



Transport Act 2000

2000 CHAPTER 38

PART IV

RAILWAYS

CHAPTER II

OTHER PROVISIONS ABOUT RAILWAYS

Directions to provide etc. railway facilities

223 Regulator's power to require provision etc. of railway facilities

In the Railways Act 1993, after section 16 insert—

“Directions to provide, improve or develop railway facilities

16A Provision, improvement and development of railway facilities

- (1) The Regulator may, on an application—
 - (a) made by the Authority, or
 - (b) made by any other person with the consent of the Authority,give to the operator of a network, station or light maintenance depot a direction to provide a new railway facility if the Regulator considers him to be an appropriate person to provide the new railway facility.
- (2) The Regulator may, on an application—
 - (a) made by the Authority, or
 - (b) made by any other person with the consent of the Authority,give to a person who has an estate or interest in, or right over, an existing railway facility a direction to improve or develop the railway facility if the Regulator

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considers him to be an appropriate person to improve or develop the railway facility.

- (3) The Authority's consent to the making by any other person of an application under subsection (1) or (2) above may be given subject to compliance with conditions (and may be withdrawn if any condition is not complied with before the Regulator decides whether to give the direction).

16B Exemption of railway facilities from section 16A

- (1) The Secretary of State may, after consultation with the Regulator, by order grant exemption from subsection (1) or (2) of section 16A above (or from both of those subsections) in respect of such railway facilities as may be specified in the order, but subject to compliance with such conditions (if any) as may be so specified.
- (2) An exemption under subsection (1) above may be granted in respect of—
- (a) railway facilities of a particular class or description, or
 - (b) a particular railway facility,
- or in respect of part only of railway facilities of a particular class or description or a particular railway facility.
- (3) An exemption under subsection (1) above may be granted generally, to persons of a particular class or description or to a particular person.
- (4) If a person fails to comply with any condition subject to compliance with which an exemption was granted, the Secretary of State may give a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.
- (5) Subject to subsection (4) above, an exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in, or determined by or under, the exemption.
- (6) Exemptions may make different provision, or be granted subject to compliance with different conditions, for different cases.

16C Making of applications for directions

- (1) An application for a direction under section 16A above must be made to the Regulator 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 the Regulator notice in writing of the variation; but if the applicant is a person other than the Authority such a notice may only be given with the consent of the Authority.

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- (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.

16D Procedure for considering applications

- (1) When the Regulator has received the application or notice of a variation, he must—
- (a) send a copy to the person specified in the application, the Authority (if it is not the applicant) and any other persons who the Regulator 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, the Regulator must decide that issue in advance of considering any other matters which may be relevant in deciding whether to give the direction.
- (3) If that person makes such representations but the Regulator decides that he is an appropriate person to do what the direction would require him to do, the Regulator 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) The Regulator must—
- (a) send the applicant a copy of any representations received by him 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, the Regulator may substitute as the applicant any other person if—
- (a) the applicant,
 - (b) the other person, and
 - (c) the Authority (if it is neither the applicant nor the other person),
- consent to the substitution.
- (6) The applicant may, by giving notice in writing to the Regulator, withdraw or suspend the application at any time before the Regulator decides whether to give the direction.
- (7) The Regulator may direct—
- (a) the person specified in the application,
 - (b) the applicant, or
 - (c) any other person (apart from the Authority),
- to provide him with any information required by him in order to decide whether to give the direction.

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- (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 the Regulator, 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.

16E Decisions on applications: adequate reward

- (1) The Regulator 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 the Regulator shall take into account (in particular)—
 - (a) any receipts obtained or likely to be obtained by the person (from the Authority, passengers, operators of railway services or any other persons) in connection with, or as a result of, the provision, improvement or development of the railway facility; and
 - (b) any other benefit obtained or likely to be obtained by him in consequence of its provision, improvement or development.
- (3) Representations made by the applicant for a direction—
 - (a) under section 16C(4) above, or
 - (b) in response to an invitation under section 16D(4) above,
 may, in particular, include representations as to matters which he considers the Regulator 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.

16F Other provisions about decisions

- (1) If the Regulator does not consider it right to give a direction under section 16A above in the terms applied for (or to reject the application), he may give a direction under that section in modified terms.
- (2) The Regulator may include supplementary provisions in any direction under section 16A above, including (in particular)—
 - (a) provision adding detail (for instance, as to the time by which, or standard to which, the person to whom it is given is to do anything which it requires him to do); and
 - (b) provision imposing requirements on the applicant (for instance, to make arrangements for rewarding the person to whom the direction is given or to make payments to him).
- (3) Before giving a direction under section 16A above which is in modified terms or includes supplementary provisions, the Regulator shall—

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- (a) notify his intention to give a direction to the applicant, the Authority (if it is not the applicant) and any other persons who the Regulator considers ought to be notified; and
- (b) invite them to make written representations within a period specified in the invitation;

and if the applicant makes representations that the direction should not be given, the Regulator shall not give it.

- (4) Whatever the Regulator's decision on an application he shall notify the decision to—
 - (a) the person specified in the application;
 - (b) the applicant; and
 - (c) any other persons who he considers ought to be notified.
- (5) The Regulator 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 he considers appropriate in respect of costs incurred in connection with the application.

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 the Regulator—
 - (a) on the application of the person to whom the direction was given, the applicant for the direction or the Authority (if it was not the applicant); and
 - (b) after consultation with the other persons with power to apply for a revocation or variation.
- (4) Such a direction may only be varied on an application by the applicant for the direction or the Authority if the Regulator 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) The Regulator may grant an application for the variation or revocation of a direction under section 16A above by the applicant for the direction or the Authority on condition that he or it secures that any such compensation as the Regulator may specify is paid to the person to whom the direction was given

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in respect of any liabilities incurred, or other things done, by him in complying with the direction.

16H Code of practice

- (1) The Regulator 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 he considers appropriate.
- (2) The Regulator shall have regard to the code of practice in the exercise of his 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.

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 the Regulator 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.”