



Railways Act 1993

1993 CHAPTER 43

PART I

THE PROVISION OF RAILWAY SERVICES

Modification of licences

12 Modification by agreement.

(1) Subject to the following provisions of this section, [^{F1}the Office of Rail Regulation] may modify the conditions of a licence if the holder of the licence consents to the modifications.

[^{F2}(1A) [^{F1}the Office of Rail Regulation] may not modify the conditions of a licence which relate to consumer protection unless the Authority also consents to the modifications.

(1B) Where the Authority proposes to consent to modifications of such conditions, it shall give notice—

- (a) stating that it proposes to consent to the modifications and setting out their effect,
- (b) stating the reasons why it proposes to consent to 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and shall, before giving consent, consider any representations or objections which are duly made and not withdrawn.

(1C) If the Authority consents to the modifications, it shall give a copy of any such representations or objections to [^{F1}the Office of Rail Regulation] and [^{F1}the Office of Rail Regulation] shall consider them before making the modifications.]

(2) Before making modifications [^{F3}of any conditions of a licence which do not relate to consumer protection], [^{F1}the Office of Rail Regulation] shall give notice—

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- (a) stating that [^{F4}it] proposes to make the modifications and setting out their effect,
 - (b) stating the reasons why [^{F4}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shall [^{F5}, before making the modifications,] consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection [^{F6}(1B) or] (2) above shall be given—
- (a) by publishing the notice in such manner as [^{F7}the Authority, or 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) As soon as practicable after making any modifications under this section, [^{F1}the Office of Rail Regulation] shall send a copy of those modifications to [^{F8}the Authority and] the Health and Safety Executive.

Textual Amendments

- F1** 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)
- F2** S. 12(1A)-(1C) inserted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 6(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)
- F3** Words in s. 12(2) substituted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 6(3)(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)
- F4** 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)
- F5** 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)
- F6** Words in s. 12(3) inserted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 6(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)
- F7** 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)
- F8** Words in s. 12(4) inserted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 6(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)

13 Modification references to the Monopolies Commission.

- (1) The [^{F9}appropriate authority] may make to the Monopolies and Mergers Commission (in this Act referred to as the [^{F10}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—

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- (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.
- [^{F11}(1A) In this section, [^{F12}section 13A below] and section 14 below “the appropriate authority” means—
- (a) where conditions of the licence addressing the matters specified in the reference would all inevitably be conditions relating to consumer protection, the Authority; and
 - (b) in any other case, [^{F13}the Office of Rail Regulation] .
- (1B) Before the Authority makes a reference under this section—
- (a) where the licence authorises the operation of trains for the purpose of carrying passengers or goods by railway for hire or reward, it shall obtain the consent of [^{F13}the Office of Rail Regulation] and
 - (b) in any other case, it shall consult [^{F13}the Office of Rail Regulation] .
- (1C) Before [^{F13}the Office of Rail Regulation] makes a reference under this section—
- (a) where any condition of the licence addressing the matters specified in the reference would or may be conditions relating to consumer protection, [^{F14}it] shall obtain the consent of the Authority; and
 - (b) in any other case, [^{F14}it] shall consult the Authority.]
- (2) The [^{F15}appropriate authority] may, at any time, by notice given to the [^{F10}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) The [^{F16}appropriate authority] may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [^{F10}Competition Commission] in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in [^{F16}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 [^{F16}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, the [^{F17}appropriate authority]—
- (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 [^{F17}it] considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) The [^{F18}appropriate authority] 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 [^{F10}Competition

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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.

(6) It shall be the duty of the [^{F19}appropriate authority], for the purpose of assisting the [^{F10}Competition Commission] in carrying out an investigation on a reference under this section, to give to the Commission—

(a) any information in [^{F19}the possession of the appropriate authority] 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 [^{F19}the opinion of the appropriate authority], 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 [^{F19}the power of the appropriate authority] 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 [^{F10} Competition Commission] shall have regard to the matters as respects which duties are imposed on ^{F20} . . . [^{F13}the Office of Rail Regulation] by section 4 above.

(8) ^{F21}

(8A) ^{F21}

(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

F9 Words in s. 13(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(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)

F10 Words in s. 13(1)-(3)(5)-(7) substituted (1.4.1999) by S.I. 1999/506, **art. 33(a)(b)**

F11 S. 13(1A)-(1C) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(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)

F12 Words in s. 13(1A) inserted (20..6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(3)(a); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

F13 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)**

F14 Word in s. 13 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)**

F15 Words in s. 13(2) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(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)

F16 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)

F17 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)

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- F18** Words in s. 13(5) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 7(7)** (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)
- F19** 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)
- F20** 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)
- F21** 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)

^{F22}**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 the appropriate authority under subsection (3) below.
- (3) The appropriate authority 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) The appropriate authority 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

- F22** 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.

^{F23}**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.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);

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- (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 [^{F24} “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

F23 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.

F24 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)

C1 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)**

14 Reports on modification references.

- (1) In making a report on a reference under section 13 above, the [^{F25}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

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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.

[^{F26}(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)

[^{F27}(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 the [^{F25}Competition Commission] on a reference under section 13 above shall be made to the [^{F28}appropriate authority].

(5) Subject to subsection (6) below, the [^{F29}appropriate authority]—

- (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 [^{F29}it] considers appropriate for bringing the report to the attention of persons likely to be affected by it.

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- [^{F30}(5A) When the Authority receives such a report it shall send a copy of it to [^{F31}the Office of Rail Regulation] ; and when [^{F31}the Office of Rail Regulation] receives such a report [^{F32}it] shall send a copy of it to the Authority.]
- (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 the [^{F33}appropriate authority] 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

- F25** Words in s. 14(1)-(2) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**
- F26** 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.
- F27** 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.
- F28** Words in s. 14(4) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 8(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)
- F29** 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)
- F30** S. 14(5A) inserted (1.2.2001) by 2000 c. 38, s. 216, 275(1), **Sch. 17 para. 8(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)
- F31** Words in s. 14 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)**
- F32** Word in s. 14 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)}
- F33** Words in s. 14(6) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 8(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)

15 Modification following report.

- (1) [^{F34}This section applies where] a report of the [^{F35} 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,

^{F36} . . .

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[^{F37}(1A) Where the report is made to [^{F38}the Office of Rail Regulation][^{F39}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 [^{F39}it] requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(1B) Where the report is made to the Authority it shall, subject to the following provisions of this section and to section 15A below, require [^{F38}the Office of Rail Regulation] to make such modifications of the conditions of the licence as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.]

(2) Before making [^{F40}, or requiring the making of,] modifications under this section, [^{F38}the Office of Rail Regulation][^{F41}, or Authority,] shall have regard to the modifications specified in the report.

(3) Before making modifications under [^{F42}subsection (1A) above], [^{F38}the Office of Rail Regulation] shall give notice—

- (a) stating that [^{F39}it] proposes to make the modifications and setting out their effect,
- (b) stating the reasons why [^{F39}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.

[^{F43}(3A) Before requiring [^{F38}the Office of Rail Regulation] to make modifications under subsection (1B) above, the Authority shall give notice—

- (a) stating that it proposes to require the making of the modifications and setting out their effect,
- (b) stating the reasons why it proposes to require the making of 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.]

(4) A notice under subsection (3) [^{F44}or (3A)] above shall be given—

- (a) by publishing the notice in such manner as [^{F38}the Office of Rail Regulation][^{F45}, or the 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 the making of the modifications; and
- (b) by serving a copy of the notice on the holder of the licence.

[^{F46}(4A) Where (after considering any representations or objections which are duly made and not withdrawn) [^{F38}the Office of Rail Regulation] or Authority proposes to make or require the making of modifications under this section, ^{F47} . . . it shall give notice to the Competition Commission—

- (a) setting out the modifications [^{F39}it] proposes to make or ^{F48} . . . require to be made; and
- (b) stating the reasons why [^{F39}it] proposes to make the modifications or ^{F48} . . . require the making of them.

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- (4B) [^{F38}the Office of Rail Regulation] or Authority 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, [^{F38}the Office of Rail Regulation] or Authority 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, [^{F38}the Office of Rail Regulation] or Authority shall make, or require the making of, such of those modifications as are not specified in the direction.]
- (5) As soon as practicable after making any modifications under this section, [^{F38}the Office of Rail Regulation] shall send a copy of those modifications to [^{F49}the Authority and] the Health and Safety Executive.
- (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

- F34** 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)
- F35** Words in s. 15(1) substituted (1.4.1999) by S.I. 1999/506, **art. 33(b)**
- F36** 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)
- F37** 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)
- F38** 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)**
- F39** 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)**
- F40** 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)
- F41** Words in s. 15(2) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(6)(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)
- F42** 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)
- F43** S. 15(3A) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(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)
- F44** Words in s. 15(4) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(7)(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)
- F45** Words in s. 15(4)(a) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(7)(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)

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- F46** 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)
- F47** 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)
- F48** 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)
- F49** Words in s. 15(5) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 9(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)

[^{F50}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 [^{F51}the Office of Rail Regulation] or Authority—
- not to make, or require the making of, the modifications set out in the notice; or
 - 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—
- setting out the modifications contained in the notice given under section 15(4A) above;
 - setting out the direction; and
 - stating the reasons why they are giving the direction.
- (5) A notice under subsection (4) above shall be given—
- 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
 - by serving a copy of the notice on the holder of the licence.]

Textual Amendments

- F50** 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)
- F51** 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)

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^{F52}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
 - (b) such of those adverse effects as would not be remedied or prevented by the modifications made by [^{F53}the Office of Rail Regulation] , or required to be made by the Authority, 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 [^{F53}the 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 [^{F53}the Office of Rail Regulation] , the Authority and the Health and Safety Executive.

Textual Amendments

F52 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)

F53 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)

^{F54}15C Sections 15A and 15B: supplementary.

- ^{F55}(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.
- (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.

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- (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 [^{F56}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—
- (“ if earlier, the day on which a copy of the modifications made by the Commission in connection with the reference concerned is sent to [^{F56}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

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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 ^{F57} "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 ^{M1}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, [^{F56}the Office of Rail Regulation] and the Authority shall [^{F58}each] give to the Competition Commission any information in ^{F59}... 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 ^{F59}... 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 ^{F59}... 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

- F54** 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**)
- F55** 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.**
- F56** 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)**
- F57** 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**)

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- F58** Word in s. 15C(3) inserted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 8(a); S.I. 2004/827, art. 4(g)**
- F59** 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)**

Marginal Citations

- M1** 1998 c. 41.

16 Modification by order under other enactments.

[^{F60}(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 [^{F61}relevant authority] shall send a copy of those modifications to [^{F62}the Office of Rail Regulation][^{F63}, to 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.

[^{F64}(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.]

Textual Amendments

- F60** 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.
- F61** 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.
- F62** 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)**
- F63** Words in s. 16(3) inserted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 10** (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)

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F64 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)

C2 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)**

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