



# 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\(6\)](#)
- C2** Pt. 1 (ss. 1-83) applied (S.) (27.4.2006) by [Edinburgh Tram \(Line Two\) Act 2006 \(asp. 6\), s.78](#) (with [s.75](#))
- Pt. 1 (ss. 1-83) applied (S.) (8.5.2006) by [Edinburgh Tram \(Line One\) Act 2006 \(asp. 7\), s.79](#) (with [ss.76, 84](#))

##### Commencement Information

- II** Pt. I (ss. 1-83) applied (1.4.1994) by [1993 c. 43, ss. 36\(2\)](#) (inserting s. 10(1)(viii) 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. . .

<sup>F1</sup> .....

##### Textual Amendments

- F1** S. 1 repealed (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\), ss. 16, 118, 120, Sch. 2 para. 2, Sch. 8](#); [S.I. 2004/827, art. 4\(g\)](#); [S.I.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

## 2 [<sup>F2</sup>Passengers' Committees].

<sup>F3</sup> .....

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**Textual Amendments**

- F2** Words in s. 2(2)-(6)(6A)(7)(8) and sidenote substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 Pt. I para. 2**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F3** S. 2 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1909, **art. 2**, **Sch.**

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**F4** .....

**Textual Amendments**

- F4** S. 3 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1909, **art. 2**, **Sch.**

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

- (1) [<sup>F5</sup>the Office of Rail Regulation][<sup>F6</sup>shall] have a duty to exercise the functions assigned or transferred to [<sup>F7</sup>it] under or by virtue of this Part [<sup>F8</sup>or the Railways Act 2005 that are not safety functions] in the manner which [<sup>F7</sup>it] considers best calculated—
  - [<sup>F9</sup>(zb) to promote improvements in railway service performance;
    - (a) otherwise to protect the interests of users of railway services;]
    - (b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that [<sup>F7</sup> it] considers economically practicable;
  - [<sup>F10</sup>(ba) to contribute to the development of an integrated system of transport of passengers and goods;
    - (bb) to contribute to the achievement of sustainable development;]
    - (c) to promote efficiency and economy on the part of persons providing railway services;
    - (d) to promote competition in the provision of railway services [<sup>F11</sup>for the benefit of users of railway services];
    - (e) to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;
    - (f) to impose on the operators of railway services the minimum restrictions which are consistent with the performance of [<sup>F12</sup>its] functions under this Part [<sup>F13</sup>or the Railways Act 2005 that are not safety functions];
    - (g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
- (2) Without prejudice to the generality of subsection (1)(a) above, [<sup>F5</sup>the Office of Rail Regulation][<sup>F14</sup>shall] have a duty, in particular, to exercise the functions assigned or transferred to [<sup>F7</sup>it] under or by virtue of this Part [<sup>F8</sup>or the Railways Act 2005 that are not safety functions] in the manner which [<sup>F7</sup>it] considers is best calculated to protect—

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- (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,<sup>F15</sup> . . . ; 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) [<sup>F5</sup>the Office of Rail Regulation][<sup>F16</sup> shall] be under a duty in exercising the functions assigned or transferred to [<sup>F7</sup>it] under or by virtue of this Part [<sup>F8</sup> or the Railways Act 2005 that are not safety functions]—
  - (a) to take into account the need to protect all persons from dangers arising from the operation of railways,<sup>F17</sup> . . . ; and
  - (b) to have regard to the effect on the environment of activities connected with the provision of railway services.

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

- (a) <sup>F19</sup> . . . . .
- (b) the references in each of the subsections to the functions transferred or assigned to the Secretary of State under or by virtue of this Part include only the functions transferred or assigned to him under or by virtue of sections 6 to 22 <sup>F20</sup> . . . below [<sup>F21</sup>and
- (c) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to the Secretary of State under or by virtue of the provisions of Part 4 of that Act other than section 39.]

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

- (a) the references in each of the subsections to functions transferred or assigned to those Ministers under or by virtue of Part 1 of this Act include only the functions transferred or assigned under or by virtue of sections 16A to 16G of this Act; and
- (b) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to those Ministers under or by virtue of Part 4 of that Act.

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

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- (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 <sup>F23</sup>or the Railways Act 2005], to promote the award of franchise agreements to companies in which qualifying railway employees have a substantial interest, “qualifying railway employees” meaning for this purpose persons who are or have been employed in an undertaking which provides or provided the services to which the franchise agreement in question relates at a time before those services begin to be provided under that franchise agreement.
- (5) <sup>F5</sup>[the Office of Rail Regulation] shall also be under a duty in exercising the functions assigned or transferred to <sup>F7</sup>[it] under this Part <sup>F24</sup>or the Railways Act 2005 that are not safety functions]—
- <sup>F25</sup>(a) to have regard to any general guidance given to <sup>F7</sup>[it] by the Secretary of State about railway services or other matters relating to railways;
- <sup>F26</sup>[ (aa) to have regard to any general guidance given to it by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or as regards Scotland that relate to railways;
- (ab) in having regard to any guidance falling within paragraph (aa), to give what appears to it to be appropriate weight to the extent (if any) to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers;]
- (b) to act in a manner which <sup>F7</sup>[it] considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which <sup>F5</sup>[the Office of Rail Regulation] has functions under or by virtue of this Part <sup>F27</sup>or that Act] (whether or not the activities in question are, or are to be, carried on by those persons in their capacity as holders of such licences); <sup>F28</sup>. . .
- <sup>F29</sup>(c) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services;
- (ca) to have regard to any notified strategies and policies of the National Assembly for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;
- (cb) to have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on it by or under any enactment;]
- <sup>F30</sup>(d) to have regard to the ability of the Mayor of London, <sup>F31</sup>. . . and Transport for London to carry out the functions conferred or imposed on them by or under any enactment]
- <sup>F32</sup>(5A) Before giving any guidance for the purposes of subsection (5)(a) above the Secretary of State must consult the National Assembly for Wales.
- (5B) In exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc. Act 1974, the Office of Rail Regulation shall be under a duty to have regard to any general guidance given to it by the Secretary of State.
- (5C) In performing its duties under subsections (1) to (5A) above in relation to—
- (a) any matter affecting the interests of users or potential users of railway services,
- (b) any matter affecting the interests of persons providing railway services, or
- (c) any matter not falling within paragraph (a) or (b) but falling within subsection (5D),

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

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

- (a) public financial resources (within the meaning of paragraph 1D of Schedule 4A to this Act), or
- (b) funds that do not comprise such resources but are provided in whole or in part by Transport for London, the National Assembly for Wales, a Passenger Transport Executive or any other body in receipt of such resources,

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

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

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

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

- (a) it may be varied or revoked by the person giving it at any time; and
- (b) the guidance, and any variation or revocation of the guidance, must be published by that person in such manner as he considers appropriate.]

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

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

(8) <sup>F36</sup>.....

(9) In this section—

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

[<sup>F38</sup>“notified strategies and policies”, in relation to the National Assembly for Wales, means the strategies and policies of that Assembly that have been notified by that Assembly for the purposes of this section to the Office of Rail Regulation;]

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

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[<sup>F39</sup>“railway service performance” includes, in particular, performance in securing each of the following in relation to railway services—

- (a) reliability (including punctuality);
- (b) the avoidance or mitigation of passenger overcrowding; and
- (c) that journey times are as short as possible;

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

- (a) under this Part,
- (b) under or by virtue of the Railways Act 2005, or
- (c) under or by virtue of the Health and Safety at Work etc. Act 1974,

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

<sup>F40</sup>  
...

#### Textual Amendments

- F5** Words in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F6** Words in s. 4(1) substituted (1.2.2001) by 2000 c. 38, s. 224(2)(a); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F7** Words in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, art. 4(g)
- F8** Words in s. 4(1)-(3) inserted (8.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 3(2), 60; S.I. 2005/1444, art. 2(1), Sch. 1; S.I. 2006/266, art. 2(2), Sch.
- F9** S. 4(zb)(a) substituted (26.6.2005) for s.4(za)(a) by Railways Act 2005 (c. 14), ss. 3(3), 60; S.I. 2005/1444, art. 2(2), Sch. 2
- F10** S. 4(1)(ba)(bb) inserted (1.2.2001) by 2000 c. 38, s. 224(2)(c); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F11** Words in s. 4(1)(d) inserted (1.2.2001) by 2000 c. 38, s. 224(2)(d); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F12** Word in s. 4 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, art. 4(g)
- F13** Words in s. 4(1)-(3) inserted (8.6.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 3(2), 60; S.I. 2005/1444, art. 2(1), Sch. 1
- F14** Words in s. 4(2) substituted (1.2.2001) by 2000 c. 38, s. 224(3)(a); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F15** Words in s. 4(2)(a) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(2)(a), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)
- F16** Words in s. 4(3) substituted (1.2.2001) by 2000 c. 38, s. 224(4); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F17** Words in s. 4(3)(a) repealed (1.4.2006) by Railways Act 2005 (c. 14), ss. 3(4), 59, 60, Sch. 13 Pt. I (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/266, art. 2(2), Sch.
- F18** S. 4(3A) inserted (1.2.2001) by 2000 c. 38, s. 224(5); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F19** S. 4(3A)(a) repealed (26.6.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1444, art. 2(2), Sch. 2

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- F20** Words in s. 4(3A)(b) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2006/2911, **art. 2**, **Sch.** (subject to the transitional and saving provisions in arts. 3-7)
- F21** S. 4(3A)(c) and preceding word inserted (1.12.2006) by Railways Act 2005 (c. 14), **ss. 3(5)**, 60; S.I. 2006/2911, **art. 2**, **Sch.** (subject to the transitional and saving provisions in arts. 3-7)
- F22** S. 4(3B)(3C) inserted (16.10.2005 for certain purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(6)**, 60; S.I. 2005/2812, **art. 2(1)**, **Sch. 1**; S.I. 2006/2911, **art. 2**, **Sch.** (subject to the transitional and saving provisions in arts. 3-7)
- F23** Words in s. 4(4) inserted (26.6.2005) by Railways Act 2005 (c. 14), **ss. 3(7)**, 60; S.I. 2005/1444, **art. 2(2)**, **Sch. 2**
- F24** Words in s. 4(5) inserted (8.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(8)(a)**, 60; S.I. 2005/1444, **art. 2(1)**, **Sch. 1**; S.I. 2006/266, **art. 2(2)**, **Sch.**
- F25** S. 4(5)(a) substituted (1.2.2001) by 2000 c. 38, **s. 224(6)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F26** S. 4(5)(aa)(ab) inserted (16.10.2005) by Railways Act 2005 (c. 14), **ss. 3(8)(b)**, 60; S.I. 2005/2812, **art. 2(1)**, **Sch. 1**
- F27** Words in s. 4(5)(b) inserted (8.6.2005) by Railways Act 2005 (c. 14), **ss. 3(8)(c)**, 60; S.I. 2005, 1444, {art. 2(1)}, **Sch. 1**
- F28** Word in s. 4(5) omitted (3.7.2000) by virtue of 1999 c. 29, **s. 200(4)** (with **Sch. 12 para. 9(1)**); S.I. 2000/801, **art. 2(c)**, **Sch.**
- F29** S. 4(5)(c)-(cb) substituted (24.7.2005) for s.4(5)(c) by Railways Act 2005 (c. 14), **ss. 3(8)(d)**, 60; S.I. 2005/1909, **art. 2**, **Sch.**
- F30** S. 4(5)(d) and preceding word inserted (3.7.2000) by Greater London Authority Act 1999 (c. 29), **ss. 200**, 425(2)(3) (with **Sch. 12 para. 9(1)**); S.I. 2000/801, art. 2(c), **Sch.**
- F31** Words in s. 4(5)(d) repealed (8.6.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt.1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1444, **art. 2(1)**, **Sch. 1**
- F32** S. 4(5A)-(5D) inserted (8.6.2005 for certain purposes and 1.4.2006 for certain further purposes and 29.1.2007 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(9)**, 60; S.I. 2005/1444, **art. 2(1)**, **Sch. 1**; S.I. 2006/266, **art. 2(2)**, **Sch.**; S.I. 2007/62, **art. 2**
- F33** S. 4(7ZA) substituted (16.10.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(6)**, 60; S.I. 2005/2812, **art. 2(1)**, **Sch. 1**; S.I. 2006/266, **art. 2(2)**, **Sch.**
- F34** S. 4(7A)(7B) inserted (1.3.2000) by 1998 c. 41, ss. 9(3), 66(5), **Sch. 10 Pt. II para. 6(3)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**
- F35** Words in s. 4(7B) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(2)(b)**; S.I. 2003/766, **art. 2**, **Sch.** (with art. 3)
- F36** S. 4(8) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(2)(c)**, **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, **Sch.** (with art. 10)
- F37** S. 4(9): definition of "the environment" substituted (14.12.1999) by 1999 c. 24, s. 6, **Sch. 2 para. 12**; S.I. 1999/3376, **art. 2**
- F38** S. 4(9): definition of "notified strategies and policies" inserted (24.7.2005) by Railways Act 2005 (c. 14), **ss. 3(11)(a)**, 60; S.I. 2005/1909, **art. 2**, **Sch.**
- F39** S. 4(9): definition of "railway service performance" and "safety functions" inserted (26.6.2005 for certain purposes and 1.4.2006 in so far as not already in force) by Railways Act 2005 (c. 14), **ss. 3(11)(b)**, 60; S.I. 2005/1444, **art. 2(2)**, **Sch. 2**; S.I. 2006/266, **art. 2(2)**, **Sch.**
- F40** S. 4(9): definition of "through ticket" repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

#### **Modifications etc. (not altering text)**

- C3** S. 4(1) modified (temp.) (E.W.) (30.5.2006) by London Olympic Games and Paralympic Games Act 2006 (c. 12), **ss. 17(1)**, 40(6); S.I. 2006/1118, **art. 2(3)**
- C4** S. 4(1) modified (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 22**

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**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](#)

<sup>F41</sup>5 .....

**Textual Amendments**

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

*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.

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

- (2) In this Part—

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

<sup>F45</sup> .....

“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.

[<sup>F46</sup>(2A) In subsection (2) above, “EEA State” means a member State, Norway, Iceland or Liechtenstein.]

- (3) Any person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;



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- (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 [<sup>F47</sup>the Office of Rail Regulation] .

#### Textual Amendments

- F42** S. 6(1A) inserted (27.6.1998) by S.I. 1998/1340, **reg. 21(2)**
- F43** Words in s. 6(1A) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 3, Sch. 1 para. 3(2)**
- F44** S. 6(2): definition of "European license" substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 3, Sch. 1 para. 3(3)(a)**
- F45** S. 6(2): definition of "international services" omitted (28.11.2005) by virtue of The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 3, Sch. 1 para. 3(3)(b)**
- F46** S. 6(2A) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 3, Sch. 1 para. 3(4)**
- F47** Words in s. 6(4) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

#### Modifications etc. (not altering text)

- C5** S. 6(1) excluded (18.12.1996) by 1996 c. 61, **s. 16(1)**
- C6** S. 6(1) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 24**

#### Commencement Information

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

## 7 Exemptions from section 6.

- (1) The Secretary of State may, after consultation with [<sup>F48</sup>the Office of Rail Regulation]<sup>F49</sup> . . . , 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 [<sup>F48</sup>the Office of Rail Regulation] for the grant of an exemption from the requirement to be authorised by licence to be the operator of such railway assets, or of railway assets of such a class or description, as he may specify in the application, [<sup>F48</sup>the Office of Rail Regulation] , after consultation with the Secretary of State <sup>F49</sup> . . . —
- (a) may either grant or refuse the exemption, whether wholly or to such extent as [<sup>F50</sup>it] may specify in the exemption; and

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- (b) if and to the extent that [<sup>F50</sup>it] grants [<sup>F51</sup>the exemption], may do so subject to compliance with such conditions (if any) as [<sup>F50</sup>it] may so specify.
- (4) Before granting a licence exemption under subsection (3) above, [<sup>F48</sup>the Office of Rail Regulation] shall give notice—
- (a) stating that [<sup>F50</sup>it] proposes to grant the licence exemption,
  - (b) stating the reasons why [<sup>F50</sup>it] proposes to grant the licence exemption; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence exemption may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given by publishing the notice in such manner as [<sup>F48</sup>the Office of Rail Regulation] considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence exemption.

<sup>F52</sup>(5A)

- (6) If any condition (the “broken condition”) of a licence exemption is not complied with—
- (a) the Secretary of State, in the case of a licence exemption under subsection (1) above, or
  - (b) [<sup>F48</sup>the Office of Rail Regulation], in the case of a licence exemption under subsection (3) above,
- may give to any relevant person a direction declaring that the licence exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

<sup>F52</sup>(6A)

- (7) For the purposes of [<sup>F53</sup>this section]—
- “condition”, in relation to a licence exemption, means any condition subject to compliance with which the licence exemption was granted;
- “relevant person”, in the case of any licence exemption, means a person who has the benefit of the licence exemption and who—
- (a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or
  - (b) is the operator of any of the railway assets in relation to which the broken condition is not complied with.
- (8) Where the Secretary of State or [<sup>F48</sup>the Office of Rail Regulation] gives a direction under subsection (6) above to any person, he [<sup>F54</sup>or it] may also direct that person to refrain from being the operator of any railway assets or of such railway assets, or railway assets of such a class or description, as may be specified in the direction by virtue of this subsection.

<sup>F52</sup>(8A)

- (9) Subject to [<sup>F55</sup>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.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

<sup>F56</sup>(10) .....

- (11) Any application for a licence exemption under subsection (3) above must be made in writing; and where any such application is made, [<sup>F48</sup>the Office of Rail Regulation] may require the applicant to furnish him with such information as [<sup>F48</sup>the Office of Rail Regulation] may consider necessary to enable [<sup>F50</sup>it] to decide whether to grant or refuse the licence exemption.
- (12) Licence exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.
- (13) In this Part “licence exemption” means an exemption, granted under any provision of this section in respect of a railway asset or in respect of railway assets of any class or description, from the requirement to be authorised by licence to be the operator of that railway asset or, as the case may be, railway assets of that class or description.

#### Textual Amendments

- F48** Words in s. 7 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F49** Words in s. 7(1)(3) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 1(1) (a), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F50** Words in s. 7 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F51** Words in s. 7(3)(b) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 4(a)**; S.I. 2004/827, **art. 4(g)**
- F52** S. 7(5A)(6A)(8A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 1(1) (b), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F53** Words in s. 7(7) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 2(6)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F54** Words in s. 7(8) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 4(b)**; S.I. 2004/827, **art. 4(g)**
- F55** S. 7(9) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 1(2)**; S.I. 2005/1909, **art. 2**, Sch.
- F56** S. 7(10) repealed (15.1.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV** and omitted (1.2.2001) by virtue of 2000 c. 38, s. 252, **Sch. 27 para. 18**; S.I. 2000/3376, **art. 2**; S.I. 2001/57, **art. 3**, **Sch. 2** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

- C7** S. 7(1) restricted (*prosp.*) by 1999 c. 29, ss. 199(1)(a)(2)(3), 425(2) (with **Sch. 12 para. 9(1)**)

## 7A Consumer protection conditions.

<sup>F57</sup> .....

#### Textual Amendments

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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

## 8 Licences.

- (1) Subject to the following provisions of this section—
- (a) the Secretary of State after consultation with [<sup>F58</sup>the Office of Rail Regulation]<sup>F59</sup> . . . , or
  - (b) [<sup>F58</sup>the Office of Rail Regulation] with the consent [<sup>F60</sup>, or in accordance with a general authority, of the Secretary of State <sup>F59</sup> . . . ,]
- 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 [<sup>F58</sup>the Office of Rail Regulation] under subsection (1) (b) above
- [<sup>F61</sup>(a) <sup>F62</sup> . . . . .
  - (b) may include a requirement for [<sup>F58</sup>the Office of Rail Regulation] either to consult the Secretary of State, or a requirement to obtain his approval before granting a licence;
- but a failure to comply with such a requirement shall not affect the validity of the licence.]
- (3) Any application for a licence—
- (a) shall be made in the prescribed manner;
  - (b) shall be accompanied by such fee (if any) as may be prescribed in the case of a licence of the description in question; and
  - (c) shall, if the Secretary of State so requires, be published by the applicant in the prescribed manner and within such period as may be notified to the applicant by the Secretary of State;
- and, on any such application, the Secretary of State or, as the case may be, [<sup>F58</sup>the Office of Rail Regulation] may either grant or refuse the licence.
- (4) Before granting a licence, the Secretary of State or [<sup>F58</sup>the Office of Rail Regulation] shall give notice—
- (a) stating that he [<sup>F63</sup>or it] proposes to grant the licence,
  - (b) stating the reasons why he [<sup>F63</sup>or it] proposes to grant the licence, and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the Secretary of State or [<sup>F58</sup>the Office of Rail Regulation] considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.
- (6) A licence shall be in writing and, unless previously revoked or surrendered in accordance with any terms contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence; and a licence shall not be capable of being surrendered [<sup>F64</sup>unless [<sup>F58</sup>the Office of Rail Regulation]<sup>F65</sup>consents] if it is—
- (a) a passenger licence;
  - (b) a network licence;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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 [<sup>F58</sup>the Office of Rail Regulation]<sup>F66</sup>. . . ; or
  - (b) in the case of a licence granted by the [<sup>F58</sup>the Office of Rail Regulation], [<sup>F67</sup>to the [<sup>F68</sup>Secretary of State]]. . . .
- (8) Any power to make regulations by virtue of subsection (3) above shall only be exercisable by the Secretary of State after consultation with [<sup>F58</sup>the Office of Rail Regulation]<sup>F69</sup>. . . .
- (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.
- <sup>F70</sup>(10) . . . . .
- (11) Any sums received by the Secretary of State or [<sup>F58</sup>the Office of Rail Regulation] under this section shall be paid into the Consolidated Fund.

#### Textual Amendments

- F58** Words in s. 8 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F59** Words in s. 8(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(1)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F60** Words in s. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(2)(b)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F61** S. 8(2)(a)(b) and words substituted for words (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F62** S. 8(2)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11); S.I. 2005/1909, **art. 2**, Sch.
- F63** Words in s. 8(4)(a)(b) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 5**; S.I. 2004/827, **art. 4(g)**
- F64** Words in s. 8(6) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(4)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F65** Word in s. 8(6) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 3(3)**; S.I. 2005/1909, **art. 2**, Sch.
- F66** Words in s. 8(7)(a) repealed (24.7.2005 for certain purposes and 1.4.2006 otherwise) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.; S.I. 2006/266, **art. 2(2)**, Sch.
- F67** Words in s. 8(7) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 4(5)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F68** Words in s. 8(7)(b) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 3(4)(b)**; S.I. 2005/1909, **art. 2**, Sch.
- F69** Words in s. 8(8) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 3(5), **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F70** S. 8(10) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C8** 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) [<sup>F71</sup>the Office of Rail Regulation], or
  - (iii) any other person, or any other person of a class or description, specified in the licence, except a Minister of the Crown or Government department,

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

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

- (a) may require the licence holder to enter into any agreement with any person for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

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

- (a) to comply with any requirements from time to time imposed by a qualified person with respect to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as a qualified person consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by a qualified person such questions arising under the licence as are specified in the licence or are of a description so specified;
- (d) to refer for approval by a qualified person such things falling to be done under the licence as are specified in the licence or are of a description so specified;
- (e) to furnish to a qualified person such documents or other information as he may require for the purpose of exercising any functions conferred or imposed on him under or by virtue of the licence;
- (f) to furnish to the Secretary of State or [<sup>F71</sup>the Office of Rail Regulation] such documents or other information as he [<sup>F72</sup>or it] may require for the purpose of exercising the functions assigned or transferred to him [<sup>F72</sup>or it] under or by virtue of this Part [<sup>F73</sup>or Part 4 of the Railways Act 2005] .

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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (4) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions; and any provision included by virtue of this subsection in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (5) Subsections (2) to (4) above are without prejudice to the generality of subsection (1) (a) above.
- (6) Any reference in subsection (3) above to a “qualified person” is a reference to—
- (a) a person specified in the licence in question for the purpose in question, or
  - (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 [<sup>F71</sup>the Office of Rail Regulation] in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

#### Textual Amendments

- F71** Words in s. 9 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F72** Words in s. 9 inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 6; S.I. 2004/827, art. 4(g)
- F73** Words in s. 9(3)(f) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, Sch. 11 para. 2; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F74** S. 9(3A) inserted (1.2.2001) by 2000 c. 38, s. 252, Sch. 27 para. 19; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

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

- (1) If and so long as a person is a licence exempt operator—
- (a) there shall not be included in any licence granted to him any condition which relates to his licence exempt activities, except to the extent permitted by virtue of subsection (2) below; and
  - (b) any such condition which is included in a licence which has been granted to him shall, except to that extent, be of no effect so far as so relating.
- (2) A condition which relates to both—
- (a) a licensed activity carried on by a person (“the licensee”), and
  - (b) a licence exempt activity carried on by him,
- may be included in a licence, but only if and to the extent that, in the opinion of the person granting the licence, the condition must, in consequence of the licensee’s carrying on of a mixed activity, necessarily have effect in relation to the whole, or some part, of so much of the mixed activity as consists of the licence exempt activity if the condition is to have full effect in relation to so much of the mixed activity as consists of the licensed activity.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (3) There shall not be included in a licence any condition relating to the fares that may be charged in respect of train journeys involving licence exempt travel, other than train journeys which also involve—
- (a) licensed travel; and
  - (b) at least two consecutive scheduled calls at stations during any one continuous spell of licensed operation.

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

F75

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

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

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

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

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

- (6) In this section—

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

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

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

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

#### **Textual Amendments**

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

## **11 Assignment of licences.**

- (1) A licence shall be capable of being assigned, but only if it includes a condition authorising assignment.
- (2) A licence shall not be capable of being assigned except with the consent of—



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- [<sup>F76</sup>(a) the Secretary of State, if he is specified for the purpose in the licence; or  
(b) [<sup>F77</sup>the Office of Rail Regulation]<sup>F78</sup> . . . , in any other case.]
- <sup>F79</sup>(3) . . . . .
- (4) Any consent under subsection (2) above may be given subject to compliance with such conditions as [<sup>F80</sup>are imposed by the person <sup>F81</sup>. . . giving the consent], which may include conditions modifying, or requiring or otherwise providing for the making of modifications to, the conditions of the licence.
- (5) A licence may include conditions which must be complied with before the licence can be assigned.
- (6) An assignment, or purported assignment, of a licence shall be void—
- (a) if the licence is not capable of assignment;
- (b) if the assignment, or purported assignment, is in breach of a condition of the licence; or
- (c) if there has, before the assignment or purported assignment, been a contravention of a condition subject to compliance with which the consent required by subsection (2) above is given.
- (7) A licence shall not be capable of being assigned under or by virtue of any other provision of this Act, other than paragraph 4 of Schedule 7 to this Act.
- (8) In this section “assignment” includes any form of transfer and cognate expressions shall be construed accordingly.
- (9) Any reference in this section to “assignment” shall be construed in Scotland as a reference to assignment.

#### Textual Amendments

- F76** S. 11(2)(a)(b) substituted for words (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 5(2)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F77** Words in s. 11 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F78** Words in s. 11(2)(b) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(a), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.
- F79** S. 11(3) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 5(3), **Sch. 31 Pt. IV** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F80** Words in s. 11(4) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 5(4)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F81** Words in s. 11(4) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 4(b), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909 {art. 2}, Sch.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

### *Modification of licences*

## 12 Modification by agreement.

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

(1A) <sup>F83</sup> .....

(1B) <sup>F83</sup> .....

(1C) <sup>F83</sup> .....

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

- (a) stating that [<sup>F85</sup>it] proposes to make the modifications and setting out their effect,
- (b) stating the reasons why [<sup>F85</sup>it] proposes to make the modifications, and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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

(3) A notice under subsection <sup>F87</sup> . . . (2) above shall be given—

- (a) by publishing the notice in such manner as [<sup>F88F89</sup> . . . 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) <sup>F90</sup> .....

#### **Textual Amendments**

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

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

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

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

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

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

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

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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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

### 13 Modification references to the Monopolies Commission.

(1) [<sup>F91</sup>the Office of Rail Regulation] may make to the Monopolies and Mergers Commission (in this Act referred to as the [<sup>F92</sup>Competition 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.

(1A) <sup>F93</sup> .....

(1B) <sup>F93</sup> .....

(1C) <sup>F93</sup> .....

(2) [<sup>F91</sup>the Office of Rail Regulation] may, at any time, by notice given to the [<sup>F92</sup>Competition 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.

(3) [<sup>F91</sup>the Office of Rail Regulation] may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [<sup>F92</sup>Competition Commission] in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in [<sup>F94</sup>its] opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of the licence by which, in [<sup>F94</sup>its] opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, [<sup>F91</sup>the Office of Rail Regulation]—

- (a) shall serve a copy of the reference or variation on the holder of the licence; and
- (b) shall publish particulars of the reference or variation in such manner as [<sup>F95</sup>it] considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) [<sup>F91</sup>the Office of Rail Regulation] shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [<sup>F92</sup>Competition 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.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (6) It shall be the duty of [<sup>F91</sup>the Office of Rail Regulation] , for the purpose of assisting the [<sup>F92</sup>Competition Commission] in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information in [<sup>F96</sup>the possession of [<sup>F91</sup>the Office of Rail Regulation]] 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 [<sup>F96</sup>the opinion of [<sup>F91</sup>the Office of Rail Regulation]], 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 [<sup>F96</sup>the power of [<sup>F91</sup>the Office of Rail Regulation]] 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 [<sup>F92</sup> Competition Commission] shall have regard to the matters as respects which duties are imposed on <sup>F97</sup> . . . [<sup>F98</sup>the Office of Rail Regulation] by section 4 above.
- (8) <sup>F99</sup> .....
- (8A) <sup>F99</sup> .....
- (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.

#### Textual Amendments

- F91** Words in s. 13 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 6(a)** (with para. 10); S.I. 2005/1909, **art. 2, Sch.**
- F92** Words in s. 13(1)-(3)(5)-(7) substituted (1.4.1999) by S.I. 1999/506, **art. 33(a)(b)**
- F93** S. 13(1A)-(1C) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, **Sch. 1 paras. 6(b), 10, Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1909, **art. 2, Sch.**
- F94** Words in s. 13(3) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(5)** (with **Sch. 28 paras. 2(5), 17**); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F95** Words in s. 13(4) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(6)** (with **Sch. 28 paras. 2(5), 17**); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F96** Words in s. 13(6) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(8)** (with **Sch. 28 paras. 2(5), 17**); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F97** Words in s. 13(7) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F98** Words in s. 13 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16, 120**, {**Sch. 2 para. 3(a) Table**}; S.I. 2004/827, **art. 4(g)**
- F99** S. 13(8)(8A) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(3)(b)**, **Sch. 26**; S.I. 2003/1397, **art. 2(1), Sch.** (with **art. 10**)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C9** S. 13 applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 1(b)**
- C10** S.13(1)(a)(i) modified (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 3**

**[<sup>F100</sup>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 [<sup>F101</sup>the Office of Rail Regulation] under subsection (3) below.
- (3) [<sup>F101</sup>the Office of Rail Regulation] 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) [<sup>F101</sup>the Office of Rail Regulation] shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence.]

**Textual Amendments**

- F100** 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.**
- F101** Words in s. 13A substituted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, **Sch. 1 para. 7** (with para. 10); [S.I. 2005/1909](#), **art. 2**, **Sch.**

**Modifications etc. (not altering text)**

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

**[<sup>F102</sup>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.);

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 [<sup>F103</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders), shall, for the purposes of the application of those sections by virtue of 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

**F102** 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.

**F103** Words in s. 13B(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389, 411(2)(3), **Sch. 16 para. 4(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to art. 3(3), Sch. 1)

#### Modifications etc. (not altering text)

**C12** 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)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

## 14 Reports on modification references.

- (1) In making a report on a reference under section 13 above, the [<sup>F104</sup>Competition 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.
- [<sup>F105</sup>(1A) For the purposes of sections 15 to 15B below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- (2) .....
- [<sup>F106</sup>(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 13 above.
- (3A) In making any report on a reference under section 13 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable) —
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]
- (4) A report of [<sup>F104</sup> the Competition Commission] on a reference under section 13 above shall be made to [<sup>F107</sup> the Office of Rail Regulation] .
- (5) Subject to subsection (6) below, [<sup>F107</sup> the Office of Rail Regulation]—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 [<sup>F108</sup>it] considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (5A) <sup>F109</sup> .....
- (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 [<sup>F110</sup>the Office of Rail Regulation] to exclude that matter from every copy of the report to be published by virtue of that paragraph.
- (7) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.

#### Textual Amendments

- F104** Words in s. 14(1)-(2) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**
- F105** S 14(1A)(1B) inserted (20.6.2003) by 2002 c. 40, ss 278, 279, Sch. 25 para. 30(5)(a); S.I. 2003/1397, **art. 2(1)**, Sch.
- F106** S. 14(3)-(3D) substituted (20.6.2003) for s. 14(3) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(5)(b); S.I. 2003/1397, **art. 2(1)**, Sch.
- F107** Words in s. 14 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 8(a)** (with para. 10); S.I. 2005/1909, **art. 2**, Sch
- F108** Words in s. 14(5) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 8(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F109** S. 14(5A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 paras. 8(b), 10, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch
- F110** Words in s. 14 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 8(a)** (with para. 10); S.I. 2005/1909, **art. 2**, Sch

#### Modifications etc. (not altering text)

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

## 15 Modification following report.

- (1) [<sup>F111</sup>This section applies where] a report of the [<sup>F112</sup> Competition 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,

<sup>F113</sup> . . .



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

<sup>F114</sup>(1A) Where the report is made to <sup>F115</sup>the Office of Rail Regulation<sup>F116</sup>it shall, subject to the following provisions of this section and to section 15A below, make such modifications of the conditions of the licence as appear to <sup>F116</sup>it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

<sup>F117</sup>(1B) . . . . .]

(2) Before making <sup>F118</sup>, or requiring the making of,] modifications under this section, <sup>F115</sup>the Office of Rail Regulation], <sup>F119</sup>. . . , shall have regard to the modifications specified in the report.

(3) Before making modifications under <sup>F120</sup>subsection (1A) above], <sup>F115</sup>the Office of Rail Regulation] shall give notice—

- (a) stating that <sup>F116</sup>it proposes to make the modifications and setting out their effect,
- (b) stating the reasons why <sup>F116</sup>it proposes to make the modifications, and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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

<sup>F121</sup>(3A) . . . . .

(4) A notice under subsection (3) <sup>F122</sup>. . . above shall be given—

- (a) by publishing the notice in such manner as <sup>F115</sup>the Office of Rail Regulation], <sup>F122</sup>. . . 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.

<sup>F123</sup>(4A) Where (after considering any representations or objections which are duly made and not withdrawn) <sup>F115</sup>the Office of Rail Regulation<sup>F119</sup>. . . proposes to make or require the making of modifications under this section, <sup>F124</sup>. . . it shall give notice to the Competition Commission—

- (a) setting out the modifications <sup>F116</sup>it proposes to make or <sup>F125</sup>. . . require to be made; and
- (b) stating the reasons why <sup>F116</sup>it proposes to make the modifications or <sup>F125</sup>. . . require the making of them.

(4B) <sup>F115</sup>the Office of Rail Regulation<sup>F119</sup>. . . shall include with the notice under subsection (4A) above a copy of any representations and objections which have been considered.

(4C) If the period within which a direction may be given by the Competition Commission under section 15A below expires without such a direction being given, <sup>F115</sup>the Office of Rail Regulation<sup>F119</sup>. . . shall make, or require the making of, the modifications set out in the notice given under subsection (4A) above.

(4D) If a direction is given by the Competition Commission under section 15A(1)(b) below, <sup>F115</sup>the Office of Rail Regulation<sup>F119</sup>. . . shall make, or require the making of, such of those modifications as are not specified in the direction.]

<sup>F126</sup>(5) . . . . .

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

- (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.

#### Textual Amendments

- F111** Words in s. 15(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(2)(a)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F112** Words in s. 15(1) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**
- F113** Words in s. 15(1) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 9(2)(b), **Sch. 31 Pt. IV** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F114** S. 15(1A)(1B) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(3)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F115** Words in s. 15 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F116** Word in s. 15 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F117** S. 15(1B) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F118** Words in s. 15(2) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(4)(a)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F119** Words in s.15(2)(4A)(4B)(4C)(4D) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F120** Words in s. 15(3) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(5)** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F121** S. 15(3A) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F122** Words in s. 15(4) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59(6), 60(2), Sch. 1 para. 9(c) {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 1 para. 10, Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F123** S. 15(4A)-(4D) inserted (1.2.2001) by 2000 c. 38, s. 242(1); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F124** Words in s. 15(4A) omitted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 7(a) Table}; S.I. 2004/827, **art. 4(g)**
- F125** Words in s. 15(4A) omitted (5.7.2004) by virtue of Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 7(b) Table}; S.I. 2004/827, **art. 4(g)**
- F126** S. 15(5) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

#### Modifications etc. (not altering text)

- C14** Ss. 13-16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**
- C15** S. 15(1A) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 4**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

## <sup>F127</sup>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 <sup>F128</sup>[the Office of Rail Regulation]<sup>F129</sup> . . . —
  - (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

**F127** 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**)

**F128** Words in s. 15A substituted (5.7.2004) by **Railways and Transport Safety Act 2003** (c. 20), ss. 16, 120, {**Sch. 2 para. 3(a) Table**}; S.I. 2004/827, **art. 4(g)**

**F129** Words in s.15(A) repealed (24.7.2005) by **Railways Act 2005** (c. 14), ss. 59, 60, **Sch. 13** (with s. 14(4) (5), **Sch. 11 para. 11(2)**); S.I. 2005/1909, **art. 2**, **Sch.**

### Modifications etc. (not altering text)

**C16** S. 15A applied (with modifications) (28.11.2005) by **The Railway (Licensing of Railway Undertakings) Regulations 2005** (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**

## <sup>F130</sup>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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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (b) such of those adverse effects as would not be remedied or prevented by the modifications made by [F131the Office of Rail Regulation] , F132. . . , 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 [F131the Office of Rail Regulation] 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 [F131the Office of Rail Regulation] , [F133the Authority and the Health and Safety Executive] .

#### Textual Amendments

- F130** 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**)
- F131** Words in s. 15B substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F132** Words in s. 15B(1)(b) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59(6), 60(2), **Sch. 13 Pt. I** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F133** Words in s. 15B(5) repealed (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 16), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

#### Modifications etc. (not altering text)

- C17** S. 15B applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**
- C18** S. 15B(2) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 5**

#### F134 **15C Sections 15A and 15B: supplementary.**

- [F135(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.

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*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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- (2) In giving any notice under section 15A(4) or 15B(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2E) and (2F) below, for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15A or 15B above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of subsection (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to [<sup>F136</sup>the Office of Rail Regulation] under section 15B(5) of the Railways Act 1993 of the modifications made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of subsection (2D) above, have effect as if for sub-paragraph (ii) there were substituted—

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (“ if earlier, the day on which a copy of the modifications made by the Commission in connection with the reference concerned is sent to [<sup>F136</sup>the Office of Rail Regulation] under section 15B(5) of the Railways Act 1993 or, if no direction is given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”.
- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15A and 15B above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F137</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those subsections.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]
- (2) The provisions are—
- (a) sections 82(1) and (2) (general provisions as to reports), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the 1973 Act;
  - (b) Part II of Schedule 7 to the <sup>M1</sup>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, [<sup>F136</sup>the Office of Rail Regulation]<sup>F138</sup> . . . shall <sup>F138</sup> . . . give to the Competition Commission any information in <sup>F139</sup> . . . 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 <sup>F139</sup> . . . 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 <sup>F139</sup> . . . 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

**F134** 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**)

**F135** S. 15C(1)-(2I) substituted for s. 15C(1)(2) (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(6)**; S.I. 2003, {art. 2(1)}, **Sch.**

**F136** Words in s. 15C substituted (5.7.2004) by **Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120**, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- F137** Words in s. 15(2G) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389, 411(2)(3), **Sch. 16 para. 4(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to art. 3(3), Sch. 1
- F138** Words in s. 15C(3) repealed (24.7.05) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13** (with s. 14(4) (5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F139** Words in s. 15C(3) omitted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 8(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

**Modifications etc. (not altering text)**

- C19** Ss. 13-16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/2050), reg. 14, **Sch. 3 para. 1(b)**

**Marginal Citations**

- M1** 1998 c. 41.

## 16 Modification by order under other enactments.

- [<sup>F140</sup>(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the supply of services relating to railways; or
- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the supply of services relating to railways; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the supply of services relating to railways.]
- (3) As soon as practicable after making any modifications under this section, the [<sup>F141</sup>relevant authority] shall send a copy of those modifications to [<sup>F142</sup>the Office of Rail Regulation], [<sup>F143</sup>the Authority and to the Health and Safety Executive] .
- (4) Nothing in this section applies in relation to any term of a licence to the extent that it makes provision for the revocation or surrender of the licence.
- [<sup>F144</sup>(5) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part; and in subsection (2) above “services relating to railways” has the same meaning as in section 67(2A) of this Act.]

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

#### Textual Amendments

- F140** S. 16(1)(2) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(2); S.I. 2003/1397, **art. 2(1)**, Sch.
- F141** Words in s. 16(3) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(3); S.I. 2003/1397, **art. 2(1)**, Sch.
- F142** Words in s. 16 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F143** Words in s. 16(3) repealed (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 16), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F144** S. 16(5) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 1 para. 10(4); S.I. 2003/1397, **art. 2(1)**, Sch.

#### Modifications etc. (not altering text)

- C20** S. 16 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(b)**
- C21** S. 16(2)(a) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 16, **Sch. 4 para. 12(1)**

*<sup>F145</sup> Directions to provide, improve or develop railway facilities*

#### Textual Amendments

- F145** S. 16A cross-heading inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, **art. 3**

### <sup>F146</sup>16A Provision, improvement and development of railway facilities.

- (1) [<sup>F147</sup>the Office of Rail Regulation] may, on an application—
- (a) made by the [<sup>F148</sup>appropriate facilities authority] , or
  - (b) made by any other person with the consent of the [<sup>F148</sup>appropriate facilities authority] ,
- give to the operator of a network, station or light maintenance depot a direction to provide a new railway facility if [<sup>F147</sup>the Office of Rail Regulation] considers him to be an appropriate person to provide the new railway facility.
- (2) [<sup>F147</sup>the Office of Rail Regulation] may, on an application—
- (a) made by the [<sup>F148</sup>appropriate facilities authority] , or
  - (b) made by any other person with the consent of the [<sup>F148</sup>appropriate facilities authority] ,
- give to a person who has an estate or interest in, or right over, an existing railway facility a direction to improve or develop the railway facility if [<sup>F147</sup>the Office of Rail Regulation] considers him to be an appropriate person to improve or develop the railway facility.
- (3) The [<sup>F149</sup>consent of the appropriate facilities authority] to the making by any other person of an application under subsection (1) or (2) above may be given subject to compliance with conditions (and may be withdrawn if any condition is not complied with before [<sup>F147</sup>the Office of Rail Regulation] decides whether to give the direction).



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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- [<sup>F150</sup>(3A) In this section and sections 16B to 16G below 'the appropriate facilities authority'—
- (a) in relation to facilities in Scotland, means the Scottish Ministers; and
  - (b) in relation to any other facilities, means the Secretary of State.]

#### Textual Amendments

- F146** S. 16A inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, art. 3
- F147** 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)
- F148** Words in s. 16A substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 11(1): S.I. 2005/2812, art. 2(1), Sch. 1
- F149** Words in s. 16A(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 11(2): S.I. 2005/2812, art. 2(1), Sch. 1
- F150** S.16A(3A) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 11(3): S.I. 2005/2812, art. 2(1), Sch. 1

#### <sup>F151</sup>16B Exemption of railway facilities from section 16A.

- (1) The [<sup>F152</sup>appropriate facilities authority] may, after consultation with [<sup>F153</sup>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 [<sup>F154</sup>appropriate facilities authority] may give a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.
  - (5) Subject to subsection (4) above, an exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in, or determined by or under, the exemption.
  - (6) Exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.
- [<sup>F155</sup>(7) A statutory instrument containing an order made under this section by the Scottish Ministers shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### Textual Amendments

- F151** S. 16B inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, {art. 3}

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F152** Words in s. 16B(1) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(4)(6)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F153** 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)**
- F154** Words in s. 16B(4) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(4)(6)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F155** S. 16(B)(7) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(5)(6)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

**<sup>F156</sup>16C Making of applications for directions.**

- (1) An application for a direction under section 16A above must be made to [<sup>F157</sup>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
  - (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 [<sup>F157</sup>the Office of Rail Regulation] notice in writing of the variation; but if the applicant is a person other than the [<sup>F158</sup>appropriate facilities authority] such a notice may only be given with the consent of the Authority.
- (4) The application or notice of a variation may be accompanied by any written representations which the applicant wishes to make in relation to the direction.

**Textual Amendments**

- F156** S. 16C inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, **art. 3**
- F157** 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)**
- F158** Words in s. 16C(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 11(1)**: S.I. 2005/2812, **art. 2(1)**, Sch. 1

**<sup>F159</sup>16D Procedure for considering applications.**

- (1) When [<sup>F160</sup>the Office of Rail Regulation] has received the application or notice of a variation, [<sup>F161</sup>it]
  - (a) send a copy to the person specified in the application, the [<sup>F162</sup>appropriate facilities authority] (if it is not the applicant) and any other persons who [<sup>F160</sup>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, [<sup>F160</sup>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.

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- (3) If that person makes such representations but [F160the Office of Rail Regulation] decides that he is an appropriate person to do what the direction would require him to do, [F160the 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) [F160the Office of Rail Regulation] must—
- (a) send the applicant a copy of any representations received by [F161it] 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, [F160the Office of Rail Regulation] may substitute as the applicant any other person if—
- (a) the applicant,
  - (b) the other person, and
  - (c) the [F162appropriate facilities authority] (if it is neither the applicant nor the other person),
- consent to the substitution.
- (6) The applicant may, by giving notice in writing to [F160the Office of Rail Regulation], withdraw or suspend the application at any time before [F160the Office of Rail Regulation] decides whether to give the direction.
- (7) [F160the Office of Rail Regulation] may direct—
- (a) the person specified in the application,
  - (b) the applicant, or
  - (c) any other person (apart from the [F162appropriate facilities authority] ),
- to provide him with any information required by him in order to decide whether to give the direction.
- (8) If a person fails to comply with a direction under subsection (7) above, the High Court or the Court of Session may, on the application of [F160the 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

**F159** S. 16D inserted (15.10.2005) by 2000 c. 38, ss. 223, 275; S.I. 2005/2862, art. 3

**F160** 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)

**F161** 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)

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**F162** Words in s. 16D substituted (16.10.2005) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 11\(1\)](#): [S.I. 2005/2812, art. 2\(1\), Sch. 1](#)

**<sup>F163</sup>16E Decisions on applications: adequate reward.**

- (1) [<sup>F164</sup>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 [<sup>F164</sup>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 [<sup>F165</sup>appropriate facilities authority], passengers, operators of railway services or any other persons) in connection with, or as a result of, the provision, improvement or development of the railway facility; and
  - (b) any other benefit obtained or likely to be obtained by him in consequence of its provision, improvement or development.
- (3) Representations made by the applicant for a direction—
  - (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 [<sup>F164</sup>the Office of Rail Regulation] should take into account in deciding whether the person to whom the direction would be given would be adequately rewarded for doing what it would require him to do.

**Textual Amendments**

**F163** S. 16E inserted (15.10.2005) by [2000 c. 38, ss. 223, 275\(1\)](#); [S.I. 2005/2862](#), {art. 3}

**F164** 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\(g\)](#)

**F165** Words in s. 16E(2)(a) substituted (16.10.2005) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 11\(1\)](#); [S.I. 2005/2812, art. 2\(1\), Sch. 1](#)

**<sup>F166</sup>16F Other provisions about decisions.**

- (1) If [<sup>F167</sup>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), [<sup>F168</sup>it] may give a direction under that section in modified terms.
- (2) [<sup>F167</sup>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).

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (3) Before giving a direction under section 16A above which is in modified terms or includes supplementary provisions, [<sup>F167</sup>the Office of Rail Regulation] shall—
- (a) notify [<sup>F169</sup>its] intention to give a direction to the applicant, the [<sup>F170</sup>appropriate facilities authority] (if it is not the applicant) and any other persons who the Regulator considers ought to be notified; and
  - (b) invite them to make written representations within a period specified in the invitation;
- and if the applicant makes representations that the direction should not be given, [<sup>F167</sup>the Office of Rail Regulation] shall not give it.
- (4) Whatever [<sup>F167</sup>the Office of Rail Regulation]’s decision on an application [<sup>F168</sup>it] shall notify the decision to—
- (a) the person specified in the application;
  - (b) the applicant; and
  - (c) any other persons who [<sup>F168</sup>it] considers ought to be notified.
- (5) [<sup>F167</sup>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 [<sup>F168</sup>it] considers appropriate in respect of costs incurred in connection with the application.

#### Textual Amendments

- F166** S. 16F inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, art. 3
- F167** 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)
- F168** 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)
- F169** 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)
- F170** Words in s. 16F(3)(a) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 11(1); S.I. 2005/2812, art. 2(1), Sch. 1

#### <sup>F171</sup>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 [<sup>F172</sup>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

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 [<sup>F173</sup>appropriate facilities authority] if [<sup>F172</sup>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) [<sup>F172</sup>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 [<sup>F173</sup>appropriate facilities authority] on condition that he or it secures that any such compensation as [<sup>F172</sup>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

**F171** S. 16G inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, art. 3

**F172** 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)

**F173** Words in s. 16G substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 11(1); S.I. 2005/2812, art. 2(1), Sch. 1

#### <sup>F174</sup>16H Code of practice.

- (1) [<sup>F175</sup>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 [<sup>F176</sup>it] considers appropriate.
- (2) [<sup>F175</sup>the Office of Rail Regulation] shall have regard to the code of practice in the exercise of [<sup>F177</sup>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

**F174** S. 16H inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, art. 3

**F175** 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)

**F176** 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)

**F177** 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)

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

**F178 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 [F179 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**

**F178** S. 16I inserted (15.10.2005) by 2000 c. 38, ss. 223, 275(1); S.I. 2005/2862, art. 3

**F179** 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)

*Access agreements*

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

- (1) [F180 the Office of Rail Regulation] may, on the application of any person, give directions to a facility owner requiring him to enter into an access contract with the applicant for the purpose specified in subsection (2) below; but no such directions shall be given if and to the extent that—
  - (a) the facility owner’s railway facility is, by virtue of section 20 below, an exempt facility;
  - (b) performance of the access contract, if entered into, would necessarily involve the facility owner in being in breach of an access agreement <sup>F181</sup> . . . ; <sup>F182</sup> . . . [F183 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; <sup>F184</sup> . . .
  - (d) <sup>F184</sup> . . . . .
- (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;

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

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

(3) In subsection (2) above—

- (a) paragraph (a) does not extend to obtaining permission to use track for the purpose of providing network services on that track;
- (b) paragraph (b) does not extend to obtaining permission to use a station for the purpose of operating that station;
- (c) paragraph (c) does not extend to obtaining permission to use a light maintenance depot for the purpose of enabling the beneficiary to carry out light maintenance;
- (d) if and to the extent that the railway facility mentioned in paragraph (e) is track, that paragraph does not extend to obtaining permission to use that track for the purpose—

- (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 [<sup>F185</sup>the Secretary of State] a network in which the track in question is comprised;

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

- (i) of providing station services at that station, or
- (ii) of operating that station,

except where the purpose for which directions are sought is to enable the beneficiary to operate the station on behalf of [<sup>F185</sup>the Secretary of State] ;

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

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

except where the purpose for which directions are sought is to enable the beneficiary to operate the light maintenance depot on behalf of the [<sup>F186</sup>Authority].

- (4) Any reference in this section to a person operating a network, station or light maintenance depot "on behalf of the [<sup>F187</sup>Secretary of State] is a reference to his operating the network, station or light maintenance depot in pursuance of any agreement or other arrangements made by the [<sup>F188</sup>Secretary of State or the Scottish Ministers] for the purpose of performing a duty imposed upon [<sup>F189</sup>him or them] , or exercising a power conferred upon [<sup>F189</sup>him or them] , under or by virtue of this Part [<sup>F190</sup>or Part 4 of the Railways Act 2005 (network modifications etc.)] to secure the operation of that network, station or light maintenance depot.



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(5) Nothing in this section authorises [<sup>F180</sup>the Office of Rail Regulation] to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility.

(6) In this Part—

“access contract” means—

(a) a contract under which—

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

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

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

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

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

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

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

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

“facility owner” means any person—

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

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

[<sup>F191</sup>but also includes a person before he becomes a facility owner;]

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

(7) In this section—

“the applicant” means the person making the application for directions;

“associate”, in relation to any person, includes—

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

(b) any passenger of his;

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

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

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

“directions” means directions under this section;

<sup>F192</sup> .....

<sup>F192</sup> .....

<sup>F192</sup> .....

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

[<sup>F193</sup>(7A) Any reference in this section to obtaining permission to use a railway facility includes, where the facility is track, permission to connect other track to it.]

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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that railway facility, whether the facility owner in question is to provide those services himself or to secure their provision by another; and
- (b) a reference to obtaining permission—
  - (i) to enter upon the facility land, with or without vehicles,
  - (ii) to bring things on to that land and keep them there,
  - (iii) to carry out works on that land, and
  - (iv) to use and maintain any things kept, or buildings or other works constructed, on that land (whether by the beneficiary or another) or any amenities situated on that land,

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

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

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

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

<sup>F194</sup>(11) .....

#### Textual Amendments

- F180** Words in s. 17 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F181** Words in s. 17(1)(b) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), Sch. 1 para. 4(a)(i)
- F182** Word in s. 17(1)(b) deleted (27.6.1998) by virtue of S.I. 1998/1340, reg. 21(5)
- F183** Word in s. 17(1)(b) inserted (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), Sch. 1 para. 4(b)
- F184** S. 17(1)(d) and preceding word omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), Sch. 1 para. 4(a)(ii)
- F185** Words in s. 17 substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 12(1); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F186** Words in s. 17(3)(4) substituted (1.2.2001) by 2000 c. 38, s. 215, Sch. 16 para. 11(2)(3); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, art. 2(2))
- F187** Words in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 12(2) (a); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F188** Words in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 12(2) (b); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F189** Word in s. 17(4) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 12(2)(c); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F190** Words in s. 17(4) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, Sch. 11 para. 3(a); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F191** S. 17(6): words in definition of “facility owner”

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

inserted (1.2.2001) by 2000 c. 38, s. 233(1); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

**F192** Definitions in s. 17(7) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049, reg. 2(4), **Sch. 1 para. 4(a)(iii)**)

**F193** S. 17(7A) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 21**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

**F194** S. 17(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

**Modifications etc. (not altering text)**

**C22** S. 17 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**

**C23** 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; <sup>F195</sup> . . .
- (b) [<sup>F196</sup>the Office of Rail Regulation] has approved the terms of the access contract and the facility owner enters into the contract pursuant to directions under this section; [<sup>F197</sup>or
- (c) the access contract is of a class or description specified in a general approval given by [<sup>F196</sup>the Office of Rail Regulation] ;]

and any access contract to which this section applies [<sup>F198</sup>shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.]

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

- (a) from a facility owner whose railway facility is track, permission to use that track for the purpose of the operation of trains on that track by the beneficiary;
- (b) from a facility owner whose railway facility is a station, permission to use that station, for or in connection with the operation of trains by the beneficiary;
- (c) from a facility owner whose railway facility is a light maintenance depot, permission to use that light maintenance depot for the purpose of obtaining light maintenance services for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;
- (d) from any facility owner, permission to use the facility owner's railway facility for the purpose of stabling, or otherwise temporarily holding, rolling stock in connection with the operation of trains on any track by the beneficiary; or
- (e) from any facility owner, permission to use the facility owner's railway facility for or in connection with the operation of a network, station or light maintenance depot by the beneficiary;

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

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

- (a) if and to the extent that the railway facility to which the access contract relates is, by virtue of section 20 below, an exempt facility; <sup>F199</sup> . . .
- (b) <sup>F199</sup> .....

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 [<sup>F200</sup>the Secretary of State] a network in which the track in question is comprised;
  - (e) if and to the extent that the railway facility mentioned in that paragraph is a station, that paragraph does not extend to obtaining permission to use that station for the purpose—
    - (i) of providing station services at that station, or
    - (ii) of operating that station,
 unless the purpose of entering into the access contract is to enable the beneficiary to operate the station on behalf of [<sup>F200</sup>the Secretary of State] ;
  - (f) if and to the extent that the railway facility mentioned in that paragraph is a light maintenance depot, that paragraph does not extend to obtaining permission to use that light maintenance depot for the purpose—
    - (i) of carrying out light maintenance at that light maintenance depot, or
    - (ii) of operating that light maintenance depot,
 unless the purpose of entering into the access contract is to enable the beneficiary to operate the light maintenance depot on behalf of [<sup>F200</sup>the Secretary of State] .
- (5) In any case where—
- (a) a facility owner and another person (the “other party”) have agreed the terms on which they propose to enter into an access contract to which this section applies, but
  - (b) the circumstances are such that, by virtue of subsection (1)(b) above, those terms must be approved, and directions must be given, by the Regulator before the facility owner may enter into the proposed access contract,
- it shall be for the facility owner to submit the proposed access contract to [<sup>F196</sup>the Office of Rail Regulation] for approval of its terms.
- (6) If, on the submission of a proposed access contract pursuant to subsection (5) above, [<sup>F196</sup>the Office of Rail Regulation] approves its terms, [<sup>F201</sup>it] shall issue directions to the facility owner—
- (a) requiring him to enter into the proposed access contract within such period as may be specified for the purpose in the directions; but
  - (b) releasing him from his duty to do so if the other party fails to enter into the proposed access contract within such period as may be specified for the purpose in the directions;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

and [F196the Office of Rail Regulation] shall send a copy of the directions to the other party.

[F202(6A) The grounds on which [F196the Office of Rail Regulation] may reject, or approve subject to modifications, a proposed access contract submitted to [F201it] pursuant to subsection (5) above include that [F201it] considers that the use of the facility for which it provides might impede the provision of services—

- (a) under a franchise agreement; or
- (b) under an agreement entered into by [F200the Secretary of State] pursuant to [F203his] duty under section 30 below.]

(7) If, on the submission of a proposed access contract pursuant to subsection (5) above, [F196the Office of Rail Regulation] does not consider it appropriate to approve its terms without modification (or to reject it), [F201it] 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 [F196the Office of Rail Regulation] notice of objection before the expiration of the period of fourteen days beginning with the day after that on which the directions are issued; or
  - (ii) the other party fails to enter into the proposed access contract, on the terms as modified under this subsection, before the date specified for the purpose in the directions;

and [F196the Office of Rail Regulation] shall send a copy of the directions to the other party.

[F204(7A) Where [F196the Office of Rail Regulation] gives or revokes a general approval under subsection (1)(c) above, [F201it] shall publish the approval or revocation in such manner as he considers appropriate.

(7B) The revocation of a general approval given under subsection (1)(c) above shall not affect the continuing validity of any access contract to which it applied.]

(8) In this section, “associate”, “the beneficiary”, F205 . . . 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),
- [F206(aa) subsection (7A),]
- (b) subsection (8)(a) and (b), and
- (c) subsection (9),

apply for the purposes of this section as they apply for the purposes of that section; and the words following paragraph (b) of subsection (8) of that section apply in relation to subsection (2)(c) of this section as they apply in relation to subsection (2)(c) of that section.

(10) This section shall not prevent a facility owner from granting a lease of any land which consists of or includes the whole or any part of his railway facility.

F207(11) . . . . .

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### Textual Amendments

- F195** Word in s. 18(1)(a) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F196** Words in s. 18 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F197** S. 18(1)(c) and word “or” immediately preceding it inserted (1.2.2001) by 2000 c. 38, s. 230(1); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F198** Words in s. 18(1) substituted (1.2.2001) by 2000 c. 38, s. 230(1); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F199** S. 18(3)(b) and preceding word omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(c)(i)**
- F200** Words in s.18 substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(1)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F201** Word in s. 18 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F202** S. 18(6A) inserted (1.2.2001) by 2000 c. 38, s. 212(6)(with Sch. 28 paras. 3, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F203** Word in s. 18(6A)(b) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 12(3)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F204** S. 18(7A)(7B) inserted (1.2.2001) by 2000 c. 38, s. 230(2); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F205** Words in s. 18(8) omitted (28.11.2005) by virtue of The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), reg. 2(4), **Sch. 1 para. 4(a)(ii)**
- F206** S. 18(9)(aa) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 22**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F207** S. 18(11) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### Modifications etc. (not altering text)

- C24** S. 18 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**
- C25** 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 <sup>F208</sup>the Secretary of State], of installations comprised in a network.

- (1) <sup>F209</sup>the Office of Rail Regulation] may, on the application of any person, give directions to an installation owner requiring him to enter into an installation access contract with the applicant for the purpose of enabling the beneficiary to obtain (whether for himself alone or for himself and, so far as may be applicable, associates of his) permission to use the installation owner’s network installation for the purpose of operating, on behalf of <sup>F208</sup>the Secretary of State], the network in which the network installation is comprised.
- (2) Directions shall not be given under subsection (1) above in the case of any network installation if and to the extent that, as a result of an obligation or duty owed by the installation owner which arose before the coming into force of this section, the consent of some other person is required by the installation owner before he may enter into the installation access contract.
- (3) An installation owner shall not enter into an installation access contract to which this subsection applies unless—

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- (a) he does so pursuant to directions under subsection (1) above; <sup>F210</sup> . . .
  - (b) [<sup>F209</sup>the Office of Rail Regulation] has approved the terms of the installation access contract and the installation owner enters into the contract pursuant to directions given by virtue of subsection (5) below; [<sup>F211</sup>or
  - (c) the installation access contract is of a class or description specified in a general approval given by the Regulator;]
- and any installation access contract to which this subsection applies [<sup>F212</sup>shall be void unless one of the conditions in paragraphs (a) to (c) above is satisfied.]
- (4) The installation access contracts to which subsection (3) above applies are those under which the beneficiary obtains (whether for himself alone or for himself and associates of his) from an installation owner permission to use the installation owner’s network installation for the purpose of operating, on behalf of [<sup>F208</sup>the Secretary of State] , the network in which the network installation is comprised.
  - (5) Subsections (5) to (7) of section 18 above shall apply in relation to installation access contracts to which subsection (3) of this section applies as they apply in relation to access contracts to which that section applies, but with the following modifications, that is to say—
    - (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.
  - <sup>F213</sup>(5A) Where [<sup>F209</sup>the Office of Rail Regulation] gives or revokes a general approval under subsection (3)(c) above, [<sup>F214</sup>it] shall publish the approval or revocation in such manner as [<sup>F214</sup>it] considers appropriate.
  - (5B) The revocation of a general approval given under subsection (3)(c) above shall not affect the continuing validity of any installation access contract to which it applied.]
  - (6) Nothing in this section—
    - (a) authorises [<sup>F209</sup>the Office of Rail Regulation] to give directions to an installation owner requiring him to grant a lease of the whole or any part of his network installation; or
    - (b) prevents an installation owner from granting a lease of any land which consists of or includes the whole or any part of his network installation.
  - (7) Any reference in this section to a person operating a network “on behalf of [<sup>F208</sup>the Secretary of State]” is a reference to his operating the network in pursuance of any agreement or other arrangements made by [<sup>F208</sup>the Secretary of State] for the purpose of performing a duty imposed upon him, or exercising a power conferred upon him, under or by virtue of this Part [<sup>F215</sup>or Part 4 of the Railways Act 2005 (network modifications etc.)] to secure the operation of that network.
  - (8) Any reference in this section to obtaining permission to use a network installation includes—
    - (a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that network installation,

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

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;

[<sup>F216</sup>but also includes a person before he becomes an installation owner;]

and any reference to an installation owner’s network installation is a reference to the network installation by reference to which he is an installation owner.

- (10) In this section—

“ancillary service” means any service which is necessary or expedient for giving full effect to any permission or right which a person may have to use a network installation;

“the applicant” means the person making the application for directions under subsection (1) above;

“associate” has the meaning given by section 17(7) above;

“the beneficiary” means the person mentioned in paragraph (a) of the definition of “installation access contract” in subsection (9) above;

“lease” includes an underlease or sublease and an agreement for a lease, underlease or sublease;

“network installation” means any installation (other than track) which is comprised in a network.

- (11) Any reference in this section to a network installation includes a reference to a part of a network installation [<sup>F217</sup>and to one which is proposed to be constructed or is in the course of construction.].

- (12) Schedule 4 to this Act shall have effect with respect to applications for directions under subsection (1) above as it has effect with respect to applications for directions under section 17 above, but with the following modifications, that is to say—

- (a) for any reference to an access contract, there shall be substituted a reference to an installation access contract;



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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.

<sup>F218</sup>(13) .....

#### Textual Amendments

- F208** Words in s. 19 substituted (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, **Sch. 1 para. 12(1)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F209** Words in s. 19 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F210** Words in s. 19(3) repealed (1.2.2001) by [2000 c. 38](#), s. 274, 275(1), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F211** S. 19(1)(c) and word “or” immediately preceding it inserted (1.2.2001) by [2000 c. 38](#), s. 230(3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F212** Words in s. 19(3) substituted (1.2.2001) by [2000 c. 38](#), s. 230(3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F213** S. 19(5A)(5B) inserted (1.2.2001) by [2000 c. 38](#), s. 230(4); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F214** Word in s. 19 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F215** Words in s. 19(7) inserted (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 3(b)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F216** S. 19(9): Words in definition of “installation owner” inserted (1.2.2001) by [2000 c. 38](#), s. 233(2)(a); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F217** Words in s. 19(11) inserted (1.2.2001) by [2000 c. 38](#), s. 233(2)(b); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F218** S. 19(13) repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

- C26** S. 19(1) restricted (18.12.1996) by [1996 c. 61](#), s. 17(4)

#### [<sup>F219</sup>19A Review of access charges by Regulator.

Schedule 4A to this Act (which contains provision about the review of access charges by [<sup>F220</sup>the Office of Rail Regulation] ) shall have effect.]

#### Textual Amendments

- F219** S. 19A inserted (30.11.2000) by [2000 c. 38](#), s. 231(1), 275(1) (with Sch. 28 paras. 11, 17)
- F220** Words in s. 19A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

## 20 Exemption of railway facilities from sections 17 <sup>F221</sup>, 18 and 22A].

(1) The Secretary of State may, after consultation with <sup>F222</sup>the Office of Rail Regulation], by order grant exemption from sections 17 and 18 above <sup>F223</sup>and section 22A below]in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.

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

- (a) to persons of a particular class or description or to a particular person; and
- (b) in respect of railway facilities of a particular class or description or a particular railway facility, or in respect of part only of any such railway facilities or facility;

<sup>F224</sup> . . .

(3) If a facility owner makes an application under this subsection to <sup>F222</sup>the Office of Rail Regulation] for the grant of an exemption from sections 17 and 18 above <sup>F223</sup>and section 22A below] in respect of the whole or any part of his railway facility, <sup>F222</sup>the Office of Rail Regulation] , after consultation with the Secretary of State—

- (a) may either grant or refuse the exemption, whether wholly or to such extent as <sup>F225</sup>it] may specify in the exemption; and
- (b) if and to the extent that <sup>F225</sup>it] grants <sup>F226</sup>the exemption] , may do so subject to compliance with such conditions (if any) as <sup>F225</sup>it] may so specify.

(4) Before granting a facility exemption under subsection (3) above, <sup>F222</sup>the Office of Rail Regulation] shall give notice—

- (a) stating that <sup>F225</sup>it] proposes to grant the facility exemption,
- (b) stating the reasons why <sup>F225</sup>it] proposes to grant the facility exemption, and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed facility exemption may be made,

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

(5) A notice under subsection (4) above shall be given by publishing the notice in such manner as <sup>F222</sup>the Office of Rail Regulation] considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the facility exemption.

(6) If any condition (the “broken condition”) of a facility exemption is not complied with—

- (a) the Secretary of State, in the case of a facility exemption under subsection (1) above, or
- (b) <sup>F222</sup>the Office of Rail Regulation], in the case of a facility exemption under subsection (3) above,

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

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

“condition”, in relation to a facility exemption, means any condition subject to compliance with which the facility exemption was granted;

“relevant person”, in the case of any facility exemption, means a person who has the benefit of the facility exemption and who—

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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.
- <sup>F227</sup>(9) .....
- (10) Any application for a facility exemption under subsection (3) above must be made in writing; and where any such application is made, [<sup>F222</sup>the Office of Rail Regulation] may require the applicant to furnish [<sup>F225</sup>it] with such information as [<sup>F222</sup>the Office of Rail Regulation] may consider necessary to enable [<sup>F225</sup>it] to decide whether to grant or refuse the facility exemption.
- (11) Facility exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.
- <sup>F228</sup>(12) .....
- (13) In this Part “facility exemption” means an exemption from sections 17 and 18 above [<sup>F223</sup>and section 22A below] granted under any provision of this section in respect of the whole or any part of a railway facility; and a railway facility is an “exempt facility” if and to the extent that it is the subject of such an exemption.

#### Textual Amendments

- F221** Words in s. 20 sidenote substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 23(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F222** Words in s. 20 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F223** Words in s. 20(1)(3)(13) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 23(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F224** Words in s. 20(3) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 23(3), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F225** Word in s. 20 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F226** Words in s. 20(3)(b) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 9**; S.I. 2004/827, **art. 4(g)**
- F227** S. 20(9) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F228** S. 20(12) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

- C27** S. 20 restricted (3.7.2000) by 1999 c. 29, ss. 199(1)(b)(2)(3), 425(2) (with Sch. 12 para. 9(1)); S.I. 2000/801, **art. 2(c)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

## 21 Model clauses for access contracts.

- (1) [<sup>F229</sup>the Office of Rail Regulation] may prepare and publish model clauses for inclusion in access contracts.
- (2) Different model clauses may be prepared and published in relation to different classes or descriptions of railway facility.
- (3) [<sup>F229</sup>the Office of Rail Regulation] may from time to time revise any model clauses published under this section and may publish those clauses as so revised.
- (4) In preparing or revising any model clauses under this section, [<sup>F229</sup>the Office of Rail Regulation] may consult such persons as [<sup>F230</sup>it] thinks fit.
- (5) [<sup>F229</sup>the Office of Rail Regulation] shall encourage, and may require, the use of any [<sup>F231</sup>of its] model clauses <sup>F232</sup> . . . in access contracts wherever [<sup>F230</sup>it] considers it appropriate.

### Textual Amendments

**F229** Words in s. 21 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)

**F230** Word in s. 21 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, art. 4(g)

**F231** Words in s. 21(5) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 10(a); S.I. 2004/827, art. 4(g)

**F232** Words in s. 21(5) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 10(b), Sch. 8; S.I. 2004/827, art. 4(i)

## 22 Amendment of access agreements.

- (1) Any amendment, or purported amendment, of an access agreement shall be void unless the amendment has been approved by [<sup>F233</sup>the Office of Rail Regulation][<sup>F234</sup>or is made pursuant to directions under section 22A or 22C below or Schedule 4A to this Act].
- (2) [<sup>F233</sup>the Office of Rail Regulation] may, for the purposes of subsection (1) above, give the parties to any particular access agreement [<sup>F235</sup>its] general approval to the making to that access agreement of amendments of a description specified in the approval; and any approval so given shall not be revoked.
- (3) [<sup>F233</sup>the Office of Rail Regulation] may, for the purposes of subsection (1) above, give [<sup>F235</sup>its] general approval to the making to access agreements, or to access agreements of a particular class or description, of amendments of a description specified in the approval.
- (4) Where [<sup>F233</sup>the Office of Rail Regulation] gives or revokes a general approval under subsection (3) above, [<sup>F236</sup>it] shall publish the approval or revocation (as the case may be) in such manner as [<sup>F236</sup>it] considers appropriate.
- (5) The revocation of a general approval given under subsection (3) above shall not affect the continuing validity of any amendment made in accordance with, and before the revocation of, that approval.

<sup>F237</sup>(6) . . . . .

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[<sup>F238</sup>(6A) Neither [<sup>F239</sup>the Office of Fair Trading] nor [<sup>F233</sup>the Office of Rail Regulation] may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.

<sup>F238</sup>(6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—

- (a) which is connected with an access agreement; and
- (b) in respect of which section 35(1)(b) of that Act applies.]

#### Textual Amendments

- F233** Words in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F234** Words in s. 22(1) inserted (1.2.2001) by 2000 c. 38, s. 232(1); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F235** Word in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, art. 4(g)
- F236** Word in s. 22 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, art. 4(g)
- F237** S. 22(6) repealed (1.2.2001) by 2000 c. 38, s. 274, Sch. 31 Pt. IV; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F238** S. 22 (6A)(6B) inserted (1.3.2000) by 1998 c. 41, ss. 66(5), Sch. 10 Pt. IV para. 15(5); S.I. 2000/344, art. 2, Sch.
- F239** Words in s. 22(6A) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(7); S.I. 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)

#### [<sup>F240</sup>22A Directions to require amendment permitting more extensive use.

- (1) [<sup>F241</sup>the Office of Rail Regulation] may, on the application of the person permitted by an access agreement to use the whole or part of a railway facility or network installation, give directions requiring the parties to the access agreement to make to the agreement—
  - (a) amendments permitting more extensive use of the railway facility or network installation by the applicant; and
  - (b) any amendments which [<sup>F241</sup>the Office of Rail Regulation] considers necessary or desirable in consequence of those amendments.
- (2) In subsection (1)(a) above “more extensive use” means—
  - (a) increased use for the purpose for which the applicant is permitted by the access agreement to use the railway facility or network installation, or
  - (b) (in the case of a railway facility) use for any other permitted purpose, and if the applicant is permitted to use only part of the railway facility or network installation, includes use for the purpose for which he is permitted to use it, or (in the case of a railway facility) for any other permitted purpose, of any other part of the railway facility or network installation.
- (3) In subsection (2) above “permitted purpose”, in relation to a railway facility, means a purpose for which directions may be given in relation to the railway facility under section 17 above.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 <sup>F242</sup> . . . .
- (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 [<sup>F241</sup>the Office of Rail Regulation] to give directions to any person requiring him to grant a lease of the whole or any part of a railway facility or network installation.
- (7) In this section and section 22B below—
- (a) [<sup>F243</sup>“lease” has]the same meaning as in section 17 above; and
  - (b) “network installation” has the same meaning as in section 19 above.]

#### Textual Amendments

**F240** 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**)

**F241** Words in s. 22A substituted (5.7.2004) by **Railways and Transport Safety Act 2003 (c. 20)**, ss. 16, 120, {**Sch. 2 para. 3(a) Table**}; S.I. 2004/827, **art. 4(g)**

**F242** Words in s. 22A(4)(b) omitted (28.11.2005) by virtue of **The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049)**, reg. 2(4), **Sch. 1 para. 4(d)(i)**

**F243** Words in s. 22A(7)(a) substituted (28.11.2005) by **The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049)**, reg. 2(4), **Sch. 1 para. 4(d)(ii)**

#### <sup>F244</sup>**22B Applications for directions under section 22A: procedure.**

- (1) Schedule 4 to this Act shall have effect with respect to applications for directions under section 22A above as it has effect with respect to applications for directions under section 17 above (but subject as follows).
- (2) In its application by virtue of this section Schedule 4 to this Act has effect with the following modifications—
- (a) in paragraph 1, in the definition of “the facility owner”, for “17(1)” there shall be substituted “22A” and, in the definition of “interested person”, for “enter into the required access contract” there shall be substituted “make the amendments”;
  - (b) in paragraph 2(1), for “which the applicant proposes should be contained in the required access contract” and “to be contained in the required access contract” there shall be substituted “of the proposed amendments”;
  - (c) in paragraph 5(2), for “to the facility owner requiring him to enter into an access contract” there shall be substituted “under section 22A of this Act”;
  - (d) for paragraph 5(2)(a)(i) and (ii) there shall be substituted “the amendments to be made and the date by which they are to be made; and”;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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

**F244** 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**)

#### <sup>F245</sup>**22C Amendment: supplementary.**

- (1) [<sup>F246</sup>the Office of Rail Regulation] may give directions requiring the parties to an access agreement to make to the access agreement amendments which are, in [<sup>F247</sup>its] opinion, necessary to give effect to the conditions of a licence or otherwise required in consequence of the conditions of a licence.
- (2) [<sup>F246</sup>the Office of Rail Regulation] shall not have power to direct or otherwise require amendments to be made to an access agreement except in accordance with section 22A above, subsection (1) above or Schedule 4A to this Act.
- (3) If an access agreement includes provision for any of its terms to be varied—
  - (a) by agreement of the parties, or
  - (b) by direction or other requirement of [<sup>F246</sup>the Office of Rail Regulation] ,a variation made pursuant to that provision shall not be regarded for the purposes of section 22 above or subsection (2) above as an amendment of the agreement.

#### Textual Amendments

**F245** 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**)

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**F246** Words in s. 22C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)

**F247** Word in s. 22C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, art. 4(g)

**Modifications etc. (not altering text)**

**C28** S. 22C(1) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, Sch. 3 para. 9

*Franchising of passenger services*

**23 Passenger services to be subject to franchise agreements.**

- (1) It shall be the duty of the [F248 appropriate designating authority] from time to time to designate [F249 such services for the carriage of passengers by railway (other than services which are, by virtue of section 24 below, exempt from designation under this subsection) as it considers ought to be provided under franchise agreements].
- (2) The [F248 appropriate designating authority] may perform [F250 its] duty under subsection (1) above by designating particular services or services of a class or description.
- [F251(2ZA) Where the Scottish Ministers designate Scotland-only services, they may also designate cross-border services which—
- (a) they consider should be provided under the same franchise agreement as particular Scotland-only services or a particular class of them; and
  - (b) are not exempt from designation under subsection (1) by virtue of section 24.
- (2ZB) Nothing in this section requires the Secretary of State to designate a cross-border service already designated by the Scottish Ministers.
- (2ZC) Before the Secretary of State or the Scottish Ministers designate a cross-border service he or they must consult the other.]
- [F252(2A) A designation may be varied or revoked; but a variation or revocation of the designation of particular services, or services of a class or description, shall not affect any franchise agreement previously entered into with respect to those services or services of that class or description.
- (2B) [F253 .....]
- (3) In this Part—
- [F254 “the appropriate designating authority”—
- (a) in relation to Scotland-only services, means the Scottish Ministers; and
  - (b) in relation to all other services, means the Secretary of State;
- “the appropriate franchising authority”—
- (a) in relation to a Scottish franchise agreement, means the Scottish Ministers; and
  - (b) in relation to any other franchise agreement, means the Secretary of State;]



*Status: Point in time view as at 25/02/2010.*

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“franchise agreement” means an agreement [<sup>F255</sup>with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly,]under which another party undertakes either—

- (a) to provide, or
- (b) to secure that a wholly owned subsidiary of his provides,

throughout the franchise term those services for the carriage of passengers by railway to which the agreement relates;

“franchise operator”, in relation to any franchise agreement, means the person (whether the franchisee or, as the case may be, the wholly owned subsidiary of the franchisee) who is to provide the franchised services;

“franchise period”, in relation to any franchise agreement, means the franchise term, except where the franchise agreement is terminated before the end of that term, in which case it means so much of that term as ends with that termination;

“franchise term”, in relation to any franchise agreement, means the period specified in the franchise agreement as the period throughout which the franchisee is to provide, or secure that a wholly owned subsidiary of his provides, the franchised services, and includes any such extension of that period as is mentioned in section 29(3) below;

“franchised services”, in relation to any franchise agreement, means the services for the carriage of passengers by railway which are to be provided under that franchise agreement;

“franchisee” means—

- (a) in relation to a franchise agreement under which a party undertakes to secure that a wholly owned subsidiary of his provides the franchised services, the party so undertaking; or
- (b) in relation to any other franchise agreement, the person who is to provide the franchised services.

- (4) Any reference in this Part to the provision of services under a franchise agreement is a reference to the provision of those services by the franchise operator; and where the franchise operator is, or is to be, a wholly owned subsidiary of the franchisee, any reference to the provision of services by the franchisee under a franchise agreement shall accordingly be construed as a reference to his securing their provision by the franchise operator.

#### Textual Amendments

- F248** Words in s. 23(1)(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(1)(5)**; S.I. 2005/1909, **art 2, Sch.**
- F249** Words in s. 23(1) substituted (1.2.2001) by 2000 c. 38, s. 212(1) (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F250** Words in s. 23(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 14(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F251** S. 23(2ZA)-(2ZC) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 13(2)(5)**; S.I. 2005/2812, **art 2(1), Sch. 1**
- F252** S. 23(2A)(2B) inserted (1.2.2001) by 2000 c. 38, s. 212(2) (with Sch. 28 para. 3); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F253** S. 23(2B) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 13(3)(5), **Sch. 13** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art 2, Sch.**

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**F254** Definitions of "appropriate designating authority" and "appropriate franchising authority" in s. 23(3) inserted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 13\(4\)\(a\)\(5\)](#); S.I. 2005/1909, [art 2, Sch.](#); S.I. 2005/2812, [art. 2\(1\), Sch. 1](#)

**F255** Words in definition of "franchise agreement" in s. 23(3) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 13\(4\)\(b\)\(5\)](#); S.I. 2005/1909, [art 2, Sch.](#); S.I. 2005/2812, [art. 2\(1\), Sch. 1](#)

**Modifications etc. (not altering text)**

**C29** 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 [<sup>F256</sup>appropriate designating authority] may by order grant exemption from designation under section 23(1) above in respect of such services for the carriage of passengers by railway as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.
- (2) A franchise exemption under subsection (1) above may be granted—
  - (a) to persons of a particular class or description or to a particular person; and
  - (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 [<sup>F256</sup>appropriate designating authority] considers appropriate for bringing it to the attention of persons of that class or description.
- (3) If a person who provides, or who proposes to introduce, services for the carriage of passengers by railway makes an application to the [<sup>F256</sup>appropriate designating authority] under this subsection for the grant of an exemption from designation under section 23(1) above in respect of any such service which he provides or proposes to introduce, the [<sup>F256</sup>appropriate designating authority], after consultation with [<sup>F257</sup>the Office of Rail Regulation]<sup>F258</sup> . . . —
  - (a) may either grant or refuse the exemption, whether wholly or to such extent as [<sup>F259</sup>the appropriate designating authority] may specify in the exemption; and
  - (b) if and to the extent that [<sup>F259</sup>the appropriate designating authority] grants it, may do so subject to compliance with such conditions (if any) as [<sup>F259</sup>the appropriate designating authority] may so specify.
- <sup>F260</sup>(3A) Before granting a franchise exemption in respect of a cross-border service, the Secretary of State must consult the Scottish Ministers.]
- (4) Before granting a franchise exemption under subsection (3) above, the [<sup>F256</sup>appropriate designating authority] shall give notice—
  - (a) stating that [<sup>F261</sup>it] proposes to grant the franchise exemption,
  - (b) stating the reasons why [<sup>F261</sup>it] proposes to grant the franchise exemption, and

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*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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- (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 [<sup>F256</sup>appropriate designating authority] considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the franchise exemption.
- (6) If any condition (the “broken condition”) of a franchise exemption [<sup>F262</sup>granted by the appropriate designating authority is not complied with, it] may give to any relevant person a direction declaring that the franchise exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.
- (7) For the purposes of subsection (6) above—  
“condition”, in relation to a franchise exemption, means any condition subject to compliance with which the franchise exemption was granted;  
“relevant person”, in the case of any franchise exemption, means a person who has the benefit of the franchise exemption and who—  
(a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or  
(b) provides any of the services in relation to which the broken condition is not complied with.
- (8) Subject to subsection (6) above, a franchise exemption, unless previously revoked in accordance with any term contained in the franchise exemption, shall continue in 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 [<sup>F256</sup>appropriate designating authority] may require the applicant to furnish [<sup>F263</sup>it] with such information as the [<sup>F256</sup>appropriate designating authority] may consider necessary to enable [<sup>F263</sup>it] to decide whether to grant or refuse the franchise exemption.
- (10) Any franchise exemption granted under subsection (3) above shall be in writing.
- (11) Subsections (1) and (3) above apply in relation to the grant of a franchise exemption whether it is to become effective on, or after, the day on which section 23(1) above comes into force.
- (12) Franchise exemptions may make different provision for different cases.
- [<sup>F264</sup>(12A) A statutory instrument containing an order under this section by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.]
- (13) In this Part, “franchise exemption” means an exemption from designation under section 23(1) above granted under any provision of this section in respect of any service for the carriage of passengers by railway.

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

### Textual Amendments

- F256** Words in s. 24(1)-(5)(9) substituted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(2)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F257** Words in s. 24 substituted (5.7.2004) by *Railways and Transport Safety Act 2003 (c. 20)*, ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F258** Words in s. 24(3) repealed (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 59, 60, **Sch. 13**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F259** Words in s. 24(3)(a)(b) substituted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(3)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F260** S. 24(3A) inserted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(4)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F261** Word in s. 24(4) substituted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(5)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F262** Words in s. 24(6) substituted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(6)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F263** Word in s. 24(9) substituted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(7)**; S.I. 2005/2812, **art 2(1)**, Sch. 1
- F264** S. 24(12A) inserted (16.10.2005) by *Railways Act 2005 (c. 14)*, ss. 1, 60, **Sch. 1 para. 14(1)(8)**; S.I. 2005/2812, **art 2(1)**, Sch. 1

## 25 Public sector operators not to be franchisees.

- (1) The following bodies and persons (in this Part referred to as “public sector operators”) shall not be franchisees—
- (a) any Minister of the Crown, Government department or other emanation of the Crown;
  - (b) any local authority;
  - <sup>F265</sup>(bb) the Greater London Authority;
  - <sup>F266</sup>(bc) Transport for London;]
  - (c) any [<sup>F267</sup>metropolitan county passenger transport authority][<sup>F267</sup>Integrated Transport Authority for an integrated transport area in England] ;
  - <sup>F268</sup>(ca) any combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;]
  - (d) any body corporate whose members are appointed by a Minister of the Crown, a Government department, a local authority [<sup>F269</sup>, the Greater London Authority, Transport for London] or [<sup>F270</sup>a metropolitan county passenger transport authority][<sup>F271</sup>, an Integrated Transport Authority for an integrated transport area in England or a combined authority] or by a body corporate whose members are so appointed;
  - (e) a company—
    - (i) a majority of whose issued shares are held by or on behalf of any of the bodies or persons falling within paragraphs (a) to (d) above;
    - (ii) in which the majority of the voting rights are held by or on behalf of any of those bodies or persons;
    - (iii) a majority of whose board of directors can be appointed or removed by any of those bodies or persons; or
    - (iv) in which the majority of the voting rights are controlled by any of those bodies or persons, pursuant to an agreement with other persons;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

(f) a subsidiary of a company falling within paragraph (e) above.

[<sup>F272</sup>(2) Expressions used in sub-paragraphs (i) to (iv) of subsection (1)(e) that are defined for the purposes of the Companies Acts (see section 1174 of, and Schedule 8 to, the Companies Act 2006) have the same meaning in those sub-paragraphs.]

<sup>F273</sup>(3) .....

<sup>F273</sup>(4) .....

<sup>F273</sup>(5) .....

<sup>F273</sup>(6) .....

<sup>F273</sup>(7) .....

<sup>F273</sup>(8) .....

<sup>F273</sup>(9) .....

#### Textual Amendments

**F265** S. 25(1)(bb) inserted (3.7.2000) by 1999 c. 29, s. 202(2) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, Sch Pt. 3

**F266** S. 25(1)(bc) inserted (3.7.2000) by 1999 c. 29, s. 202(2) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, Sch Pt. 3

**F267** Words in s. 25(1)(c) substituted (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), Sch. 4 para. 58(2)(a); S.I. 2009/107, art. 2(1), Sch. 1 Pt. 1

**F268** S. 25(1)(ca) inserted (17.12.2009) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), s. 148(6), Sch. 6 para. 85(a); S.I. 2009/3318, art. 2(c)

**F269** Words in s. 25(1)(d) inserted (3.7.2000) by 1999 c. 29, s. 202(3) (with Sch. 12 para. 9(1)); S.I. 2000/801, art. 3, Sch Pt. 3

**F270** Words in s. 25(1)(d) repealed (E.W.) (9.2.2009) by Local Transport Act 2008 (c. 26), s. 134(4), Sch. 4 para. 58(2)(b); S.I. 2009/107, art. 2(1), Sch. 1 Pt. 1

**F271** Words in s. 25(1)(d) substituted (17.12.2009) by Local Democracy, Economic Development and Construction Act 2009 (c. 20), s. 148(6), Sch. 6 para. 85(b); S.I. 2009/3318, art. 2(c)

**F272** S. 25(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 143(2) (with art. 10)

**F273** S. 25(3)-(9) repealed (1.2.2001) by 2000 c. 38, s. 274, Sch. 31 Pt. IV; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

**C30** S. 25 excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 25

#### Commencement Information

**I5** S. 25 wholly in force at 1.4.1994; s. 25 not in force at Royal Assent see s. 154(2); s. 25(1)(2) in force at 6.1.1994 for specified purposes by S.I. 1993/3237, art. 2(2); s. 25 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, art. 5

## 26 Invitations to tender for franchises.

(1) [<sup>F274</sup>The appropriate franchising authority may select the person who is to be the franchisee in relation to a franchise agreement]from among those who submit tenders

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

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 [<sup>F275</sup>appropriate franchising authority] shall prepare any such invitation to tender and shall issue that invitation to such persons as [<sup>F276</sup>it] may, after consultation with [<sup>F277</sup>the Office of Rail Regulation] , think fit.
- (3) The [<sup>F275</sup>appropriate franchising authority] shall not issue an invitation to tender under this section to (or entertain such a tender from) any person unless [<sup>F276</sup>it] is of the opinion that the person has, or is likely by the commencement of the franchise term to have, an appropriate financial position and managerial competence, and is otherwise a suitable person, to be the franchisee.
- [<sup>F278</sup>(4) <sup>F279</sup>.....]
- [<sup>F280</sup>(4A) The Secretary of State and the Scottish Ministers shall each publish a statement of policy about how he proposes, or (as the case may be) they propose, to exercise the power under subsection (1) above.
- (4B) The statement must in particular include the policy of the Secretary of State or the Scottish Ministers about—
- (a) when his or their selection of the person to be a franchisee under a franchise agreement is likely to be from those submitting tenders in response to an invitation to do so;
  - (b) when it is likely such an invitation will not be issued; and
  - (c) the means by which he is, or they are, proposing that the selection will be made in cases where there is no such invitation.
- (4C) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must have regard to its statement of policy.
- (4D) The Secretary of State or Scottish Ministers—
- (a) may at any time alter or replace the statement of policy which he has made or (as the case may be) which they have made; and
  - (b) where that statement is altered or replaced, must publish the altered or replacement statement.
- (4E) Before preparing, altering or replacing a statement of policy—
- (a) the Secretary of State must consult the National Assembly for Wales and undertake such other consultation as he considers appropriate; and
  - (b) the Scottish Ministers must undertake such consultation as they consider appropriate.
- (4F) Where a statement of policy is prepared, altered or replaced, a copy of it must be laid—
- (a) in the case of a statement prepared, altered or replaced by the Secretary of State, before Parliament; and
  - (b) in the case of a statement prepared, altered or replaced by the Scottish Ministers, before the Scottish Parliament.]]

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

#### Textual Amendments

- F274** Words in s. 26(1) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 15\(2\)\(6\)](#); S.I. 2005/1909, [art. 2, Sch.](#); S.I. 2005/2812, [art. 2\(1\), Sch. 1](#)
- F275** Words in s. 26(2)(3) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 15\(3\)\(6\)](#); S.I. 2005/1909, [art. 2, Sch.](#); S.I. 2005/2812, [art. 2\(1\), Sch. 1](#)
- F276** Words in s. 26(2)(3) substituted (1.2.2001) by [2000 c. 38, s. 215, Sch. 16 para. 16\(3\)](#); S.I. 2001/57, [art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))(which S.I. was amended by S.I. 2001/115, [art. 2\(2\)](#))
- F277** Words in s. 26 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\), ss. 16, 120, {Sch. 2 para. 3\(a\) Table}; S.I. 2004/827, art. 4\(g\)](#)
- F278** S. 26(4)-(10) inserted (1.2.2001) by [2000 c. 38, s. 212\(3\)](#) (with [Sch. 28 para. 3](#)); S.I. 2001/57, [art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F279** S 26(4) repealed (24.7.2005 for certain purposes and otherwise prosp.) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 15\(4\)\(6\), Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2, Sch.](#)
- F280** S. 26(4A)-(4F) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) for s. 26(5)-(10) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 15\(5\)\(6\)](#); S.I. 2005/1909, [art. 2, Sch.](#); S.I. 2005/2812, [art. 2\(1\), Sch. 1](#)

#### [<sup>F281</sup>26ZA] No adequate tender for franchise received.

- (1) This section applies in the case of an invitation to tender under section 26 for the provision of services if—
- (a) the appropriate franchising authority receives no tender in response to the invitation; or
  - (b) it receives a tender but considers that the services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement entered into in response to the tender.
- (2) The appropriate franchising authority may —
- (a) issue a new invitation to tender under section 26 for the provision of the services;
  - (b) decide to secure the provision of the services under a franchise agreement with a person who did not submit a tender; or
  - (c) decide not to seek to secure the provision of the services under a franchise agreement.
- (3) Nothing in this section prevents the appropriate franchising authority, where it has decided not to seek to secure the provision of services under a franchise agreement, from subsequently making a decision to issue a new invitation to tender for the provision of those services.]

#### Textual Amendments

- F281** 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](#)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

## 27 Transfer of franchise assets and shares.

- (1) It shall be the duty of the [<sup>F284</sup>appropriate franchising authority] before entering into a franchise agreement to satisfy [<sup>F285</sup>itself] that if the franchise agreement is entered into—
  - (a) the initial franchise assets (if any) for that franchise agreement will be vested in the person who is to be the franchise operator; and
  - (b) if the franchise agreement is to be one under which the franchisee undertakes to secure that a wholly owned subsidiary of his provides the franchised services, that the franchise operator will be a wholly owned subsidiary of the franchisee.
- (2) After a franchise agreement has been entered into, it shall be the duty of the [<sup>F284</sup>appropriate franchising authority] , before any property, rights or liabilities are subsequently designated as franchise assets in accordance with the terms of, or by amendment to, the franchise agreement, to satisfy [<sup>F285</sup>itself] that, if the property, rights or liabilities in question are so designated, they will be vested in the franchise operator.
- (3) Without the consent of the [<sup>F284</sup>appropriate franchising authority] , the franchise operator shall not—
  - (a) if and to the extent that the franchise assets are property or rights—
    - (i) transfer or agree to transfer, or create or agree to create any security over, any franchise assets or any interest in, or right over, any franchise assets; or
    - (ii) create or extinguish, or agree to create or extinguish, any interest in, or right over, any franchise assets; and
  - (b) if and to the extent that the franchise assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged, or transferred to some other person.
- (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 [<sup>F284</sup>appropriate franchising authority] , take any action which would result in the franchise operator ceasing to be a wholly owned subsidiary of his.
- (5) Any transaction which is entered into in contravention of subsection (3) or (4) above shall be void.
- (6) In England and Wales, no execution or other legal process may be commenced or continued, and no distress may be levied, 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



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (c) property, rights or liabilities are to be designated as franchise assets by an amendment made to a franchise agreement, the [F284appropriate franchising authority] shall ensure that the franchise agreement includes provision specifying, or providing for the determination of, amounts to be paid in respect of the property, rights and liabilities which, immediately before the end of the franchise period, constitute the franchise assets in relation to that franchise agreement if and to the extent that they are transferred by [F286a scheme under [F287section 12 of the Railways Act 2005]]at or after the end of that period.
- (9) Without prejudice to the generality of the provisions that may be included in a franchise agreement with respect to the acquisition, provision, disposal or other transfer of property, rights or liabilities (whether franchise assets or not), the [F284appropriate franchising authority] may undertake in a franchise agreement to exercise [F288its] powers under [F287section 12 of the Railways Act 2005] to transfer franchise assets to [F288itself] or another in such circumstances as may be specified in the franchise agreement.
- (10) The [F284appropriate franchising authority] shall ensure that every franchise agreement includes such provision (if any) as [F289it] 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
  - (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 <sup>M2</sup>Insolvency Act 1986.

F290(14) .....

F290(15) .....

#### Textual Amendments

**F284** Words in s. 27 substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 17(1)**; S.I. 2005/1909, **art. 2, Sch.**; S.I. 2005/2812, **art. 2(1), Sch. 1**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F285** Words in s. 27(1)(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F286** Words in s. 27(8) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F287** Words in s. 27(8)(9) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 17(2)**; S.I. 2005/1909, **art. 2, Sch.**; S.I. 2005/2812, **art. 2(1), Sch. 1**
- F288** Words in s. 27(8) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F289** Words in s. 27(10) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 17(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F290** S. 27(14)(15) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Marginal Citations

**M2** 1986 c. 45.

## 28 Fares and approved discount fare schemes.

- (1) A franchise agreement may include provision with respect to the fares to be charged for travel by means of the franchised services.
- (2) Subject to the other provisions of this Act, if it appears to the [<sup>F291</sup>appropriate franchising authority] that the interests of persons who use, or who are likely to use, franchised services so require, [<sup>F292</sup>it] shall ensure that the franchise agreement in question contains any such provision as [<sup>F292</sup>it] may consider necessary for the purpose of securing that any fares, or any fares of a class or description, which are to be charged are, in [<sup>F292</sup>its] opinion, reasonable in all the circumstances of the case.
- (3) Every franchise agreement shall include provision requiring the franchise operator—
  - (a) to participate in every approved discount fare scheme,
  - (b) to charge fares, in cases to which such a scheme applies, at rates which are not in excess of the levels or, as the case may be, the maximum levels set by the scheme, and
  - (c) otherwise to comply with the requirements of every such scheme,
 if and to the extent that the franchised services are services, or services of a class or description, in relation to which the approved discount fare scheme in question applies.
- (4) The discount fare schemes which are to be regarded [<sup>F293</sup>, in relation to a franchise agreement,] for the purposes of this section as “approved” are those which are from time to time approved for the purposes of this section by the [<sup>F294</sup>appropriate franchising authority] .
- (5) In this section—
 

“discount fare scheme” means any scheme for enabling persons who are young, elderly or disabled to travel by railway at discounted fares, subject to compliance with such conditions (if any) as may be imposed by or under the scheme;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

“discounted fare” means a lower fare than the standard fare for the journey in question;

“scheme” includes any agreement or arrangements.

#### Textual Amendments

**F291** Words in s. 28(2) substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(1)(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F292** Words in s. 28(2) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 18(2)**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)(which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

**F293** Words in s. 28(4) inserted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(2)(a)(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F294** Words in s. 28(4) substituted (24.7.2005 for certain purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 18(2)(b)(3)**; S.I. 2005/1909, **art. 2**, Sch.

## 29 Other terms and conditions of franchise agreements.

(1) The [<sup>F295</sup>appropriate franchising authority] may enter into a franchise agreement on conditions requiring—

(a) the rendering to the Franchising Director by the franchisee or the franchise operator of payments of such amounts and at such intervals as may be specified in, or determined by or under, the franchise agreement; <sup>F296</sup> . . .

<sup>F296</sup>(b) . . . . .

(2) A franchise agreement may include provision requiring the franchisee—

(a) to operate any additional railway asset; or

(b) to secure the operation of any additional railway asset by the franchise operator or any other wholly owned subsidiary of the franchisee.

(3) A franchise agreement shall include provision specifying the franchise term and may include provision enabling that term to be extended by such further term as may be specified in the franchise agreement.

(4) Without prejudice to the generality of the provisions relating to property, rights and liabilities that may be included in a franchise agreement, a franchise agreement may include provision requiring the franchise operator—

(a) to acquire from such person as may be specified in the franchise agreement, and to use, such property or rights as may be so specified; or

(b) to undertake such liabilities as may be so specified.

(5) Subject to any requirements imposed by or under this Act, a franchise agreement may contain any such provisions as the [<sup>F295</sup>appropriate franchising authority] may think fit.

<sup>F297</sup>(6) . . . . .

<sup>F297</sup>(7) . . . . .

(8) In this Part, “additional railway asset” means any network, station or light maintenance depot, and any reference to an additional railway asset includes a reference to any part of an additional railway asset.

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 for the Railways Act 1993, Part I. (See end of Document for details)*

#### Textual Amendments

- F295** Words in s. 29 substituted (24.7.2005 for certain purposes and 16.10.2005 in so far as not already in force) by **Railways Act 2005 (c. 14)**, ss. 1, 60, **Sch. 1 para. 19**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F296** S. 29(1)(b) and word “or” immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F297** S. 29(6)(7) repealed (1.2.2001) by 2000 c. 38, s. 274 **Sch. 31 Pt. IV**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

#### Commencement Information

- I6** S. 29 wholly in force at 1.4.1994; s. 29 not in force at Royal Assent see s. 154(2); s. 29(8) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; s. 29 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

### [<sup>F298</sup>30 Duty of Authority in absence of franchise.

- (1) The Authority shall provide, or secure the provision of, services for the carriage of passengers by railway where—
- (a) a direction not to seek to secure the provision of the services under a franchise agreement has been given to the Authority under section 26A or 26B above (and not revoked); or
  - (b) a franchise agreement in respect of the services is terminated or otherwise comes to an end but no further franchise agreement has been entered into in respect of the services (otherwise than because of such a direction).
- (2) The duty in subsection (1) above in relation to any services ceases if the services begin (or again begin) to be provided under a franchise agreement.
- (3) Subsection (1) above does not—
- (a) require the Authority to provide or secure the provision of services if and to the extent that, in its opinion, adequate alternative railway passenger services are available;
  - (b) preclude it from giving notice under subsection (5) of section 38 below in relation to any of the services, in which case its duty under this section to secure the provision of the services to which the notice relates will (subject to subsections (5) and (6) of that section) terminate on the day specified in the notice in pursuance of paragraph (b) of that subsection; or
  - (c) preclude it from ceasing to provide or secure the provision of any of the services in any case falling within any of paragraphs (a) to (d) of subsection (2) of that section.]

#### Textual Amendments

- F298** S. 30 substituted (1.2.2001) by 2000 c. 38, s. 212(5) (with **Sch. 28 para. 3**); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

*Status: Point in time view as at 25/02/2010.*

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### **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 <sup>M3</sup>Landlord and Tenant Act 1954 (security of tenure of business premises) nor the <sup>M4</sup>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 <sup>M5</sup>Landlord and Tenant Act 1954 or, in Scotland, as it has in the <sup>M6</sup>Tenancy of Shops (Scotland) Act 1949.

#### **Marginal Citations**

- M3** 1954 c. 56.
- M4** 1949 c. 25.
- M5** 1954 c. 56.
- M6** 1949 c. 25.

### *Passenger Transport Authorities and Executives*

**F299**<sup>32</sup> .....

#### **Textual Amendments**

- F299** S. 32 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

**F300**<sup>33</sup> .....

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

#### Textual Amendments

**F300** S. 33 repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

### 34 Passenger Transport Authorities and Executives: franchising.

F301

#### Textual Amendments

**F301** S. 34 repealed (24.7.2005 for E.W. and otherwise prosp.) by *Railways Act 2005* (c. 14), ss. 14(1)(c), 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1909 {art. 2}, **Sch.**

#### Modifications etc. (not altering text)

**C31** S. 34: certain functions transferred to the Scottish Ministers (28.11.2005) by *The Transfer of Rail Functions To The Scottish Ministers Order 2005* (S.I. 2005/598), art. 3, **Sch. 1**

**C32** S. 34: modified (28.11.2005) by *The Transfer of Rail Functions To The Scottish Ministers Order 2005* (S.I. 2005/598), art. 4, **Sch. 2 para. 2**

### 35 Termination and variation of section 20(2) agreements by the [<sup>F302</sup> Authority].

F303

#### Textual Amendments

**F302** Words in s. 35 and sidenote substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 21**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

**F303** S. 35 repealed (24.7.2005 for E.W. and otherwise prosp.) by *Railways Act 2005* (c. 14), ss. 14(1)(c), 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/1909 {art. 2}, **Sch.**

#### Modifications etc. (not altering text)

**C33** S. 35: certain functions transferred to the Scottish Ministers (28.11.2005) by *The Transfer of Rail Functions To The Scottish Ministers Order 2005* (S.I. 2005/598), art. 3, **Sch. 1**

### 36 Miscellaneous amendments of the Transport Act 1968.

(1) In section 10 of the <sup>M7</sup>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.”

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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 <sup>M8</sup>Companies Act 1985.”.
- (5) In section 159(1) of that Act (general interpretation), in the definition of “subsidiary” and “wholly-owned subsidiary”, for the words “subject to section 51(5)” there shall be substituted the words “subject to sections 23A(2) and 51(5)”.

**Marginal Citations**

**M7** 1968 c. 73.

**M8** 1985 c. 6.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

*Closures*

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

F304 .....

**Textual Amendments**  
F304 S. 37 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**38 Proposals to discontinue franchised etc. passenger services.**

F305 .....

**Textual Amendments**  
F305 S. 38 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**39 Notification of proposals to close operational passenger networks.**

F306 .....

**Textual Amendments**  
F306 S. 39 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**40 Proposals to close passenger networks operated on behalf of the Authority.**

F307 .....

**Textual Amendments**  
F307 S. 40 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)

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

F308 .....



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

**Textual Amendments**

**F308** S. 41 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**42 Proposals to close passenger railway facilities operated on behalf of the Authority.**

**F309** .....

**Textual Amendments**

**F309** S. 42 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**43 Notification to, and functions of, the Secretary of State and the relevant Rail Passengers Committees.**

**F310** .....

**Textual Amendments**

**F310** S. 43 repealed (1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**44** .....

**F311** .....

**Textual Amendments**

**F311** S. 44 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**45 Closure conditions: general.**

**F312** .....

**Textual Amendments**

**F312** S. 45 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

## 46 Variation of closure conditions.

F313 .....

### Textual Amendments

**F313** S. 46 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

## 46A General determinations of minor closures.

F314 .....

### Textual Amendments

**F314** S. 46A repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

## 46B Notification of minor closures to Regulator.

F315 .....

### Textual Amendments

**F315** S. 46B repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

## 47 Withdrawal of bus substitution service.

F316 .....

### Textual Amendments

**F316** S. 47 repealed (1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

## 47A Objections to withdrawal of bus substitution service.

F317 .....

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**Textual Amendments**

**F317** S. 47A repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)

**47B Revocation or variation of bus substitution conditions.**

**F318** .....

**Textual Amendments**

**F318** S. 47B repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)

**48 Experimental railway passenger services.**

**F319** .....

**Textual Amendments**

**F319** Ss. 37-49 repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)

**49 Abolition of former closure procedures, exemptions from new procedures and imposition of alternative procedure.**

**F320** .....

**Textual Amendments**

**F320** S. 49 repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)

**50 Exclusion of liability for breach of statutory duty.**

- (1) The obligations of the [<sup>F321</sup>Secretary of State and of the Scottish Ministers, so far as] imposed by or under any provision of this Part—
- (a) <sup>F322</sup> .....
  - <sup>F323</sup>(b) ...
  - (c) to secure the provision of any services, or
  - (d) to secure the operation of any additional railway asset,
- shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

(2) <sup>F322</sup> .....

**Textual Amendments**

- F321** Words in s. 50(1) substituted (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 5**; [S.I. 2006/2911](#), **art. 2**, **Sch.** (subject to the transitional and saving provisions in [arts. 3-7](#))
- F322** S. 50(1)(a)(2) repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, **Sch. 13 Pt. 1** (with [s. 14\(4\)\(5\)](#), **Sch. 11 para. 11(2)**); [S.I. 2006/2911](#), **art. 2**, **Sch.** (subject to the transitional and saving provisions in [arts. 3-7](#))
- F323** S. 50(1)(b) repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; [S.I. 2001/57](#), art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

**Modifications etc. (not altering text)**

- C34** S. 50 excluded (21.7.1994) by [1994 c. xv](#), **s. 17(4)**

*Supplementary powers of the Franchising Director etc.*

<sup>F324</sup>**51** .....

**Textual Amendments**

- F324** S. 51 repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; [S.I. 2001/57](#), art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

<sup>F325</sup>**52** .....

**Textual Amendments**

- F325** S. 52 repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; [S.I. 2001/57](#), art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

<sup>F326</sup>**53** .....

**Textual Amendments**

- F326** S. 53 repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; [S.I. 2001/57](#), art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

**54 Exercise of functions for purpose of encouraging investment in the railways.**

- (1) The [<sup>F327</sup>Secretary of State or the Scottish Ministers]—
- (a) in exercising or deciding whether or not to exercise any of [<sup>F328</sup>his or] their franchising functions, may take into account the desirability of encouraging railway investment; and

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (b) may exercise any such functions for the purpose of encouraging railway investment or for purposes which include that purpose.

[<sup>F329</sup>(2) The Secretary of State and the Scottish Ministers shall each have power to enter into agreements under which an undertaking is given by him or them—

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

(3) In this section—

“franchising functions”, in relation to the [<sup>F330</sup>Secretary of State or the Scottish Ministers], means—

- (a) any [<sup>F331</sup>of the functions of the Secretary of State or of the Scottish Ministers] under sections 17 to 19, 23, 24, 26 to [<sup>F332</sup>31]<sup>F333</sup> . . . above;  
(b) any power conferred on the [<sup>F330</sup>Secretary of State or the Scottish Ministers] under or by virtue of [<sup>F334</sup>section 1(2) of the Railways Act 2005] ; and  
(c) any other functions of the [<sup>F330</sup>Secretary of State or the Scottish Ministers] which relate to the provision of railway passenger services, or the operation of additional railway assets, under or by virtue of franchise agreements;

[<sup>F335</sup>“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.

### Textual Amendments

- F327** Words in s. 54(1) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(1)(a)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F328** Words in s. 54(1)(a) inserted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(1)(b)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F329** S. 54(2) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(2)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F330** Words in s. 54(1) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(a)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F331** Words in s. 54(3)(a) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(b)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F332** Word in s. 54(3)(a) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(c)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F333** S. 54(3): words in definition of “franchising functions” repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F334** Words in s. 54(3)(b) substituted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)(d)**; S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F335** S. 54(3): definition omitted (24.7.2005 for certain purposes and 21.11.2005 for certain further purposes and otherwise prosp.) by virtue of Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 6(3)**; S.I. 2005/1909 {art. 2}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1 and said definition repealed (24.7.2005 for E. W. and otherwise prosp.) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5) Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

#### Commencement Information

- I7** S. 54 wholly in force at 1.4.1994; s. 54 not in force at Royal Assent see s. 154(2); s. 54(2)(3) in force for specified purposes at 21.3.1994 by S.I. 1994/571, **art. 3**; s. 54 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

#### *Enforcement by the Regulator and the <sup>F336</sup>Authority*

#### Textual Amendments

- F336** Words in the heading before section 55 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 35(5)**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)

### 55 Orders for securing compliance.

- (1) Subject to subsections (2) to <sup>F337</sup>[5(C)] and section 56 below, where the appropriate <sup>F338</sup>[authority] is satisfied that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, <sup>F338</sup>[it] shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to <sup>F339</sup>subsections (5) to <sup>F337</sup>[5(C)] below, where it appears to the appropriate <sup>F338</sup>[authority]—
  - (a) that a relevant operator is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) that it is requisite that a provisional order be made,<sup>F338</sup>[it] shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to <sup>F338</sup>[it] requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the appropriate <sup>F338</sup>[authority] shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to <sup>F339</sup>subsections (5) to <sup>F337</sup>[5(C)] and section 56 below, the appropriate <sup>F338</sup>[authority] shall confirm a provisional order, with or without modifications, if—
  - (a) <sup>F338</sup>[it] is satisfied that the relevant operator to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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 [<sup>F338</sup>authority] shall not make a final order, or make or confirm a provisional order, in relation to a relevant operator if [<sup>F338</sup>it] is satisfied—
  - (a) that the duties imposed on [<sup>F338</sup>it] by section 4 [<sup>F340</sup>above <sup>F341</sup>. . . ] preclude the making or, as the case may be, the confirmation of the order;
  - <sup>F342</sup>(b) . . . . .
  - <sup>F342</sup>(c) . . . . .
- [<sup>F343</sup>(5ZA) [<sup>F344</sup>Neither the Secretary of State nor the Scottish Ministers shall] make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions unless—
  - (a) [<sup>F345</sup>the Secretary of State has or (as the case may be) those Ministers have] given notice to [<sup>F346</sup>the Office of Rail Regulation] specifying a period within which [<sup>F347</sup>it] may give notice to [<sup>F348</sup>him or them] if [<sup>F347</sup>it] considers that the most appropriate way of proceeding is under the <sup>M9</sup>Competition Act 1998;
  - (b) that period has expired; and
  - (c) [<sup>F346</sup>the Office of Rail Regulation] has not given notice to [<sup>F349</sup>the Secretary of State or (as the case may be) the Scottish Ministers] within that period that [<sup>F347</sup>it] so considers (or, if [<sup>F347</sup>it] has, [<sup>F347</sup>it] has withdrawn it).]
- [<sup>F350</sup>(5A) [<sup>F346</sup>the Office of Rail Regulation] shall not make a final order, or make or confirm a provisional order, <sup>F351</sup>. . . if [<sup>F338</sup>it] is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.]
- [<sup>F352</sup>(5B) If the appropriate authority is satisfied—
  - (a) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question, or
  - (b) that the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure,it shall only make a final order, or make or confirm a provisional order, if it considers it appropriate to do so.]
- [<sup>F353</sup>(5C) Neither the Secretary of State nor the Scottish Ministers shall be required, in respect of any contravention or apprehended contravention of the terms of a franchise agreement, to make a final order, or to make or to confirm a provisional order, if he considers or (as the case may be) they consider—
  - (a) that the contravention or apprehended contravention is trivial; and
  - (b) that it would be inappropriate, for that reason, to make or to confirm the order.
- (5D) The appropriate authority must comply with subsection (6)—
  - (a) in a case where the appropriate authority is the Secretary of State or the Scottish Ministers, if that authority decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5) or (5ZA) above; or

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (b) in the case of the Office of Rail Regulation, if it decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5), (5A) or (5B) above.]
- [<sup>F354</sup>(6) Where the appropriate authority must comply with this subsection, it must—
- (a) serve notice of its decision on the relevant operator; and]
  - (b) publish the notice in such manner as [<sup>F338</sup>it] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) shall require the relevant operator to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the appropriate [<sup>F338</sup>authority].
- [<sup>F355</sup>(7A) The provision that may be made in a final or provisional order includes, in particular, provision requiring the relevant operator to pay [<sup>F356</sup> in the event of a specified contravention of the order—
- (a) in the case of an order made by the Scottish Ministers, to them, and
  - (b) in any other case, to the Secretary of State,
- such] reasonable sum in respect of the contravention as is specified in, or determined in accordance with, the order in such manner, at such place and by such date as is so specified or determined.
- (7B) The amount of the sum may not exceed 10 per cent. of the turnover of the relevant operator determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (7C) If the whole or any part of the sum is not paid by the date by which it is to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M10</sup>Judgments Act 1838.]
- (9) Without prejudice to [<sup>F357</sup>section 44 of the Railways Act 2005 (exclusion of liability for breach of statutory duty)], nothing in this section or in sections 56 to 58 below shall exclude the availability of any remedy in respect of any contravention or apprehended contravention of a relevant condition or requirement.
- (10) In this Part—
- “the appropriate [<sup>F358</sup>authority]” means—
- (a) in relation to any relevant condition or requirement in the case of a licence holder, <sup>F359</sup> . . . , <sup>F360</sup> . . . [<sup>F346</sup>the Office of Rail Regulation] ;
  - (aa) [<sup>F361</sup>in relation to any relevant condition or requirement in the case of—
    - (i) a franchisee under a Scottish franchise agreement,
    - (ii) a franchise operator in relation to such an agreement, or
    - (iii) a person under Scottish closure restrictions,

the Scottish Ministers; and

  - (b) in relation to any relevant condition or requirement in the case of—



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- (i) a franchisee not falling within paragraph (aa)(i),
- (ii) a franchise operator not falling within paragraph (aa)(ii), or
- (iii) a person under closure restrictions that are not Scottish closure restrictions,

the Secretary of State;]

“final order” means an order under this section, other than a provisional order [<sup>F362</sup>or an order under subsection (7B)];

“provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;

“relevant condition or requirement” means—

- (a) in the case of a licence holder, any condition of his licence;
- (b) in the case of a franchisee, or any franchise operator who is a party to the franchise agreement, any term of the franchise agreement;
- (c) [<sup>F363</sup>in the case of a person under closure restrictions, any duty mentioned in subsection (11) to which he is subject;]

[<sup>F364</sup>“relevant operator” means—

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

(11) In [<sup>F365</sup>subsections [<sup>F366</sup>(5ZA)]and (10)]above, “person under closure restrictions” means a person [<sup>F367</sup>who is under—

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

[<sup>F368</sup>(11A) In the definition of “the appropriate authority” in subsection (10) above the reference to a relevant condition or requirement in the case of a person under Scottish closure restrictions is a reference to a relevant condition or requirement which—

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

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

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

- (a) a case in which the Scottish Ministers are the national authority for the purposes of provisions of Part 4 of the Railways Act 2005 relating to the proposal for the closure;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Railways Act 1993, Part I. (See end of Document for details)*

- (b) a case in which it is the Scottish Ministers who make a determination under section 34 of that Act (minor modifications) in relation to the closure; or
- (c) a case in which the closure is a closure notice of which is given under section 37 of that Act (experimental passenger services) and the proposal relates to a Scotland-only service.]

F369(12) . . . . .

### Textual Amendments

- F337** Words in s. 55(1)(2)(4) substituted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 21\(2\)](#); S.I. 2005/1909, [art. 2](#)
- F338** Words in s. 55(1)-(7) substituted (1.2.2001) by [2000 c. 38](#), s. 215, [Sch. 16 para. 35\(2\)](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#)) (which S.I. was amended by S.I. 2001/115, [art. 2\(2\)](#))
- F339** Words in s. 55(2)(4) substituted (1.2.2001) by [2000 c. 38](#), s. 252, [Sch. 27 para. 30\(3\)](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F340** Words in s. 55(5)(a) substituted (1.2.2001) by [2000 c. 38](#), s. 252, [Sch. 27 para. 30\(4\)](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F341** Words in s. 55(5) repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 59, 60, [Sch. 1 para. 21\(3\)](#), [Sch. 13 Pt. 1](#) (with s. 14(4)(5) [Sch. 11 para. 11\(2\)](#)); S.I. 2006/2911, {art. 2} (subject to the transitional and saving provisions in arts. 3-7)
- F342** S. 55(5)(b)(c) repealed (1.2.2001) by [2000 c. 38](#), ss. 226(1)(a), 274, [Sch. 31 Pt. IV](#) (with [Sch. 28 paras. 9, 17](#)); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F343** S. 55(5ZA) inserted (1.2.2001) by [2000 c. 38](#), s. 216, [Sch. 17 para. 11\(2\)](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F344** Words in s. 55(5ZA) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 21\(4\)\(a\)](#); S.I. 2005/1909, {art. 1}, [Sch.](#); S.I. 2005/2812, [art. 2\(1\)](#), [Sch. 1](#); S.I. 2006/2911, [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in arts. 3-7)
- F345** Words in s. 55(5ZA)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 21\(4\)\(b\)](#); S.I. 2005/1909, {art. 1}, [Sch.](#); S.I. 2005/2812, [art. 2\(1\)](#), [Sch. 1](#); S.I. 2006/2911, [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in arts 3-7)
- F346** Words in s. 55 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {[Sch. 2 para. 3\(a\) Table](#)}; S.I. 2004/827, [art. 4\(g\)](#)
- F347** Word in s. 55 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {[Sch. 2 para. 3\(b\) Table](#)}; S.I. 2004/827, [art. 4\(g\)](#)
- F348** Words in s. 55(5ZA)(a) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 21\(4\)\(b\)](#); S.I. 2005/1909, {art. 1}, [Sch.](#); S.I. 2005/2812, [art. 2\(1\)](#), [Sch. 1](#); S.I. 2006/2911, [art. 2](#) [Sch.](#); S.I. 2006/2911, [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in arts. 3-7)
- F349** Words in s. 55(5ZA)(c) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 21\(4\)\(c\)](#); S.I. 2005/1909, {art. 1}, [Sch.](#); S.I. 2005/2812, [art. 2\(1\)](#), [Sch. 1](#); S.I. 2006/2911, [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in arts. 3-7)
- F350** S. 55(5A) inserted (1.3.2000) by [1998 c. 41](#), s. 66(5), [Sch. 10 Pt. IV para. 15\(6\)](#) (with s. 73); S.I. 2000/344, [art. 2](#), [Sch.](#)
- F351** Words in s. 55(5A) repealed (1.2.2001) by [2000 c. 38](#), s. 274, [Sch. 31 Pt. IV](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F352** S. 55(5B) inserted (1.2.2001) by [2000 c. 38](#), s. 226(1)(b) (with [Sch. 28 paras. 9, 17](#)); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

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- F353** S. 55(5C)(5D) inserted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 21\(5\)](#); S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1; S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F354** S. 55(6): "words from the beginning to the end of paragraph (a)" substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by virtue of [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 21\(6\)](#); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1; S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F355** S. 55(7A)(7B)(7C) substituted (1.2.2001) for s. 55(8) by 2000 c. 38, [s. 225\(2\)](#); S.I. 2001/57, art. 3(1), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F356** Words in s. 55(7A) substituted 24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 21\(7\)](#); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1; S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F357** Words in s. 55(9) substituted (1.12.2006) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(1\)](#); S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F358** Words in s. 55(10) substituted (1.2.2001) by 2000 c. 38, [s. 215, Sch. 16 para. 35\(3\)](#); S.I. 2001/57, [art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#)) (which S.I. was amended by S.I. 2001/115, [art. 2\(2\)](#))
- F359** S.55(10): words in definition of "the appropriate authority" repealed (24.7.2005) by [Railways Act 2005 \(c. 14\), ss. 1, 59, 60, Sch. 1 para. 21\(4\)\(b\), {Sch. 13 Pt. 1}](#) (with s. 14(4)(5) Sch. 11 para. 11(2)); S.I. 2005/1909, {art. 2}, Sch.
- F360** Words in s. 55(10) repealed (1.2.2001) by 2000 c. 38, [ss. 216, 274, Sch. 17 para. 26\(a\), Sch. 31 Pt. IV; S.I. 2001/57, art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F361** S. 55(10): paras. (aa)(b) in definition of "the appropriate authority" substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) for para. (b) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 21\(8\)\(b\)](#); S.I. 2005/1909, [art. 1, Sch. S.I. 2005/2812, {art. 2\(1\)}](#), Sch. 2; S.I. 2006/2911, [art. 2, Sch.](#) (subject to the transitional and saving provisions in arts. 3-7)
- F362** S. 55(10): words in definition of "final order" inserted (24.7.2005) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(2\)](#); S.I. 2005/1909, [art. 2, Sch.](#)
- F363** S. 55(10): para. (c) in definition of "relevant condition or requirement" substituted (1.12.2006) for paras. (c)(d) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(3\)](#); S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F364** S. 55(10): definition of "relevant operator" substituted (1.12.2006) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(4\)](#); S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F365** Words in s. 55(11) substituted (1.3.2000) by 1998 c. 41, [s. 66\(5\), Sch. 10 Pt. IV para. 15\(7\)\(b\)](#) (with s. 73); S.I. 2000/344, [art. 2, Sch.](#)
- F366** Word in s. 55(11) substituted (1.2.2001) by 2000 c. 38, [s. 216, Sch. 17 para. 11\(4\)](#); S.I. 2001/57, [art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F367** S. 55(11)(a)-(c) and words substituted (1.12.2006) for s. 55(11)(a)(b) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(5\)](#); S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F368** S. 55(11A)(11B) inserted (1.12.2006) by [Railways Act 2005 \(c. 14\), ss. 54, 60, Sch. 11 para. 7\(6\)](#); S.I. 2006/2911, {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F369** S. 55(12) repealed (1.2.2001) by 2000 c. 38, [ss. 252, 274, Sch. 27 para. 30\(5\), Sch. 31 Pt. IV; S.I. 2001/57, art. 3\(1\), Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

#### Modifications etc. (not altering text)

- C35** S. 55 applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\), reg. 14, Sch. 3 para. 1\(c\)](#)

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**C36** S. 55(5)(a) modified (28.1.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, [Sch. 3 para. 6](#)

**Marginal Citations**

**M9** 1998 c. 41.

**M10** 1838 c. 110.

**56 Procedural requirements [F370 for section 55 orders].**

- (1) Before [F371it] makes a final order or confirms a provisional order, the appropriate [F372authority] shall give notice—
- (a) stating that [F371it] 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 [F373its] opinion, constitute or would constitute contraventions of that condition or requirement, and
    - (iii) the other facts which, in [F373its] opinion, justify the making or confirmation of the order, and
  - (c) specifying the period (not being less than [F37421] 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 [F372authority] 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.
- [F375(2A) Where [F376the Office of Rail Regulation] serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the [F377Secretary of State and on the Scottish Ministers.] .]
- (3) The appropriate [F372authority] 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 [F372authority] shall—
- (a) serve on the relevant operator to whom the order relates such notice as appears to him requisite of [F373its] proposal to make or confirm the order with modifications;
  - (b) [F378unless the proposed modifications are trivial, in that notice specify a period (not being less than seven] from the date of service of the notice)

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- 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 [<sup>F372</sup>authority] shall—
- (a) serve a copy of the order on the relevant operator to whom the order relates; and
- (b) publish the order in such manner as [<sup>F371</sup>it] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the appropriate [<sup>F372</sup>authority] shall give notice—
- (a) stating that [<sup>F371</sup>it] proposes to revoke the order and setting out the effect of its revocation, and
- (b) specifying the period (not being less than [<sup>F379</sup>21] days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving notice under subsection (6) above, the appropriate [<sup>F372</sup>authority] decides not to revoke the order to which the notice relates, [<sup>F371</sup>it] shall give notice of [<sup>F373</sup>its] decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the appropriate [<sup>F372</sup>authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice on the relevant operator to whom the order relates.

#### Textual Amendments

- F370** Words in s. 56 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 31**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F371** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F372** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F373** Word in s. 56 substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 36(c)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, **art. 2(2)**)
- F374** Word in s. 56(1)(c) substituted (1.2.2001) by 2000 c. 38, s. 226(2)(a); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F375** S. 56(2A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 12** (with Sch. 28 paras. 2(5), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F376** Words in s. 56 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **ss. 16, 120**, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, {art. 4(g)}

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- F377** Words in s. 56(2A) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\), ss. 1, 60, Sch. 1 para. 22](#); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1; S.I. 2006/2911, [art. 2](#), Sch. (subject to the transitional and saving provisions in [arts. 3-7](#))
- F378** Words in s. 56(4)(b) substituted (1.2.2001) by [2000 c. 38, s. 226\(2\)\(b\)](#); S.I. 2001/57, art. 3(1), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F379** Words in s. 56(6)(b) substituted (1.2.2001) by [2000 c. 38, s. 226\(2\)\(c\)](#); S.I. 2001/57, art. 3(1), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

**Modifications etc. (not altering text)**

- C37** S. 56 applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\), reg. 14, Sch. 3 para. 1\(c\)](#)

**57 Validity and effect of [<sup>F380</sup>section 55] orders.**

- (1) If the relevant operator to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
  - (a) that its making or confirmation was not within the powers of section 55 above, or
  - (b) that any of the requirements of section 56 above have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.

- (2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the relevant operator have been substantially prejudiced by a failure to comply with those requirements—
  - (a) may quash the order or any provision of the order; <sup>F381</sup> . . .
  - <sup>F382</sup>(b) . . . . .

[<sup>F383</sup>(2A) If such an application is made in relation to a provision of an order requiring the payment of a sum in the event of a contravention and the sum would be payable before the time when the application is determined, it need not be paid until that time.

(2B) Where such an application is so made the court, if satisfied as mentioned in subsection (2) above, may (instead of quashing the order or the provision of the order) make provision under either or both of paragraphs (a) and (b) of subsection (2C) below.

- (2C) The provision referred to in subsection (2B) above is—
  - (a) provision substituting for the sum, or provision for determining a sum, specified in the order such lesser sum, or such other provision for determining a sum, as the court considers appropriate in all the circumstances of the case; and
  - (b) provision substituting for the date by which the sum is to be paid specified in or determined in accordance with the order such later date as the court considers appropriate in all the circumstances of the case.

(2D) Where the court substitutes a lesser sum, or different provision for determining a sum, it may require the payment of interest on the new sum at such rate, and from such date, as it determines; and where it specifies as the date by which the sum is to be paid a date before the determination of the application it may require the payment of interest on the sum from that date at such rate as it determines.]

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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 [<sup>F384</sup>authority] for an injunction or for interdict or for any other appropriate relief or remedy.
- (8) Where a relevant operator to whom a final or provisional order relates has made an application pursuant to subsection (1) above questioning the validity of that order, the making of that application shall not affect—
  - (a) his obligation to comply with the order, or
  - (b) the right which any person may have to bring civil proceedings against him in pursuance of subsection (5) or (7) above.
- (9) In this section and [<sup>F385</sup>sections 57F and 58] below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

#### Textual Amendments

- F380** Words in s. 57 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F381** S. 57(2)(b) and word “or” immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F382** S. 57(2)(b) omitted (1.2.2001) by virtue of 2000 c. 38, s. 252, **Sch. 27 para. 32(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F383** S. 57(2A)-(2D) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F384** Word in s. 57(7) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 37**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))
- F385** Words in s. 57(9) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 32(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

- C38** S. 57 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

## <sup>F386</sup>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
  - <sup>F387</sup>(a) in the case of a penalty imposed by the Scottish Ministers, to them; and
  - (b) in any other case, to the Secretary of State.]
- (3) The amount of a penalty imposed on a relevant operator may not exceed 10 per cent. of his turnover determined in accordance with an order made by the Secretary of State; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (4) No penalty may be imposed in respect of any contravention of a final or provisional order if provision was made in the order by virtue of section 55(7A) above in relation to the contravention.
- (5) <sup>F388</sup>[Neither the Secretary of State nor the Scottish Ministers shall] impose a penalty on a licence holder or person under closure restrictions unless—
  - (a) <sup>F389</sup>[the Secretary of State has or (as the case may be) those Ministers have] given notice to <sup>F390</sup>[the Office of Rail Regulation] specifying a period within which <sup>F391</sup>[it] may give notice to <sup>F392</sup>[him or them] if <sup>F391</sup>[it] considers that the most appropriate way of proceeding is under the <sup>M11</sup>Competition Act 1998;
  - (b) that period has expired; and
  - (c) <sup>F390</sup>[the Office of Rail Regulation] has not given notice to <sup>F393</sup>[the Secretary of State or (as the case may be) the Scottish Ministers] within that period that <sup>F391</sup>[it] so considers (or, if <sup>F391</sup>[it] has, <sup>F391</sup>[it] has withdrawn it).
- (6) <sup>F390</sup>[the Office of Rail Regulation] shall not impose a penalty if he is satisfied that the most appropriate way of proceeding is under the <sup>M12</sup>Competition Act 1998.]

### Textual Amendments

- F386** 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)
- F387** S. 57A(2)(a)(b) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) for words by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 23(2); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F388** Words in s. 57A(5) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 23(3)(a); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F389** Words in s. 57A(5)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 23(3)(b); S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**F390** Words in s. 57A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

**F391** Word in s. 57A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

**F392** Words in s. 57A(5)(a) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(b)**; S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

**F393** Words in s. 57A(5)(c) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 23(3)(c)**; S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

#### Modifications etc. (not altering text)

**C39** S. 57A applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 15**, {Sch. 3 para. 1(c)}

#### Marginal Citations

**M11** 1998 c. 41.

**M12** 1998 c. 41.

#### <sup>F394</sup>**57B Statement of policy.**

- (1) The [<sup>F395</sup>Secretary of State, the Scottish Ministers] and [<sup>F396</sup>the Office of Rail Regulation] shall each prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) A statement of policy may include provision for a decision whether to impose a penalty, or the determination of the amount of any penalty, in respect of the contravention of any relevant condition or requirement or order to be influenced by—
  - (a) the desirability of securing compliance with that relevant condition or requirement or order;
  - (b) the consequences or likely consequences of anything which has been or is being done or omitted to be done in contravention of that relevant condition or requirement or order; and
  - (c) the desirability of deterring contraventions of relevant conditions and requirements and final and provisional orders.
- (3) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the [<sup>F395</sup>Secretary of State, the Scottish Ministers] and Regulator shall have regard to any statement of [<sup>F397</sup>his, their or] its <sup>F398</sup>. . . policy published at the time when the contravention occurred.
- (4) The [<sup>F395</sup>Secretary of State, the Scottish Ministers] and [<sup>F396</sup>the Office of Rail Regulation]—
  - (a) may at any time alter or replace a statement of [<sup>F397</sup>his, their or] <sup>F399</sup>. . . its policy; and [<sup>F397</sup> his, their or]
  - (b) shall publish the altered or replacement statement.
- (5) The [<sup>F395</sup>Secretary of State, the Scottish Ministers] and [<sup>F396</sup>the Office of Rail Regulation] shall undertake appropriate consultation when preparing, altering or replacing a statement of policy.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (6) The [<sup>F395</sup>Secretary of State, the Scottish Ministers] and [<sup>F396</sup>the Office of Rail Regulation] shall publish a statement of policy in the manner that appears most suitable for bringing it to the attention of those likely to be affected by it.
- (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

- F394** 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)
- F395** Words in s. 57B substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 24(1)(a)(2); S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F396** Words in s. 57B substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F397** Words in s. 57B(3)(4) inserted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 24(1)(b)(2); S.I. 2005/1909, {art. 2}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F398** Words in s. 57B(3) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 13(a), Sch. 8; S.I. 2004/827, art. 4(i)
- F399** Words in s. 57B(4)(a) repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 13(b), Sch. 8; S.I. 2004/827, art. 4(i)

#### Modifications etc. (not altering text)

- C40** S. 57B applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 15, Sch. 3 para. 1(c)

#### <sup>F400</sup>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

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*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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- (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.
- (3) Where [<sup>F401</sup>the Office of Rail Regulation] serves a copy of a notice under subsection (1) above on a licence holder, he shall also serve a copy on the [<sup>F402</sup>Secretary of State and on the Scottish Ministers.]
- (4) The appropriate authority shall not modify a proposal to impose a penalty except—
- (a) with the consent of the relevant operator;
  - (b) where the modifications consist of a reduction of the amount of the penalty or a deferral of the date by which it is to be paid; or
  - (c) after complying with the requirements of subsection (5) below.
- (5) The requirements mentioned in subsection (4)(c) above are that the appropriate authority shall—
- (a) give to the relevant operator such notice as appears to it requisite of its modified proposal;
  - (b) unless the proposed modifications are trivial, in that notice specify a period (not being less than seven days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty, the appropriate authority shall give notice—
- (a) stating that it has imposed a penalty on the relevant operator and its amount;
  - (b) setting out the relevant condition or requirement or order in question;
  - (c) specifying the acts or omissions which, in its opinion, constitute contraventions of that condition or requirement or order and the other facts which, in its opinion, justify the imposition of the penalty and its amount;
  - (d) specifying the manner in which, and place at which, the penalty is to be paid; and
  - (e) specifying the date (not being less than fourteen days from the date of publication of the notice) by which the penalty is to be paid.
- (7) A notice under subsection (6) above shall be given—
- (a) by publishing the notice in such manner as the appropriate authority considers appropriate; and
  - (b) by serving a copy of the notice on the relevant operator.
- (8) The relevant operator may, within 21 days of the date of service on him of the notice under subsection (6) above, make an application to the appropriate authority for it to specify different dates by which different portions of the penalty are to be paid.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

#### Textual Amendments

- F400** 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)
- F401** Words in s. 57C substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, art. 4(g)
- F402** Words in s. 57C(3) substituted (24.7.2005 for certain purposes and 16.10.2005 for certain further purposes and 1.12.2006 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 25; S.I. 2005/1909, {art. 1}, Sch.; S.I. 2005/2812, art. 2(1), Sch. 1; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)

#### Modifications etc. (not altering text)

- C41** S. 57C applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, Sch. 3 para. 1(c)

#### <sup>F403</sup>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

- F403** 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)

- C42** 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)

#### <sup>F404</sup>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 <sup>M13</sup>Judgments Act 1838.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (2) If an application is made under subsection (8) of section 57C above in relation to a penalty, the penalty need not be paid until the application has been determined.
- (3) If the appropriate authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the appropriate authority under that subsection, so much of the penalty as has not already been paid is to be paid immediately.

#### **Textual Amendments**

**F404** 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)**

**C43** 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**

**M13** 1838 c. 110.

#### **<sup>F405</sup>57F Validity and effect of penalties.**

- (1) If the relevant operator to whom a [<sup>F406</sup>penalty notice] relates is aggrieved by a penalty and desires to question its validity on the ground—
  - (a) that it was not within the powers of section 57A above,
  - (b) that any of the requirements of section 57C above have not been complied with in relation to it and his interests have been substantially prejudiced by the non-compliance, or
  - (c) that it was unreasonable of the appropriate authority not to grant an application under section 57C(8) above;he may make an application to the court under this section.
- (2) An application under this section by a person shall be made—
  - (a) where it is on the ground mentioned in subsection (1)(c) above, within 42 days from the date on which he is notified of the decision not to grant the application under section 57C(8) above, and
  - (b) in any other case, within 42 days from the date of service on him of the notice under section 57C(6) above.
- (3) If an application is made under this section in relation to a penalty, the penalty need not be paid until the application has been determined.
- (4) On an application under this section on the ground mentioned in subsection (1)(a) or (b) above the court, if satisfied that the ground is established, may quash the penalty 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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (b) provision substituting as the date by which the penalty, or any portion of the penalty, is to be paid a date later than that specified in the notice under section 57C(6) above.
- (6) On an application under this section on the ground mentioned in subsection (1)(c) above the court, if satisfied that the ground is established, may specify different dates by which different portions of the penalty are to be paid.
- (7) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it determines; and where it specifies as the date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application it may require the payment of interest on the penalty, or portion, from that date at such rate as it determines.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

#### Textual Amendments

- F405** 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)
- F406** Words in s. 57F(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, Sch. 11 para. 8; S.I. 2005/1909, {art. 1}, Sch.

#### Modifications etc. (not altering text)

- C44** S. 57F applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 15, {Sch. 3 para. 1(c)}

### 58 Power to require information etc [<sup>F407</sup> for purposes of sections 55 and 57A].

- (1) Where it appears to the appropriate [<sup>F408</sup>authority] that a relevant operator [<sup>F409</sup>may have contravened or be contravening—
- (a) a relevant condition or requirement, or
- (b) a final or provisional order made by the appropriate authority,
- the] appropriate [<sup>F408</sup>authority] may, for any purpose connected with such of [<sup>F408</sup>its] functions under section 55 [<sup>F410</sup>or 57A] above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice signed by the appropriate [<sup>F411</sup>authority] and—
- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the appropriate [<sup>F411</sup>authority] or to any person appointed by the appropriate [<sup>F411</sup>authority] for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) requiring that person, 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 [<sup>F411</sup>authority] such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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 [<sup>F411</sup>authority], make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

#### Textual Amendments

- F407** Words in s. 58 sidenote inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F408** Word in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))
- F409** Words in s. 58(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F410** Words in s. 58(1) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 33(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F411** Word in s. 58(2)(6) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 38(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))

#### Modifications etc. (not altering text)

- C45** S. 58 applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005](#) (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(c)**

### *Railway administration orders, winding up and insolvency*

#### **59 Meaning and effect of railway administration order.**

- (1) A “railway administration order” is an order of the court made in accordance with section 60, 61 or 62 below in relation to a protected railway company and directing

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Railways Act 1993, Part I. (See end of Document for details)*

- 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 <sup>M14</sup>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 <sup>M15</sup>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—
- [<sup>F412</sup>(za) “appropriate national authority”—
    - (i) in relation to a Scottish protected railway company or a company subject to a railway administration order that was such a company when the order was made, means the Scottish Ministers; and
    - (ii) in relation to any other protected railway company or company subject to a railway administration order, means the Secretary of State;]
  - (a) “protected railway company” means a company which is both a private sector operator and the holder of—
    - (i) a passenger licence [<sup>F413</sup>or a European licence which authorises the carriage of passengers by railway (or both)] ; or
    - (ii) a network licence, a station licence or a light maintenance depot licence; <sup>F414</sup> . . .
  - (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 [<sup>F413</sup>or a European licence which authorises the carriage of passengers by railway (or both)] passenger licence, the carriage of passengers by railway; or
    - (ii) in the case of a company which is the holder of a network licence, a station licence or a light maintenance depot licence, the management of a network, a station or a light maintenance depot, according to the description of licence in question.



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

[<sup>F415</sup>(c) “Scottish protected railway company” means a protected railway company that is such a company only in respect of activities carried on by it as franchise operator in relation to a Scottish franchise agreement.]

(7) In this section—

“business” and “property” have the same meaning as they have in the <sup>M16</sup>Insolvency Act 1986;

[<sup>F416</sup>“the court”, in relation to a protected railway company, means the court—

(a) having jurisdiction to wind up the company, or

(b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);]

“the railway administration order provisions of this Act” means this section, sections 60 to 65 below and Schedules 6 and 7 to this Act.

#### Textual Amendments

**F412** S. 59(6)(za) inserted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **ss. 49(1)(a)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F413** Words in s. 59(6) inserted (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 3, **Sch. 1 para. 3(5)**

**F414** Word in s. 59(6)(a) repealed (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F415** S. 59(6)(c) inserted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **s. 49(1)(b)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F416** Words in s. 59(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 143(3)** (with art. 10)

#### Modifications etc. (not altering text)

**C46** S. 59(6) modified (18.12.1996) by [1996 c. 61](#), **s. 19(1)**

#### Marginal Citations

**M14** 1986 c. 45.

**M15** 1986 c. 45.

**M16** 1986 c. 45.

## 60 Railway administration orders made on special petitions.

[<sup>F417</sup>(1) If, on an application relating to a protected railway company] the court is satisfied that either or both of the grounds specified in subsection (2) below is satisfied in relation 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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Railways Act 1993, Part I. (See end of Document for details)*

inspectors' report etc), it would be just and equitable, as mentioned in that section, for the company to be wound up.

- (3) Notice of any petition under this section for a railway administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the 1986 Act; and no such petition shall be withdrawn except with the leave of the court.
- (4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a railway administration order in relation to any company as they apply on the hearing of a petition for an administration order.
- (5) Subsections (1), (2), (4) and (5) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a railway administration order in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to a railway administration order;
  - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
  - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 55 <sup>F418</sup>or 57A] above.
- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company, within the meaning of Part V of the 1986 Act, which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- (7) In this section—
- “the 1986 Act” means the <sup>M17</sup>Insolvency Act 1986;
- “the court” has the same meaning as in section 59 above.

#### Textual Amendments

**F417** S. 60(1): words substituted "for the words from the beginning to the end of paragraph (b)" (16.10.2005) by virtue of [Railways Act 2005 \(c. 14\)](#), **ss. 49(2)**, 60, Sch. 1; S.I. 2005/2812, **art. 2(2)**, Sch. 1

**F418** Words in s. 60(5)(c) inserted (1.2.2001) by [2000 c. 38](#), s. 252, **Sch. 27 para. 34**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

#### Modifications etc. (not altering text)

**C47** S. 60 modified (18.12.1996) by [1996 c. 61](#), **s. 19(3)**  
S. 60 restricted (18.12.1996) by [1996 c. 61](#), **s. 19(7)**

#### Marginal Citations

**M17** [1986 c. 45](#).

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

## 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 [<sup>F419</sup>appropriate national authority] ; and
    - (ii) <sup>F420</sup> .....
  - (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 [<sup>F419</sup>appropriate national authority] , <sup>F421</sup> . . .
  - (b) <sup>F421</sup> .....may, at any time before a winding-up order is made on the petition, make an application to the court for a railway administration order in relation to that company; and where such an application is made the court may, if it is satisfied as mentioned in section 60(1) above, make a railway administration order instead of a winding-up order.
- (3) Where, on a petition for the winding up of a protected railway company, the court makes, or proposes to make, a railway administration order by virtue of subsection (2) above, subsections (4) and (5) of section 9 of the <sup>M18</sup>Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that petition as they apply on the hearing of a petition for an administration order.
- (4) In this section “the court” has the same meaning as in section 59 above.

### Textual Amendments

**F419** Words in s. 61(1)(a)(i)(2)(a) substituted (16.10.2005) by [Railways Act 2005 \(c. 14\), s. 49\(4\)\(a\)](#); S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1

**F420** S. 61(1)(a)(ii) repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2](#), Sch.

**F421** S. 61(2)(b) and preceding word repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2](#), Sch.

### Modifications etc. (not altering text)

**C48** S. 61 restricted (18.12.1996) by [1996 c. 61, s. 19\(7\)](#)

### Marginal Citations

**M18** [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—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

- (a) notice of the application has been served on—
- (i) the [<sup>F422</sup>appropriate national authority] ; and
  - (ii) <sup>F423</sup> .....
- (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 [<sup>F422</sup>appropriate national authority] , <sup>F424</sup> . . .
  - (b) <sup>F424</sup> .....
- 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 <sup>M19</sup>Insolvency Act 1986 (powers on application for administration order) shall apply on the hearing of that application as they apply on the hearing of a petition for an administration order.
- (5) No administration order under Part II of the <sup>M20</sup>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 [<sup>F422</sup>appropriate national authority] ; and
    - (ii) <sup>F425</sup> .....  - (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 <sup>M21</sup>Insolvency Act 1986 has been made in the case of a protected railway company—
- (a) the [<sup>F422</sup>appropriate national authority] , <sup>F426</sup> . . .
  - (b) <sup>F426</sup> .....
- 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 <sup>M22</sup>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 [<sup>F422</sup>appropriate national authority] ; <sup>F427</sup> . . .
  - (b) <sup>F427</sup> .....
- (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 <sup>M23</sup>Insolvency Act 1986;
- “security” and “property” have the same meaning as in the <sup>M24</sup>Insolvency Act 1986.

*Status: Point in time view as at 25/02/2010.*

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#### Textual Amendments

- F422** Words in s. 62(2)(a)(i)(3)(a)(5)(a)(i)(6)(a)(7)(a) substituted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 49\(4\)\(b\)](#), 60; [S.I. 2005/2812](#), [art. 2\(1\)](#), Sch. 1
- F423** S. 62(2)(a)(ii) repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 1, 59, 60](#), Sch. 1 para. 27(1)(b)(2), [Sch. 13 Pt. 1](#) (with s. 14(4)(5), Sch. 11 para. 11(2)); [S.I. 2005/1909](#), [art. 2](#), Sch.
- F424** S. 62(3)(b) and word repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 1, 59, 60](#), Sch. 1 para. 27(1)(b)(2), {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); [S.I. 2005/1909](#), [art. 2](#), Sch.
- F425** S. 62(5)(a)(ii) repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 1, 59, 60](#), Sch. 1 para. 27(1)(b)(2), {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); [S.I. 2005/1909](#), [art. 2](#), Sch.
- F426** S. 62(6)(b) and word repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 1, 59, 60](#), Sch. 1 para. 27(1)(b)(2), [Sch. 13 Pt. 1](#) (with s. 14(4)(5), Sch. 11 para. 11(2)); [S.I. 2005/1909](#), [art. 2](#), Sch.
- F427** S. 62(7)(b) and word repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), [ss. 1, 59, 60](#), Sch. 1 para. 27(1)(b)(2), [Sch. 13 Pt. 1](#) (with s. 14(4)(5), Sch. 11 para. 11(2)); [S.I. 2005/1909](#), [art. 2](#), Sch.

#### Modifications etc. (not altering text)

- C49** S. 62 restricted (18.12.1996) by [1996 c. 61](#), [s. 19\(7\)](#)

#### Marginal Citations

- M19** [1986 c. 45](#).  
**M20** [1986 c. 45](#).  
**M21** [1986 c. 45](#).  
**M22** [1986 c. 45](#).  
**M23** [1986 c. 45](#).  
**M24** [1986 c. 45](#).

### 63 Government financial assistance where railway administration orders made.

- (1) Where a railway administration order is for the time being in force in relation to a company [<sup>F428</sup> other than a Scottish protected railway company], the Secretary of State may, with the consent of the Treasury—
- (a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
- [<sup>F429</sup>(b) agree to indemnify a relevant person in respect of—
- (i) liabilities incurred by that person in connection with the carrying out by the railway administrator of his functions under the order; and
- (ii) loss or damage incurred by that person in that connection.]
- (2) The Secretary of State may, with the consent of the Treasury, guarantee,<sup>F430</sup> . . . 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 [<sup>F431</sup> where that company—
- (a) is a company in relation to which a railway administration order is in force at the time when the guarantee is given; and
- (b) is not a Scottish protected railway company.]
- a railway administration order is in force at the time when the guarantee is given.
- [<sup>F432</sup>(2A) A grant, loan, indemnity or guarantee under this section may be made or given in whatever manner, and on whatever terms and subject to whatever conditions, the Secretary of State considers appropriate.]

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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.
- [<sup>F433</sup>(3A) The power of the Secretary of State under this section to agree to indemnify a relevant person—
- (a) is confined to a power to agree to indemnify that person in respect of liabilities, loss and damage incurred or sustained by him as a relevant person; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (3B) A person is a relevant person for the purposes of this section if he is—
- (a) the railway administrator;
  - (b) an employee of the railway administrator;
  - (c) a member or employee of a firm of which the railway administrator is a member;
  - (d) a member or employee of a firm of which the railway administrator is an employee;
  - (e) a member of a firm of which the railway administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the railway administrator; or
  - (g) an officer, employee or member of such a body corporate.
- (3C) For the purposes of this section—
- (a) the references in this section to the railway administrator, in relation to a railway administration order, are references to the person appointed to achieve the purposes of the order and, where two or more persons are so appointed, are to be construed as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.]
- (4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.
- [<sup>F434</sup>(4A) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section in the case of a company in relation to which a railway administration order is in force, the company must pay him—
- (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (4B) Payments to the Secretary of State under subsection (4A) must be made at such times and in such manner as he may determine.
- (4C) Subsection (4A) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the railway administration order in question was made.
- (4D) The consent of the Treasury is required for the giving of a direction under subsection (4A) and for the making of a determination under subsection (4B).]
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

#### Textual Amendments

- F428** Words in s. 63(1) inserted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **ss. 50(1)(a)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F429** S. 63(1)(b) substituted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 9(1)**; S.I. 2005/1909, **art. 2**, Sch.
- F430** Words in s. 63(2) repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F431** Words in s. 63(2) inserted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **ss. 50(1)(b)**, 60; S.I. 2005/2812 {art. 2(1)}, Sch. 1
- F432** S. 63(2A) inserted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 9(2)**; S.I. 2005/1909, **art. 2**, Sch.
- F433** S. 63(3A)-(3C) inserted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 9(3)**; S.I. 2005/1909, **art. 2**, Sch.
- F434** S. 63(4A)-(4D) inserted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 54, 60, **Sch. 11 para. 9(4)**; S.I. 2005/1909, **art. 2**, Sch.

#### Modifications etc. (not altering text)

- C50** 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.
- (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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

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)**

**C51** S. 64 restricted (18.12.1996) by [1996 c. 61, s. 19\(7\)](#)

**[<sup>F435</sup> 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.
- (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,



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- 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.
- (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**

**F435** 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

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

## **65 Meaning of “company” and application of provisions to unregistered, foreign and other companies.**

- [<sup>F436</sup>(1) In the railway administration order provisions of this Act—
- “company” means—
- (a) a company registered under the Companies Act 2006, or
  - (b) an unregistered company; and
- “unregistered company” means a company that is not registered under that Act.]
- (2) In the application of section 59(1) above in a case where the protected railway company there mentioned is a foreign company, the reference to the affairs, business and property of the company shall be taken as a reference to the affairs and business of the company, so far as carried on in Great Britain, and the property of the company within Great Britain.
  - (3) In the application of section 9(5) of the 1986 Act by virtue of subsection (4) of section 60 above or subsection (3) of section 61 above where the petition mentioned in the subsection in question relates to a company which is a foreign company, the reference to restricting the exercise of any powers of the directors or of the company shall be taken as a reference to restricting—
    - (a) the exercise within Great Britain of the powers of the directors or of the company; or
    - (b) any exercise of those powers so far as relating to the affairs, business or property of the company in Great Britain.
  - (4) In the application of provisions in section 10 of the 1986 Act by virtue of subsection (5) of section 60 above where the company mentioned in that subsection is a foreign company—
    - (a) paragraph (a) of subsection (1) shall be omitted;
    - (b) any reference in paragraph (b) or (c) of that subsection to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain;
    - (c) in paragraph (c) of that subsection—
      - (i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and
      - (ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales; and
    - (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.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

(7) In this section—

“the 1986 Act” means the <sup>M25</sup>Insolvency Act 1986;

“foreign company” means a company incorporated outside Great Britain;

“the railway administration order provisions of this Act” means sections 59 to 64 above, this section and Schedules 6 and 7 to this Act.

#### Textual Amendments

**F436** S. 65(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 143(4)** (with art. 10)

#### Modifications etc. (not altering text)

**C52** S. 65 restricted (18.12.1996) by [1996 c. 61, s. 19\(7\)](#)

#### Marginal Citations

**M25** [1986 c. 45.](#)

### *Consumer protection*

## 66 Amendments of the Fair Trading Act 1973.

(1) <sup>F437</sup> .....

(2) <sup>F437</sup> .....

[<sup>F438</sup>(3) For the purposes of Part 3 of the Enterprise Act 2002 (merger references), where a person enters into a franchise agreement as a franchisee, there shall be taken to be brought under his control an enterprise engaged in the supply of the railway services to which the agreement relates.]

(4) In section 137 of the 1973 Act, in subsection (3) (meaning of the expression “the supply of services”), after paragraph (f) there shall be inserted the words “and

(g) includes the supply of network services and station services, within the meaning of Part I of the Railways Act 1993;”.

(5) <sup>F439</sup> .....

[<sup>F440</sup>(6) Expressions used in subsection (3) above and in Part 3 of the Enterprise Act 2002 have the same meaning in that subsection as they have in that Part.]

#### Textual Amendments

**F437** S. 66(1)(2) repealed (20.6.2003) by [2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397](#), **art. 2, Sch.** (with art. 10)

**F438** S. 66(3) substituted (20.6.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 30\(8\)\(a\); S.I. 2003/1397](#), **art. 2(1), Sch.**

**F439** S. 66(5) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 2, **Sch. para. 21(2)**

**F440** S. 66(6) substituted (20.6.2003) by [2002 c. 40, ss. 278, 279, Sch. 25 para. 30\(8\)\(b\); S.I. 2003/1397](#), **art. 2(1), Sch.**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C53** S. 66(3) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 16, [Sch. 4 para 12\(2\)](#)

**67** **Respective functions of [<sup>F441</sup>the Office of Rail Regulation] and the [<sup>F442</sup>OFT], and functions of the Monopolies Commission.**

(1) <sup>F443</sup> .....

[<sup>F444</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of [<sup>F441</sup>the Office of Rail Regulation] and the OFT.

(2A) This subsection applies to the functions of the OFT under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to the supply of services relating to railways.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to [<sup>F441</sup>the Office of Rail Regulation] (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F445</sup>[<sup>F446</sup>(3) [<sup>F441</sup>the Office of Rail Regulation] shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to the supply of services relating to railways.]

[ In [<sup>F448</sup>subsections (2A) and (3)] above “services relating to railways” means—

- <sup>F447</sup>(3ZA)
- (a) railway services;
  - (b) the provision or maintenance of rolling stock;
  - (c) the development, maintenance or renewal of a network, station or light maintenance depot; and
  - (d) the development, provision or maintenance of information systems designed wholly or mainly for facilitating the provision of railway services.

(3ZB) The Secretary of State may by order amend subsection (3ZA) above; and an order under this subsection shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of each House of Parliament.]

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [<sup>F449</sup>the OFT] are to be read as including a reference to [<sup>F441</sup>the Office of Rail Regulation] ([<sup>F450</sup>except in sections 31D(1) to (6), 38(1) to (6) ], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- [<sup>F451</sup>(4) Before the OFT or [<sup>F441</sup>the Office of Rail Regulation] first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.
- (4A) Neither the OFT nor [<sup>F441</sup>the Office of Rail Regulation] shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]
- (5) It shall be the duty of [<sup>F441</sup>the Office of Rail Regulation] , for the purpose of assisting the [<sup>F452</sup>Competition 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 [<sup>F453</sup>its] 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 [<sup>F453</sup>its] 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 [<sup>F453</sup>its] 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 [<sup>F452</sup>Competition Commission] by [<sup>F441</sup>the Office of Rail Regulation] by virtue of subsection (2) [<sup>F454</sup>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) <sup>F455</sup> .....
    - (ii) a publicly owned railway company which supplies network services or station services.
- (7) A copy of any report of the [<sup>F452</sup> Competition Commission][<sup>F456</sup>under section 136 or 142 of the Enterprise Act 2002] which relates to [<sup>F457</sup>the supply of services relating to railways] may be transmitted by the Commission to [<sup>F441</sup>the Office of Rail Regulation] , notwithstanding that the reference <sup>F458</sup> . . . could not have been made by [<sup>F441</sup>the Office of Rail Regulation] .
- (8) If any question arises [<sup>F459</sup>in any particular case as to the jurisdiction of [<sup>F441</sup>the Office of Rail Regulation] under any of the provisions mentioned in] subsection [<sup>F460</sup>(2A)] or (3) above <sup>F461</sup> . . . . <sup>F462</sup> . . . , that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) [<sup>F463</sup>Part 4 of the Enterprise Act 2002], or
  - [<sup>F464</sup>(b) Part I of the Competition Act 1998 ([<sup>F465</sup>other than sections 31D(1) to (6), 38(1) to (6)] and 51),]
- by or in relation to [<sup>F441</sup>the Office of Rail Regulation] on the ground that it should have been done by or in relation to [<sup>F449</sup>the OFT].
- [<sup>F466</sup>(9) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by [<sup>F441</sup>the Office of Rail Regulation] by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to [<sup>F441</sup>the Office of Rail Regulation] .]

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

(10) <sup>F467</sup> .....

### Textual Amendments

- F441** Words in s. 67 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {Sch. 2 para. 3(a) Table}; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F442** S. 67: word in sidenote substituted (1.4.2003) by [2002 c. 40](#), ss. 278, 279, [Sch. 25 para. 30\(9\)\(c\)](#); [S.I. 2003/766](#), {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F443** S. 67(1) repealed (1.4.2003) by [2002 c. 40](#), ss. 278, 279, [Sch. 25 para. 30\(9\)\(a\)](#), [Sch. 26](#); [S.I. 2003/766](#), {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F444** S. 67(2)-(2B) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 Pt. 2 para. 21(2); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.
- F445** S. 67(3)(3A) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) for s. 67(3) by [1998 c. 41](#), s. 66(5), [Sch. 10 Pt. II para. 6\(5\)](#) (with s. 73); [S.I. 1998/2750](#), [art. 2](#); [S.I. 2000/344](#), art. 2, [Sch.](#)
- F446** S. 67(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), art. 1(b), [Sch. 2 para. 6\(2\)\(a\)](#)
- F447** S. 67(3ZA)(3ZB) inserted (1.2.2001) by [2000 c. 38](#), s. 243(3); [S.I. 2001/57](#), art. 3(1), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F448** Words in s. 67(3ZA) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(3); [S.I. 2003/1397](#), [art. 2](#), Sch.
- F449** Words in s. 67(3)(3A)(8) substituted (1.4.2003) by [2002 c. 40](#), ss. 278, 279, [Sch. 25 para. 30\(9\)\(b\)](#); [S.I. 2003/766](#), {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F450** Words in s. 67(3A) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), art. 1(b), [Sch. 2 para. 6\(2\)\(b\)](#)
- F451** S. 67(4)(4A) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(4); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.
- F452** Words in s. 67(5)(6)(a)(7)(9) substituted (1.4.1999) by [S.I. 1999/506](#), s. 33(b)
- F453** Word in s. 67 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, {Sch. 2 para. 3(c) Table}; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F454** Words in s. 67(6)(a) repealed by [1998 c. 41](#), ss. 66(5), 74(3), Sch. 10 Pt. II para. 6(7), [Sch. 14 Pt. I](#) (with s. 73) (which repeal was brought into force at 26.11.1998 in so far as words in s. 67(6)(a) omitted for specified purposes by virtue of Sch. 10 Pt. II para. 6(7) of the repealing Act by [S.I. 1998/2750](#), [art. 2](#) and was brought wholly into force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch](#))
- F455** S. 67(6)(b)(i) repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); [S.I. 2006/2911](#) {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F456** Words in s. 67(7) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(5)(a); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.
- F457** Words in s. 67(7) substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 2, [Sch. para. 21\(3\)](#)
- F458** Words in s. 67(7) repealed (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 278, 279, Sch. 9 para. 21(5)(b), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch. (with art. 10)
- F459** Words in s. 67(8) substituted (3.1.1995) by [1994 c. 40](#), ss. 12(7), 82(2), [Sch. 4 para. 4](#)
- F460** Word in s. 67(8) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(6)(a); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.
- F461** Words in s. 67(8) repealed (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 278, 279, Sch. 9 para. 21(6)(b), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch. (with art. 10)
- F462** Words in s. 67(8) repealed (3.1.1995) by [1994 c. 40](#), s. 12(7), 81(1), Sch. 4 para. 4, [Sch. 17](#)
- F463** Words in s. 67(8) substituted (20.6.2003) by [2002 c. 40](#), ss. 86(5), 164(2), 168(9), 279, Sch. 9 para. 21(6)(c); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F464** S. 67(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 76(3), **Sch. 10 Pt. II para. 6(8)** (with s. 73); S.I. 1998/2750, **art. 2**; S.I. 2000/344, art. 2, **Sch. 10 Pt. II para. 6(8)**
- F465** Words in s. 67(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), art. 1(b), **Sch. 2 para. 6(2)(c)**
- F466** S. 67(9) substituted (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 278, 279, **Sch. 9 para. 21(9)**; S.I. 2003/1397, {art. 2(1)}, Sch.
- F467** S. 67(10) repealed (20.6.2003) by 2002 c. 40, ss. 86(5), 164(2), 168(9), 278, 279, Sch. 9 para. 21(8), Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

#### Modifications etc. (not altering text)

- C54** S. 67(1) restricted (18.12.1996) by 1996 c. 61, s. 22(1)
- C55** S. 67(2) applied (3.1.1995) by 1994 c. 40, s. 7(2), **Sch. 2 para. 11(2)**
- C56** S. 67(4) restricted (18.12.1996) by 1996 c. 61, s. 22(4)

### Other functions of the Regulator

## 68 Investigatory functions.

- (1) Subject to subsection (2) below, it shall be the duty of [<sup>F468</sup>the Office of Rail Regulation] to investigate any alleged or apprehended contravention of—
- (a) a condition of a licence <sup>F469</sup> . . . . , <sup>F470</sup> . . . .
- <sup>F471</sup>(b) . . . . .
- if the alleged or apprehended contravention is the subject of a representation (other than one appearing to him to be frivolous or vexatious) made to [<sup>F472</sup>it] by or on behalf of a person who appears to [<sup>F468</sup>the Office of Rail Regulation] to have an interest in the matter.
- (2) [<sup>F468</sup>the Office of Rail Regulation] may, if [<sup>F472</sup>it] thinks fit, require [<sup>F473</sup>the <sup>F474</sup>Passengers' Council]] to investigate and report to [<sup>F472</sup>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 [<sup>F475</sup>its] duty to investigate.

#### Textual Amendments

- F468** Words in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F469** Words in s. 68(1)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F470** S. 68(1)(b) and word immediately preceding it repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F471** S. 68(1)(b) omitted (1.2.2001) by virtue of 2000 c. 38, s. 234(7) (with Sch. 28 paras. 12, 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F472** Words in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F473** Words in s. 68(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), s. 21(2); S.I. 2005/1909, **art. 2**, Sch.
- F474** Words in s. 68(2) substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(2)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

**F475** Word in s. 68 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

**Modifications etc. (not altering text)**

**C57** S. 68 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(d)**

**69 General functions.**

- (1) It shall be the duty of [<sup>F476</sup>the Office of Rail Regulation] , so far as it appears to [<sup>F477</sup>it] practicable from time to time to do so—
  - (a) to keep under review the provision, both in Great Britain and elsewhere, of railway services; and
  - (b) to collect information with respect to the provision of those services, with a view to facilitating the exercise of [<sup>F478</sup>its] functions under this Part.
- (2) The Secretary of State may give general directions indicating—
  - (a) considerations to which [<sup>F476</sup>the Office of Rail Regulation] should have particular regard in determining the order of priority in which matters are to be brought under review in performing [<sup>F478</sup>its] duty under subsection (1)(a) or (b) above; and
  - (b) considerations to which, in cases where it appears to [<sup>F476</sup>the Office of Rail Regulation] that any of [<sup>F478</sup>its] functions under this Part are exercisable, [<sup>F477</sup>it] should have particular regard in determining whether to exercise those functions.
- (3) It shall be the duty of [<sup>F476</sup>the Office of Rail Regulation] , where either [<sup>F477</sup>it] considers it expedient or [<sup>F477</sup>it] is requested by the Secretary of State or [<sup>F479</sup>the OFT] to do so, to give information, advice and assistance to the Secretary of State or [<sup>F479</sup>the OFT] with respect to any matter in respect of which any function of [<sup>F476</sup>the Office of Rail Regulation] under this Part is exercisable.
- (4) <sup>F480</sup> .....

**Textual Amendments**

- F476** Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F477** Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F478** Words in s. 69 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**
- F479** Words in s. 69(3) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(10)**; S.I. 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F480** S. 69(4) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), **Sch. 11 para. 11(2)**); S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)

<sup>F481</sup>**70** .....



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

#### Textual Amendments

**F481** S. 70 repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 28(2), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### 71 Publication of information and advice.

- (1) [<sup>F482</sup>the Office of Rail Regulation] may arrange for the publication, in such form and in such manner as [<sup>F483</sup>it] considers appropriate, of such information and advice as it may appear to [<sup>F483</sup>it] expedient to give to users or potential users of railway services in Great Britain.
- (2) In arranging for the publication of any such information or advice [<sup>F482</sup>the Office of Rail Regulation] shall have regard to the need for excluding, so far as that is practicable—
  - (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of [<sup>F482</sup>the Office of Rail Regulation], seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of [<sup>F482</sup>the Office of Rail Regulation], seriously and prejudicially affect the interests of that body.
- (3) [<sup>F484</sup>The OFT] shall consult [<sup>F482</sup>the Office of Rail Regulation] before publishing under [<sup>F485</sup>section 6 of the Enterprise Act 2002] any information or advice which may be published by [<sup>F482</sup>the Office of Rail Regulation] under this section.

#### Textual Amendments

- F482** Words in s. 71 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F483** Word in s. 71 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F484** Words in s. 71(3) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(11)(a)**; S.I. 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F485** Words in s. 71(3) substituted (20.6.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(11)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.

*[<sup>F486</sup> Other functions of the Authority]*

#### Textual Amendments

**F486** 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)

### 71A Investigatory functions.

**F487** .....

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

#### Textual Amendments

**F487** S. 71A repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 27(1)(b)(2), Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, art. 2, Sch.

### [<sup>F488</sup>71B Code of practice for protection of interests of rail users who are disabled.

- (1) The [<sup>F489</sup>Secretary of State] shall—
- (a) prepare and from time to time revise, and
  - (b) publish and otherwise promote the adoption and implementation of,
- a code of practice for protecting the interests of users of railway passenger services or station services who are disabled
- (2) In preparing or revising the code of practice, the [<sup>F489</sup>Secretary of State] shall consult the Disabled Persons Transport Advisory Committee established under section 125 of the <sup>M26</sup>Transport Act 1985.]

#### Textual Amendments

**F488** 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)

**F489** Words in s. 71B substituted (26.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, Sch. 1 para. 29; S.I. 2005/1444, art. 2(2), Sch. 2

#### Marginal Citations

**M26** 1985 c. 67.

### *Registers and reports of the Regulator and the [<sup>F490</sup>Authority]*

#### Textual Amendments

**F490** Word in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 215, Sch. 16 para. 43; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))

## 72 Keeping of register by the Regulator.

- (1) [<sup>F491</sup>the Office of Rail Regulation] shall, at such premises and in such form as [<sup>F492</sup>it] may determine, maintain a register <sup>F493</sup>. . . .
- (2) Subject to subsection (3) and to any direction given under subsection (4) below, [<sup>F491</sup>the Office of Rail Regulation] shall cause to be entered in the register—
- (a) in relation to licences [<sup>F494</sup>and European licences], the provisions of—
    - (i) every licence [<sup>F495</sup>, every licence exemption and every European licence];
    - (ii) every assignment of a licence of which notice is received by [<sup>F491</sup>the Office of Rail Regulation];

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (iii) every modification or revocation of a licence [<sup>F496</sup>, every]<sup>F497</sup> requirement to modify conditions of a licence imposed on [<sup>F491</sup>the Office of Rail Regulation] by the Authority]<sup>F498</sup>, and every modification or revocation of a European licence];
  - (iv) every revocation of a licence exemption [<sup>F499</sup>and every requirement to revoke a licence exemption imposed on [<sup>F491</sup>the Office of Rail Regulation] by the Authority];
  - (v) every requirement imposed, or consent or approval given, by [<sup>F491</sup>the Office of Rail Regulation] under a licence [<sup>F500</sup>or European licence] ;
  - (vi) every requirement imposed, or consent or approval given, under a licence by any person (other than [<sup>F491</sup>the Office of Rail Regulation] ) who is a qualified person, within the meaning of section 9(3) above, for the purpose in question, being a requirement, consent or approval whose provisions have been notified to [<sup>F491</sup>the Office of Rail Regulation] pursuant to a condition of the licence;
  - (vii) every final or provisional order [<sup>F501</sup>made by [<sup>F491</sup>the Office of Rail Regulation] in relation] to a licence, every revocation of such an order and every notice given by [<sup>F491</sup>the Office of Rail Regulation] under section 55(6) above that he is satisfied that he does not need to make such an order;
  - <sup>F502</sup>(viii) every scheme made by the Secretary of State under section 7A(4) above or paragraph 2 of Schedule 28 to the Transport Act 2000;]
  - <sup>F503</sup>(ix) every penalty imposed by [<sup>F491</sup>the Office of Rail Regulation] under section 57A above;
  - (x) every statement of policy published by [<sup>F491</sup>the Office of Rail Regulation] under that section;]
- and notice of every surrender of a licence [<sup>F504</sup>or European licence] ;
- (b) in relation to access agreements, access contracts and installation access contracts, the provisions of—
    - (i) every facility exemption granted under section 20(3) above;
    - (ii) every direction to enter into an access contract or an installation access contract;
    - (iii) every access agreement;
    - (iv) every amendment (however described) of an access agreement;
    - (v) every general approval given under section [<sup>F505</sup>18(1)(c), 19(3)(c) or] 22(3) above which is for the time being in force;
    - <sup>F506</sup>(va) every direction under section 22A above;
    - (vb) every notice given by or to [<sup>F491</sup>the Office of Rail Regulation] or the Competition Commission under Schedule 4A to this Act;]
    - (vi) every document issued or made by [<sup>F491</sup>the Office of Rail Regulation] under an access agreement;
  - <sup>F507</sup>(c) .....
  - (d) in relation to experimental passenger services, within the meaning of [<sup>F508</sup>Part 4 of the Railways Act 2005] , the provisions of—
    - <sup>F509</sup>(i) every designation under section 36 of that Act of a service as experimental;
    - (ii) every notice under section 37(1) or (2) of that Act of the proposed discontinuance of a service designated as experimental;]
  - <sup>F510</sup>(da) in relation to closures, the provisions of—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (i) every closure ratification notice or closure non-ratification notice (within the meaning of Part 4 of the Railways Act 2005) issued by it;
- (ii) every closure requirement imposed by it;
- (e) the provisions of every railway administration order and of every discharge of such an order.
- (3) In entering any provision in the register, [F491the Office of Rail Regulation] shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 71(2)(a) and (b) above.
- (4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct [F491the Office of Rail Regulation] not to enter that provision in the register.
- (5) Where an access agreement is entered into or amended, the facility owner or installation owner concerned shall send a copy of the access agreement or amendment to [F491the Office of Rail Regulation] not later than 14 days after the date on which the access agreement is entered into or the amendment is made, as the case may be.
- (6) A person who fails to comply with subsection (5) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State.
- (8) Any person may, on the payment of such fee as may be specified in an order so made, require [F491the Office of Rail Regulation] to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by [F491the Office of Rail Regulation] to be a true copy or extract.
- (9) The contents of the register shall be available for inspection at any time by the [F511Authority], without payment of any fee; and the [F511Authority] may require [F491the Office of Rail Regulation], without payment of any fee, to supply [F512it] with a copy of, or extract from, any part of the register, being a copy or extract which is certified by [F491the Office of Rail Regulation] to be a true copy or extract.
- (10) Any reference in this section to “assignment” shall be construed in Scotland as a reference to assignation.
- (11) Any sums received by [F491the Office of Rail Regulation] under this section shall be paid into the Consolidated Fund.

#### Textual Amendments

- F491** Words in s. 72 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F492** Word in s. 72 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F493** Words in s. 72(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F494** Words in s. 72(2)(a) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(a)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F495** Words in s. 72(2)(a)(i) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(b)**
- F496** Words in s. 72(2)(a)(iii) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, **Sch. 1 para. 3(6)(c)**
- F497** Words in s. 72(2)(a)(iii) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(a)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F498** Words in s. 72(2)(a)(iii) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(c)}
- F499** Words in s. 72(2)(a)(iv) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(b)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F500** Words in s. 72(2)(a)(v) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(d)}
- F501** Words in s. 72(2)(a)(vii) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(c)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F502** S. 72(2)(a)(viii) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 15(d)** (with Sch. 28 paras. 5(2), 17); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F503** S. 72(2)(a)(ix)(x) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 36(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F504** Words in s. 72(2)(a) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(6)(e)}
- F505** Words in s. 72(2)(b)(v) inserted (1.2.2001) by 2000 c. 38, s. 230(5); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F506** S. 72(2)(b)(va)(vb) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 36(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F507** S. 72(2)(c) repealed (1.2.2001) by 2000 c. 38, ss. 216, 274, Sch. 17 para. 27(2), **Sch. 31 Pt. IV** (with Sch. 28 para. 14); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F508** Words in s. 72(2)(d) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(a)(2)**; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F509** S. 72(2)(d)(i)-(ii) substituted (1.12.2006) for s. 72(d)(i)-(iii) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(b)(2)**; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F510** S. 72(2)(da) inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 10(1)(c)(2)**; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F511** Words in s. 72(9) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 43(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))
- F512** Word in s. 72(9) substituted (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para. 43(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II) (which S.I. was amended by S.I. 2001/115, art. 2(2))

#### **Modifications etc. (not altering text)**

- C58** S. 72(1) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
- C59** S. 72(2)(a) applied (in part) (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
- C60** S. 72(2)(a)(i) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 7}

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

<b>C61</b>	S. 72(3) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
<b>C62</b>	S. 72(4) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
<b>C63</b>	S. 72(7) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
<b>C64</b>	S. 72(8) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}
<b>C65</b>	S. 72(11) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 14, {Sch. 3 para. 1(e)}

**73 Keeping of register by the <sup>F513</sup>Secretary of State].**

- (1) The <sup>F513</sup>Secretary of State] shall, at such premises and in such form as <sup>F514</sup>he] may determine, maintain a register <sup>F515</sup> . . . .
- (2) Subject to <sup>F516</sup>subsections (3) and (4)] below, the <sup>F513</sup>Secretary of State] shall cause to be entered in the register <sup>F517</sup>(except so far as they are required to be entered in the register maintained under section 73A below)] the provisions of—
  - (a) every franchise exemption;
  - (b) every franchise agreement;
  - <sup>F518</sup>(c) . . . . .
  - (d) every amendment (however described) of a franchise agreement <sup>F519</sup>other than any which are not likely to have a material effect on the provision of services under the agreement or on any sums payable under the agreement.];
  - <sup>F520</sup>(da) every determination made by him under section 34 of the Railways Act 2005 that a closure is a minor modification or that closures of a particular description are minor modifications;
  - (db) every revocation of a determination made by him under that section in relation to a description of closures;
  - (dc) every condition agreed to under subsection (5) of that section in connection with a determination made by him;]
  - (e) every final or provisional order <sup>F521</sup>made by the <sup>F513</sup>Secretary of State] in relation to <sup>F522</sup> . . . ] a franchise agreement <sup>F523</sup>or to any closure or proposed closure or to any closure requirement] , every revocation of such an order and every notice given by the <sup>F513</sup>Secretary of State] under section 55(6) above that <sup>F524</sup>he] is satisfied that <sup>F524</sup>he] does not need to make such an order;
  - <sup>F525</sup>(f) every penalty imposed by the <sup>F513</sup>Secretary of State] under section 57A above;
  - (g) every statement of policy published by the <sup>F513</sup>Secretary of State] under that section;
  - [ <sup>F526</sup>(ga) every designation under section 23 and every variation or revocation of such a designation;]]
  - (h) <sup>F527</sup> . . . . .
  - (i) <sup>F527</sup> . . . . .
  - (j) <sup>F527</sup> . . . . .
  - (k) <sup>F527</sup> . . . . .
  - (l) <sup>F527</sup> . . . . .
  - (m) <sup>F527</sup> . . . . .

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

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.

[<sup>F528</sup>(3) The Secretary of State may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as he considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that body.]

(4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest [<sup>F529</sup>he may decide] not to enter that provision in the register.

(5) <sup>F530</sup> .....

(6) <sup>F530</sup> .....

(7) The contents of the register shall be available for inspection at any time by [<sup>F531</sup>the Scottish Ministers or]<sup>F532</sup>[the Office of Rail Regulation] , without payment of any fee; and [<sup>F533</sup>the Scottish Ministers and the Office of Rail Regulation may each] require the [<sup>F513</sup>Secretary of State] , without payment of any fee, to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the [<sup>F513</sup>Secretary of State] to be a true copy or extract.

<sup>F518</sup>(8) .....

#### Textual Amendments

**F513** Words in s. 73 substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(1)**; S.I. 2005/1909, **art. 2**, Sch.

**F514** Word in s. 73(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(2)**; S.I. 2005/1909, **art. 2**, Sch.

**F515** Words in s. 73(1) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

**F516** Words in s. 73(2) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(a)**; S.I. 2005/1909, **art. 2**, Sch.

**F517** Words in s. 73(2) inserted (16.10.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(b)**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

**F518** S. 73(2)(c)(8) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F519** Words in s. 73(2)(d) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 37(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F520** S. 73(da)-(dc) substituted (1.12.2006) for s. 73(da) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 11(1)(a)(2)**; S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F521** Words in s. 73(2)(e) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 16(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F522** Words in s. 73(2)(e) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F523** Words in s. 73(2)(e) substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 11(1)(b)(2)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F524** Word in s.73(2)(e) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(c)**; S.I. 2005/1909 {art. 2}, Sch.
- F525** S. 73(2)(f)(g) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 37(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F526** S. 73(2)(ga) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(3)(d)**; S.I. 2005/1909, **art. 2**, Sch.
- F527** S. 73(2)(h)-(m) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F528** S. 73(3) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(4)**; S.I. 2005/1909, **art. 2**, Sch.
- F529** Words in s. 73(4) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(5)**; S.I. 2005/1909, **art. 2**, Sch.
- F530** S. 73(5)(6) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 30(6), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F531** Words in s. 73(7) inserted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(7)(a)**; S.I. 2005/1909, **art. 2**, Sch.
- F532** Words in s. 73 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**
- F533** Words in s.73(7) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 30(7)(b)**; S.I. 2005/1909 {art. 2}, Sch.

### **[<sup>F534</sup>73A Keeping of register by the Scottish Ministers**

- (1) The Scottish Ministers must maintain a register.
- (2) The register must be kept in such form and at such premises as the Scottish Ministers determine.
- (3) Subject to subsections (4) and (5) below, the Scottish Ministers must cause the provisions of each of the following to be entered in the register—
  - (a) every designation made by them under section 23 of this Act, and every variation or revocation of such a designation;
  - (b) every franchise exemption granted by them;
  - (c) every franchise agreement to which they are a party;
  - (d) every amendment of such a franchise agreement, other than those that are unlikely to have a material effect on the provision of services under the agreement or on the sums payable under it;
  - (e) every determination made by them under section 34 of the Railways Act 2005 that a closure is a minor modification or that closures of a particular description are minor modifications;
  - (f) every revocation of a determination made by them under that section in relation to a description of closures;
  - (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;



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (i) every revocation by them of such an order;
  - (j) every notice given by them under section 55(6) of this Act of a decision not to make such an order;
  - (k) every penalty imposed by them under section 57A of this Act;
  - (l) every statement of policy published by them under section 57B of this Act.
- (4) The Scottish Ministers may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as they consider it appropriate to exclude for the purpose of maintaining the confidentiality of—
- (a) matters relating to the affairs of an individual the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that body.
- (5) If it appears to the Scottish Ministers that the entry of any provision in the register would be against the public interest, they may decide not to enter it in the register.
- (6) The contents of the register must be available for inspection, at any time and free of charge, by the Secretary of State or the Office of Rail Regulation.
- (7) The Secretary of State and the Office of Rail Regulation may each require the Scottish Ministers to supply him or (as the case may be) it free of charge with a certified copy of a part of the register or with a certified extract from it.
- (8) The references in subsection (7) to a certified copy or a certified extract are references to a copy or extract that has been certified by the Scottish Ministers to be a true copy or extract.
- (9) In subsection (3)(d) “amendment”, in relation to a franchise agreement, means any amendment however described, including variations (whether or not effected in accordance with the terms of the agreement or by a modification of it) of the property, rights and liabilities which from time to time constitute the franchise assets.]

#### Textual Amendments

**F534** 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 <sup>F535</sup>the Office of Rail Regulation].

- (1) <sup>F535</sup>the Office of Rail Regulation] shall, as soon as practicable <sup>F536</sup>after the end of each financial year,], make to the Secretary of State a report on—
- (a) his activities during that year; and
  - (b) the <sup>F537</sup>Competition Commission's] activities during that year, so far as relating to references made by <sup>F535</sup>the Office of Rail Regulation] .
- (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 <sup>F538</sup>its] functions;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- <sup>F539</sup>(b) .....
- (c) a statement setting out any general directions given to [<sup>F535</sup>the Office of Rail Regulation] during that year under section 69(2) above; <sup>F539</sup> . . .
- (d) .....
- (3) The Secretary of State shall lay a copy of every report made by [<sup>F535</sup>the Office of Rail Regulation] under subsection (1) above before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he may consider appropriate.
- <sup>F540</sup>(3A) Where a report is made by [<sup>F535</sup>the Office of Rail Regulation] under subsection (1) above to the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), the Scottish Ministers shall lay a copy of the report before the Scottish Parliament and shall arrange for copies to be published in such manner as they consider appropriate.]
- (4) [<sup>F535</sup>the Office of Rail Regulation] may also prepare such other reports as [<sup>F541</sup>it] thinks fit with respect to any matter falling within the scope of [<sup>F538</sup>its] functions.
- (5) [<sup>F535</sup>the Office of Rail Regulation] may arrange for copies of any report prepared under subsection (4) above to be published in such manner as [<sup>F541</sup>it] may consider appropriate.
- (6) In making or preparing any report under this section, [<sup>F535</sup>the Office of Rail Regulation] shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 71(2)(a) and (b) above.
- (7) [<sup>F542</sup>Paragraph 12A(1) of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission)] shall not apply to activities of the [<sup>F537</sup>Competition Commission] on which [<sup>F535</sup>the Office of Rail Regulation] is required to report by this section.
- (8) In this section—  
  - “financial year” means a period of twelve months ending with 31st March;
  - and
  - <sup>F543</sup> .....

**Textual Amendments**

**F535** Words in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(a) Table}; S.I. 2004/827, **art. 4(g)**

**F536** Words in s. 74(1) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 14(a)**; S.I. 2004/827, **art. 4(g)**

**F537** Words in s. 74(1)(b)(7) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**

**F538** Word in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**

**F539** S. 74(2)(b)(d) and the word “and” before s. 74(2)(d) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F540** S. 74(3A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1(1), 6(1), **Sch. 5 para. 13 (2)**; S.I. 1998/3178, **art. 3**

**F541** Word in s. 74 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- F542** Words in s. 74(7) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(12)**; S.I. 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)
- F543** S. 74(8): definition of "first relevant financial year" repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 14(b), **Sch. 8**; S.I. 2004/827, **art. 4(i)**

**Modifications etc. (not altering text)**

- C66** S. 74(1)(3): certain functions made exercisable by the Scottish Ministers concurrently with the Ministers concerned (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2**; S.I. 1998/3178, **art. 3**

**75 Annual reports of the Franchising Director.**

**F544** .....

**Textual Amendments**

- F544** S. 75 repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5)); S.I. 2006/2911, **art. 2, Sch.** (subject to the transitional and saving provisions in arts. 3-7)

*The <sup>F545</sup><sup>F546</sup>Passengers' Council] and Rail Passengers' Committees]*

**Textual Amendments**

- F545** Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 8(10)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F546** Words in s. 76 cross-heading substituted (25.2.2010) by The Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, **Sch. para. 6(4)**

**76 <sup>F547</sup>General railway duties of Passengers' Council] .**

(1) It shall be the duty of <sup>F548</sup>the Passengers' Council] to investigate any matter which relates—

- <sup>F549</sup>(a) to the provision of railway passenger services, or]
- (b) to the provision of station services by any person in a case where the operator of the station in question is authorised by a licence to be the operator of that station,

if the condition specified in subsection (2) below is satisfied in relation to the matter in question.

(2) The condition mentioned in subsection (1) above is satisfied if—

- (a) the matter is the subject of a representation made to <sup>F548</sup>the Passengers' Council] by a user or potential user of railway passenger services and does not appear to <sup>F548</sup>the Passengers' Council] to be frivolous or vexatious;
- (b) the matter is referred to <sup>F548</sup>the Passengers' Council] by the <sup>F550</sup>Secretary of State] ; or
- (c) the matter appears to <sup>F548</sup>the Passengers' Council] to be one which it ought to investigate.

<sup>F551</sup>(2A) If any matter falling within subsection (2)(a) appears to <sup>F548</sup>the Passengers' Council] to relate only to—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Railways Act 1993, Part I. (See end of Document for details)*

- (a) the provision of railway passenger services wholly within the London railway area (within the meaning of section 252A of the Greater London Authority Act 1999), or
- (b) the provision of station services within that area,
- that Council must refer the matter to the London Transport Users' Committee.]
- (3) <sup>F552</sup> .....
- (4) If, on investigating any matter, [<sup>F548</sup>the Passengers' Council] considers it appropriate to do so, [<sup>F548</sup>the Passengers' Council] shall make representations to the person providing the [<sup>F553</sup>secured service (within the meaning of Part 4 of the Railways Act 2005) which is] in question and—
- (a) in the case of a service provided under a franchise agreement, to the franchisee, or
- (b) in the case of a service provided on behalf of the [<sup>F550</sup>Secretary of State] , to the [<sup>F550</sup>Secretary of State] ,
- about the matter, or any matter to which it relates or which appears to [<sup>F548</sup>the Passengers' Council] to be relevant to the subject of the matter investigated.
- (5) Where [<sup>F548</sup>the Passengers' Council] —
- (a) having made representations under subsection (4) above, is of the opinion that it is unable to achieve a satisfactory resolution of the matter by that means, or
- (b) on investigating any matter, has reason to believe that [<sup>F554</sup>a franchisee is contravening, or is likely to contravene, any term of the franchise agreement or that] the holder of a passenger licence or a station licence is contravening, or is likely to contravene, any condition of the licence,
- [<sup>F548</sup>the Passengers' Council] shall [<sup>F555</sup>, unless representations about the matter have been made to the [<sup>F550</sup>Secretary of State] by [<sup>F548</sup>the Passengers' Council], refer it to the [<sup>F550</sup>Secretary of State] with a view to the [<sup>F550</sup>Secretary of State] exercising such of [<sup>F556</sup>his] powers as [<sup>F557</sup>he] considers appropriate in the circumstances of the case].
- <sup>F558</sup>(5A) But if the [<sup>F550</sup>Secretary of State] considers that it would be more appropriate for a matter referred to it by [<sup>F548</sup>the Passengers' Council] to be considered by the Office of Rail Regulation , the [<sup>F550</sup>Secretary of State] shall refer it to [<sup>F559</sup>the Office of Rail Regulation] , with a view to [<sup>F560</sup>it] exercising such of [<sup>F561</sup>its] powers as [<sup>F560</sup>it] considers appropriate in the circumstances of the case.]
- (6) Where [<sup>F548</sup>the Passengers' Council] investigates any matter—
- (a) it may prepare, and send to the Secretary of State <sup>F562</sup>. . . , a report of its findings; and
- (b) it may publish any such report, unless the matter in question is one which was referred to [<sup>F548</sup>the Passengers' Council] by the [<sup>F550</sup>Secretary of State] as mentioned in subsection (2)(b) above.
- (7) Where [<sup>F548</sup>the Passengers' Council] has investigated any matter under this section, it shall neither—
- (a) include in any report or representations a proposal for any steps to be taken by any person in relation to that matter, nor
- (b) refer the matter to the [<sup>F550</sup>Secretary of State] under subsection (5)(a) above by reason only of the failure of any person to take any steps in relation to that matter,

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

unless, balancing the cost of taking those steps against the benefits which [<sup>F548</sup>the Passengers' Council] considers will be enjoyed by any person in consequence of the taking of those steps, [<sup>F548</sup>the Passengers' Council] is of the opinion, on the basis of the information available to it, that the expenditure involved represents good value for money.

[<sup>F563</sup>(7A) It shall also be the duty of [<sup>F548</sup>the Passengers' Council], so far as it appears expedient from time to time to do so—

- (a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services;
- (b) to make representations to, and consult, such persons as they think appropriate about those matters; and
- (c) to co-operate with other bodies representing the interests of users of public passenger transport services.

(7B) The Secretary of State may, after consultation with [<sup>F548</sup>the Passengers' Council], make an order excluding services from the duties imposed by this section; and an order under this subsection—

- (a) may exclude services of a particular class or description, particular services or services provided by a particular person;
- (b) may provide that services are excluded subject to compliance with specified conditions; and
- (c) may not revoke an exclusion except for breach of condition or in accordance with the order which made it.

(7C) The Secretary of State may, after consultation with [<sup>F548</sup>the Passengers' Council], make an order providing that the duties imposed by this section apply to services of a particular class or description, particular services or services provided by a particular person—

- (a) only to such extent as is specified by the order; or
- (b) with such modifications as are so specified.]

(8) <sup>F564</sup>.....

(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; <sup>F565</sup> . . .

#### Textual Amendments

**F547** Words in s. 76 heading substituted (25.2.2010) by [The Passengers' Council \(Non-Railway Functions\) Order 2010 \(S.I. 2010/439\)](#), art. 1, [Sch. para. 6\(3\)\(b\)](#)

**F548** Words in s. 76 substituted (25.2.2010) by [The Passengers' Council \(Non-Railway Functions\) Order 2010 \(S.I. 2010/439\)](#), art. 1, [Sch. para. 6\(3\)\(a\)](#)

**F549** S. 76(1)(a) substituted (29.7.2003) by 2000 c. 38, ss. 228(2), 275(1); S.I. 2003/1694, [art. 2](#)

**F550** Words in s. 76 substituted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 32\(1\)](#); S.I. 2005/1909, [art. 2](#), [Sch.](#)

**F551** S. 76(2A) inserted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 21, 60, [Sch. 6 para. 5](#); S.I. 2005/1909, [art. 2](#), [Sch.](#)

**F552** S. 76(3) repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2](#), [Sch.](#)

**F553** Words in s. 76(4) substituted (1.12.2006 for certain purposes and otherwise prosp.) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 32\(2\)](#); S.I. 2006/2911, [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in [arts. 3-7](#))

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F554** Words in s. 76(5)(b) inserted (29.7.2003) by 2000 c. 38, ss. 228(3)(a), 275(1); S.I. 2003/1694, **art. 2**
- F555** Words in s. 76(5) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 20(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F556** Word in s. 76(5) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(3)(a)**; S.I. 2005/1909, **art. 2**, Sch.
- F557** Word in s. 76(5) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 32(3)(b)**; S.I. 2005/1909, **art. 2**, Sch.
- F558** S. 76(5A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 20(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F559** Words in s. 76(5A) substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 15**; S.I. 2004/827, **art. 4(g)**
- F560** Word in s. 76 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(b) Table}; S.I. 2004/827, **art. 4(g)**
- F561** Word in s. 76 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, {Sch. 2 para. 3(c) Table}; S.I. 2004/827, **art. 4(g)**
- F562** Words in s. 76(6)(a) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 32(4), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F563** S. 76(7A)-(7C) inserted (29.7.2003) by 2000 c. 38, ss. 228(4), 275(1); S.I. 2003/1694, **art. 2**
- F564** S. 76(8) repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 59, 60, Sch. 1 para. 32(5), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F565** Words in s. 76(9) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### Modifications etc. (not altering text)

- C67** S. 76 excluded (30.11.2000) by 2000 c. 38, s. 253, **Sch. 28 para. 10**
- C68** 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**
- C69** S. 76 applied (with modifications) (29.7.2003) by The Merseyrail Electrics Network Order 2003 (S.I. 2003/1696), **art. 3**
- C70** S. 76(5) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **reg. 17**
- C71** 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**

#### [<sup>F566</sup>76A Delegation of duties under section 76(7A)]

- (1) The [<sup>F567</sup>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 [<sup>F567</sup>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—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

- (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 [<sup>F567</sup>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**

**F566** S. 76A inserted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 20, 60; S.I. 2005/1909, art. 2, Sch.

**F567** Words in s. 76A substituted (25.2.2010) by [The Passengers’ Council \(Non-Railway Functions\) Order 2010 \(S.I. 2010/439\)](#), art. 1, Sch. para. 6(5)

**77 General duties of [<sup>F568</sup>Rail Passengers’ Committees].**

<sup>F569</sup> .....

**Textual Amendments**

**F568** Words in the sidenote to s. 77 substituted (1.2.2001) by [2000 c. 38, s. 227, Sch. 22 para. 9\(10\)](#); S.I. 2001/57, art. 3(1), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

**F569** S.77 repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5)); S.I. 2005/1909 {art. 2}, Sch.

**78 Functions under section 56 of the Transport Act 1962.**

<sup>F570</sup>(1) .....

<sup>F570</sup>(2) .....

<sup>F570</sup>(3) .....

<sup>F570</sup>(4) .....

(5) After subsection (6) of that section there shall be inserted—

“(6ZA) If the Secretary of State so directs in the case of any consultative committee, subsections (4) to (6) of this section shall have effect in relation to that 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.”

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Railways Act 1993, Part I. (See end of Document for details)*

F570(6) .....

F570(7) .....

#### Textual Amendments

**F570** S. 78(1)-(4)(6)(7) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

### 79 Annual reports by the [<sup>F571</sup>Rail Passengers' Council and the Rail Passengers' Committees].

F572 .....

#### Textual Amendments

**F571** Words in the sidenote to s. 79 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 10(7)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

**F572** S. 79 repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5)); S.I. 2005/1909, art. 2, Sch.

### *Information*

### 80 Duty of certain persons to furnish information to the [<sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] on request.

- (1) [<sup>F574</sup>Licence holders] shall be under a duty to furnish to the [<sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] in such form and manner as [<sup>F575</sup>he, they or it] may by notice request such information as [<sup>F575</sup>he, they or it] may so request, being information which the [<sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] considers necessary for the purpose of facilitating the performance of any [<sup>F576</sup>functions of the Secretary of State, the Scottish Ministers or (as the case may be) that Office] under this Part [<sup>F577</sup>, the Transport Act 2000 or the Railways Act 2005 or any other function or activity of his, theirs or its in relation to railway services].

[<sup>F578</sup>(1A) Holders of European licences shall be under a duty to furnish to the Office of Rail Regulation in such form and manner as it may by notice request such information as it may so request, being information which the Office of Rail Regulation considers necessary for the purpose of facilitating the performance of any of its functions under any instrument made for the purpose of implementing Council Directive 95/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council.]

- (2) A request under subsection (1) [<sup>F579</sup>or (1A)] above must be complied with within such time (being not less than 28 days from the making of the request) as may be specified in the request.
- (3) [<sup>F580</sup>If a request under subsection (1) above] is not complied with, the [<sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] may serve a notice



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

under subsection (4) below on the person from whom the information was requested under subsection (1) above.

<sup>F581</sup>(3A) If a request under subsection (1A) above is not complied with, the Office of Rail Regulation may serve a notice under subsection (4) below on the person from whom the information was requested under subsection (1A) above.]

(4) A notice under this subsection is a notice signed by the <sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the <sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation] or to any person appointed by the Franchising Director for the purpose, any documents which are specified or described in the notice and are in that person’s custody or under his control; or

(b) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the Franchising Director such information as may be specified or described in the notice. <sup>F582</sup>In its application to a notice served by virtue of subsection (3A) above this subsection has effect with the omission of the references to the Secretary of State and the Scottish Ministers.]

(5) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

<sup>F583</sup>(6) .....

(7) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (4) above to produce is guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(8) If a person makes default in complying with a notice under subsection (4) above, the court may, on the application of the <sup>F573</sup>Secretary of State, the Scottish Ministers or the Office of Rail Regulation]<sup>F584</sup>in the case of a request under subsection (1) above, or the Office of Rail Regulation in the case of a request under subsection (1A) above,], make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

(10) In this section “the court” means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

#### Textual Amendments

**F573** Words in s. 80 substituted (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 1, 60, [Sch. 1 para. 33\(1\)](#); [S.I. 2005/1909](#), [art. 2](#), [Sch](#)

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F574** Words in s. 80(1) substituted (1.2.2001) for s. 80(1)(a)-(c) by 2000 c. 38, s. 252, **Sch. 27 para. 38(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F575** Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 33(2)(a)**; S.I. 2005/1909, art. 2, Sch
- F576** Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 33(2)(b)**; S.I. 2005/1909, art. 2, Sch
- F577** Words in s. 80(1) substituted (24.7.2005) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 12**; S.I. 2005/1909 {art. 2}, Sch.
- F578** S. 80(1A) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(a)**
- F579** Words in s. 80(2) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(b)**
- F580** Words in s. 80(3) substituted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(c)**
- F581** S. 80(3A) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(d)**
- F582** Words in s. 80(4) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(e)**
- F583** S. 80(6) repealed (1.2.2001) by 2000 c. 38, ss. 252, 274, Sch. 27 para. 38(b), **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F584** Words in s. 80(8) inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), art. 3, **Sch. 1 para. 3(7)(f)**

**Modifications etc. (not altering text)**

- C72** S. 80 applied (with modifications) (28.11.2005) by The Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), **reg. 31**

*Interpretation*

**81 Meaning of “railway”.**

- (1) Subject to subsection (2) below, the definition of “railway” in section 67(1) of the <sup>M27</sup>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
  - (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 <sup>M28</sup>Transport and Works Act 1992.

**Marginal Citations**

- M27** 1992 c. 42.

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

M28 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—

- (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,

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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 <sup>M29</sup>Fair Trading Act 1973;
  - “the 1980 Act” means the <sup>M30</sup>Competition Act 1980;
  - “access agreement” means—
    - (a) an access contract [<sup>F585</sup>which satisfies one of the conditions in paragraphs (a) to (c) of section 18(1)] above; or
    - (b) an installation access contract [<sup>F586</sup>which satisfies one of the conditions in paragraphs (a) to (c) of section 19(3)] above;
  - “access contract” has the meaning given by section 17(6) above;
  - “access option” shall be construed in accordance with section 17(6) above;
  - “additional railway asset” has the meaning given by section 29(8) above;
  - “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;
  - [<sup>F587</sup>“appropriate authority” has the meaning given by section 55(10) above;]
  - [<sup>F588</sup>“appropriate designating authority” has the meaning given by section 23(3) above;
  - “appropriate franchising authority” has the meaning given by section 23(3) above;
  - “appropriate national authority” has the meaning given by section 59(6)(za) above;]
  - [<sup>F589</sup>“bus substitution service” means a service for the carriage of passengers by road that is provided as an alternative to the whole or a part of a railway

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

passenger service that has been discontinued, reduced or modified (whether temporarily or permanently);]

<sup>F590</sup>

[<sup>F591</sup>“closure” has the same meaning as in Part 4 of the Railways Act 2005 (see section 45 of that Act);

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

<sup>F592</sup>

[<sup>F593</sup>“cross-border service” means a railway passenger service starting either in England and Wales or in Scotland and ending, or otherwise making at least one scheduled call, in the other;]

<sup>F590</sup>

<sup>F594</sup>

[<sup>F595</sup>“European licence” has the meaning given by section 6(2) above;]

“exempt facility” shall be construed in accordance with section 20(13) above;

“experimental passenger service” has the meaning given by section 48(6) above;

“facility exemption” has the meaning given by section 20(13) above;

“facility owner” has the meaning given by section 17(6) above;

“final order” and “provisional order” have the meaning given by section 55(10) above;

“franchise agreement” has the meaning given by section 23(3) above;

“franchise assets” has the meaning given by section 27(11) above;

“franchise exemption” has the meaning given by section 24(13) above;

“franchise operator” has the meaning given by section 23(3) above;

“franchise period” has the meaning given by section 23(3) above;

“franchise term” has the meaning given by section 23(3) above;

“franchised services” has the meaning given by section 23(3) above;

“franchisee” has the meaning given by section 23(3) above;

“goods” includes mail, parcels, animals, plants and any other creature, substance or thing capable of being transported, but does not include passengers;

“information” includes accounts, estimates, records and returns;

“installation access contract” has the meaning given by section 19(9) above;

“installation owner” has the meaning given by section 19(9) above;

[<sup>F596</sup>“international licence” has the meaning given by section 6(2) above;]

“licence” means a licence under section 8 above and “licence holder” shall be construed accordingly;

“licence exemption” has the meaning given by section 7(13) above;

“light maintenance” (without more) means—

- (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; or
- (b) the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service;

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

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;

<sup>F592</sup> .....

[<sup>F597</sup>“the OFT” means the Office of Fair Trading;]

“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;

“protected railway company” has the meaning given by section 59(6)(a) above;

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*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part 1. (See end of Document for details)*

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- “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;
- [<sup>F598</sup>“scheduled call”, in relation to a service or journey, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends);
- “Scotland-only service” means a railway passenger service which starts and ends in Scotland and is not a cross-border service;
- “Scottish franchise agreement” means a franchise agreement the franchised services under which—
- (a) consist of or include Scotland-only services; and
  - (b) so far as they include other services, include only cross-border services designated by the Scottish Ministers;]

“station” means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes;

“station licence” means a licence authorising a person to be the operator of a station;

“station services” has the meaning given by section 82 above;

[<sup>F599</sup>“through ticket” means—

    - (a) a ticket which is valid for a journey which involves use of the services of more than one passenger service operator; or
    - (b) a combination of two or more tickets issued at the same time which are between them valid for such a journey;

and “through ticketing” shall be construed accordingly;]

“track” means any land or other property comprising the permanent way of any railway, taken together with the ballast, sleepers and metals laid thereon, whether or not the land or other property is also used for other purposes; and any reference to track includes a reference to—

*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- (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.

[<sup>F600</sup>(1A) In sections 17 to 22C above (and Schedule 4 to this Act) references to a railway facility (including references to any track, station or light maintenance depot) or a network include references to a railway facility (or any track, station or light maintenance depot) or a network which is proposed to be constructed or is in the course of construction.]

- (2) For the purposes of this Part, a person shall be regarded as providing or operating services for the carriage of goods by railway notwithstanding that he provides or operates the services solely for the carriage of his own goods or otherwise for his own benefit.

<sup>F601</sup> .....

### Textual Amendments

- F585** S. 83(1): words in para. (a) of the definition of “access agreement” substituted (1.2.2001) by 2000 c. 38, s. 230(6)(a); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F586** S. 83(1): words in para. (b) of the definition of “access agreement” substituted (1.2.2001) by 2000 c. 38, s. 230(6)(b); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F587** Definition of “appropriate authority” in s. 83(1) substituted for definition of “appropriate officer” (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 39(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F588** S. 83(1): definitions inserted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(a)**; S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F589** S. 83(1): definition of “bus substitution service” substituted (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(b)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F590** Definitions of “the Central Committee” and “consultative committee” in s. 83(1) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F591** S. 83(1): definition of “closure” and “closure requirement” substituted for “closure” and “closure conditions” (1.12.2006) by Railways Act 2005 (c. 14), ss. 54, 60, **Sch. 11 para. 13(c)**; S.I. 2006/2911 {art. 2}, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F592** S.83(1): definition of “closure consent” and “notice period” repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, art. 2, Sch. (subject to the transitional and saving provisions in arts. 3-7)
- F593** S.83(1): definition of “cross-border service” inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 37(2)**; S.I. 2005/1444, art. 2(1), Sch. 1
- F594** Definition of “the Director” in s. 83(1) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(13)(a), **Sch. 26**; S.I. 2003/766, {art. 2}, Sch. (with transitional and transitory provision in art. 3)



*Status: Point in time view as at 25/02/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Part I. (See end of Document for details)*

- F595** S. 83(1): definition of "European license" inserted (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (2005/3050), reg. 3, {Sch. 1 para. 3(8)(a)}
- F596** Definition of "international licence" inserted (27.6.1998) by S.I. 1998/1340, reg. 21(9)
- F597** Definition of "the OFT" in s. 83(1) inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(13)(b)**; S.I. 2003/766, {art. 2}, Sch.
- F598** S. 83(1): definitions of "scheduled call", "Scotland-only service", and "Scottish franchise agreement" inserted (8.6.2005) by Railways Act 2005 (c. 14), ss. 1, 60, **Sch. 1 para. 37(3)**; S.I. 2005/1444, **art. 2(1)**, Sch. 1
- F599** Definition of "through ticket" in s. 83(1) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 39(4)**; S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F600** S. 83(1A) inserted (1.2.2001) by 2000 c. 38, s. 233(3); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F601** S. 83(3) repealed (1.12.2006) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, **art. 2**, Sch. (subject to the transitional and saving provisions in arts. 3-7)

#### Commencement Information

- I8** S. 83 wholly in force at 1.4.1994; s. 83 not in force at Royal Assent see s. 154(2); s. 83(1) in force for specified purposes and s. 83(2) wholly in force at 24.12.1993 by S.I. 1993/3237, **art. 2(1)**; s. 83(1) in force for further specified purposes at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; S. 83(1) in force for specified purposes at 22.2.1994 by S.I. 1994/447, **art. 2**; S. 83 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

#### Marginal Citations

- M29** 1973 c. 41.  
**M30** 1980 c. 21.

**Status:**

Point in time view as at 25/02/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Railways Act 1993, Part I.