



# High Speed Rail (West Midlands - Crewe) Act 2021

## 2021 CHAPTER 2

### *Railway matters*

#### **34 Objectives of Office of Rail and Road**

- (1) The list of objectives in section 4(1) of the Railways Act 1993 (objectives of Office of Rail and Road and Secretary of State) is to be treated, in relation to the Office of Rail and Road only, as including the objective of facilitating the construction of Phase 2a of High Speed 2 and the railway works referred to in section 1(1)(b).
- (2) The Office of Rail and Road must consult the Secretary of State about the discharge of its duty under section 4(1) of the Railways Act 1993 so far as relating to that objective.
- (3) This section ceases to have effect on such day as the Secretary of State may specify by regulations.
- (4) Regulations under subsection (3) must be made by statutory instrument; and a statutory instrument containing such regulations must be laid before Parliament after being made.

#### **35 Disapplication of licensing requirement in pre-operational phase**

- (1) Section 6(1) of the Railways Act 1993 (which prohibits any person from acting as the operator of a railway asset unless authorised by a licence under section 8 of that Act) does not apply in relation to—
  - (a) a railway asset, other than a train, which is constructed in exercise of the powers conferred under this Act but which is not yet ready for commercial use, or
  - (b) a train being used on a network where the network is a railway asset falling within paragraph (a).

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- (2) For the purposes of subsection (1), a railway asset is to be taken to be ready for commercial use only if the Secretary of State has laid before Parliament notice of his or her determination that it is ready for such use.
- (3) The exemption granted by subsection (1) is an appropriate licence exemption for the purposes of section 122 of the Railways Act 1993 (which provides a defence to actions in nuisance etc to persons who hold a licence under section 8 of that Act or have an appropriate licence exemption).
- (4) In this section, “network”, “railway asset” and “train” have the same meaning as in Part 1 of the Railways Act 1993.

### **36 Disapplication of statutory closure provisions**

- (1) The Secretary of State may at any time before Phase 2a of High Speed 2 is ready for commercial use direct that the statutory closure provisions (so far as otherwise relevant) are not to apply to any discontinuance which the Secretary of State considers necessary or expedient because of—
  - (a) the carrying out or proposed carrying out of works authorised by this Act, or
  - (b) the proposed operation of Phase 2a of High Speed 2.
- (2) In subsection (1), “statutory closure provisions” means the following provisions of the Railways Act 2005—
  - sections 22 to 25 (discontinuance of railway passenger services),
  - sections 26 to 28 (discontinuance of operation of passenger networks),
  - sections 29 to 31 (discontinuance of use or operation of stations), and
  - section 37 (discontinuance of experimental passenger services).
- (3) For the purposes of this section, Phase 2a of High Speed 2 is to be taken to be ready for commercial use only if the Secretary of State has laid before Parliament notice of his or her determination that it is ready for such use.

### **37 Other railway legislation etc**

Schedule 28 contains provision about the application of railway legislation.

### **38 Co-operation**

- (1) Where the nominated undertaker considers that a matter affects—
  - (a) the construction, maintenance or operation of Phase 2a of High Speed 2, and
  - (b) the construction, maintenance or operation of a railway asset, or other railway facility, which is not a Phase 2a asset or facility,
 the nominated undertaker may by notice require a controller of the asset or facility to enter into an agreement with the nominated undertaker about how the matter is to be dealt with.
- (2) Where a controller of a railway asset, or other railway facility, that is not a Phase 2a asset or facility considers that a matter affects—
  - (a) the construction, maintenance or operation of the asset or facility, and
  - (b) the construction, maintenance or operation of Phase 2a of High Speed 2,

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the controller may by notice require the nominated undertaker to enter into an agreement with the controller about how the matter is to be dealt with.

- (3) The terms of an agreement under subsection (1) or (2) are to be such as the nominated undertaker and the controller may agree or, in default of agreement, as may be determined by arbitration.
- (4) Schedule 29 contains provision about arbitration under subsection (3) (which is in addition to the general provision about arbitration in section 56).
- (5) For the purposes of this section, a railway asset or other railway facility is a “Phase 2a asset or facility” if—
  - (a) in the case of a railway asset consisting of any train being used on a network, the network is comprised in Phase 2a of High Speed 2, and
  - (b) in any other case, if the railway asset or other railway facility is used, or intended for use, for Phase 2a purposes.
- (6) Subsections (1) and (2) do not apply in relation to—
  - (a) a matter which pursuant to any enactment must or may be dealt with by the Office of Rail and Road, or
  - (b) a matter relating to an agreement which pursuant to any provision of that or any other agreement must or may be dealt with by the Office of Rail and Road.
- (7) In this section—

“controller”, in relation to a railway asset or facility, means—

  - (a) the person having the management of the asset or facility for the time being, or
  - (b) a person who owns, or has rights in relation to, the asset or facility;

“network”, “railway asset” and “train” have the same meaning as in Part 1 of the Railways Act 1993;

“railway facility” includes a maintenance depot, electrical supply facility or stabling facility.

### **39 Transfer of functions relating to works**

- (1) If for the purposes of this Act the Secretary of State acquires any land from a railway operator on which works authorised by any enactment are situated, the Secretary of State may by order provide for the transfer to the Secretary of State or the nominated undertaker of any power or duty which—
  - (a) was previously exercisable by the railway operator, and
  - (b) was conferred under an enactment.
- (2) The Secretary of State may by order provide for the further transfer, to the Secretary of State or the nominated undertaker, of a power or duty transferred under subsection (1) or this subsection.
- (3) If a railway operator acquires any land from the Secretary of State on which works authorised by this Act are situated, the Secretary of State may, with the consent of the railway operator, by order provide for the transfer to the railway operator of any duty under this Act relating to the works.

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- (4) An order under this section may contain such supplementary, incidental, consequential or transitional provision as the Secretary of State considers necessary or expedient in connection with the order.
- (5) In subsections (1) and (3), references to a railway operator are to a person who has the management for the time being of any network, station or light maintenance depot.
- (6) In this section, “light maintenance depot”, “network” and “station” have the same meaning as in Part 1 of the Railways Act 1993.

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