

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, Cross Heading: Reference to Competition Commission. (See end of Document for details)*

## SCHEDULES

### <sup>F1</sup>SCHEDULE 4A

#### REVIEW OF ACCESS CHARGES BY [<sup>F1</sup>THE OFFICE OF RAIL REGULATION]

##### Textual Amendments

- F1** Sch. 4A inserted (30.11.2000) by 2000 c. 38, ss. 231(2), 275(1), Sch. 24, Sch. 28 paras. 11, 17
- F1** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)

##### *Reference to Competition Commission*

- 9 (1) A reference to the Competition Commission under this paragraph shall be so framed as to require them to investigate and report on the questions specified in subparagraph (2) below.
- (2) Those questions are—
- (a) whether the matters considered on the access charges review which are specified in the reference operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the making of relevant changes.
- (3) [<sup>F1</sup>the Office of Rail Regulation] may, at any time, by notice given to the Competition Commission vary a reference under this paragraph—
- (a) by adding to the matters specified in the reference; or
- (b) by excluding from the reference some or all of the matters so specified.
- (4) On receipt of such a notice the Competition Commission shall give effect to the variation.
- (5) [<sup>F1</sup>the Office of Rail Regulation] may specify in a reference under this paragraph, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any relevant changes by which, in his opinion, those effects could be remedied or prevented.
- (6) As soon as practicable after making a reference under this paragraph, or a variation of such a reference, the Regulator—
- (a) shall serve a copy of the reference or variation on the persons on whom a copy of the review notice was served; and

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- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- [<sup>F2</sup>(6A) A reference to the Competition Commission under this paragraph must be accompanied by—
- (a) any information which in the case in question was provided to the Office of Rail Regulation by the Secretary of State or the Scottish Ministers under paragraph 1D;
  - (b) any information to which he or they referred in discharging the obligation imposed by that paragraph;
  - (c) any suggestion which in that case was made under paragraph 1E; and
  - (d) any revision of anything falling within paragraph (a) to (c) which has been notified to that Office under paragraph 1F or 1G.]
- (7) For the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this paragraph, [<sup>F1</sup>the Office of Rail Regulation] shall give to the Competition Commission [<sup>F3</sup>(in addition to the information and revisions mentioned in sub-paragraph (6A))] any information in [<sup>F4</sup>its] possession which relates to matters falling within the scope of the investigation and—
- (a) is requested by the Competition Commission for that purpose; or
  - (b) is information which, in [<sup>F4</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>F4</sup>its] power to give, in relation to any such matters.
- (8) For the purpose of carrying out such an investigation, the Competition Commission shall take account of any information given to them for that purpose under [<sup>F5</sup>sub-paragraphs (6A) and] (7) above.
- (9) In determining for the purposes of this paragraph whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on [<sup>F1</sup>the Office of Rail Regulation] by section 4 of this Act [<sup>F6</sup>and to the information, suggestions and revisions mentioned in sub-paragraph (6A)]

#### Textual Amendments

- F1** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F2** Sch. 4A para. 9(6A) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 7\(1\)](#); [S.I. 2007/62](#), [art. 2](#)
- F3** Words in Sch. 4A para. 9(7) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 7\(2\)](#); [S.I. 2007/62](#), [art. 2](#)
- F4** Word in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(c\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F5** Words in Sch. 4A para. 9(8) substituted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 7\(3\)](#); [S.I. 2007/62](#), [art. 2](#)
- F6** Words in Sch. 4A para. 9(9) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 7\(4\)](#); [S.I. 2007/62](#), [art. 2](#)

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*References under paragraph 9: time limits*

10 F7 .....

**Textual Amendments**

**F7** Sch. 4A para. 10 repealed (29.1.2007) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2007/62, art. 2

*References under paragraph 9: application of Enterprise Act 2002*

[<sup>F8</sup>10A(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—

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

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

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—

- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
- (c) the words “by this Part” were omitted.

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F9</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 sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

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

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#### Textual Amendments

- F8** Sch. 4A paras. 10, 10A substituted (20.6.2003) for Sch. 4A para. 10 by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 8, 12)
- F9** Words in Sch. 4A para. 10A(4) substituted (29.12.2003) by **Communications Act 2003** (c. 21), ss. 389, 411(2)(3), **Sch. 16 para. 4(4)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (subject to art. 3(3))

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