of Shops (Scotland) Act 1949.

Marginal Citations

M11 1954 c. 56.
M12 1949 c. 25.
M13 1954 c. 56.
M14 1949 c. 25.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
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Passenger Transport Authorities and Executives

32 Power of Passenger Transport Executives to enter into agreements with wholly owned subsidiaries of the Board.

(1) The [M15]Transport Act 1968 shall have effect with the following amendments, which are made for the purpose of enabling Passenger Transport Executives to enter into agreements under section 20(2)(b) of that Act (securing provision of railway services considered appropriate to meet public transport requirements for the Executive's area) with wholly owned subsidiaries of the Board, as well as with the Board.

(2) In section 10(1)(vi) (power of Executive to make payments to the Board for certain services)—

(a) after the words "Railways Board" there shall be inserted the words " , or any wholly-owned subsidiary of that Board, "; and

(b) after the words "the Board" there shall be inserted the words " or the subsidiary (as the case may be) ".

(3) In section 15(1)(d) (Executive to obtain the Authority's approval of any agreement proposed to be entered into otherwise than under section 20(2)(b) with the Board for the provision by the Board of certain services)—

(a) after the words "Railways Board" there shall be inserted the words " or a wholly-owned subsidiary of that Board "; and

(b) after the words "the Board" there shall be inserted the words " or the wholly-owned subsidiary ".

(4) In section 20(2)(b)—

(a) after the words "section 10 of this Act" there shall be inserted the words " and subject to sections 33 and 34 of the Railways Act 1993 ";

(b) after the words "that Board" there shall be inserted the words " , or with any wholly-owned subsidiary of that Board, "; and

(c) for the words "the Board" there shall be substituted the words " , between them, the Board and their wholly-owned subsidiaries ".

(5) In section 20(4) (payments to the Board)—

(a) after the words "to the Railways Board" there shall be inserted the words " or a wholly-owned subsidiary of that Board "; and

(b) after the words "provided by the Board" there shall be inserted the words " or the subsidiary ".

(6) In section 20(6) (resolution of disputes)—

(a) after the words "Railways Board" there shall be inserted the words " or any wholly-owned subsidiary of that Board "; and

(b) after the words "the Board" there shall be inserted the words " or the subsidiary ".

Marginal Citations

M15 1968 c. 73.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
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33 Re-negotiation of section 20(2) agreements as a result of this Act.

(1) It shall be the duty of the Board and of every Passenger Transport Authority and every Passenger Transport Executive to co-operate with each other with a view to reaching agreement about—

(a) the changes that need to be made to existing section 20(2) agreements as a result of the provisions of this Act or anything done or to be done pursuant to any such provision;

(b) whether those changes can best be made by amending the existing section 20(2) agreements or by terminating those agreements and entering into new section 20(2) agreements in their place; and

(c) the amendments that need to be made to the existing section 20(2) agreements or, as the case may be, the provisions that need to be contained in the new section 20(2) agreements.

(2) The Secretary of State may give notice to the Board, and to the Passenger Transport Authority and the Passenger Transport Executive for any passenger transport area, specifying the date by which they are—

(a) to have reached agreement on the matters specified in paragraphs (a) to (c) of subsection (1) above, so far as relating to the existing section 20(2) agreement with which they are concerned; and

(b) to have made to that existing section 20(2) agreement the amendments mentioned in paragraph (c) of that subsection or, as the case may be, to have entered into a new section 20(2) agreement, containing the provisions mentioned in that paragraph, in place of the existing section 20(2) agreement.

(3) If, in a case where the Secretary of State has given notice under subsection (2) above, the requirements of paragraphs (a) and (b) of that subsection have not been complied with by the date specified in that notice, he may issue directions to the Board and to the Passenger Transport Executive in question requiring them—

(a) to make to the existing section 20(2) agreement in question amendments determined by him and specified in the directions, or

(b) to enter into a new section 20(2) agreement, on terms determined by him and specified in the directions, in place of the existing section 20(2) agreement,

by such date as may be specified in the directions.

(4) The Board or any Passenger Transport Executive may refer to the Secretary of State any dispute which arises in the course of negotiations concerning the matters specified in paragraphs (a) to (c) of subsection (1) above; and on any such reference the Secretary of State may give such directions as he thinks fit to the Board and to the Passenger Transport Executive in question.

(5) Without prejudice to the generality of the directions that may be given on a reference under subsection (4) above, the Secretary of State may, on any such reference, give directions to the Board and to the Passenger Transport Executive in question requiring the Board and that Executive—

(a) to make to the existing section 20(2) agreement in question amendments determined by him and specified in the directions; or

(b) to enter into a new section 20(2) agreement, on terms determined by him and specified in the directions, in place of the existing section 20(2) agreement,

by such date as may be specified in the directions.

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(6) Where the Secretary of State gives directions under this section with respect to the amendments that are to be made to an existing section 20(2) agreement or the terms on which a new section 20(2) agreement is to be entered into, any requirement for the consent of the Passenger Transport Authority in question to be obtained to the making of those amendments or that agreement shall be dispensed with.

(7) This section shall apply in relation to any section 20(2) agreement which has been amended or entered into pursuant to this section as it applies in relation to an existing section 20(2) agreement, and "existing section 20(2) agreement" shall be construed accordingly.

(8) In this section—

"section 20(2) agreement" means an agreement made between the Board and a Passenger Transport Executive pursuant to section 20(2)(b) of the [M16]Transport Act 1968 (whether or not the agreement has been amended or entered into pursuant to this section);

"existing section 20(2) agreement", subject to subsection (7) above, means a section 20(2) agreement entered into before the coming into force of this section;

"new section 20(2) agreement" means a section 20(2) agreement made at or after the coming into force of this section;

and any reference to the Board includes a reference to a wholly owned subsidiary of the Board.

Marginal Citations

M16 1968 c. 73.

34 Passenger Transport Authorities and Executives: franchising.

(1) The fact that any services for the carriage of passengers by railway are, or are to be, provided by the Board or a wholly owned subsidiary of the Board under a section 20(2) agreement does not preclude the designation of those services under section 23(1) above as eligible for provision under a franchise agreement.

(2) Subsection (1) above does not affect the continuing validity of any section 20(2) agreement and, accordingly, no services provided, or to be provided, under such an agreement shall begin to be provided under a franchise agreement until such time as the section 20(2) agreement in question has terminated.

(3) Subject to section 35(7) below, a Passenger Transport Executive shall continue to have power to enter into section 20(2) agreements with the Board or any wholly owned subsidiary of the Board for the provision of services for the carriage of passengers by railway until such time as the services in question first begin to be provided under a franchise agreement; and, accordingly, once the services first begin to be so provided, the Executive in question shall cease to have power to enter into a section 20(2) agreement for the provision of those services.

(4) The Franchising Director—

(a) before issuing an invitation to tender under section 26 above in respect of any services for the carriage of passengers by railway within the passenger transport area of a Passenger Transport Executive, or

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(b) in a case where the Secretary of State has given a direction under section 26(1) above which has effect in relation to any such services, before entering into a franchise agreement in respect of any of those services,

shall comply with the requirements imposed upon him by subsection (5) below.

(5) The requirements mentioned in subsection (4) above are that the Franchising Director must give notice to the Passenger Transport Executive for the area in question—

(a) of his intentions with respect to the inclusion, in any franchise agreement contemplated by that subsection, of provisions relating to the operation of any additional railway assets wholly or partly within the area in question, and

(b) of his intention—

(i) in a case falling within paragraph (a) of that subsection, to issue the invitation to tender, or

(ii) in a case falling within paragraph (b) of that subsection, to enter into the franchise agreement,

and must, in either of the cases mentioned in paragraph (b) above, consult that Executive, which may, before the expiration of the period of 60 days immediately following the date specified in that notice as its date of issue, submit to him a statement under this subsection.

(6) A statement under subsection (5) above—

(a) shall specify the services for the carriage of passengers by railway which the Passenger Transport Authority for the area in question considers it appropriate to secure to meet any public transport requirements within that area, so far as relating to the provision of services of the same description as those in respect of which the Franchising Director proposes—

(i) to issue the invitation to tender mentioned in paragraph (b)(i) of that subsection, or

(ii) to enter into the franchise agreement mentioned in paragraph (b)(ii) of that subsection,

as the case may be;

(b) may specify the minimum level of quality to which any services so specified are to be provided;

(c) may (subject to section 28(3) above) specify requirements with respect to the fares to be charged to persons using any services so specified; and

(d) may specify the minimum level of quality with respect to the operation of any station (but not any other additional railway asset) which may be required by any such franchise agreement as is mentioned in subsection (5)(a) above.

(7) A Passenger Transport Executive which has submitted a statement under subsection (5) above to the Franchising Director may from time to time amend that statement by giving notice of the amendments to the Franchising Director; and where any such statement is so amended, any reference in this section to the statement submitted under subsection (5) above shall be taken as a reference to that statement as for the time being amended.

(8) Where a Passenger Transport Executive has submitted a statement under subsection (5) above to the Franchising Director, the Franchising Director shall ensure that the services, and any minimum levels of quality or requirements with respect to fares, specified in that statement—

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(a) in a case falling within paragraph (a) of subsection (4) above, are included in the specification of the services in respect of which the invitation to tender is issued; or

(b) in a case falling within paragraph (b) of that subsection, are provided for in any franchise agreement into which he may enter in respect of the services mentioned in that paragraph.

(9) A Passenger Transport Executive shall be a party to any franchise agreement which relates, whether in whole or in part, to the provision, within the Executive's passenger transport area, of services specified in a statement under subsection (5) above.

(10) The Franchising Director and any Passenger Transport Executive may enter into agreements with each other as to the terms on which franchise agreements to which the Executive is a party are to be entered into.

(11) Before entering into a franchise agreement, a Passenger Transport Executive for a passenger transport area shall submit to the Passenger Transport Authority for that area, and obtain that Passenger Transport Authority's approval of, the proposed franchise agreement.

(12) It shall be the duty of every Passenger Transport Authority and every Passenger Transport Executive to facilitate the attainment by the Franchising Director of the objective of securing expeditiously that franchise agreements are entered into in respect of any services for the carriage of passengers by railway within their passenger transport area—

(a) which are for the time being the subject of section 20(2) agreements; but

(b) which are designated under section 23(1) above as eligible for provision under franchise agreements.

(13) In any case where —

(a) any services ("the PTA services") are included, in consequence of a statement under subsection (5) above, among those which are to be provided under a franchise agreement or a franchise agreement requires the operation of any additional railway assets as mentioned in paragraph (a) of that subsection,

(b) the franchise agreement does not make provision for the Passenger Transport Executive for the area in question to make payments to the franchisee or the franchise operator in respect of the provision of the PTA services or the operation of the additional railway assets, and

(c) payments by way of grant in respect of the provision of the PTA services or the operation of the additional railway assets fall to be made by the Franchising Director pursuant to conditions contained in the franchise agreement by virtue of section 29(1)(b) above,

the Passenger Transport Executive shall pay to the Franchising Director, at or before the time at which any such payment as is mentioned in paragraph (c) above is made, a sum equal to the amount of that payment.

(14) Where, pursuant to section 30 above, the Franchising Director is under a duty to secure the provision of any services for the carriage of passengers by railway, or is empowered to secure the operation of any additional railway assets, within the passenger transport area of a Passenger Transport Executive, the Executive—

(a) shall have power to enter into agreements with the Franchising Director with respect to the securing by him of—

(i) the provision of any of the services in question, or

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(ii) the operation of any of the additional railway assets in question,

until such time as they are again provided under a franchise agreement;

(b) shall make to the Franchising Director in respect of—

(i) the provision of any of the services in question whose provision he secures pursuant to section 30 above, and

(ii) the operation of any of the additional railway assets in question whose operation he secures pursuant to section 30 above,

payments of such amounts, and at such times, as may be agreed between the Executive and the Franchising Director or, in default of agreement, of such amounts and at such times as the Secretary of State may direct; but

(c) shall not have power to enter into agreements with the Board or any wholly owned subsidiary of the Board for—

(i) the provision of any of the services in question, or

(ii) the operation of any of the additional railway assets in question.

(15) Without prejudice to the generality of the provisions which may be included in any agreement made between the Franchising Director and a Passenger Transport Executive under paragraph (a) of subsection (14) above, such an agreement may, in particular, contain provisions concerning—

(a) the services for the carriage of passengers by railway which the Passenger Transport Authority for the passenger transport area in question considers it appropriate to secure to meet any public transport requirements within that area,

(b) the minimum level of quality to which any such services are to be provided,

(c) the fares to be charged to persons using any such services, or

(d) the minimum level of quality to which the operation of any station (but not of any other additional railway asset) is to be secured under sub-paragraph (ii) of that paragraph.

(16) The Secretary of State shall not direct a Passenger Transport Executive to make any payment under subsection (14)(b) above, except in respect of—

(a) any service—

(i) which is provided under an agreement entered into by the Franchising Director pursuant to his duty under section 30 above, and

(ii) which under the terms of that agreement is required to involve calls at more than one station within the passenger transport area of the Executive, or

(b) any additional railway asset which is operated under an agreement entered into by the Franchising Director pursuant to his power under that section,

"call" meaning for this purpose any stop at a station for the purpose of allowing passengers to board or leave the train (including the stops at the stations at the beginning and end of any journey to which the service relates).

(17) If any dispute arises between the Franchising Director and a Passenger Transport Executive in connection with—

(a) a proposal by the Franchising Director to issue an invitation to tender, or to enter into a franchise agreement, in respect of services for the carriage of passengers by railway within the passenger transport area of that Executive, or

(b) any franchise agreement which has been entered into in respect of any such services, or in respect of any such services and any additional railway asset,

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either of them may refer the dispute to the Secretary of State for determination and on any such reference the Secretary of State may give to the Franchising Director or the Passenger Transport Executive such directions with respect to the dispute as he may think fit.

(18) Without prejudice to subsection (17) above—

(a) if the Franchising Director considers it desirable to do so for the purpose of securing expeditiously that a franchise agreement is entered into in respect of services for the carriage of passengers by railway within the passenger transport area of a Passenger Transport Executive, he may apply to the Secretary of State for directions under this subsection; or

(b) if a Passenger Transport Executive for any passenger transport area considers it desirable to do so for the purpose of securing expeditiously that a franchise agreement is entered into in respect of services for the carriage of passengers by railway within that passenger transport area, the Executive may apply to the Secretary of State for directions under this subsection;

and on any such application, the Secretary of State may give for that purpose such directions as he may think fit to the Franchising Director or the Executive.

(19) Without prejudice to the generality of the directions that may be given under subsection (17) or (18) above, but subject to subsection (20) below, the Secretary of State may, in particular, give a direction under either of those subsections—

(a) requiring the Franchising Director or the Executive to enter into a franchise agreement on such terms as may be specified in the direction;

(b) providing that any one or more of subsections (4) to (11) and (13) above, or any part of any of those subsections, shall not have effect with respect to a franchise agreement; or

(c) requiring the Executive to make payments in respect of—

(i) the provision under a franchise agreement of services for the carriage of passengers by railway within their passenger transport area, whether or not the inclusion of those services among the services which are to be provided under the franchise agreement is in consequence of a statement submitted under subsection (5) above by the Executive and whether or not the Executive is a party to the franchise agreement; or

(ii) the operation under or by virtue of a franchise agreement of additional railway assets wholly or partly within their passenger transport area, whether or not the Executive is a party to the franchise agreement;

and, without prejudice to any other provision of this Act, any reference in paragraph (b) or (c) above to a franchise agreement includes a reference to a proposed franchise agreement.

(20) The Secretary of State shall not give a direction under subsection (19)(c) above requiring a Passenger Transport Executive to make payments in respect of the provision under a franchise agreement of services for the carriage of passengers by railway, or the operation under or by virtue of a franchise agreement of additional railway assets, except in respect of—

(a) such of those services as are required by the terms of the franchise agreement—

(i) to be provided during the relevant period in the case of that direction, and

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(ii) to involve calls at more than one station within the passenger transport area of the Executive, or

(b) such of those additional railway assets as are required by or under the terms of the franchise agreement to be operated during the relevant period in the case of that direction,

"call" having the same meaning in this subsection as it has in subsection (16) above.

(21) For the purposes of subsection (20) above, the "relevant period", in the case of any direction, is the period which is made up of—

(a) the financial year in which the direction is given,

(b) the financial year immediately preceding that in which the direction is given, and

(c) the financial year immediately following that in which the direction is given,

"financial year" meaning for this purpose the period of twelve months ending with 31st March.

(22) In this section—

"public transport requirements" has the same meaning as it has in the [M17]Transport Act 1968;

"section 20(2) agreement" has the same meaning as in section 33 above.

(23) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Marginal Citations

M17 1968 c. 73.

35 Termination and variation of section 20(2) agreements by the Franchising Director.

(1) This section applies in any case where services for the time being provided under a section 20(2) agreement by the Board or a wholly owned subsidiary of the Board have been designated under section 23(1) above as eligible for provision under a franchise agreement.

(2) If, in a case where this section applies, a franchise agreement is entered into in respect of all the services for the time being provided under the section 20(2) agreement, the Franchising Director shall serve a notice on the parties to the section 20(2) agreement terminating that agreement on such date ("the termination date") as may be specified in the notice.

(3) Where notice is served under subsection (2) above, the parties to the section 20(2) agreement—

(a) shall be taken to have agreed to terminate that agreement on the termination date, and

(b) shall accordingly be released from the performance of their obligations under that agreement after that date,

and the section 20(2) agreement shall not have effect after the termination date, except so far as relating to anything done, or required to be done, pursuant to the agreement on or before that date.

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(4) If, in a case where this section applies, a franchise agreement is entered into in respect of some, but not all, of the services for the time being provided under the section 20(2) agreement, the Franchising Director may serve a notice on the parties to the section 20(2) agreement varying the terms of that agreement.

(5) Where notice is served under subsection (4) above—

(a) the parties to the section 20(2) agreement shall be taken to have agreed to a variation of the section 20(2) agreement such that the services to be provided under the franchise agreement shall, after such date as may be specified in the notice, no longer be provided under the section 20(2) agreement; and

(b) the section 20(2) agreement shall have effect with such further modifications which are necessary to give effect to, or are consequential on, the variation referred to in paragraph (a) above as the parties may agree or, in default of agreement, as may be determined on a reference to arbitration.

(6) For the purposes of subsection (5)(b) above—

(a) either party to the section 20(2) agreement may refer the matter in dispute to arbitration after giving the other not less than fourteen days' notice of his intention to do so; and

(b) if the parties are unable to agree on the appointment of a person as the arbitrator, either of them, after giving the other not less than fourteen days' notice of his intention to do so, may by notice request the Franchising Director to appoint a person as the arbitrator.

(7) Where a section 20(2) agreement is terminated or varied by virtue of this section, the Passenger Transport Executive in question shall not have power to enter into another such agreement for the provision of the services which are to be provided under the franchise agreement referred to in subsection (2) or (4) above (as the case may be) without the consent of the Franchising Director.

(8) Where a section 20(2) agreement has been entered into, but services have not begun to be provided under it, this section shall have effect in relation to the services which are to be provided as it has effect in relation to services for the time being provided under a section 20(2) agreement.

(9) Any reference in this section to an arbitrator shall, in Scotland, be taken as a reference to an arbiter.

(10) In this section, "section 20(2) agreement" has the same meaning as it has in section 33 above.

36 Miscellaneous amendments of the Transport Act 1968.

(1) In section 10 of the [M18]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;".

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(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—

"**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 [M19]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

M18 1968 c. 73.

M19 1985 c. 6.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

Closures

37 Proposals to discontinue non-franchised etc. passenger services.

(1) In any case where—

(a) all the railway passenger services on any line or from any station are provided otherwise than in satisfaction of requirements imposed by a franchise agreement and otherwise than on behalf of the Franchising Director, and

(b) the person providing those services (in this section referred to as "the service operator") proposes to discontinue all such services on that line or from that station (in this section referred to as a closure),

then, unless the closure is certified by the Regulator as being a minor closure, the service operator shall give notice of the proposal to the Franchising Director not less than three months before the date specified pursuant to subsection (3)(b) below as that on which the service operator will cease providing the services (the "service operator's withdrawal date") and shall not discontinue those services before that date.

(2) In determining for the purposes of paragraph (a) of subsection (1) above whether all the railway passenger services on a line or from a station are provided as mentioned in that paragraph, there shall be left out of account any services—

(a) which involve travel through the Channel Tunnel;

(b) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M20]Transport Act 1962;

(c) which are provided otherwise than as regular scheduled services for that line or for that station, as the case may be; or

(d) which are designated, or which are of a class or description designated, by order under section 49(2) below as services in relation to which this section is not to have effect;

and this section shall not have effect in relation to any services falling within paragraphs (a) to (d) above.

(3) A notice under subsection (1) above shall be accompanied by a statement of—

(a) the service operator's reasons for the proposal;

(b) the date on which he will cease providing the services in question; and

(c) any alternative transport services which appear to the service operator to be available.

(4) Where notice is given to the Franchising Director under subsection (1) above, he must consider, and form an opinion on, the question whether the proposed closure should or should not be permitted to take effect.

(5) If the Franchising Director is of the opinion that the proposed closure should not be permitted to take effect, he shall be under a duty to secure the provision of the services in question after the service operator's withdrawal date.

(6) If the Franchising Director is of the opinion that the proposed closure should be permitted to take effect, he shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—

(a) particulars of the proposal to effect the closure,

(b) particulars of the date on which it is proposed that the closure will take effect,

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(c) particulars of any alternative transport services which appear to him to be available,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the provision of the services to which the proposed closure relates.

(7) The reasons contained in the statement referred to in subsection (6)(d) above may consist of or include the reasons included in the statement under subsection (3) above, with or without other reasons of the Franchising Director's.

(8) Without prejudice to the provisions of section 38 below in relation to the services in question—

(a) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the provision of those services after the interim period; and

(b) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(9) In this section—

"the area affected" means the area in which is situated the station or, as the case may be, the line mentioned in subsection (1) above;

"the final decision on the closure question" means—

(a) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means the period beginning immediately after the service operator's withdrawal date and ending four weeks after the date of the final decision on the closure question;

"minor closure" means the discontinuance of services on any stretch of line along which there is no station (or no station in use) where the circumstances are, in the opinion of the Regulator, such that—

(a) any trains that would otherwise use that stretch of line in travelling between any two stations will instead pass along an alternative route; and

(b) any passengers travelling on any such trains will not be required to make any additional change of train and will not incur any significant increase in the time which their journey takes.

(10) The railway passenger services which are to be regarded for the purposes of this section as provided on behalf of the Franchising Director are those whose provision he is for the time being under a duty to secure in consequence of—

(a) section 30 above,

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) subsection (5) or (8)(a) above,
(c) section 38(6)(a) below, or
(d) any closure condition imposed under section 43(9) or 44(2) below.

(11) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C11 S. 37 excluded (1.4.1994) by S.I. 1994/606, **art. 7(1)**
S. 37 excluded (21.7.1994) by 1994 c. xi, **s. 17**
S. 37 excluded (21.7.1994) by 1994. c. xv, s. 17(4)
S. 37 excluded (24.5.1996) by S.I. 1996/1356, **art. 3(1)**
S. 37 excluded (23.7.1997) by S.I. 1997/1531, **art. 3(1)**
S. 37 excluded (13.12.1999) by S.I. 1999/3112, **art. 4(1)**

Marginal Citations

M20 1962 c. 46.

38 Proposals to discontinue franchised etc. passenger services.

(1) This section applies in any case where—
(a) any railway passenger services on any line or from any station are provided on behalf of the Franchising Director and he proposes to discontinue those services, or
(b) any railway passenger services on any line or from any station are provided in satisfaction of requirements imposed by a franchise agreement, but—
(i) the person so providing those services intends not to continue to provide them when the requirement so to provide them comes to an end, and
(ii) the Franchising Director proposes that they should then be discontinued;

and any reference in this section to a closure is a reference to a discontinuance falling within paragraph (a) or (b) above.

(2) If in a case to which this section applies—
(a) the closure is certified by the Regulator as being a minor closure,
(b) the closure in question is one in respect of which, in consequence of the application of section 49(6) below, neither section 37 above nor Schedule 5 to this Act is to apply,
(c) the closure is one in respect of which neither of the conditions in subsection (3) below is satisfied, and any requirement imposed by a franchise agreement to provide the services in question has come to an end, or
(d) the services in question fall within any of paragraphs (a) to (c) of subsection (4) below,

the Franchising Director may discontinue the services in question, notwithstanding any duty imposed on him by or under this Part to secure their provision, and subsections (5) and (6) below shall not apply in relation to the closure.

(3) The conditions mentioned in subsection (2)(c) above are—

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) that all the railway passenger services on the line or from the station in question are provided on behalf of the Franchising Director and he proposes to discontinue all such services on that line or from that station; or

(b) that all the railway passenger services on the line or from the station in question are provided in satisfaction of requirements imposed by a franchise agreement, and—

(i) the person so providing those services intends not to continue providing them when the requirement so to provide them comes to an end, and

(ii) the Franchising Director proposes that all such services on that line or from that station should then be discontinued.

(4) In determining, for the purposes of paragraph (a) or (b) of subsection (3) above, whether all the railway passenger services on a line or from a station are provided as mentioned in that paragraph there shall be left out of account any services—

(a) which involve travel through the Channel Tunnel;

(b) which are provided otherwise than as regular scheduled services for that line or for that station, as the case may be;

(c) which are designated, or which are of a class or description designated, by order under section 49(2) below as services in relation to which section 37 above is not to have effect; or

(d) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M21]Transport Act 1962;

and this section shall not have effect in relation to any services falling within paragraph (d) above.

(5) Subject to subsection (2) above, where this section applies, the Franchising Director shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—

(a) particulars of the proposal to effect the closure,

(b) the date on which it is proposed that the closure will take effect,

(c) particulars of any alternative transport services which appear to him to be available,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the provision of the services to which the proposed closure relates.

(6) Without prejudice to any subsequent application of this section in relation to the services in question—

(a) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the provision of those services after the interim period; and

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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(7) In this section—

"the area affected" means the area in which is situated the station or, as the case may be, the line mentioned in subsection (1) above;

"the final decision on the closure question" means—

(a) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means—

(a) in a case falling within paragraph (a) of subsection (1) above, the period beginning with the date mentioned in subsection (5)(b) above and ending four weeks after the date of the final decision on the closure question; or

(b) in a case falling within paragraph (b) of that subsection, the period beginning immediately after the requirement mentioned in sub-paragraph (i) of that paragraph comes to an end and ending four weeks after the date of the final decision on the closure question;

"minor closure" has the same meaning as it has in section 37 above.

(8) The services which are to be regarded for the purposes of this section as provided on behalf of the Franchising Director are the same services as are to be so regarded for the purposes of section 37 above.

(9) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C12 S. 38 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**
S. 38 restricted (18.12.1996) by 1996 c. 61, **s. 18**

Marginal Citations

M21 1962 c. 46.

39 Notification of proposals to close operational passenger networks.

(1) Subject to subsection (2) below, in any case where—

(a) the operator of a network proposes to discontinue the operation of the network or some part of it (in this section referred to as a "closure"),

(b) the network or, as the case may be, the part of the network in question has, at any time within the preceding five years, been used for or in connection with the provision of any services for the carriage of passengers by railway, and

(c) the network or, as the case may be, the part of the network in question is not one which is operated on behalf of the Franchising Director,

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

then, unless the closure is certified by the Regulator as being a minor closure, the operator shall give notice of the proposal to the Franchising Director not less than three months before the date specified pursuant to subsection (4)(b) below as the date on which it is proposed that the closure should take effect and shall not discontinue the operation of the network or, as the case may be, the part of the network in question before that date.

(2) This section does not apply if and to the extent that the proposal mentioned in subsection (1) above is a proposal to discontinue the operation of part of a multiple track railway between any two places, where the circumstances are such that the railway line in question will continue to be at least a single track railway between those two places.

(3) In determining for the purposes of subsection (1)(b) above whether the network or, as the case may be, the part of the network in question has at any time within the period there mentioned been used for or in connection with the provision of services for the carriage of passengers by railway, there shall be left out of account any use for or in connection with the provision of services—

(a) which involve travel through the Channel Tunnel;

(b) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M22]Transport Act 1962; or

(c) which are provided otherwise than as regular scheduled services on that network or, as the case may be, the part of the network in question;

and this section shall not have effect in relation to any networks which are designated, or which are of a class or description designated, by order under section 49(4) below as networks in relation to which this section is not to have effect.

(4) A notice under subsection (1) above shall be accompanied by a statement of—

(a) the operator's reasons for the proposal;

(b) the date on which it is proposed that the closure will take effect; and

(c) any alternative transport services which appear to him to be available.

(5) Where notice is given to the Franchising Director under subsection (1) above, he must consider, and form an opinion on, the question whether the proposed closure should or should not be permitted to take effect.

(6) If the Franchising Director is of the opinion that the proposed closure should not be permitted to take effect, he shall be under a duty to secure the continued operation of the network or, as the case may be, the part of the network in question after the date on which the operator proposes that the closure should take effect.

(7) If the Franchising Director is of the opinion that the proposed closure should be permitted to take effect, he shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—

(a) particulars of the proposal to effect the closure,

(b) the date on which it is proposed that the closure will take effect,

(c) particulars of any alternative transport services which appear to him to be available,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the operation of the network or, as the case may be, the part of the network to which the proposed closure relates.

(8) The reasons contained in the statement referred to in subsection (7)(d) above may consist of or include the reasons included in the statement under subsection (4) above, with or without other reasons of the Franchising Director's.

(9) Without prejudice to the provisions of section 40 below in relation to the network or the part of the network in question—

(a) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the operation of the network or, as the case may be, the part of the network after the interim period; and

(b) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(10) In this section—

"the area affected" means the area in which is situated the network or, as the case may be, the part of the network in question;

"the final decision on the closure question" means—

(a) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means the period beginning with the date mentioned in subsection (7)(b) above and ending four weeks after the date of the final decision on the closure question;

"minor closure" means discontinuance of the operation of—

(a) any part of a network which consists of a stretch of track, or installations associated with a stretch of track, along which there is no station (or no station in use) where the circumstances are, in the opinion of the Regulator, such that—

(i) any trains that would otherwise use that part of the network in travelling between any two stations will instead pass along an alternative route; and

(ii) any passengers travelling on any such trains will not be required to make any additional change of train and will not incur any significant increase in the time which their journey takes; or

(b) any part of a network (other than track) which, in the opinion of the Regulator, is not necessary for the use of the network for or in connection with the provision of services for the carriage of passengers by railway;

"multiple track railway" means a railway line between any two places which consists of two or more continuous sets of track taking the same route between those two places;

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

"single track railway" means a railway line between any two places which consists of one continuous set of track between the two places.

(11) The networks, and the parts of networks, which are to be regarded for the purposes of this section as operated on behalf of the Franchising Director are those whose operation he is for the time being under a duty to secure, in consequence of—

(a) subsection (6) or (9)(a) above,

(b) section 40(6)(a) below, or

(c) any closure condition imposed under section 43(9) or 44(2) below,

and those whose operation he is for the time being securing in pursuance of his power under section 30 above.

(12) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C13 S. 39 excluded (1.4.1994) by S.I. 1994/606, **art. 7(2)**
S. 39 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**
S. 39 excluded (24.5.1996) by S.I. 1996/1356, **art. 3(2)**
S. 39 excluded (23.7.1997) by S.I. 1997/1531, **art. 3(2)**
S. 39 excluded (13.12.1999) by S.I. 1999/3112, **art. 4(2)**
S. 39 excluded (13.12.1999) by S.I. 1999/3111, **art. 3(1)**
S. 39 excluded (26.5.2000) by S.I. 2000/1178, **art. 2**

Marginal Citations

M22 1962 c. 46.

40 Proposals to close passenger networks operated on behalf of the Franchising Director.

(1) This section applies in any case where—

(a) a network or a part of a network is operated on behalf of the Franchising Director; and

(b) the Franchising Director proposes to discontinue the operation of the network or, as the case may be, the part of the network in question (in this section referred to as a "closure").

(2) If in a case where this section applies—

(a) the closure is certified by the Regulator as being a minor closure,

(b) the closure is one to which subsection (3) below applies,

(c) the network or, as the case may be, the part of the network in question has at no time within the preceding five years been used for or in connection with the provision of any services for the carriage of passengers by railway, or

(d) the network in question is one of those which are designated, or which are of a class or description designated, by order under section 49(4) below as networks in relation to which section 39 above is not to have effect,

the Franchising Director may discontinue the operation of the network or, as the case may be, the part of the network in question, notwithstanding any duty imposed upon him by or under this Part to secure its operation, and subsections (5) and (6) below shall not apply in relation to the closure.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(3) This subsection applies to a closure if and to the extent that it is the closure of part of a multiple track railway running between any two places, where the circumstances are such that the railway line in question will continue to be at least a single track railway between those two places.

(4) In determining for the purposes of subsection (2)(c) above whether the network or, as the case may be, the part of the network in question has at any time within the period there mentioned been used for or in connection with the provision of services for the carriage of passengers by railway, there shall be left out of account any use for or in connection with the provision of services—

(a) which involve travel through the Channel Tunnel;

(b) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M23]Transport Act 1962; or

(c) which are provided otherwise than as regular scheduled services on that network or, as the case may be, the part of the network in question.

(5) Subject to subsection (2) above, where this section applies, the Franchising Director shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—

(a) particulars of the proposal to effect the closure,

(b) the date on which it is proposed that the closure will take effect,

(c) particulars of any alternative transport services which appear to him to be available,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the operation of the network or, as the case may be, the part of the network to which the proposed closure relates.

(6) Subject to subsection (2) above and without prejudice to any subsequent application of this section in relation to the network or the part of the network in question—

(a) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the operation of the network or, as the case may be, the part of the network after the interim period; and

(b) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(7) In this section—

"the area affected" means the area in which is situated the network or, as the case may be, the part of the network in question;

"the final decision on the closure question" means—

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means the period beginning with the date mentioned in subsection (5)(b) above and ending four weeks after the date of the final decision on the closure question;

"minor closure", "multiple track railway" and "single track railway" have the same meaning as they have in section 39 above.

(8) The networks and parts of networks that are to be regarded for the purposes of this section as operated on behalf of the Franchising Director are the same networks and parts of networks as are to be so regarded for the purposes of section 39 above.

(9) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C14 S. 40 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Marginal Citations

M23 1962 c. 46.

41 Notification of proposals to close railway facilities used in connection with passenger services.

(1) In any case where—

(a) the operator of a station or light maintenance depot ("the relevant facility") proposes to terminate the use of that station or light maintenance depot, or some part of it, as such (in this section referred to as a "closure"),

(b) the relevant facility or, as the case may be, the part of the relevant facility in question has, at any time within the preceding five years, been used in connection with the provision of any services for the carriage of passengers by railway, and

(c) the relevant facility or, as the case may be, the part of the relevant facility in question is not one which is operated on behalf of the Franchising Director,

then, unless the closure is certified by the Regulator as being a minor closure, the operator shall give notice of the proposal to the Franchising Director not less than three months before the date specified pursuant to subsection (3)(b) below as the date on which it is proposed that the closure should take effect and shall not terminate the use of the relevant facility or, as the case may be, the part of the relevant facility in question before that date.

(2) In determining for the purposes of subsection (1)(b) above whether the relevant facility or, as the case may be, the part of the relevant facility in question has at any time within the period there mentioned been used in connection with the provision of services for the carriage of passengers by railway, there shall be left out of account any use in connection with the provision of services—

(a) which involve travel through the Channel Tunnel;

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M24]Transport Act 1962; or

(c) which are provided otherwise than as regular scheduled services;

and this section shall not have effect in relation to any stations or light maintenance depots which are designated, or which are of a class or description designated, by order under section 49(5) below as stations or light maintenance depots in relation to which this section is not to have effect.

(3) A notice under subsection (1) above shall be accompanied by a statement of—

(a) the operator's reasons for the proposal;

(b) the date on which it is proposed that the closure will take effect; and

(c) any alternative facilities which appear to the operator to be available for the provision of services corresponding to those provided by means of the relevant facility or, as the case may be, the part of the relevant facility in question.

(4) Where notice is given to the Franchising Director under subsection (1) above, he must consider, and form an opinion on, the question whether the proposed closure should or should not be permitted to take effect.

(5) If the Franchising Director is of the opinion that the proposed closure should not be permitted to take effect, he shall be under a duty to secure the continued operation of the relevant facility or, as the case may be, the part of the relevant facility in question after the date on which the operator proposes that the closure should take effect.

(6) If the Franchising Director is of the opinion that the proposed closure should be permitted to take effect, he shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—

(a) particulars of the proposal to effect the closure,

(b) the date on which it is proposed that the closure will take effect,

(c) particulars of any alternative facilities which appear to him to be available for the provision of services corresponding to those provided by means of the relevant facility or, as the case may be, the part of the relevant facility in question,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the operation of the relevant facility or, as the case may be, the part of the relevant facility to which the proposed closure relates.

(7) The reasons contained in the statement referred to in subsection (6)(d) above may consist of or include the reasons included in the statement under subsection (3) above, with or without other reasons of the Franchising Director's.

(8) Without prejudice to the provisions of section 42 below in relation to the relevant facility or the part of the relevant facility in question—

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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the operation of the relevant facility or, as the case may be, the part of the relevant facility after the interim period; and

(b) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(9) In this section—

"the area affected"—

(a) in a case where the relevant facility is a station, means the area served by the station; and

(b) in a case where the relevant facility is a light maintenance depot, means the area in which the light maintenance depot is situated;

"the final decision on the closure question" means—

(a) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means the period beginning with the date mentioned in subsection (6)(b) above and ending four weeks after the date of the final decision on the closure question;

"minor closure"—

(a) in relation to a station, means discontinuance of the operation of a part of the station which, in the opinion of the Regulator, is not necessary for the use of the station for the purpose of, or in connection with, the provision of services for the carriage of passengers by railway; and

(b) in relation to a light maintenance depot, means any such discontinuance as would not, in the opinion of the Regulator, jeopardise the provision of any services for the carriage of passengers by railway.

(10) The stations and light maintenance depots, and the parts of stations or light maintenance depots, which are to be regarded for the purposes of this section as operated on behalf of the Franchising Director are those whose operation he is for the time being under a duty to secure, in consequence of—

(a) subsection (5) or (8)(a) above,

(b) section 42(5)(a) below, or

(c) any closure condition imposed under section 43(9) or 44(2) below,

and those whose operation he is for the time being securing in pursuance of his power under section 30 above.

(11) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C15 S. 41 excluded (1.4.1994) by S.I. 1994/606, **art. 7(3)(4)**
S. 41 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**
S. 41 excluded (24.5.1996) by S.I. 1996/1356, **art. 3(3)**

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

S. 41 excluded (23.7.1997) by S.I. 1997/1531, **art. 3(3)**
s. 41 excluded (13.12.1999) by S.I. 1999/3112, **art. 4(3)**
S. 41 excluded (13.12.1999) by S.I. 1999/3111, **art. 3(2)**

Marginal Citations
M24 1962 c. 46.

42 Proposals to close passenger railway facilities operated on behalf of the Franchising Director.

(1) This section applies in any case where—
- (a) the whole or some part of a station or light maintenance depot ("the relevant facility") is operated on behalf of the Franchising Director; and
- (b) the Franchising Director proposes to discontinue the operation of the relevant facility or of some part of the relevant facility (in this section referred to as a "closure").

(2) If in a case where this section applies—
- (a) the closure is certified by the Regulator as being a minor closure,
- (b) the relevant facility or, as the case may be, the part of the relevant facility in question has at no time within the preceding five years been used in connection with the provision of any services for the carriage of passengers by railway, or
- (c) the relevant facility is, or is part of, one of those stations or light maintenance depots which are designated, or which are of a class or description designated, by order under section 49(5) below as stations or light maintenance depots in relation to which section 41 above is not to have effect,

the Franchising Director may discontinue the operation of the relevant facility or, as the case may be, the part of the relevant facility in question, notwithstanding any duty imposed upon him by or under this Part to secure its operation, and subsections (4) and (5) below shall not apply in relation to the closure.

(3) In determining for the purposes of subsection (2)(b) above whether the relevant facility or, as the case may be, the part of the relevant facility in question has at any time within the period there mentioned been used in connection with the provision of services for the carriage of passengers by railway, there shall be left out of account any use in connection with the provision of services—
- (a) which involve travel through the Channel Tunnel;
- (b) which are experimental passenger services, within the meaning of section 48 below, or which are provided on an experimental basis, for the purposes of section 56A of the [M25]Transport Act 1962; or
- (c) which are provided otherwise than as regular scheduled services.

(4) Subject to subsection (2) above, where this section applies, the Franchising Director shall publish in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as appears to him to be appropriate, a notice containing—
- (a) particulars of the proposal to effect the closure,
- (b) the date on which it is proposed that the closure will take effect,
- (c) particulars of any alternative facilities which appear to him to be available for the provision of services corresponding to those provided by means of

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the relevant facility or, as the case may be, the part of the relevant facility in question,

(d) the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected, or from which a copy of that statement can be obtained, and any fees payable for copies of the statement,

(e) a statement that objections to the proposed closure may be lodged with the Regulator within such period as may be specified for the purpose in the notice (being not less than six weeks from the date of the last publication of the notice in a local newspaper),

and shall be under a duty during the interim period to secure the operation of the relevant facility or, as the case may be, the part of the relevant facility to which the proposed closure relates.

(5) Subject to subsection (2) above and without prejudice to any subsequent application of this section in relation to the relevant facility or the part of the relevant facility in question—

(a) if the final decision on the closure question is that the proposed closure will not be allowed to take effect, the Franchising Director shall be under a duty to secure the operation of the relevant facility or, as the case may be, the part of the relevant facility after the interim period; and

(b) if the final decision on the closure question is that the proposed closure will be allowed to take effect subject to compliance with conditions, the Franchising Director shall be under a duty to comply with those conditions or to secure that they are complied with.

(6) In this section—

"the area affected" means the area in which is situated the relevant facility or, as the case may be, the part of the relevant facility in question;

"the final decision on the closure question" means—

(a) in a case where the decision of the Regulator under section 43(9) below with respect to the proposed closure is not referred to the Secretary of State under section 44 below, that decision; or

(b) in a case where that decision is referred to the Secretary of State under section 44 below, the disposal of that reference by the Secretary of State;

"the interim period" means the period beginning with the date mentioned in subsection (4)(b) above and ending four weeks after the date of the final decision on the closure question;

"minor closure" has the same meaning as it has in section 41 above.

(7) The stations and light maintenance depots and the parts of stations and light maintenance depots that are to be regarded for the purposes of this section as operated on behalf of the Franchising Director are the same stations and light maintenance depots and parts of stations and light maintenance depots as are to be so regarded for the purposes of section 41 above.

(8) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C16 S. 42 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
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Marginal Citations
M25 1962 c. 46.

43 Notification to, and functions of, the Regulator and the relevant consultative committees.

(1) Where the Franchising Director is required by any provision of sections 37 to 42 above to publish any notice, he shall also send the following documents, that is to say—
   (a) a copy of the notice,
   (b) a copy of the statement of reasons to which the notice refers, and
   (c) a statement of his recommendations with respect to the conditions (if any) to be attached to any consent to the closure,

   to the Regulator and to every consultative committee whose area consists of or includes the whole or any part of the area affected by the proposed closure.

(2) The Regulator shall send to every consultative committee whose area consists of or includes the whole or any part of the area affected a copy of every objection to the proposed closure which is lodged with him in accordance with the terms of the statement published pursuant to paragraph (e) of whichever of sections 37(6), 38(5), 39(7), 40(5), 41(6) or 42(4) above is applicable in the case of that proposed closure.

(3) On receipt of the copy of the notice referred to in subsection (1)(a) above, a consultative committee shall—
   (a) consider whether or not the proposed closure will cause any hardship;
   (b) identify any reasonable means of alleviating any such hardship; and
   (c) prepare, and send to the Regulator, a report of the conclusions which it has reached in the discharge of its functions under paragraphs (a) and (b) above;

   and, for the purposes of paragraph (b) above, a consultative committee shall not conclude that any particular means of alleviating hardship is reasonable unless, balancing the cost to the Franchising Director (or any other public authority) of employing those means against the benefit of any alleviation thereby secured, the committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(4) Any consultative committee which has prepared a report under subsection (3)(c) above shall send a copy of the report to the Central Committee and may publish the report in any manner which it considers appropriate.

(5) For the purpose of facilitating the discharge of its functions under subsection (3) above, a consultative committee may, after consultation with the Regulator, hold public hearings.

(6) In deciding whether to hold a public hearing for the purposes of this section, and in conducting any such hearing, a consultative committee shall take into account such matters as may be notified to it by the Regulator.

(7) The report required by subsection (3)(c) above shall be sent to the Regulator before the expiration of the period of 12 weeks, or such longer period as the Regulator may allow in any particular case, immediately following the end of the period within which objections to the proposed closure may be lodged with the Regulator.

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(8) The Regulator shall only allow a longer period for the purposes of subsection (7) above if, on an application made to him by the consultative committee in question, he considers it appropriate to do so in the circumstances of the particular case.

(9) It shall be for the Regulator to decide whether the proposed closure should, or should not, be allowed to take effect; and a decision may be given allowing the proposed closure to take effect subject to compliance with such conditions (if any) as the Regulator may see fit to impose.

(10) Before deciding whether or not to allow the proposed closure to take effect, or whether to impose any and, if so, what conditions, the Regulator shall consider—
- (a) the reasons for the proposed closure set out in the copy of the statement sent to him pursuant to subsection (1)(b) above;
- (b) any objections to the proposed closure which have been lodged with him; and
- (c) every report relating to the proposed closure which is sent to him by a consultative committee pursuant to subsection (3)(c) above.

(11) The Regulator shall make his decision with respect to the proposed closure before the expiration of the period of 26 weeks, or such longer period as the Secretary of State may at the request of the Regulator allow in any particular case, immediately following the day on which he receives the documents sent to him pursuant to subsection (1) above.

(12) When the Regulator has made a decision with respect to the proposed closure, he shall send a copy of the decision to—
- (a) the Secretary of State,
- (b) the Franchising Director,
- (c) every such consultative committee as is mentioned in subsection (1) above, and
- (d) either—
  - (i) in a case falling within section 37 above, the service operator, within the meaning of that section, or
  - (ii) in a case falling within section 39 or 41 above, the operator of the network, station or light maintenance depot in question who gave the notice required by subsection (1) of the section in question,

and shall publish notice of the decision at every station within the area affected.

(13) In this section, "the area affected", in relation to a proposed closure, shall be construed in accordance with the section under or by virtue of which the Franchising Director is required to publish the notice referred to in subsection (1) above.

Modifications etc. (not altering text)
C17 S. 43 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

44 Reference to the Secretary of State of decisions of the Regulator concerning proposed closures.

(1) Any person aggrieved by a decision of the Regulator in relation to a proposed closure may refer that decision to the Secretary of State by notice in writing given to the Secretary of State not later than 4 weeks after the date of the decision.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
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(2) On a reference under this section, the Secretary of State may—
- (a) confirm the decision given by the Regulator;
- (b) in the case of a decision of the Regulator to allow a proposed closure to take effect subject to compliance with conditions, confirm the decision to allow the proposed closure to take effect but modify the conditions; or
- (c) substitute his decision for that of the Regulator.

(3) Any person who refers a decision to the Secretary of State under this section shall provide, with his notice under subsection (1) above, a statement of the reasons why he is aggrieved by the decision of the Regulator.

(4) On disposing of any reference under this section, the Secretary of State shall give notice of his decision to—
- (a) the Regulator,
- (b) the Franchising Director,
- (c) every consultative committee to which notice of the Regulator's decision was required to be given by paragraph (c) of subsection (12) of section 43 above,
- (d) any person to whom notice of the Regulator's decision was required to be given by paragraph (d) of that subsection, and
- (e) if not falling within paragraphs (a) to (d) above, the person who referred the Regulator's decision to the Secretary of State under subsection (1) above,

and shall publish notice of his decision on the reference at every station at which the Regulator was required by section 43(12) above to publish notice of his decision.

Modifications etc. (not altering text)
C18 S. 44 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

45 Closure conditions: general.

(1) In this Part, "closure conditions" means the conditions subject to compliance with which consent to a closure is given.

(2) Closure conditions—
- (a) may impose requirements on the Franchising Director with respect to the times at which, or stages by which, a closure is to take effect;
- (b) may require the Franchising Director to secure the provision of a bus substitution service, within the meaning of sections 119 to 124 of the [M26]Transport Act 1985.

(3) The provisions of this section are without prejudice to the generality of the closure conditions that may be imposed in any case.

Modifications etc. (not altering text)
C19 S. 45 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Marginal Citations
M26 1985 c. 67.

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46 Variation of closure conditions.

(1) The Regulator may from time to time vary or revoke any conditions for the time being required to be complied with in connection with a closure, other than—

(a) a condition imposed by the Secretary of State under Schedule 5 to this Act, or

(b) a condition requiring the Franchising Director to secure the provision of a bus substitution service (within the meaning of sections 119 to 124 of the [M27]Transport Act 1985),

whether or not those conditions have been imposed, modified or confirmed by the Secretary of State under section 44 above and whether the closure took place before or after the coming into force of this section.

(2) Where, in exercise of his power under subsection (1) above, the Regulator decides to vary or revoke any closure condition, he shall send a copy of his decision to—

(a) the Secretary of State,

(b) the Franchising Director,

(c) every consultative committee whose area consists of or includes the whole or any part of the area affected by the closure to which the condition relates, and

(d) either—

(i) if the closure in question is one falling within section 37 above, the service operator, within the meaning of that section, or

(ii) if the closure in question is one falling within section 39 or 41 above, the operator of the network, station or light maintenance depot in question who gave the notice required by subsection (1) of the section in question,

and shall publish notice of the decision at every station within the area affected by the closure to which the condition relates.

(3) Any person aggrieved by a decision of the Regulator under subsection (1) above may refer that decision to the Secretary of State in accordance with section 44 above; and that section shall apply in relation to the reference of any such decision to vary or revoke a condition as it applies in relation to the reference of a decision in connection with a proposed closure, but taking any reference to proposed closure as a reference to variation or revocation of a condition.

(4) In this section—

"the area affected", in relation to any closure, shall be construed in accordance with the section under or by virtue of which the Franchising Director was required to publish in connection with that closure the notice referred to in section 43(1) above;

"closure" includes any closure within the meaning of subsection (7) of section 56 of the [M28]Transport Act 1962, whether that subsection applied in relation to the closure or not.

Modifications etc. (not altering text)

C20 S. 46 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Marginal Citations

M27 1985 c. 67.

M28 1962 c. 46.

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VALID FROM 01/02/2001

[F38 46A General determinations of minor closures.

(1) The Authority may make a general determination for the purposes of any or all of sections 37(1), 38(2), 39(1), 40(2), 41(1) and 42(2) above that closures of a particular class or description are minor closures.

(2) Where the Authority makes or revokes a general determination under subsection (1) above, it shall—

(a) give a copy of the determination or revocation to the Regulator; and

(b) publish it in such manner as it considers appropriate.

(3) The revocation of a general determination made under subsection (1) above shall not affect any closure if its status as a minor closure by virtue of the general determination has been relied on before the revocation as the ground for not giving a notice or for discontinuing any services or the operation of the whole or part of any network or facility.**]**

Textual Amendments

F38 S. 46A inserted (1.2.2001) by 2000 c. 38, **s. 238**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

VALID FROM 01/02/2001

[F39 46B Notification of minor closures to Regulator.

The Authority shall notify the Regulator of every determination under section 37(1), 38(2), 39(1), 40(2), 41(1) or 42(2) above that a closure is a minor closure.**]**

Textual Amendments

F39 S. 46B inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 25(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

47 Bus substitution services etc.

(1) There are hereby transferred to the Franchising Director (so as to be exercisable concurrently with the Board) the functions of the Board under—

(a) section 4A of the [M29]Transport Act 1962 (provision of road passenger transport services), and

(b) sections 119 to 124 of the [M30]Transport Act 1985 (bus substitution services etc),

so far as relating to services which have been temporarily interrupted or discontinued.

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(2) In their application to the Franchising Director by virtue of subsection (1) above, the sections there mentioned shall have effect—

(a) as if any reference to the Board were a reference to the Franchising Director;

(b) as if any reference to the imposition of a condition by the Secretary of State were a reference to the imposition of a closure condition under this Part by the Secretary of State or the Regulator;

(c) in the case of sections 119 to 122 of the Transport Act 1985, with the modifications set out in subsection (3) below; and

(d) in the case of section 123 of that Act, with the modifications set out in subsection (4) below.

(3) The modifications of sections 119 to 122 are that—

(a) any reference to the Secretary of State (other than a reference to the imposition of a condition by him) shall be taken as a reference to the Regulator;

(b) any reference to section 54(5) of the [M31]Transport Act 1968 shall be taken as a reference to section 43(9) or 44(2) above;

(c) in subsection (1)(a) of section 119, the words "by the Board" shall be treated as omitted; and

(d) subsections (4) and (5) of section 122 shall be disregarded.

(4) The modifications of section 123 are that—

(a) any reference to the Secretary of State shall be taken as a reference to the Regulator;

(b) in subsection (1), for paragraphs (a) and (c) there shall be substituted respectively—

> "(a) "Area Committee" means a rail users' consultative committee established under subsection (2) of section 2 of the Railways Act 1993 or, in relation to the Greater London area, within the meaning of that section, the London Regional Passengers' Committee;"; and
>
> "(c) "the Central Committee" means the Central Rail Users' Consultative Committee;";

and the words following paragraph (c) shall be disregarded;

(c) subsection (3) shall be disregarded;

(d) in subsection (4)—

(i) the reference to section 56(4) of the [M32]Transport Act 1962 shall be taken as a reference to section 76 or, as the case may be, section 77 below; and

(ii) the reference to the services and facilities provided by the Railways Board shall be taken as a reference to services for the carriage of passengers by railway;

(e) in subsection (10), the reference to section 119 of that Act shall be taken to include a reference to section 37 or 38 above.

(5) In sections 23 to 31 above, any reference to services for the carriage of passengers by railway includes a reference to bus substitution services required to be provided in place of any such services.

(6) Where the Board is subject to a condition requiring the securing of the provision of a bus substitution service, the duty to comply with that condition shall, without prejudice

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to the generality of section 85 below, be regarded as a liability that may be transferred by a scheme under that section; and where there is such a transfer, any reference to the Board in sections 119 to 124 of the [M33]Transport Act 1985 shall accordingly be taken to include a reference to the transferee.

(7) In this section "bus substitution service" has the same meaning as it has in sections 120 to 124 of the Transport Act 1985.

Modifications etc. (not altering text)

C21 S. 47 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Marginal Citations

M29 1962 c. 46.
M30 1985 c. 67.
M31 1968 c. 73.
M32 1962 c. 46.
M33 1985 c. 67.

VALID FROM 01/02/2001

[F40]47A Objections to withdrawal of bus substitution service.

(1) Where a notice has been published by the Authority under section 47 above, any user of any service affected (and any body representing users of any such service) may within the period specified in the notice lodge an objection in writing with the Rail Passengers' Committee for the area in a locality or point affected by the proposed withdrawal of service is situated.

(2) Where a Rail Passengers' Committee receives objections pursuant to a notice under section 47 above, it shall—
- (a) immediately inform the Secretary of State and the Authority;
- (b) consider the objection and any representations made by the Authority; and
- (c) report to the Secretary of State as soon as possible on the hardship, if any, which they consider will be caused by the proposed withdrawal of service (and the report may contain proposals for alleviating that hardship).

(3) Where objections with respect to any proposed withdrawal of service have been lodged with two or more Rail Passengers' Committees, they may—
- (a) report to the Secretary of State jointly under this section; or
- (b) agree that their functions under this sections shall be delegated to one any of them.

(4) The Secretary of State may require a further report from any committee making a report to him under subsection (1) above.

(5) Copies of every report under subsection (1) or (2) above shall be sent to the Rail Passengers' Council and to the Authority.

(6) Where the proposed withdrawal of service—
- (a) relates to a service which is subsidised by the Passenger Transport Executive for a passenger transport area, or

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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) would affect a locality or point in the passenger transport area of a Passenger Transport Executive,

the Executive may, within the period specified in the notice for objecting to the withdrawal, send the Secretary of State a statement in writing that they oppose the withdrawal and of their reasons for opposing it (even if they consented to the publication of the notice).

(7) Where the Passenger Transport Executive for any passenger transport area send such a statement to the Secretary of State they shall send a copy of it to the Authority.

Textual Amendments

F40 Ss. 47-47B substituted (1.2.2001) for s. 47 by 2000 c. 38, s. 215, **Sch. 16 para. 31**; 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)

C22 S. 47A modiffied (temp.) (27.7.2005) by (The Railways Act 2005 (Transitional Provisions and Savings) Order 2005 (S.I. 2005/1738, **art. 3** (with art. 4)

VALID FROM 01/02/2001

[F41]47B Revocation or variation of bus substitution conditions.

(1) Where an objection to a proposed withdrawal of service is lodged in accordance with subsection (1) of section 47A above, the Secretary of State may revoke or vary the condition in question—

(a) when he has received the report required by subsection (3) of that section and any further report required by him under subsection (4) of that section (unless he considers that any such report has been unreasonably delayed); and

(b) after considering any statement under subsection (4) of that section.

(2) Where the Secretary of State revokes or varies a condition under subsection (1), he may—

(a) impose such conditions as he thinks fit, including a condition requiring the Authority to secure the provision of another bus substitution service; and

(b) from time to time give such directions to the Authority as he thinks fit in connection with the withdrawal of the bus substitution service required by that condition;

and such a condition may be varied or revoked as if it had been made under section 43 above.

(3) Where no objections are lodged in accordance with section 47A above, the Secretary of State shall revoke or vary the condition in question in accordance with the Authority's proposals.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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

F41 Ss. 47-47B substituted (1.2.2001) for s. 47 by 2000 c. 38, s. 215, **Sch. 16 para. 31**; 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)**)

48 Experimental railway passenger services.

(1) Sections 37, 38, 43 and 44 above shall not apply in relation to any proposal to discontinue an experimental passenger service on any line or from any station.

(2) In any case where—

(a) an experimental passenger service on any line or from any station is provided in satisfaction of requirements imposed by a franchise agreement,

(b) the requirement so to provide that service comes to an end, and

(c) the operator intends to discontinue that service,

the Franchising Director shall give due notice if he proposes not to secure its continued provision.

(3) In any case where—

(a) an experimental passenger service on any line or from any station is provided otherwise than as mentioned in subsection (2)(a) above, and

(b) the operator proposes to discontinue that service,

he shall give due notice of that proposal and shall not discontinue that service before the expiry of the notice period.

(4) For the purposes of subsection (2) above, the Franchising Director shall be taken to have given due notice of a proposal if, and only if, after consultation with every consultative committee whose area consists of or includes the whole or any part of the area affected, he has, not less than six weeks before giving effect to the proposal,—

(a) published a notice giving details of the proposal in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers and in such other manner as may appear to him appropriate; and

(b) sent a copy of that notice to every such consultative committee.

(5) For the purposes of subsection (3) above, the operator shall be taken to have given due notice of a proposal if, and only if, not less than six weeks before giving effect to the proposal, he has published in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers, and in such other manner as may appear to him appropriate, a notice giving details of the proposal.

(6) In this Part "experimental passenger service", in relation to any line or station, means a railway passenger service on that line or from that station which is designated by the Franchising Director as experimental and which either—

(a) was so designated before its introduction; or

(b) before being designated under this section as experimental, was at some time provided on an experimental basis, within the meaning of section 56A of the [M34]Transport Act 1962.

(7) Where the Franchising Director decides to designate a service as experimental, he shall—

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(a) if the service is to be provided otherwise than in satisfaction of requirements imposed by a franchise agreement, give notice of the designation to the person who is to be the operator of the service;

(b) send a copy of that notice to the Regulator and to every consultative committee whose area consists of or includes the whole or any part of the area affected; and

(c) publish notice of the designation in two successive weeks in a local newspaper circulating in the area affected and in two national newspapers.

(8) No service may be designated as experimental for a period exceeding 5 years.

(9) Where a service is designated as experimental for a period of less than 5 years, the designation may subsequently be extended, but the aggregate of the periods for which a service is designated as experimental shall not exceed 5 years.

(10) In determining for the purposes of subsection (8) or (9) above the period or periods for which a service is designated as experimental—

(a) there shall be left out of account so much of any period when the service was designated as experimental as falls before the day on which the service was introduced; but

(b) if the service is one which has been provided on an experimental basis, within the meaning of section 56A of the [M35]Transport Act 1962, every period during which it was so provided, or during which the provisions of that section had effect in relation to it by virtue of subsection (11)(b) below, shall be counted as a period during which the service was designated as experimental.

(11) Where, immediately before the coming into force of section 49(1) below so far as relating to section 56A of the [M36]Transport Act 1962 (proposals to discontinue services provided on an experimental basis), a railway passenger service is being provided on an experimental basis within the meaning of the said section 56A—

(a) none of the following provisions, that is to say, sections 37 and 38 above, section 49(2) and (3) below and Schedule 5 to this Act, shall have effect in relation to that service until such time as a franchise agreement is entered into in respect of that service or in respect of some or all of the other railway passenger services provided in the area in which, or on the line on which, that service is provided; and

(b) the provisions of the said section 56A shall continue to have effect with respect to that service—

(i) until the time mentioned in paragraph (a) above, or

(ii) until the service becomes an experimental passenger service under this section,

whichever first occurs.

(12) In this section—

"the area affected", in relation to an experimental service on any line or from any station, means the area in which is situated the line or, as the case may be, the station in question;

"operator", in relation to any service, means—

(a) in the case of a service provided in satisfaction of requirements imposed by a franchise agreement, the franchisee; or

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(b) in the case of a service provided otherwise than in satisfaction of requirements imposed by a franchise agreement, the person who provides the service.

(13) In this Part, "notice period", in relation to the duty of an operator to give due notice of a proposed discontinuance of an experimental passenger service, means the period of six weeks immediately following the fulfilment by the operator of that duty.

Modifications etc. (not altering text)

C23 S. 48 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

C24 S. 48(3) restricted (18.12.1996) by 1996 c. 61, **s. 18**

Marginal Citations

M34 1962 c. 46.

M35 1962 c. 46.

M36 1962 c. 46.

49 Abolition of former closure procedures, exemptions from new procedures and imposition of alternative procedure.

(1) The former closure provisions, that is to say—

(a) section 56(7) to (10) and (13) of the [M37]Transport Act 1962,

(b) section 56A of that Act,

(c) section 54 of the [M38]Transport Act 1968, and

(d) any other enactment (including an enactment comprised in local legislation) to the extent that it applies the enactments specified in paragraphs (a) to (c) above, with or without modification,

shall, subject to the provisions of this Act, cease to have effect.

(2) Section 37 above shall not have effect in relation to any railway passenger services, or any railway passenger services of a class or description, which the Secretary of State may by order designate as services in relation to which that section is not to have effect.

(3) Schedule 5 to this Act (which makes similar provision to that made by section 56(7) to (10) and (13) of the [M39]Transport Act 1962) shall have effect in relation to such of the railway passenger services, or railway passenger services of a class or description, in relation to which section 37 above does not have effect as the Secretary of State may by order designate as railway passenger services in relation to which that Schedule is to have effect.

(4) Section 39 above shall not have effect with respect to any networks, or any networks of a class or description, which the Secretary of State may by order designate as networks in relation to which that section is not to have effect.

(5) Section 41 above shall not have effect in relation to any stations or light maintenance depots, or stations or light maintenance depots of a class or description, which the Secretary of State may by order designate as stations, or (as the case may be) light maintenance depots, in relation to which that section is not to have effect.

(6) Where any enactment or instrument passed or made before the relevant date contains provision to the effect that section 56 of the [M40]Transport Act 1962 is not to apply in respect of the discontinuance of specified railway passenger services or

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railway passenger services of a specified class or description, that provision shall (notwithstanding anything in subsection (1) above) have effect in relation to any such discontinuance after the relevant date as if references in that provision to that section were references—

(a) to section 37 above; and

(b) to Schedule 5 to this Act;

and in this subsection "the relevant date" means the date on which the provisions mentioned in paragraphs (a) and (b) above come into force.

(7) Any reference in this section to railway passenger services, networks, stations or light maintenance depots includes a reference to part of a railway passenger service, network, station or light maintenance depot, as the case may be.

(8) For the purposes of this section, "railway" has its wider meaning.

Modifications etc. (not altering text)

C25 S. 49 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

C26 S. 49(3) applied (21.7.1994) by 1994 c. xi, **s. 48**

Marginal Citations

M37 1962 c. 46.

M38 1968 c. 73.

M39 1962 c. 46.

M40 1962 c. 46.

50 Exclusion of liability for breach of statutory duty.

(1) The obligations of the Franchising Director, imposed by or under any provision of this Part—

(a) to comply with any closure conditions,

(b) to secure compliance with any closure conditions,

(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) Subject to section 57 below, the obligations of—

(a) any service operator (within the meaning of section 37 above), imposed by or under section 37(1) above, not to discontinue any railway passenger services,

(b) any operator (within the meaning of section 48 above), imposed by or under section 48(3) above, not to discontinue any experimental passenger services, or

(c) any operator of an additional railway asset, imposed by or under section 39(1) or 41(1) above, not to discontinue 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.

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Modifications etc. (not altering text)
C27 S. 50 excluded (21.7.1994) by 1994 c. xv, **s. 17(4)**

Supplementary powers of the Franchising Director etc.

51 Performance of the Franchising Director's duties to secure the provision of services etc.

(1) Where the Franchising Director is under a duty to secure the provision of any services or the operation of any additional railway assets, or is empowered by section 30 above to secure the operation of any additional railway assets, he may perform that duty or exercise that power by entering into agreements or arrangements under which other persons (in this section referred to as "sub-contractors") are to provide the services or, as the case may be, operate the additional railway assets in question.

(2) The Franchising Director may enter into an agreement or arrangement such as is mentioned in subsection (1) above notwithstanding that the sub-contractor in question is a company which is wholly owned by the Franchising Director.

(3) Any agreement or arrangement such as is mentioned in subsection (1) above may include such provisions, including provision with respect to the fares or other charges that may be imposed by the sub-contractor in question, as the Franchising Director may think fit.

(4) Any sums required by the Franchising Director for the purpose of performing any such duty, or exercising any such power, as is mentioned in subsection (1) above shall be paid by the Secretary of State out of money provided by Parliament.

(5) Any sums received by the Franchising Director in consequence of the performance of any such duty, or the exercise of any such power, as is mentioned in subsection (1) above shall be paid into the Consolidated Fund.

52 Contracts between the Franchising Director and the Board etc. for the provision of non-franchised railway passenger services.

(1) The Franchising Director may enter into agreements with the Board or any wholly owned subsidiary of the Board for the provision by the Board or subsidiary of any railway passenger services which are not provided under a franchise agreement.

(2) Any sums required by the Franchising Director for the making of payments under any agreement entered into by virtue of this section shall be paid by the Secretary of State out of money provided by Parliament.

(3) Any sums received by the Franchising Director under any such agreement shall be paid into the Consolidated Fund.

53 Powers of the Franchising Director to form and finance companies and to acquire and dispose of assets.

(1) The Franchising Director may form companies for the purpose of facilitating the performance of any functions assigned or transferred to him under or by virtue of this Act.

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(2) The Franchising Director may—

(a) hold interests in any company which he forms as mentioned in subsection (1) above;

(b) exercise rights conferred by the holding of interests in any such company; and

(c) provide financial or other assistance to or in respect of any such company, including assistance by way of guarantee of its obligations.

(3) The Franchising Director may (whether by exercising his powers to make a transfer scheme or otherwise and whether or not for any consideration) acquire or dispose of any property, rights or liabilities which have been, or which are intended to be,—

(a) designated as franchise assets by or under any franchise agreement,

(b) used for the purpose of providing franchised services,

(c) used for the purpose of operating any additional railway asset under a franchise agreement, or

(d) used for the purpose of providing any services, or operating any additional railway asset, in pursuance of a duty or power to secure the provision of such services or the operation of such an additional railway asset.

(4) Any sums required by the Franchising Director for making payments in consequence of the exercise of any such powers as are mentioned in this section shall be paid by the Secretary of State out of money provided by Parliament.

(5) Any sums received by the Franchising Director in consequence of the exercise of any such powers as are mentioned in this section shall be paid into the Consolidated Fund.

54 Exercise of functions for purpose of encouraging investment in the railways.

(1) The Franchising Director or a Passenger Transport Authority or Passenger Transport Executive—

(a) in exercising or deciding whether or not to exercise any of his, or (as the case may be) 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.

(2) The Franchising Director may, for the purpose of encouraging railway investment, enter into agreements with any person 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.

(3) In this section—

"franchising functions", in relation to the Franchising Director, means—

(a) any functions of his under sections 17 to 19, 23, 24, 26 to 35, 52 and 53(3) above;

(b) any power conferred on him under or by virtue of Part II below with respect to the effecting by transfer scheme of any transfer contemplated by any provision of those sections; and

(c) any other functions of his which relate to the provision of railway passenger services, or the operation of additional railway assets, under or by virtue of franchise agreements;

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"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.

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 Franchising Director

55 Orders for securing compliance.

(1) Subject to subsections (2) to (5) and section 56 below, where the appropriate officer is satisfied that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, he 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 subsection (5) below, where it appears to the appropriate officer—

(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,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him 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 officer 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 subsection (5) and section 56 below, the appropriate officer shall confirm a provisional order, with or without modifications, if—

(a) he 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 officer shall not make a final order, or make or confirm a provisional order, in relation to a relevant operator if he is satisfied—

(a) that the duties imposed on him by section 4 or, as the case may be, section 5 above preclude the making or, as the case may be, the confirmation of the order;

(b) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate officer for the time being to be appropriate for the

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relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

(c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

(6) Where the appropriate officer is satisfied as mentioned in subsection (5) above, he shall—

(a) serve notice that he is so satisfied on the relevant operator; and

(b) publish the notice in such manner as he 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 officer.

(8) Without prejudice to the generality of the power conferred by subsection (1) above, the provision that may be made in a final order includes, in particular, the imposition by the appropriate officer on the relevant operator to whom the order relates of a requirement to pay to the appropriate officer a monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question.

(9) Without prejudice to section 50 above, 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 officer" means—

(a) in relation to any relevant condition or requirement in the case of a licence holder or a person under closure restrictions, the Regulator;

(b) in relation to any relevant condition or requirement in the case of a franchisee or a franchise operator, the Franchising Director;

"final order" means an order under this section, other than a provisional order;

"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) in the case of a person under closure restrictions—

(i) the duty under section 37(1), 39(1) or 41(1) above not to discontinue a railway passenger service, or the operation of the whole or any part of a network, station or light maintenance depot, before the date stated by him in accordance with section 37(3), 39(4) or 41(3) above; and

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(ii) the duty under section 48(3) above not to discontinue an experimental passenger service before the expiry of the notice period;

"relevant operator" means any licence holder, franchisee, franchise operator who is a party to the franchise agreement or person under closure restrictions.

(11) In subsection (10) above, "person under closure restrictions" means a person—

(a) who proposes a closure in circumstances such that he is required by any provision of this Part to give notice of the proposal to the Franchising Director; or

(b) who proposes to discontinue an experimental passenger service in circumstances such that he is required by section 48 above to give due notice of the proposal.

(12) Any sums received by the appropriate officer by way of monetary penalty under this section shall be paid into the Consolidated Fund.

56 Procedural requirements.

(1) Before he makes a final order or confirms a provisional order, the appropriate officer shall give notice—

(a) stating that he 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,

(ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement, and

(iii) the other facts which, in his opinion, justify the making or confirmation of the order, 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 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 officer 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.

(3) The appropriate officer 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 officer shall—

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(a) serve on the relevant operator to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than 28 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.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the appropriate officer 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 he 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 officer shall give notice—

(a) stating that he proposes to revoke the order and setting out the effect of its revocation, and

(b) 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 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 officer decides not to revoke the order to which the notice relates, he shall give notice of his decision.

(8) A notice under subsection (6) or (7) above shall be given—

(a) by publishing the notice in such manner as the appropriate officer 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.

57 Validity and effect of 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; or

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(b) if and to the extent that the application related to so much of an order as imposes a monetary penalty, may substitute a monetary penalty of such lesser amount as the court considers appropriate in all the circumstances of the case.

(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.

(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 officer 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 section 58 below "the court" means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

VALID FROM 01/02/2001

[F42 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 to the Authority.

(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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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) The Authority shall not impose a penalty on a licence holder or person under closure restrictions unless—

(a) it has given notice to the Regulator specifying a period within which he may give notice to it if he considers that the most appropriate way of proceeding is under the [M41]Competition Act 1998;

(b) that period has expired; and

(c) the Regulator has not given notice to the Authority within that period that he so considers (or, if he has, he has withdrawn it).

(6) The Regulator shall not impose a penalty if he is satisfied that the most appropriate way of proceeding is under the [M42]Competition Act 1998.**]**

Textual Amendments

F42 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)

Marginal Citations

M41 1998 c. 41.

M42 1998 c. 41.

VALID FROM 01/02/2001

[F43]57B Statement of policy.

(1) The Authority and the Regulator 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 Authority and Regulator shall have regard to any statement of its or his policy published at the time when the contravention occurred.

(4) The Authority and Regulator—

(a) may at any time alter or replace a statement of his or its policy; and

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(b) shall publish the altered or replacement statement.

(5) The Authority and Regulator shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.

(6) The Authority and Regulator 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.

(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

F43 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)

VALID FROM 01/02/2001

[F44]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,

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.

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(3) Where the Regulator serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the Authority; and where the Authority so serves a copy of such a notice, it shall also serve a copy on the Regulator.

(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.

Textual Amendments

F44 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)

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VALID FROM 01/02/2001

[F45]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

F45 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)

C28 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)**

VALID FROM 01/02/2001

[F46]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 [M43]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.

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Textual Amendments

F46 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)

C29 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

M43 1838 c. 110.

VALID FROM 01/02/2001

[F47]57F Validity and effect of penalties.

(1) If the relevant operator to whom a penalty order 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 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.

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(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

F47 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)

58 Power to require information etc.

(1) Where it appears to the appropriate officer that a relevant operator may be contravening, or may have contravened, any relevant condition or requirement, the appropriate officer may, for any purpose connected with such of his functions under section 55 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 officer and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate officer or to any person appointed by the appropriate officer 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, 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 officer 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 officer, 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.

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(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.

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 [M44]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 [M45]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—
  (a) "protected railway company" means a company which is both a private sector operator and the holder of—
    (i) a passenger licence; or
    (ii) a network licence, a station licence or a light maintenance depot licence; and
  (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 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

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of a network, a station or a light maintenance depot, according to the description of licence in question.

(7) In this section—

"business" and "property" have the same meaning as they have in the [M46]Insolvency Act 1986;

"the court", in the case of any protected railway company, means the court having jurisdiction to wind up the company;

"the railway administration order provisions of this Act" means this section, sections 60 to 65 below and Schedules 6 and 7 to this Act.

Modifications etc. (not altering text)

C30 S. 59(6) modified (18.12.1996) by 1996 c. 61, **s. 19(1)**

Marginal Citations

M44 1986 c. 45.
M45 1986 c. 45.
M46 1986 c. 45.

60 Railway administration orders made on special petitions.

(1) If, on an application made to the court by petition presented—

(a) by the Secretary of State, or

(b) if the petition relates to a protected railway company which is the holder of a passenger licence, by the Franchising Director with the consent of the Secretary of State,

the court is satisfied that either or both of the grounds specified in subsection (2) below is satisfied in relation 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—

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(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 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 [M47]Insolvency Act 1986;

"the court" has the same meaning as in section 59 above.

Modifications etc. (not altering text)

C31 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)**

C32 S. 60(1)(b) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**

Marginal Citations

M47 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 Secretary of State; and

(ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and

(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 Secretary of State, or

(b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,

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

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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 [M48]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.

Modifications etc. (not altering text)

C33 S. 61 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**
C34 S. 61(1)(a)(ii) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**
C35 S. 61(2)(b) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**

Marginal Citations

M48 1986 c. 45.

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 Secretary of State; and
  - (ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and
- (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 Secretary of State, or
- (b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,

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 [M49]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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(5) No administration order under Part II of the [M50]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 Secretary of State; and

(ii) the Franchising Director, if the protected railway company is the holder of a passenger licence; and

(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 [M51]Insolvency Act 1986 has been made in the case of a protected railway company—

(a) the Secretary of State, or

(b) if the company is the holder of a passenger licence, the Franchising Director with the consent of the Secretary of State,

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 [M52]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 Secretary of State; and

(b) the Franchising Director, if the company is the holder of a passenger licence.

(8) In this section—

"the court" has the same meaning as in section 59 above;

"resolution for voluntary winding up" has the same meaning as in the [M53]Insolvency Act 1986;

"security" and "property" have the same meaning as in the [M54]Insolvency Act 1986.

Modifications etc. (not altering text)

C36 S. 62 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**
C37 S. 62(2)(a)(ii) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**
C38 S. 62(3)(b) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**
C39 S. 62(5)(a)(ii) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**
C40 S. 62(6)(b) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**
C41 S. 62(7)(b) modified (18.12.1996) by 1996 c. 61, **s. 19(2)(a)**

Marginal Citations

M49 1986 c. 45.
M50 1986 c. 45.
M51 1986 c. 45.
M52 1986 c. 45.
M53 1986 c. 45.
M54 1986 c. 45.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

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, 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;

(b) agree to indemnify the person appointed to achieve the purposes of the order in respect of liabilities incurred and loss or damage sustained by that person in connection with the carrying out of his functions under the order.

(2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he 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 sum which is borrowed from any person by a company in relation to which a railway administration order is in force at the time when the guarantee is given.

(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.

(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.

(5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C42 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 finally discharged), lay before each House of Parliament a statement relating to that sum.

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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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)

C43 S. 64 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

VALID FROM 16/10/2005

[F48 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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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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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Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(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

F48 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.

(1) In the railway administration order provisions of this Act—

"company" means—

(a) any company formed and registered under the [M55]Companies Act 1985 or any existing company within the meaning given in section 735(1) of that Act; and

(b) any unregistered company; and

"unregistered company" has the meaning given in Part V of the 1986 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 [M56]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.

Modifications etc. (not altering text)

C44 S. 65 restricted (18.12.1996) by 1996 c. 61, **s. 19(7)**

Marginal Citations

M55 1985 c. 6.

M56 1986 c. 45.

Consumer protection

66 Amendments of the Fair Trading Act 1973.

(1) In section 50 of the 1973 Act, at the beginning of subsection (2) (which prohibits the making of a monopoly reference by the Director General of Fair Trading in connection with monopoly situations arising in relation to the supply of certain goods and services, including the supply of railway services) there shall be inserted the words "Subject to subsection (2A) of this section" and after that subsection there shall be inserted—

"(2A) Subsection (2) of this section shall not preclude the making of a monopoly reference by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of such services as are specified in paragraph 5 of Schedule 5 to this Act in Great Britain, except in relation to the supply of any such services by—

(a) a body corporate to which section 16 of this Act applies;

(b) a subsidiary, within the meaning of section 736 of the [M57]Companies Act 1985, of any such body corporate; or

(c) a publicly owned railway company, within the meaning of the Railways Act 1993."

(2) In section 51 of that Act, in subsection (3) (which specifies those Ministers the consent of one or more of whom is required before the Secretary of State for Trade and Industry may make a monopoly reference under that section in connection with monopoly situations arising in relation to the supply of certain goods and services,

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including the supply of railway services) after the words "the Secretary of State for the Environment," there shall be inserted the words " the Secretary of State for Transport, ".

(3) For the purposes of sections 64 to 77 of that Act (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, within the meaning of section 63(2) of that Act, 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;".

(5) In Schedule 5 to the 1973 Act (goods and services in respect of which the making of a monopoly reference is prohibited or made subject to special restrictions) for paragraph 5 (which relates to the carriage of goods or passengers by railway) there shall be substituted—

"5 Services for the carriage of passengers, or of goods, by railway, network services and station services, within the meaning of Part I of the Railways Act 1993, but excluding the carriage of passengers or goods on shuttle services (within the meaning of the [M58]Channel Tunnel Act 1987)."

(6) Expressions used in this section and in the 1973 or 1980 Act have the same meaning in this section as they have in that Act.

Marginal Citations

M57 1985 c. 6.

M58 1987 c. 53.

67 Respective functions of the Regulator and the Director General of Fair Trading, and functions of the Monopolies Commission.

(1) If and to the extent that he is requested by the Director General of Fair Trading (in this Part referred to as "the Director") to do so, it shall be the duty of the Regulator to exercise the functions of the Director under Part III of the 1973 Act so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of railway services, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to the Director shall be construed accordingly.

(2) There are hereby transferred to the Regulator (so as to be exercisable concurrently with the Director)—

(a) the functions of the Director under sections 44 and 45 of the 1973 Act, and

(b) the functions of the Director under sections 50, 52, 53, 86 and 88 of that Act,

so far as relating to monopoly situations which exist or may exist in relation to the supply of railway services; and references in Part IV and sections 86, 88 and 133 of that Act to the Director shall be construed accordingly.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
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(3) There are hereby transferred to the Regulator (so as to be exercisable concurrently with the Director) the functions of the Director under sections 2 to 10 and 16 of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the supply of railway services; and references in those sections and in section 19 of that Act to the Director shall be construed accordingly.

(4) Before either relevant authority (that is to say, the Regulator or the Director) first exercises in relation to any matter functions transferred by any of the following provisions, namely—

(a) paragraph (a) of subsection (2) above,

(b) paragraph (b) of that subsection, and

(c) subsection (3) above,

he shall consult the other relevant authority; and neither relevant authority shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other relevant authority.

(5) It shall be the duty of the Regulator, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference falling within subsection (6) below, to give to the Commission—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—

(i) is requested by the Commission for that purpose; or

(ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and

(b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters;

and the Commission 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 reference made to the Monopolies Commission by the Regulator by virtue of subsection (2) or (3) above; and

(b) any reference made to the Commission by the Secretary of State under section 11 of the 1980 Act, if the person who is the subject of the reference is—

(i) the Board or a wholly owned subsidiary of the Board, or

(ii) a publicly owned railway company which supplies network services or station services.

(7) A copy of any report of the Monopolies Commission on a monopoly reference which relates to the supply of railway services may be transmitted by the Commission to the Regulator, notwithstanding that the reference was made by a person other than the Regulator or that it could not have been made by him.

(8) If 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) Part IV or section 86 or 88 of the 1973 Act, or

(b) sections 2 to 10 of the 1980 Act,

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by or in relation to the Regulator on the ground that it should have been done by or in relation to the Director.

(9) Section 93B of the 1973 Act (offences of supplying false or misleading information to the Secretary of State, the Director General of Fair Trading or the Monopolies Commission in connection with their functions under Parts IV, V, VI or VIII of the 1973 Act or under the 1980 Act) shall have effect, so far as relating to functions exercisable by the Regulator by virtue of subsection (2) or (3) above, as if the reference in subsection (1)(a) of that section to the Director included a reference to the Regulator.

(10) Expressions used in this section and in the 1973 or 1980 Act have the same meaning in this section as they have in that Act.

Modifications etc. (not altering text)
C45 S. 67(2) applied (3.1.1995) by 1994 c. 40, s. 7(2), **Sch. 2 para. 11(2)**

Other functions of the Regulator

68 Investigatory functions.

(1) Subject to subsection (2) below, it shall be the duty of the Regulator to investigate any alleged or apprehended contravention of—
  (a) a condition of a licence, or
  (b) a condition of a closure consent,
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 him by or on behalf of a person who appears to the Regulator to have an interest in the matter.

(2) The Regulator may, if he thinks fit, require a consultative committee to investigate and report to him 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 his duty to investigate.

69 General functions.

(1) It shall be the duty of the Regulator, so far as it appears to him 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 his functions under this Part.

(2) The Secretary of State may give general directions indicating—
  (a) considerations to which the Regulator should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and

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(b) considerations to which, in cases where it appears to the Regulator that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Regulator, where either he considers it expedient or he is requested by the Secretary of State or the Director to do so, to give information, advice and assistance to the Secretary of State or the Director with respect to any matter in respect of which any function of the Regulator under this Part is exercisable.

(4) If the Regulator—

(a) is requested to do so by the Franchising Director, or

(b) considers it appropriate to do so,

he may provide the Franchising Director with any information which he has which relates to the functions of the Franchising Director.

70 Code of practice for protection of interests of rail users who are disabled.

(1) The Regulator shall—

(a) prepare and from time to time revise, and

(b) publish and otherwise encourage 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 Regulator shall consult the Disabled Persons Transport Advisory Committee, established under section 125 of the [M59]Transport Act 1985.

Marginal Citations

M59 1985 c. 67.

71 Publication of information and advice.

(1) The Regulator may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him 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 the Regulator 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 the Regulator, 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 the Regulator, seriously and prejudicially affect the interests of that body.

(3) The Director shall consult the Regulator before publishing under section 124 of the 1973 Act any information or advice which may be published by the Regulator under this section.

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VALID FROM 01/02/2001

[F49 Other functions of the Authority]

Textual Amendments

F49 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)

[F50 71A Investigatory functions.

(1) Subject to subsection (2) below, it shall be the duty of the Authority to investigate any alleged or apprehended contravention of a condition of a licence which relates to consumer protection if the alleged or apprehended contravention is the subject of a representation made to the Authority by or on behalf of a person who appears to the Authority to have an interest in the matter (other than one appearing to the Authority to be frivolous or vexatious).

(2) The Authority may, if it thinks fit, require a Rail Passengers' Committee to investigate and report to 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 the Authority's duty to investigate.**]**

Textual Amendments

F50 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)

[F51 71B Code of practice for protection of interests of rail users who are disabled.

(1) The Authority 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 Authority shall consult the Disabled Persons Transport Advisory Committee established under section 125 of the M60 Transport Act 1985.**]**

Textual Amendments

F51 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)

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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

M60 1985 c. 67.

Registers and reports of the Regulator and the Franchising Director

72 Keeping of register by the Regulator.

(1) The Regulator shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to subsection (3) and to any direction given under subsection (4) below, the Regulator shall cause to be entered in the register—

(a) in relation to licences, the provisions of—

(i) every licence and every licence exemption;

(ii) every assignment of a licence of which notice is received by the Regulator;

(iii) every modification or revocation of a licence;

(iv) every revocation of a licence exemption;

(v) every requirement imposed, or consent or approval given, by the Regulator under a licence;

(vi) every requirement imposed, or consent or approval given, under a licence by any person (other than the Regulator) 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 the Regulator pursuant to a condition of the licence;

(vii) every final or provisional order which relates to a licence, every revocation of such an order and every notice given by the Regulator under section 55(6) above that he is satisfied that he does not need to make such an order;

and notice of every surrender of a 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 22(3) above which is for the time being in force;

(vi) every document issued or made by the Regulator under an access agreement;

(c) in relation to closures, the provisions of—

(i) every closure consent and every closure condition; and

(ii) every final or provisional order made by the Regulator which relates to any closure or proposed closure or to any closure consent or closure condition, every revocation of such an order and every notice given

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

by the Regulator under section 55(6) above that he is satisfied that he does not need to make such an order;

(d) in relation to experimental passenger services, within the meaning of section 48 above, the provisions of—

(i) every notice under section 48(7) above designating a service as experimental;

(ii) every notice under section 48(2) or (3) above of a proposal to discontinue a service designated as experimental;

(iii) every final or provisional order made by the Regulator which relates to the provision or discontinuance of any such service, every revocation of such an order and every notice given by the Regulator under section 55(6) above that he is satisfied that he does not need to make such an order; and

(e) the provisions of every railway administration order and of every discharge of such an order.

(3) In entering any provision in the register, the Regulator 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 the Regulator 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 the Regulator 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 the Regulator 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 Regulator to be a true copy or extract.

(9) The contents of the register shall be available for inspection at any time by the Franchising Director, without payment of any fee; and the Franchising Director may require the Regulator, 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 Regulator 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 the Regulator under this section shall be paid into the Consolidated Fund.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

73 Keeping of register by the Franchising Director.

(1) The Franchising Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to subsection (3) and to any direction given under subsection (4) below, the Franchising Director shall cause to be entered in the register the provisions of—

(a) every franchise exemption;

(b) every franchise agreement;

(c) every notice of a determination under section 25(4) above;

(d) every amendment (however described) of a franchise agreement;

(e) every final or provisional order which relates to a franchise agreement, every revocation of such an order and every notice given by the Franchising Director under section 55(6) above that he is satisfied that he does not need to make such an order;

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.

(3) In entering any provision in the register, the Franchising Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) above, for this purpose taking references in those paragraphs to the Regulator as references to the Franchising Director.

(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 the Franchising Director not to enter that provision in the register.

(5) 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.

(6) Any person may, on the payment of such fee as may be specified in an order so made, require the Franchising Director 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 Franchising Director to be a true copy or extract.

(7) The contents of the register shall be available for inspection at any time by the Regulator, without payment of any fee; and the Regulator may require the Franchising Director, 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 Franchising Director to be a true copy or extract.

(8) Any sums received by the Franchising Director under this section shall be paid into the Consolidated Fund.

VALID FROM 16/10/2005

[F52 73A Keeping of register by the Scottish Ministers

(1) The Scottish Ministers must maintain a register.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) 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;

(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.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(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

F52 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 the Regulator.

(1) The Regulator shall, as soon as practicable after the end of the first relevant financial year and of each subsequent financial year, make to the Secretary of State a report on—

(a) his activities during that year; and

(b) the Monopolies Commission's activities during that year, so far as relating to references made by the Regulator.

(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 the Regulator's functions;

(b) general surveys of any developments during that year which relate to—

(i) the provision of railway passenger services or station services for, or the use of such services by, persons who are disabled; or

(ii) the employment by licence holders of persons who are disabled;

(c) a statement setting out any general directions given to the Regulator during that year under section 69(2) above; and

(d) a general survey of the activities during that year of the Central Committee and the consultative committees and a summary of any reports made to him by the Central Committee or any consultative committee.

(3) The Secretary of State shall lay a copy of every report made by the Regulator 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.

(4) The Regulator may also prepare such other reports as he thinks fit with respect to any matter falling within the scope of his functions.

(5) The Regulator may arrange for copies of any report prepared under subsection (4) above to be published in such manner as he may consider appropriate.

(6) In making or preparing any report under this section, the Regulator 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.

(7) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Regulator is required to report by this section.

(8) In this section—

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

"financial year" means a period of twelve months ending with 31st March; and

"first relevant financial year" means the financial year in which is made the first appointment of a person as the Regulator.

75 Annual reports of the Franchising Director.

(1) The Franchising Director shall, as soon as practicable after the end of the first relevant financial year, and of each subsequent financial year, make to the Secretary of State a report on—
  (a) his activities during that year; and
  (b) the general performance of franchisees during that year in carrying out their functions under their franchise agreements.

(2) The Secretary of State shall lay a copy of every report made by the Franchising Director 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.

(3) In making or preparing any report under this section, the Franchising Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) above, for this purpose taking references in those paragraphs to the Regulator as references to the Franchising Director.

(4) In this section—

"financial year" means a period of twelve months ending with 31st March; and

"first relevant financial year" means the financial year in which is made the first appointment of a person as the Franchising Director.

The Central Committee and the consultative committees

76 General duties of the Central Committee.

(1) It shall be the duty of the Central Committee to investigate any matter which relates—
  (a) to the provision of railway passenger services—
    (i) by the Board or any subsidiary of the Board,
    (ii) under a franchise agreement, or
    (iii) on behalf of the Franchising Director, 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 the Committee by a user or potential user of railway passenger services and does not appear to the Committee to be frivolous or vexatious;
  (b) the matter is referred to the Committee by the Regulator; or
  (c) the matter appears to the Committee to be one which it ought to investigate.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(3) If any matter falling within paragraph (a) of subsection (2) above appears to the Central Committee to relate only to the provision of railway passenger services, or of station services, within the area of one consultative committee, the Committee shall refer that matter to the consultative committee for that area.

(4) If, on investigating any matter, the Central Committee considers it appropriate to do so, the Committee shall make representations to the person providing the service 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 Franchising Director, to the Franchising Director,

about the matter, or any matter to which it relates or which appears to the Committee to be relevant to the subject of the matter investigated.

(5) Where the Central Committee—

(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 the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,

the Committee shall refer the matter to the Regulator, with a view to his exercising such of his powers as he considers appropriate in the circumstances of the case.

(6) Where the Central Committee investigates any matter—

(a) it may prepare, and send to the Secretary of State and the Regulator, a report of its findings; and

(b) it may publish any such report, unless the matter in question is one which was referred to the Central Committee by the Regulator as mentioned in subsection (2)(b) above.

(7) Where the Central Committee 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

(b) refer the matter to the Regulator 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 the Committee considers will be enjoyed by any person in consequence of the taking of those steps, the Committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(8) The services which are to be regarded for the purposes of this section as provided on behalf of the Franchising Director are the same services as are to be so regarded for the purposes of section 37 above.

(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; and in this subsection, “bus substitution services” has the same meaning as it has in sections 120 to 124 of the [M61]Transport Act 1985.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

Modifications etc. (not altering text)

C46 S. 76 excluded (30.11.2000) by 2000 c. 38, s. 253, **Sch. 28 para. 10**

C47 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**

C48 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**

Marginal Citations

M61 1985 c. 67.

VALID FROM 24/07/2005

[F53 76A Delegation of duties under section 76(7A)

(1) The Rail 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—

(a) the duties of the Rail 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 Rail 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

F53 S. 76A inserted (24.7.2005) by Railways Act 2005 (c. 14), **ss. 20**, 60; S.I. 2005/1909, **art. 2**, Sch.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

77 General duties of consultative committees.

(1) It shall be the duty of each consultative committee to investigate any matter which relates—

(a) to the provision of railway passenger services—

(i) by the Board or any subsidiary of the Board,

(ii) under a franchise agreement, or

(iii) on behalf of the Franchising Director, 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 the matter—

(a) is the subject of a representation made to the committee by a user or potential user of railway passenger services and does not appear to the committee to be frivolous or vexatious;

(b) is referred to the committee—

(i) by the Regulator under section 68(2) above; or

(ii) by the Central Committee under section 76(3) above; or

(c) appears to the committee to be one which it ought to investigate.

(3) If, on investigating any matter, a consultative committee considers it appropriate to do so, the committee shall make representations to the person providing the service 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 Franchising Director, to the Franchising Director,

about the matter, or any matter to which it relates or which appears to the committee to be relevant to the subject of the matter investigated.

(4) Where a consultative committee—

(a) having made representations under subsection (3) 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 the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,

the committee shall refer the matter to the Regulator (or, in the case of a matter that was referred to the committee by the Regulator, refer it back to the Regulator) with a view to his exercising such of his powers as he considers appropriate in the circumstances of the case.

(5) Where a consultative committee investigates any matter pursuant to subsections (1) to (3) above—

(a) it may prepare, and send to the Central Committee, a report of its findings; and

(b) it may publish any such report, unless the matter in question is one which was referred to the consultative committee by the Regulator as mentioned in subsection (2)(b)(i) above.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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)*

(6) At the request of the Regulator, a consultative committee shall make a report to him on such matters relating to the quality of the railway passenger services, and the station services, provided in the committee's area as may be specified in the request.

(7) The Regulator may arrange for the publication of any report under subsection (6) above in such manner as he may consider appropriate.

(8) If the Franchising Director, after consultation with the Regulator, so requests, a consultative committee shall assist the Franchising Director, to such extent and in such respects as may be specified in the request, in ascertaining whether, in the case of any franchise agreement, the franchise operator is attaining the standards set for the provision of the franchised services.

(9) Where a consultative committee has investigated any matter pursuant to subsections (1) to (3) or subsection (6) above, 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

(b) refer the matter to the Regulator under subsection (4)(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 the committee considers will be enjoyed by any person in consequence of the taking of those steps, the committee is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

(10) The services which are to be regarded for the purposes of this section as provided on behalf of the Franchising Director are the same services as are to be so regarded for the purposes of section 37 above.

(11) 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; and in this subsection, "bus substitution services" has the same meaning as it has in sections 120 to 124 of the [M62]Transport Act 1985.

Modifications etc. (not altering text)

C49 S. 77 excluded (30.11.2000) by 2000 c. 38, s. 253, **Sch. 28 para. 10**

C50 Ss. 76, 77 applied (1.4.1994) by 1993 c. 43, ss. 47(2)(d)(4)(d), 152(2), **Sch. 13 para. 3(2)** (modifying 1985 c. 67, **s. 123**); S.I. 1994/571, **art. 5**

Marginal Citations

M62 1985 c. 67.

78 Functions under section 56 of the Transport Act 1962.

(1) In consequence of sections 76 and 77 above, subsections (4) to (6) of section 56 of the [M63]Transport Act 1962 (which make provision with respect to the functions of the former Central Committee and Area Committees with respect to services and facilities provided by certain Boards and, as applied or amended, by certain other persons) shall not have effect in relation to matters affecting the services or facilities which are for the time being provided by the Board or a subsidiary of the Board or under a franchise agreement.

Status: *Point in time view as at 01/04/1994. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Railways Act 1993, Part I is up to date with all changes known to be in force on or before 25 July 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) In section 56 of that Act, in subsection (5), the words from the beginning to "section; and" (which preclude committees from considering charges for services and questions relating to the discontinuance or reduction of railway services) shall be omitted.

(3) Subject to subsections (1) and (2) above—

(a) the functions of the former Central Committee under subsections (4) to (6A) of section 56 of that Act are hereby transferred to the Central Committee; and

(b) the functions of the former Area Committees under those subsections are hereby transferred to the consultative committees.

(4) In consequence of subsection (3) above—

(a) any reference in those subsections to the former Central Committee shall be taken as a reference to the Central Committee; and

(b) for the words "each Area Committee", "any Area Committee", "Area Committees", "an Area Committee" and "An Area Committee", wherever occurring in those subsections, there shall be substituted respectively the words " each consultative committee ", " any consultative committee ", " consultative committees ", " a consultative committee " and " A consultative committee ".

(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 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."

(6) At the end of that section there shall be added—

"(20) In this section—

"the Central Committee" means the Central Rail Users' Consultative Committee, constituted under the Railways Act 1993;

"consultative committee" means—

(a) a Rail Users' Consultative Committee established under the Railways Act 1993; or

(b) so far as relating to the Greater London area, within the meaning of section 2 of that Act, the London Regional Passengers' Committee."

(7) In this section—

"former Area Committees" means Area Transport Users Consultative Committees, established under section 56 of the [M64]Transport Act 1962;

"the former Central Committee" means the Central Transport Consultative Committee for Great Britain, established under that section.

Marginal Citations

M63 1962 c. 46.

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M64 1962 c. 46.

79 Annual reports by the Central Committee and the consultative committees.

(1) Each committee shall, as soon as practicable after the end of the first relevant financial year and of each subsequent financial year—

(a) make a report to the Regulator on the committee's activities during that year; and

(b) in the case of the Central Committee and the consultative committees for Scotland and for Wales, send a copy of that report to the Secretary of State;

and the Secretary of State shall lay before each House of Parliament a copy of the reports sent to him pursuant to paragraph (b) above.

(2) Each committee may arrange for any report which it makes under subsection (1) above to be published in such manner as the committee considers appropriate.

(3) In arranging for the publication of any report under this section, a committee shall have regard to the need for excluding, so far as that is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) above, for this purpose taking references in those paragraphs to the Regulator as references to the committee.

(4) In this section—

"committee" means the Central Committee or a consultative committee;

"financial year" means a period of twelve months ending with 31st March; and

"first relevant financial year", in relation to a committee, means the financial year in which the committee is established.

Information

80 Duty of certain persons to furnish information to the Franchising Director on request.

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

(a) the Board,

(b) any wholly owned subsidiary of the Board, or

(c) any person who is the holder of a network licence or a station licence,

shall be under a duty to furnish to the Franchising Director in such form and manner as he may by notice request such information as he may so request, being information which the Franchising Director considers necessary for the purpose of facilitating the performance of any function of his under this Part.

(2) A request under subsection (1) 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) If any such request is not complied with, the Franchising Director may serve a notice under subsection (4) below on the person from whom the information was requested under subsection (1) above.

(4) A notice under this subsection is a notice signed by the Franchising Director and—

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(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Franchising Director 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.

(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.

(6) A person who without reasonable excuse fails to do anything required of him by notice under subsection (4) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(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 Franchising Director, 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 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.

Interpretation

81 Meaning of "railway".

(1) Subject to subsection (2) below, the definition of "railway" in section 67(1) of the [M65]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 [M66]Transport and Works Act 1992.

Marginal Citations
M65 1992 c. 42.
M66 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 [M67]Fair Trading Act 1973;

"the 1980 Act" means the [M68]Competition Act 1980;

"access agreement" means—

(a) an access contract entered into pursuant to directions under section 17 or 18 above; or

(b) an installation access contract entered into pursuant to directions under section 19 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;

"appropriate officer" has the meaning given by section 55(10) above;

"the Central Committee" means the Central Rail Users' Consultative Committee;

"closure" shall be construed in accordance with section 37(1), 38(1), 39(1), 40(1), 41(1) or 42(1) above, as the case may be, and "proposed closure" shall be construed accordingly;

"closure conditions" has the meaning given by section 45 above;

"closure consent" means any decision required by section 43 or 44 above before a proposed closure may take effect;

"consultative committee" means a Rail Users' Consultative Committee, established under subsection (2) of section 2 above (but this definition is subject to subsection (4) of that section);

"the Director" means the Director General of Fair Trading;

"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;

"installation owner" has the meaning given by section 19(9) 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

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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;

"notice period" has the meaning given by section 48(13) above;

"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

(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;

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"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;

"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;

"station services" has the meaning given by section 82 above;

"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.

(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.

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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

M67 1973 c. 41.

M68 1980 c. 21.

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