



Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Access agreements

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

- (1) [^{F1}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 ^{F2} . . . ; ^{F3} . . . [^{F4} 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; ^{F5} . . .
 - (d) ^{F5}
- (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

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light maintenance services for or in connection with the operation of trains by the beneficiary, whether the facility owner is to provide those services himself or to secure their provision by another;

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

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

(3) In subsection (2) above—

- (a) paragraph (a) does not extend to obtaining permission to use track for the purpose of providing network services on that track;
- (b) paragraph (b) does not extend to obtaining permission to use a station for the purpose of operating that station;
- (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 [^{F6}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 [^{F6}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 [^{F7}Authority].

(4) Any reference in this section to a person operating a network, station or light maintenance depot "on behalf of the [^{F8}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 [^{F9}Secretary of State or the Scottish Ministers] for the purpose of performing a duty imposed upon [^{F10}him or them] , or exercising a power conferred upon [^{F10}him or them] , under or by virtue of this Part

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[^{F11}or Part 4 of the Railways Act 2005 (network modifications etc.)] to secure the operation of that network, station or light maintenance depot.

(5) Nothing in this section authorises [^{F1}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;

[^{F12}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;

^{F13}

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^{F13}

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

[^{F14}(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.]

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- (8) Any reference in this section to obtaining permission to use a railway facility includes—
- (a) a reference to obtaining, in connection with any such permission, power to obtain the provision of ancillary services relating to that railway facility, 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.
- ^{F15}(11)

Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** Word in s. 17(1)(b) deleted (27.6.1998) by virtue of [S.I. 1998/1340](#), **reg. 21(5)**
- F4** 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)**
- F5** 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)**
- F6** 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)
- F7** 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)**)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)

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- F12** S. 17(6): words in definition of “facility owner” 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**)
- F13** 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)**)
- F14** 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**)
- F15** 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)

- C1** S. 17 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**
- C2** 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—
- he does so pursuant to directions under section 17 above; ^{F16} . . .
 - ^{F17}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; ^{F18}or
 - the access contract is of a class or description specified in a general approval given by ^{F17}the Office of Rail Regulation ;]
- and any access contract to which this section applies ^{F19}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)—
- 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;
 - 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;
 - 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;
 - 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
 - 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—
- 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; ^{F20} . . .

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(b) ^{F20}

(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 [^{F21}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 [^{F21}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 [^{F21}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 [^{F17}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, [^{F17}the Office of Rail Regulation] approves its terms, [^{F22}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

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- (b) releasing him from his duty to do so if the other party fails to enter into the proposed access contract within such period as may be specified for the purpose in the directions;
- and [F17the Office of Rail Regulation] shall send a copy of the directions to the other party.
- [F23(6A) The grounds on which [F17the Office of Rail Regulation] may reject, or approve subject to modifications, a proposed access contract submitted to [F22it] pursuant to subsection (5) above include that [F22it] 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 [F21the Secretary of State] pursuant to [F24his] duty under section 30 below.]
- (7) If, on the submission of a proposed access contract pursuant to subsection (5) above, [F17the Office of Rail Regulation] does not consider it appropriate to approve its terms without modification (or to reject it), [F22it] 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 [F17the 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 [F17the Office of Rail Regulation] shall send a copy of the directions to the other party.
- [F25(7A) Where [F17the Office of Rail Regulation] gives or revokes a general approval under subsection (1)(c) above, [F22it] 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”,^{F26} . . . 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),
 - [F27(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.

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(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.

^{F28}(11)

Textual Amendments

- F16** 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**)
- F17** 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)**
- F18** 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**)
- F19** 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**)
- F20** 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)**
- F21** 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)
- F22** 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)**
- F23** 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**)
- F24** 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)
- F25** 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**)
- F26** 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)**
- F27** 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**)
- F28** 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)

- C3** S. 18 excluded (2.4.1994) by S.I. 1994/606, **art. 5(1)(2)(3)(a)(b)(4)(5)(6)(a)(b)**
- C4** 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 [^{F29}the Secretary of State], of installations comprised in a network.

- (1) [^{F30}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 [^{F29}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

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of some other person is required by the installation owner before he may enter into the installation access contract.

(3) An installation owner shall not enter into an installation access contract to which this subsection applies unless—

- (a) he does so pursuant to directions under subsection (1) above; ^{F31} . . .
- (b) [^{F30}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; [^{F32}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 [^{F33}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 [^{F29}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.

[^{F34}(5A) Where [^{F30}the Office of Rail Regulation] gives or revokes a general approval under subsection (3)(c) above, [^{F35}it] shall publish the approval or revocation in such manner as [^{F35}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 [^{F30}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 [^{F29}the Secretary of State]” is a reference to his operating the network in pursuance of any agreement or other arrangements made by [^{F29}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 [^{F36}or Part 4 of the Railways Act 2005 (network modifications etc.)] to secure the operation of that network.

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(8) Any reference in this section to obtaining permission to use a network installation includes—

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

and in paragraph (b) above “installation land” means the land which constitutes the network installation in question.

(9) In this Part—

“installation access contract” means a contract under which—

- (a) a person (whether or not the applicant), and
- (b) so far as may be appropriate, any associate of that person,

obtains permission from an installation owner to use the installation owner’s network installation;

“installation owner” means any person—

- (a) who has an estate or interest in, or right over, a network installation; and
- (b) whose permission to use that network installation is needed by another before that other may use it;

[^{F37}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 [^{F38}and to one which is proposed to be constructed or is in the course of construction.].

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- (12) Schedule 4 to this Act shall have effect with respect to applications for directions under subsection (1) above as it has effect with respect to applications for directions under section 17 above, but with the following modifications, that is to say—
- (a) for any reference to an access contract, there shall be substituted a reference to an installation access contract;
 - (b) any reference to an application for directions under section 17 above shall be taken as a reference to an application for directions under subsection (1) above;
 - (c) for any reference to the facility owner, there shall be substituted a reference to the installation owner mentioned in subsection (1) above;
 - (d) for any reference to section 17 above (but not to any specific provision of that section) there shall be substituted a reference to this section.

^{F39}(13)

Textual Amendments

- F29** 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)
- F30** 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)**
- F31** 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)
- F32** 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)
- F33** 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)
- F34** 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)
- F35** 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)**
- F36** 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)
- F37** 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)
- F38** 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)
- F39** 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)

- C5** S. 19(1) restricted (18.12.1996) by [1996 c. 61](#), s. 17(4)

[^{F40}19A Review of access charges by Regulator.

Schedule 4A to this Act (which contains provision about the review of access charges by [^{F41}the Office of Rail Regulation]) shall have effect.]

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Textual Amendments

F40 S. 19A inserted (30.11.2000) by 2000 c. 38, s. 231(1), 275(1) (with Sch. 28 paras. 11, 17)

F41 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)

20 Exemption of railway facilities from sections 17 ^{F42}, 18 and 22A].

- (1) The Secretary of State may, after consultation with ^{F43}the Office of Rail Regulation], by order grant exemption from sections 17 and 18 above ^{F44}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;

^{F45} . . .
- (3) If a facility owner makes an application under this subsection to ^{F43}the Office of Rail Regulation] for the grant of an exemption from sections 17 and 18 above ^{F44}and section 22A below] in respect of the whole or any part of his railway facility, ^{F43}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 ^{F46}it] may specify in the exemption; and
 - (b) if and to the extent that ^{F46}it] grants ^{F47}the exemption], may do so subject to compliance with such conditions (if any) as ^{F46}it] may so specify.

and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before granting a facility exemption under subsection (3) above, ^{F43}the Office of Rail Regulation] shall give notice—
 - (a) stating that ^{F46}it] proposes to grant the facility exemption,
 - (b) stating the reasons why ^{F46}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 ^{F43}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) ^{F43}the Office of Rail Regulation], in the case of a facility exemption under subsection (3) above,

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

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

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

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

- (a) is a person who failed to comply with the broken condition or with respect to whom the broken condition is not complied with; or
- (b) is the facility owner in the case of the railway facility in relation to which the broken condition is not complied with.

(8) Subject to subsection (6) above, a facility exemption, unless previously revoked in accordance with any term contained in the facility exemption, shall continue in force for such period as may be specified in, or determined by or under, the facility exemption.

^{F48}(9)

(10) Any application for a facility exemption under subsection (3) above must be made in writing; and where any such application is made, [^{F43}the Office of Rail Regulation] may require the applicant to furnish [^{F46}it] with such information as [^{F43}the Office of Rail Regulation] may consider necessary to enable [^{F46}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.

^{F49}(12)

(13) In this Part “facility exemption” means an exemption from sections 17 and 18 above [^{F44}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

- F42** 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)
- F43** 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)**
- F44** 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)
- F45** 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)
- F46** 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)**
- F47** 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)**
- F48** 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)

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F49 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)

C6 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)**

21 Model clauses for access contracts.

- (1) [^{F50}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) [^{F50}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, [^{F50}the Office of Rail Regulation] may consult such persons as [^{F51}it] thinks fit.
- (5) [^{F50}the Office of Rail Regulation] shall encourage, and may require, the use of any [^{F52}of its] model clauses ^{F53}. . . in access contracts wherever [^{F51}it] considers it appropriate.

Textual Amendments

- F50** 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)**
- F51** 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)**
- F52** 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)**
- F53** 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 [^{F54}the Office of Rail Regulation][^{F55}or is made pursuant to directions under section 22A or 22C below or Schedule 4A to this Act.].
- (2) [^{F54}the Office of Rail Regulation] may, for the purposes of subsection (1) above, give the parties to any particular access agreement [^{F56}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) [^{F54}the Office of Rail Regulation] may, for the purposes of subsection (1) above, give [^{F56}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.

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(4) Where [^{F54}the Office of Rail Regulation] gives or revokes a general approval under subsection (3) above, [^{F57}it] shall publish the approval or revocation (as the case may be) in such manner as [^{F57}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.

^{F58}(6)

[^{F59}(6A) Neither [^{F60}the Office of Fair Trading] nor [^{F54}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.

^{F59}(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

- F54** 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)
- F55** 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)
- F56** 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)
- F57** 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)
- F58** 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)
- F59** 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.
- F60** 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)

[^{F61}22A Directions to require amendment permitting more extensive use.

(1) [^{F62}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 [^{F62}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,

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and if the applicant is permitted to use only part of the railway facility or network installation, includes use for the purpose for which he is permitted to use it, or (in the case of a railway facility) for any other permitted purpose, of any other part of the railway facility or network installation.

- (3) In subsection (2) above “permitted purpose”, in relation to a railway facility, means a purpose for which directions may be given in relation to the railway facility under section 17 above.
- (4) No directions shall be given under this section in relation to a railway facility if and to the extent that—
 - (a) the railway facility is, by virtue of section 20 above, an exempt facility; or
 - (b) performance of the access agreement as amended would necessarily involve the facility owner in being in breach of another access agreement^{F63}
- (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 [^{F62}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) [^{F64}“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

- F61** 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**)
- F62** 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)**
- F63** 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)**
- F64** 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)**

^{F65}**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”;

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- (b) in paragraph 2(1), for “which the applicant proposes should be contained in the required access contract” and “to be contained in the required access contract” there shall be substituted “of the proposed amendments”;
- (c) in paragraph 5(2), for “to the facility owner requiring him to enter into an access contract” there shall be substituted “under section 22A of this Act”;
- (d) for paragraph 5(2)(a)(i) and (ii) there shall be substituted “the amendments to be made and the date by which they are to be made; and”;
- (e) in paragraph 6(2), for the words from “facility owner’s” to the end of paragraph (c) there shall be substituted “making of the amendments, the performance of the access agreement as amended or failing to take any step to protect the interests of the interested person in connection with the application for directions or the making of the amendments,”; and
- (f) in paragraph 6(3), for “any access contract which is entered into” there shall be substituted “the amendments made”;

and the definition of “the required access contract”, and the words following that definition, in paragraph 1 and paragraph 5(4) shall be omitted.

- (3) In its application by virtue of this section in relation to an application relating to an installation access contract Schedule 4 to this Act has effect with the following further modifications—
 - (a) references to the railway facility shall have effect as references to the network installation;
 - (b) references to the facility owner shall have effect as references to the installation owner; and
 - (c) in the definition of “interested person” in paragraph 1, for “17” there shall be substituted “19”.
- (4) The Regulator may determine that, in their application by virtue of this section in relation to any particular application, paragraphs 3 and 4 of Schedule 4 to this Act shall have effect as if for any of the numbers of days specified in them there were substituted the lower number specified by the Regulator.

Textual Amendments

F65 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**)

^{F66}22C Amendment: supplementary.

- (1) [^{F67}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 [^{F68}its] opinion, necessary to give effect to the conditions of a licence or otherwise required in consequence of the conditions of a licence.
- (2) [^{F67}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 [^{F67}the Office of Rail Regulation] ,

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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

- F66** 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**)
- F67** 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)**
- F68** 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)

- C7** 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**

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