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## SCHEDULES

### <sup>F1F1</sup>SCHEDULE 1

#### Textual Amendments

- F1** Sch. 1 repealed (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 118, 120, Sch. 2 para. 2, **Sch. 8**; S.I. 2004/827, **art. 4(i)**

### SCHEDULE 2

Section 2.

#### RAIL [<sup>F13</sup> PASSENGERS]COMMITTEES

#### Textual Amendments

- F13** Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(8)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### *Preliminary*

<sup>F14</sup><sub>1</sub> .....

#### Textual Amendments

- F14** Sch. 2 para. 1 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(2), **Sch. 31 Pt.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) (which S.I. was amended by S.I. 2001/115)

#### *Remuneration of, and allowances for, [<sup>F15</sup>members]*

#### Textual Amendments

- F15** Words in the cross-heading substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

2 There shall be paid to the chairman [<sup>F16</sup>and other members] of [<sup>F17</sup>a Rail Passengers' Committee] such remuneration, and such travelling and other allowances, as the [<sup>F18</sup>Authority] may <sup>F19</sup> . . . determine.

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#### Textual Amendments

- F16** Words in **Sch. 2 para. 2** inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(1)**; 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 **Sch. 2 para. 2** substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F18** Words in **Sch. 2 para. 2** substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 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**)
- F19** Words in **Sch. 2 para. 2** repealed (1.2.2001) by 2000 c. 38, s. 251(3), 274, **Sch. 31 Pt.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**)

- [<sup>F20</sup>2A If a person ceases to hold office as chairman or another member of a Rail Passengers' Committee by reason of the abolition of the Committee before his term of office would otherwise have expired, the Authority may, if it determines that there are special circumstances which make it right that he should receive compensation, pay to him such compensation as may be determined by the Authority.]

#### Textual Amendments

- F20** **Sch. 2 para. 2A** inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 2(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

#### *Allowances for other members*

- <sup>F21</sup>3 .....

#### Textual Amendments

- F21** **Sch. 2 para. 3** repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, **Sch. 23 para. 2(4)**, **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**)

#### *Administration etc.*

- 4 The [<sup>F22</sup>Authority] shall make arrangements for [<sup>F23</sup>a Rail Passengers' Committee] to be provided with office accommodation and with such services as he considers appropriate to enable them to carry out their functions.

#### Textual Amendments

- F22** Word in **Sch. 2 para. 4** substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 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**)
- F23** Words in **Sch. 2 para. 4** substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

#### *Proceedings*

- 5 (1) Subject to the following provisions of this paragraph and paragraph 6 below, [<sup>F24</sup>a Rail Passengers' Committee] may regulate their own procedure, including quorum.

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- (2) [F25 A Rail Passengers' Committee] shall meet when convened by the chairman, and in any case shall meet at least twice a year.
- (3) Without prejudice to the discretion of the chairman to call a meeting whenever he thinks fit, he shall call a meeting when required to do so by any three members of [F24 a Rail Passengers' Committee].
- (4) Minutes shall be kept of the proceedings at every meeting of [F24 a Rail Passengers' Committee]; and copies of those minutes shall be sent to the [F26 Rail Passengers' Council] and the [F27 Authority].
- (5) [F25 A Rail Passengers' Committee] shall have regard to any general recommendations which the [F26 Rail Passengers' Council] may from time to time make with respect to any matter affecting the procedure or functions of [F28 Rail Passengers' Committees].
- (6) The validity of any proceedings of [F24 a Rail Passengers' Committee] shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

#### Textual Amendments

- F24** Words in Sch. 2 para. 5 substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 12(4)(a); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F25** Words in Sch. 2 para. 5(2)(5) substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 12(4)(b); 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 Sch. 2 para. 5(4)(5) substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 12(4)(c); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F27** Words in Sch. 2 para. 5(4) substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 17 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)
- F28** Words in Sch. 2 para. 5(5) substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 12(4)(d); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### *Admission of public to meetings*

- 6 (1) Subject to sub-paragraph (2) below, meetings of [F29 a Rail Passengers' Committee] shall be open to the public.
- (2) The public shall be excluded during any item of business where—
  - (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the committee by the [F30 the Office of Rail Regulation] or the [F31 Authority] would be disclosed in breach of the obligation of confidence;
  - (b) [F29 a Rail Passengers' Committee] have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;
  - (c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—
    - (i) any matter which relates to the affairs of an individual, or

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- (ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, <sup>F32</sup>or
- (d) the circumstances are such as are specified in, or determined by resolution of a Rail Passengers' Committee in accordance with, an order made by the Secretary of State.]

where public disclosure of that matter would or might, in the opinion of <sup>F29</sup>a Rail Passengers' Committee], seriously and prejudicially affect the interests of that individual or body.

- (3) <sup>F33</sup>A Rail Passengers' Committee] shall give such notice—
- (a) of any meeting of <sup>F29</sup>a Rail Passengers' Committee] which is open to the public, and
- (b) of the business to be taken at that meeting (other than items during which the public is to be excluded),
- as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

#### Textual Amendments

- F29** Words in Sch. 2 para. 6(1)(2)(b)(3)(a) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(5)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F30** Words in Sch. 2 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 Sch. 2 para. 6(2)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 46**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F32** Sch. 2 para. 6(2)(d) and the word "or" immediately preceding it inserted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 6**; 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 Sch. 2 para. 6(3) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(5)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### *Sub-committees*

- 7 (1) <sup>F34</sup>A Rail Passengers' Committee] may, <sup>F35</sup>. . .—
- (a) establish local and other sub-committees through which <sup>F36</sup>a Rail Passengers' Committee] may carry out such of their functions as they may determine;
- (b) appoint such persons (including persons who are not members of <sup>F36</sup>a Rail Passengers' Committee]) to be members of any such sub-committee as they may determine; and
- (c) regulate the procedure of any such sub-committee.
- (2) Persons appointed under sub-paragraph (1) above who are not members of <sup>F36</sup>a Rail Passengers' Committee] may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

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### Textual Amendments

- F34** Words in Sch. 2 para. 7(1) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(6)(a)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II); 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 Sch. 2 para. 7(1) repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, 275(1), Sch. 23 para. 8, **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)
- F36** Words in Sch. 2 para. 7(1)(a)(b)(2) substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 12(6)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### Financial provisions

- 8 (1) There shall be paid by the [<sup>F37</sup>Authority]—
- (a) any sums payable to or in respect of any person under paragraph 2 <sup>F38</sup> . . . or 7 above; and
  - (b) any expenses incurred by [<sup>F39</sup>a Rail Passengers' Committee (provided that the Rail Passengers' Committee complied with their financial duties in incurring them)].
- [<sup>F40</sup>(2) The Authority may determine the financial duties of Rail Passengers' Committees; and different determinations may be made for different functions of Rail Passengers' Committees.
- (3) The Authority shall give a Rail Passengers' Committee notice of every determination of their financial duties; and such a determination may—
- (a) relate to a period beginning before, on or after the date on which it is made;
  - (b) contain supplementary provisions; and
  - (c) be varied by a subsequent determination.]

### Textual Amendments

- F37** Words in Sch. 2 para. 8(1) substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 23(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F38** Word in Sch. 2 para. 8(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)
- F39** Words in Sch. 2 para. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 4(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F40** Sch. 2 para. 8(2)(3) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 4(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### Amendment of other Acts

<sup>F41</sup>9 . . . . .

### Textual Amendments

- F41** Sch. 2 para. 9 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(7), **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)

<sup>F42</sup>10 . . . . .

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**Textual Amendments**

- F42** Sch. 2 para. 10 repealed (1.2.2001) by 2000 c. 38, ss. 227, 274, Sch. 22 para. 12(7), 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)

SCHEDULE 3

Section 3.

THE [<sup>F43</sup>RAIL PASSENGERS’ COUNCIL]

**Textual Amendments**

- F43** Words in heading to Sch. 3 substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 13(8); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

*Preliminary*

<sup>F44</sup><sub>1</sub> . . . . .

**Textual Amendments**

- F44** Sch. 3 para. 1 repealed (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 13(2), 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)

*Remuneration of, and allowances for, [<sup>F45</sup>members]*

**Textual Amendments**

- F45** Words in cross-heading substituted (1.2.2001) by 2000 c. 38, s. 229, Sch. 23 para. 3(2); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

- 2            There shall be paid to the chairman [<sup>F46</sup>and other members] of the [<sup>F47</sup>Rail Passengers’ Council] such remuneration, and such travelling and other allowances, as the [<sup>F48</sup>Authority] may <sup>F49</sup>. . . determine.

**Textual Amendments**

- F46** Words in Sch. 3 para. 2 inserted (1.2.2001) by 2000 c. 38, s. 229, Sch. 23 para. 3(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 Sch. 3 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 13(3); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F48** Word in Sch. 3 para. 2 substituted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 24(2); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F49** Words in Sch. 3 para. 2 repealed (1.2.2001) by 2000 c. 38, ss. 251(4), 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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### *Allowances for other members*

<sup>F50</sup>3 .....

#### **Textual Amendments**

**F50** Sch. 3 para. 3 repealed (1.2.2001) by 2000 c. 38, ss. 229, 274, Sch. 23 para. 3(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)

### *Administration etc.*

- 4 The [<sup>F51</sup>Authority] shall make arrangements for the [<sup>F52</sup>Rail Passengers’ Council] to be provided with office accommodation and with such services as he considers appropriate to enable them to carry out their functions.

#### **Textual Amendments**

**F51** Word in Sch. 3 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 216, **Sch. 17 para. 24(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F52** Words in Sch. 3 para. 4 substituted (1.2.2001) by 2000 c. 38, s. 227, **Sch. 22 para. 13(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### *Proceedings*

- 5 (1) Subject to the following provisions of this paragraph and paragraph 6 below, the [<sup>F53</sup>Rail Passengers’ Council] may regulate their own procedure, including quorum.
- (2) The [<sup>F53</sup>Rail Passengers’ Council] shall meet when convened by the chairman, and in any case shall meet at least twice a year.
- (3) Without prejudice to the discretion of the chairman to call a meeting whenever he thinks fit, he shall call a meeting when required to do so by any three members of the [<sup>F53</sup>Rail Passengers’ Council].
- (4) Minutes shall be kept of the proceedings at every meeting of the [<sup>F53</sup>Rail Passengers’ Council]; and copies of those minutes shall be sent to the Secretary of State and the [<sup>F54</sup>Authority].
- (5) A person who is a member of the [<sup>F53</sup>Rail Passengers’ Council] by virtue of being the chairman of a [<sup>F55</sup>Rail Passengers’ Committee] may appoint another member of that [<sup>F55</sup>Rail Passengers’ Committee] to attend any meeting of the committee in his stead.
- (6) The validity of any proceedings of the committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

#### **Textual Amendments**

**F53** Words in Sch. 3 para. 5(1)-(5) substituted (1.2.2001) by 2000 c. 38, ss. 227, 275(1), **Sch. 22 para. 13(4)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F54** Word in Sch. 3 para. 5(4) substituted (1.2.2001) by 2000 c. 38, ss. 216, 275(1), **Sch. 17 para. 24(2)**; 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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**F55** Words in Sch. 3 para. 5(5) substituted (1.2.2001) by 2000 c. 38, ss. 227, 275(1), Sch. 22 para. 13(4)(a); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

*Admission of public to meetings*

6 (1) Subject to sub-paragraph (2) below, meetings of the [<sup>F56</sup>Rail Passengers’ Council] shall be open to the public.

(2) The public shall be excluded during any item of business where—

- (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the [<sup>F56</sup>Rail Passengers’ Council] by the [<sup>F57</sup>the Office of Rail Regulation] or the [<sup>F58</sup>Authority] would be disclosed in breach of the obligation of confidence;
- (b) the [<sup>F56</sup>Rail Passengers’ Council] have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded;
- (c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—
  - (i) any matter which relates to the affairs of an individual, or
  - (ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, [<sup>F59</sup>or
- (d) the circumstances are such as are specified in, or determined by a resolution of the Rail Passengers’ Council in accordance with, an order made by the Secretary of State.]

where public disclosure of that matter would or might, in the opinion of the [<sup>F56</sup>Rail Passengers’ Council], seriously and prejudicially affect the interests of that individual or body.

(3) The [<sup>F56</sup>Rail Passengers’ Council] shall give such notice—

- (a) of any meeting of the [<sup>F56</sup>Rail Passengers’ Council] which is open to the public, and
- (b) of the business to be taken at that meeting (other than items during which the public is to be excluded),

as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

**Textual Amendments**

**F56** Words in Sch. 3 para. 6(1)(2)(a)(b)(3)(a) substituted (1.2.2001) by 2000 c. 38, ss. 227, Sch. 22 para. 13(5); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F57** Words in Sch. 3 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)

**F58** Word in Sch. 3 para. 6(2)(a) substituted (1.2.2001) by 2000 c. 38, s. 252, Sch. 27 para. 47; S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

**F59** Sch. 3 para. 6(2)(d) and the word immediately preceding it inserted (1.2.2001) by 2000 c. 38, s. 229, Sch. 23 para. 7; 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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### *Sub-committees*

- 7 (1) The [<sup>F60</sup>Rail Passengers’ Council] may <sup>F61</sup>. . . —
- (a) establish [<sup>F62</sup>committees] through which the [<sup>F60</sup>Rail Passengers’ Council] may carry out such of their functions as they may determine;
  - (b) appoint such persons (including persons who are not members of the [<sup>F60</sup>Rail Passengers’ Council]) to be members of any such [<sup>F63</sup>committee] as they may determine; and
  - (c) regulate the procedure of any such [<sup>F63</sup>committee].
- (2) Persons appointed under sub-paragraph (1) above who are not members of the [<sup>F60</sup>Rail Passengers’ Council] may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

#### **Textual Amendments**

- F60** Words in Sch. 3 para. 7 substituted (1.2.2001) by 2000 c. 38, s. 227, Sch. 22 para. 13(6); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F61** Words in Sch. 3 para. 7(1) repealed (1.2.2001) by 2000 c. 38, s. 229, 275(1), Sch. 23 para. 9(a), 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)
- F62** Words in Sch. 3 para. 7(1)(a) substituted (1.2.2001) by 2000 c. 38, s. 229, Sch. 23 para. 9(b); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F63** Words in Sch. 3 para. 7(1)(b)(c) substituted (1.2.2001) by 2000 c. 38, s. 229, Sch. 23 para. 9(c); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

### *Financial provisions*

- 8 (1) There shall be paid by the [<sup>F64</sup>Authority]—
- (a) any sums payable to or in respect of any person under paragraph 2 <sup>F65</sup>. . . or 7 above; and
  - (b) any expenses incurred by the [<sup>F66</sup>Rail Passengers’ Council (provided that the Rail Passengers’ Council complied with their financial duties in incurring them)].
- <sup>F67</sup>(2) The Authority may determine the financial duties of the Rail Passengers’ Council; and different determinations may be made for different functions of the Rail Passengers’ Council.
- (3) The Authority shall give the Rail Passengers’ Council notice of every determination of its financial duties; and such a determination may—
- (a) relate to a period beginning before, on or after the date on which it is made;
  - (b) contain supplementary provisions; and
  - (c) be varied by a subsequent determination.]

#### **Textual Amendments**

- F64** Words in Sch. 3 para. 8(1) substituted (1.2.2001) by 2000 c. 38, s. 216, Sch. 17 para. 24(3); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F65** Word in Sch. 3 para. 8(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)

*Status: Point in time view as at 29/01/2007.*

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- F66** Words in Sch. 3 para. 8(1)(b) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 5(2)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F67** Sch. 3 para. 8(2)(3) substituted (1.2.2001) by 2000 c. 38, s. 229, **Sch. 23 para. 5(3)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

### *Amendment of other Acts*

**F68**g

#### **Textual Amendments**

- F68** Sch. 3 para. 9 repealed (1.2.2001) by 2000 c. 38, s. 227, 274, Sch. 22 para. 13(7), **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)

## SCHEDULE 4

Sections 17 and 19.

### ACCESS AGREEMENTS: APPLICATIONS FOR ACCESS CONTRACTS

#### *Interpretation*

- 1 In this Schedule—
- “application for directions” means an application for directions under section 17 of this Act;
- “the facility owner” means the facility owner mentioned in section 17(1) of this Act;
- “interested person” means any person whose consent is required by the facility owner, as a result of an obligation or duty owed by the facility owner which arose after the coming into force of section 17 of this Act, before the facility owner may enter into the required access contract;
- “the required access contract” means the access contract which the applicant seeks to obtain by virtue of the application for directions;
- and, subject to that, expressions used in this Schedule and in section 17 of this Act have the same meaning in this Schedule as they have in that section.

#### *Making and withdrawal of application*

- 2 (1) Any application for directions must be made in writing to [<sup>F69</sup>the Office of Rail Regulation] and must—
- (a) contain particulars of the required rights;
  - (b) specify the terms which the applicant proposes should be contained in the required access contract; and
  - (c) include any representations which the applicant wishes to make with regard to the required rights or the terms to be contained in the required access contract.
- (2) The applicant may, by giving notice in writing to [<sup>F69</sup>the Office of Rail Regulation], withdraw or suspend the application at any time.

*Status: Point in time view as at 29/01/2007.*

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- (3) In this paragraph “the required rights” means the permission to use the railway facility in question which it is sought to obtain by virtue of the application for directions.

#### Textual Amendments

**F69** Words in Sch. 4 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)

#### *Notifications, representations and information*

- 3 (1) [<sup>F70</sup>the Office of Rail Regulation] shall—
- (a) send a copy of any application for directions received by [<sup>F71</sup>it] to the facility owner; and
  - (b) invite the facility owner to make written representations to [<sup>F70</sup>the Office of Rail Regulation] within such period (being not less than 21 days from the date of issue of the invitation) as may be specified in the invitation.
- (2) [<sup>F70</sup>the Office of Rail Regulation] shall send a copy of any such representations received by [<sup>F71</sup>it] to the applicant and invite him to make further written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.
- (3) [<sup>F70</sup>the Office of Rail Regulation] may from time to time request or invite further information, clarification or representations from the applicant or the facility owner.

#### Textual Amendments

**F70** Words in Sch. 4 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)

**F71** Word in Sch. 4 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)

#### *Interested persons*

- 4 (1) Where [<sup>F72</sup>the Office of Rail Regulation] receives an application for directions, [<sup>F72</sup>it] shall issue a direction to the facility owner requiring him to furnish the name and address of every interested person to [<sup>F72</sup>the Office of Rail Regulation] within such period (being not less than 14 days from the date of issue of that direction) as may be specified in that direction.
- (2) Where the name and address of an interested person is furnished pursuant to subparagraph (1) above, [<sup>F72</sup>the Office of Rail Regulation] shall invite the interested person to make written representations to [<sup>F72</sup>it] within such period (being not less than 14 days from the date of issue of the invitation) as may be specified in the invitation.
- (3) [<sup>F72</sup>the Office of Rail Regulation] shall send a copy of any such representations received by [<sup>F73</sup>it] to the applicant and to the facility owner and invite each of them

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to make written representations within such period (being not less than 10 days from the date of issue of the invitation) as may be specified in the invitation.

- (4) [F72the Office of Rail Regulation] may from time to time request or invite further information, clarification or representations from any interested person.

#### **Textual Amendments**

- F72** Word in Sch. 4 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\(g\)](#)
- F73** Word in Sch. 4 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\(g\)](#)

#### *The decision and the directions*

- 5 (1) [F74the Office of Rail Regulation] shall inform the applicant, the facility owner and any interested person of [F75its] decision on an application for directions.
- (2) If t [F74the Office of Rail Regulation] decides to give directions to the facility owner requiring him to enter into an access contract—
- (a) the directions shall specify—
    - (i) the terms of the access contract; and
    - (ii) the date by which the access contract is to be entered into; and
  - (b) [F74the Office of Rail Regulation] may also give directions to the applicant or the facility owner requiring him to pay compensation of such amount as may be specified in the directions to such interested person as may be so specified.
- (3) Any compensation directed to be paid by virtue of sub-paragraph (2)(b) above shall be recoverable as a debt due.
- (4) The facility owner shall be released from his duty to comply with the directions if the applicant fails to enter into an access contract on the terms required by the directions by the date specified for that purpose in the directions.

#### **Textual Amendments**

- F74** Words in [Sch. 4](#) 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\(g\)](#)
- F75** Words in [Sch. 4](#) 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\(g\)](#)

#### *Effect of directions on facility owner and interested persons*

- 6 (1) Any directions given on an application for directions or under this Schedule shall be binding on the person to whom they are given, notwithstanding any obligation or duty he may owe to an interested person and whether or not the interested person has had an opportunity to make representations.

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- (2) No interested person, and no successor to an interested person, shall take any step for the purpose of enforcing or exercising any right he may have against the facility owner in respect of, or in consequence of, the facility owner’s—
- (a) entering into an access contract pursuant to directions under section 17 of this Act,
  - (b) performing such a contract in accordance with its terms, or
  - (c) 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 access contract,
- whether or not the interested person had, or has had, an opportunity to make representations.
- (3) The duty of the facility owner to furnish [<sup>F76</sup>the Office of Rail Regulation] with the name and address of every interested person pursuant to a direction under paragraph 4 above is a duty owed to each interested person and (subject to the defences and incidents applying in actions for breach of statutory duty) any contravention of that duty shall be actionable at the suit or instance of the interested person and the facility owner shall be liable for any loss or damage suffered by the interested person as a result of any access contract which is entered into in consequence of the application for directions.
- (4) It shall be a defence in any proceedings brought by virtue of sub-paragraph (3) above for the facility owner to show that he took all reasonable steps, and exercised all due diligence, to avoid contravening the duty in question.
- (5) In this paragraph “successor”, in relation to an interested person, means any person—
- (a) who is a successor in title to the interested person; or
  - (b) whose rights derive directly or indirectly from the interested person.

**Textual Amendments**

**F76** Words in Sch. 4 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)

*Financial provision*

<sup>F77</sup> .....

**Textual Amendments**

**F77** Sch. 4 para. 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)

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## F78 SCHEDULE 4A

### REVIEW OF ACCESS CHARGES BY [F79 THE OFFICE OF RAIL REGULATION]

#### Textual Amendments

- F78** Sch. 4A inserted (30.11.2000) by 2000 c. 38, ss. 231(2), 275(1), Sch. 24, Sch. 28 paras. 11, 17
- F79** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)

### [F80 Application of Schedule]

#### Textual Amendments

- F80** Sch. 4A paras. 1-1H and cross-headings substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 2 (with Sch. 4 para. 11)

- [F81] This Schedule applies where an access agreement provides, or is treated as providing, for the Office of Rail Regulation to undertake reviews of the terms of that agreement as to—
- (a) the amounts payable under the agreement by one of the parties to the other; and
  - (b) the times at which, and the manner in which, those amounts are payable.]

#### Textual Amendments

- F81** Sch. 4A para. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 2 (with para. 11); S.I. 2007/62, art. 2

### [F82 Scope of review

#### Textual Amendments

- F82** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 2 (with Sch. 4 para. 11); S.I. 2007/62, art. 2

- 1A (1) Where the Office of Rail Regulation undertakes such a review, it must, at the same time, review the conditions of every linked licence both—
- (a) in relation to the matters mentioned in paragraph 1(a) and (b); and
  - (b) in relation to the matters about which that Office is provided with information under paragraph 1D.
- (2) A review by that Office of both—
- (a) the terms of an access agreement as to the matters mentioned in paragraph 1(a) and (b), and
  - (b) the conditions of a linked licence,
- is referred to in this Schedule as an access charges review.

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- (3) An access charges review must include a consideration of—
- (a) the time at which the next access charges review is to be undertaken in relation to both the access agreement in question and every linked licence; and
  - (b) the circumstances in which it would be appropriate to undertake such a review before that time.
- (4) In this Schedule “linked licence”, in relation to an access agreement, means a licence of which the holder is—
- (a) the facility owner, or installation owner, who is a party to the agreement; or
  - (b) a person other than that owner who has an estate or interest in the railway facility or network installation to which the agreement relates or who has a right over it.]

*[<sup>F83</sup>Response to request to carry out review*

**Textual Amendments**

**F83** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1B Where—
- (a) the Secretary of State or the Scottish Ministers suggest to the Office of Rail Regulation that an access charges review should be carried out in any case, but
  - (b) that Office decides not to carry out the suggested review,
- that Office must provide the Secretary of State or Scottish Ministers with its reasons for that decision.]

*[<sup>F84</sup>Notice of access charges review*

**Textual Amendments**

**F84** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1C (1) Before beginning an access charges review, the Office of Rail Regulation must give notice of its proposal to undertake the review to each of the following—
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Treasury;
  - (d) the parties to the access agreement in question; and
  - (e) such other persons as that Office considers appropriate.
- (2) No notice is required to be given under sub-paragraph (1) to the Secretary of State or the Scottish Ministers—
- (a) in the case of the Secretary of State, if the facility or installation to which the relevant agreement relates is situated wholly in Scotland; or

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- (b) in the case of the Scottish Ministers, if the facility or installation to which the relevant agreement relates is situated wholly in England and Wales.
- (3) A notice under this paragraph must set out—
- (a) the period to which the Office of Rail Regulation expects the review to relate (“the review period”);
  - (b) the date by which the Secretary of State, the Scottish Ministers or (as the case may be) each of them needs to provide the information that has to be provided under paragraph 1D; and
  - (c) any conditions which that Office requires to be satisfied in the period ending with that date if it is to proceed with the review.
- (4) The period set out under sub-paragraph (3)(a) must be the one which—
- (a) begins with the time as from which the Office of Rail Regulation expects that any changes resulting from the review would fall to be implemented; and
  - (b) ends with the time as from which it thinks it likely (in the absence of special circumstances making an earlier review appropriate) that any changes resulting from the next access charges review in relation to the same agreement and licence would fall to be implemented.
- (5) The date set out under sub-paragraph (3)(b) must be not less than the following period after the date of the notice—
- (a) in a case which the Office of Rail Regulation is satisfied is a case of urgency, four weeks; and
  - (b) in any other case, three months.
- (6) Before setting out a date under sub-paragraph (3)(b) that is less than three months after the date of the notice, the Office of Rail Regulation must consult each of the persons to whom the notice is to be given.]

*<sup>F85</sup>Duty to notify ORR about desired outputs and finances*

#### **Textual Amendments**

**F85** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1D (1) Where a notice under paragraph 1C is given to the Secretary of State, he must provide the Office of Rail Regulation with—
- (a) information about what he wants to be achieved by railway activities in Great Britain as a whole during the review period; and
  - (b) such information as it is reasonable for him to provide about the public financial resources that are or are likely to become available to be applied during the review period for purposes that contribute (directly or indirectly) towards the achievement of what he wants.
- (2) Where a notice under paragraph 1C is given to the Scottish Ministers (whether instead of or as well as to the Secretary of State), they must provide the Office of Rail Regulation with—
- (a) information about what they want to be achieved by Scottish railway activities during the review period; and



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- (b) such information as it is reasonable for them to provide about the public financial resources that are or are likely to become available to be applied during that period for purposes that contribute (directly or indirectly) towards the achievement of what they want.
- (3) The information that may be provided as falling within sub-paragraph (1)(a) or (2)(a) includes objectives and standards to be achieved in the course of carrying on railway activities.
- (4) Those objectives and standards may include, in particular, objectives and standards with respect to any of the following matters—
  - (a) the capacity (in terms of types and numbers of trains) of networks;
  - (b) the frequency of railway passenger services;
  - (c) journey times;
  - (d) reliability of railway services (both in terms of punctuality and otherwise);
  - (e) the taking of measures to prevent or mitigate overcrowding;
  - (f) levels and types of fares;
  - (g) the quality of information provided to passengers;
  - (h) the accessibility of railway services to people with disabilities;
  - (i) the carrying out of major projects to improve railway services;
  - (j) the protection of persons from dangers arising from the operation of railways.
- (5) In a case where information is also required to be provided by the Scottish Ministers, the information that is required to be provided by the Secretary of State does not include—
  - (a) any information about what he wants to be achieved by Scottish railway activities not relating to cross-border services; or
  - (b) information about any public financial resources so far as they appear to him to be available, or to be likely to become available, to be applied for purposes relating only to such activities.
- (6) An obligation of the Secretary of State or the Scottish Ministers to provide information under this paragraph—
  - (a) must be discharged before the date set out in the notice given under paragraph 1C or, if a later date is fixed under sub-paragraph (7), by that later date; but
  - (b) may be discharged by a notification that refers that Office to information previously provided under this paragraph.
- (7) the Office of Rail Regulation may at any time, by notice to each of the persons to whom the notice under paragraph 1C was given, fix a later date for the provision of information under this paragraph.
- (8) Neither—
  - (a) the Secretary of State, nor
  - (b) the Scottish Ministers,are required to provide information for the purposes of a review at any time after a decision has been made by the Office of Rail Regulation not to proceed with the review because of an actual or expected failure of the conditions set out under paragraph 1C(3)(c) to be satisfied.

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- (9) In this paragraph “railway activities” means activities consisting in, or involving, any of the following—
- (a) providing railway services;
  - (b) making available railway facilities;
  - (c) making use of such facilities;
  - (d) using railway assets;
  - (e) allowing others to use such assets.
- (10) In this paragraph “Scottish railway activities” means activities which are railway activities by reference only to—
- (a) railway services which begin and end in Scotland;
  - (b) railway services in relation to which financial assistance is provided by the Scottish Ministers and which (without falling within paragraph (a)) begin or end in Scotland;
  - (c) railway facilities that are situated in Scotland; or
  - (d) railway assets so situated.
- (11) In this paragraph “public financial resources” means any of the following—
- (a) money charged on and payable out of the Consolidated Fund;
  - (b) money provided by Parliament;
  - (c) money payable out of the Scottish Consolidated Fund.]

*<sup>F86</sup>Suggestions about future reviews*

**Textual Amendments**

**F86** Sch. 4A paras. 1-1H substituted for Sch. 4A para. 1 (29.1.2007) by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1E Where the Secretary of State or the Scottish Ministers provide the Office of Rail Regulation with information under paragraph 1D, he or they may also, at the same time, make a suggestion to that Office setting out his or their opinion about—
- (a) when the next access charges review should be undertaken in relation to both the access agreement in question and every linked licence; and
  - (b) the circumstances in which it would be appropriate to undertake such a review before that time.]

*<sup>F87</sup>Revision of outputs and financial information*

**Textual Amendments**

**F87** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1F (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that—
- (a) the information that has been provided to it by the Secretary of State or the Scottish Ministers under paragraph 1D, or

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- (b) the information, taking it all together, that has been so provided by the Secretary of State and the Scottish Ministers,
- shows that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of what he or they, or both of them, want to be achieved, that Office must so notify the Secretary of State or the Scottish Ministers or (as the case may be) each of them.
- (2) The Office of Rail Regulation must send a copy of every notification under sub-paragraph (1) to the Treasury.
- (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
- (a) may revise any information provided to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
- (b) if the information or such a suggestion is revised, must notify the revisions to that Office.
- (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or Scottish Ministers in accordance with sub-paragraph (1).
- (5) Where the Office of Rail Regulation has already given a notification under this paragraph with respect to any information, it is required to give a further notification under this paragraph with respect to that information, or any revision of it, only if—
- (a) a revision has been made in response to its previous notification; and
- (b) it has not previously given a notification in respect of an earlier revision of the information.]

*<sup>F88</sup>Notification of likely adverse effect on interests of certain providers of railway services*

#### Textual Amendments

**F88** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\), ss. 4, 60, Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); [S.I. 2007/62, art. 2](#)

- 1G (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that it is likely that the implementation of the review will adversely affect the interests of persons providing railway passenger services or of persons providing services for the carriage of goods by railway, that Office must so notify—
- (a) the Secretary of State, in the case of a review notice of which was given to him under paragraph 1C; and
- (b) the Scottish Ministers, in the case of a review notice of which was given to them under that paragraph.
- (2) Where the Office of Rail Regulation gives a notification under sub-paragraph (1) in respect of a review relating to an access agreement to which a facility owner is a party, the notification must include—
- (a) its assessment of the measures that the facility owner is likely to be required to take, as a consequence of the implementation of the review, in order to meet obligations of his arising under the access agreement in question or under any other access agreement to which he is a party; and
- (b) its estimate of the cost to the facility owner of taking those measures.

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- (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
  - (a) may revise any information provided under paragraph 1D to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
  - (b) if the information or such a suggestion is revised, must notify the revisions to that Office.
- (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or the Scottish Ministers in accordance with sub-paragraph (1).
- (5) Where the Office of Rail Regulation has already given a notification under this paragraph, it is required to give a further notification under this paragraph only if—
  - (a) information provided to it has been revised in response to its notification; and
  - (b) it has not previously given a notification in respect of an earlier revision of that information.]

*[<sup>F89</sup>Duty to have regard to information about desired outputs and finances etc.*

#### Textual Amendments

**F89** Sch. 4A paras. 1-1H substituted (29.1.2007) for Sch. 4A para. 1 by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 2](#) (with [Sch. 4 para. 11](#)); S.I. 2007/62, [art. 2](#)

- 1H (1) The Office of Rail Regulation must conduct an access charges review in the manner that it considers is most likely to secure that the implementation of the review will make the best and most practicable contribution to the achievement of—
- (a) what the Secretary of State wants to be achieved by railway activities in Great Britain as a whole; and
  - (b) what the Scottish Ministers want to be achieved by Scottish railway activities.
- (2) Where in the case of an access charges review the Office of Rail Regulation considers (notwithstanding any notification or revision under paragraph 1F or 1G) that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of, as the case may be—
- (a) everything that the Secretary of State wants to be achieved,
  - (b) everything that the Scottish Ministers want to be achieved, or
  - (c) everything that both the Secretary of State and the Scottish Ministers want to be achieved,
- it is to be for that Office to determine, for the purposes of the review, how much of what is wanted should be achieved using (but only for the purposes for which they may be applied) all the public financial resources that it considers are or are likely to be available.
- (3) In conducting an access charges review the Office of Rail Regulation must have regard to the consequences of compliance by a facility owner who is a party to the access agreement in question with any terms—
- (a) of that agreement, or
  - (b) of any other access agreement to which that facility owner is a party,

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that it considers are relevant to a matter notified under paragraph 1G (including, in particular, a term requiring the facility owner to pay compensation or to take mitigatory measures).

- (4) In considering the matters mentioned in paragraph 1A(3), the Office of Rail Regulation must have regard to any suggestion made under paragraph 1E, and to any revision of that suggestion.
- (5) For the purposes of this paragraph—
  - (a) expressions used in this paragraph and in paragraph 1D have the same meanings in this paragraph as in that;
  - (b) what the Secretary of State or the Scottish Ministers want must be determined in every case in accordance with the information provided in that case under paragraph 1D, and with any revisions notified under paragraph 1F(3)(b) or 1G(3)(b); and
  - (c) the Office of Rail Regulation must have regard to the financial information so provided and revised whenever considering what is likely to make the best and most practicable contribution to the achievement of what the Secretary of State or the Scottish Ministers want.]

#### *Main provisions*

- 2 (1) The procedure for the implementation of an access charges review shall be as provided for by paragraphs 4 to 16 of this Schedule.
- (2) And any procedure relating to the implementation of an access charges review for which the access agreement or any linked licence makes provision shall not apply.

<sup>F90</sup>3 .....

#### **Textual Amendments**

**F90** Sch. 4A para. 3 repealed (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 59, 60, Sch. 4 para. 3, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2007/62, [art. 2](#)

#### *Review notice*

- 4 (1) The implementation of an access charges review shall be initiated by [<sup>F91</sup>the Office of Rail Regulation] giving notice (a “review notice”)—
  - (a) stating [<sup>F92</sup>its] conclusions on the access charges review and the reasons why [<sup>F93</sup>it] reached those conclusions;
  - (b) specifying the relevant changes which [<sup>F93</sup>it] proposes to make for or in connection with giving effect to those conclusions;
  - (c) stating, in relation to each of the proposed relevant changes, the date on which [<sup>F93</sup>it] proposes that it should come into operation; and
  - (d) specifying the period (not being less than six weeks from the date of publication of the notice) within which objections with respect to any of the proposed relevant changes, or the date on which it is proposed that it should come into operation, may be made by a person within sub-paragraph (4)(a) or (b) below.
- (2) In this Schedule “relevant changes”, in relation to an access agreement, means—

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- (a) amendments of the access agreement;
- (b) modifications of the conditions of any linked licence; or
- (c) both such amendments and such modifications;

and references to the making of relevant changes are, in the case of amendments of the access agreement, references to directing the parties to the access agreement to make the amendments to the access agreement.

[<sup>F94</sup>(2A) Before giving a review notice specifying modifications of a linked licence that are proposed for purposes connected with securing—

- (a) what the Secretary of State has informed the Office of Rail Regulation he wants to be achieved by any railway activities, or
- (b) what the Scottish Ministers have informed that Office they want to be achieved by any such activities,

that Office must consult the Secretary of State or (as the case may be) those Ministers.]

(3) The review notice shall be given—

- (a) by publishing it in such manner as [<sup>F91</sup>the Office of Rail Regulation] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and
- (b) by serving a copy on the persons specified in sub-paragraph (4) below.

(4) The persons referred to in sub-paragraph (3)(b) above are—

- [<sup>F95</sup>(za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
- (zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;
- (zc) the Treasury;]
- (a) the facility owner, or installation owner, who is a party to the access agreement;
- (b) any other person who has an estate or interest in, or right over, the railway facility or network installation to which the access agreement relates and who [<sup>F91</sup> the Office of Rail Regulation] considers ought to be given a copy; and
- (c) the beneficiary.

(5) In this Schedule “the beneficiary”—

- (a) in relation to an access contract, has the meaning given by section 17(7) of this Act; and
- (b) in relation to an installation access contract, has the meaning given by section 19(10) of this Act.

#### Textual Amendments

- F91** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)
- F92** Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(c) Table; S.I. 2004/827, art. 4(g)
- F93** Word in Sch. 4A 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)

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- F94** Sch. 4A para. 4(2A) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 4\(1\)](#); [S.I. 2007/62](#), [art. 2](#)
- F95** Sch. 4A para. 4(4)(za)-(zc) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 4\(2\)](#); [S.I. 2007/62](#), [art. 2](#)

#### *Notice of agreement*

- 5 (1) If no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), [<sup>F96</sup>the Office of Rail Regulation] shall give notice (a “notice of agreement”) stating that fact.
- (2) The notice of agreement shall be given—
- (a) by publishing it in such manner as [<sup>F96</sup>the Office of Rail Regulation] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the proposed relevant changes; and
  - (b) by serving a copy on the beneficiary.

#### **Textual Amendments**

- F96** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)

#### *Termination notice*

- 6 (1) After a copy of a notice of agreement is served on the beneficiary, he may give notice (a “termination notice”) terminating the access agreement.
- (2) The termination notice shall specify the date on which the access agreement is to terminate.
- (3) The termination notice shall be given by serving a copy on—
- [<sup>F97</sup>(za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
  - (zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;]
  - (a) the facility owner or installation owner;
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and
  - (c) [<sup>F98</sup>the Office of Rail Regulation].
- (4) The date specified by the termination notice as that on which the access agreement is to terminate shall be neither—
- (a) less than six months, nor
  - (b) more than one year,
- after the copy of the termination notice is served on the facility owner or installation owner.
- (5) The termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice of agreement is served on the beneficiary.

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#### Textual Amendments

- F97** Sch. 4A para. 6(3)(za)(zb) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 5](#); [S.I. 2007/62](#), [art. 2](#)
- F98** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)

#### *Review implementation notice*

- 7 (1) After a copy of a notice of agreement is served on the beneficiary and the time within which a termination notice may be given by him has expired—
- (a) if he has not given a termination notice (or has withdrawn any notice which he has given), [<sup>F99</sup>the Office of Rail Regulation] shall (unless [<sup>F100</sup>it] acts under paragraph 8(2) below) give a review implementation notice; or
  - (b) if he has given (and not withdrawn) a termination notice, [<sup>F99</sup>the Office of Rail Regulation] may give such a notice.
- (2) A review implementation notice is a notice stating that [<sup>F99</sup>the Office of Rail Regulation]'s conclusions on the access charges review are to be implemented as proposed in the review notice.
- (3) The review implementation notice shall—
- (a) specify the relevant changes which [<sup>F99</sup>the Office of Rail Regulation] is making; and
  - (b) state, in relation to each of the relevant changes, the date on which it comes into operation.
- (4) The review implementation notice shall be given—
- (a) by publishing it in such manner as [<sup>F99</sup>the Office of Rail Regulation] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the relevant changes; and
  - (b) by serving a copy on the persons on whom a copy of the review notice was served, <sup>F101</sup> . . . .

#### Textual Amendments

- F99** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F100** Word in Sch. 4A 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\(g\)](#)
- F101** Words in Sch. 4A para. 7(4)(b) repealed (1.4.2006 for certain purposes and 1.12.2006 in so far as not already in force) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); [S.I. 2006/266](#), [art. 2\(2\)](#), [Sch.](#) ; [S.I. 2006/2911](#), [art. 2](#), [Sch.](#) (subject to the transitional and saving provisions in [arts. 3-7](#))

#### *New review notice or Competition Commission reference*

- 8 (1) This paragraph applies if—
- (a) objections are duly made by a person within paragraph 4(4)(a) or (b) above (and not withdrawn); or



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- (b) although no objections are duly made by a person within paragraph 4(4)(a) or (b) above (or any that are so made are withdrawn), relevant objections are duly made (and not withdrawn) in relation to a similar review notice relating to another access agreement.
- (2) [F102the Office of Rail Regulation] may—
    - (a) give a new review notice under paragraph 4 above; or
    - (b) make a reference to the Competition Commission under paragraph 9 below.
  - (3) For the purposes of sub-paragraph (1) above—
    - (a) “relevant objections”, in relation to another access agreement, means objections by a person who is within paragraph 4(4)(a) or (b) above in relation to that other access agreement; and
    - (b) one review notice is similar to another if they make provision which, in the opinion of [F102the Office of Rail Regulation] , is to broadly the same effect.
  - (4) Before acting under sub-paragraph (1) above, [F102the Office of Rail Regulation] shall consider the objections referred to in that sub-paragraph.
- [F103(4A) Paragraph 1H applies to the making of any determination by the Office of Rail Regulation of what should be included in a new review notice to be given under this paragraph as it applies to the conduct of an access charges review.]
- (5) If [F102the Office of Rail Regulation] gives a new review notice under paragraph 4 above by virtue of sub-paragraph (2)(a) above, the references in that paragraph and paragraph 7(2) above to [F104its] conclusions on the access charges review shall be read in relation to the new notice as references to those conclusions as modified since the previous review notice (in particular as the result of any objections or representations made in relation to it).

#### Textual Amendments

**F102** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)

**F103** Sch. 4A para. 8(4A) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 6; S.I. 2007/62, art. 2

**F104** Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(c) Table; S.I. 2004/827, art. 4(g)

#### Reference to Competition Commission

- 9 (1) A reference to the Competition Commission under this paragraph shall be so framed as to require them to investigate and report on the questions specified in sub-paragraph (2) below.
- (2) Those questions are—
  - (a) whether the matters considered on the access charges review which are specified in the reference operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the making of relevant changes.

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- (3) [<sup>F105</sup>the Office of Rail Regulation] may, at any time, by notice given to the Competition Commission vary a reference under this paragraph—
- (a) by adding to the matters specified in the reference; or
  - (b) by excluding from the reference some or all of the matters so specified.
- (4) On receipt of such a notice the Competition Commission shall give effect to the variation.
- (5) [<sup>F105</sup>the Office of Rail Regulation] may specify in a reference under this paragraph, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any relevant changes by which, in his opinion, those effects could be remedied or prevented.
- (6) As soon as practicable after making a reference under this paragraph, or a variation of such a reference, the Regulator—
- (a) shall serve a copy of the reference or variation on the persons on whom a copy of the review notice was served; and
  - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- [<sup>F106</sup>(6A) A reference to the Competition Commission under this paragraph must be accompanied by—
- (a) any information which in the case in question was provided to the Office of Rail Regulation by the Secretary of State or the Scottish Ministers under paragraph 1D;
  - (b) any information to which he or they referred in discharging the obligation imposed by that paragraph;
  - (c) any suggestion which in that case was made under paragraph 1E; and
  - (d) any revision of anything falling within paragraph (a) to (c) which has been notified to that Office under paragraph 1F or 1G.]
- (7) For the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this paragraph, [<sup>F105</sup>the Office of Rail Regulation] shall give to the Competition Commission [<sup>F107</sup>(in addition to the information and revisions mentioned in sub-paragraph (6A))] any information in [<sup>F108</sup>its] possession which relates to matters falling within the scope of the investigation and—
- (a) is requested by the Competition Commission for that purpose; or
  - (b) is information which, in [<sup>F108</sup>its] opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;
- and any other assistance which the Competition Commission may require, and which it is within [<sup>F108</sup>its] power to give, in relation to any such matters.
- (8) For the purpose of carrying out such an investigation, the Competition Commission shall take account of any information given to them for that purpose under [<sup>F109</sup>sub-paragraphs (6A) and] (7) above.

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- (9) In determining for the purposes of this paragraph whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on [F105 the Office of Rail Regulation] by section 4 of this Act [F110 and to the information, suggestions and revisions mentioned in sub-paragraph (6A)]

#### Textual Amendments

- F105** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(a)** Table; S.I. 2004/827, **art. 4(g)**
- F106** Sch. 4A para. 9(6A) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(1)**; S.I. 2007/62, **art. 2**
- F107** Words in Sch. 4A para. 9(7) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(2)**; S.I. 2007/62, **art. 2**
- F108** Word in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, **Sch. 2 para. 3(c)** Table; S.I. 2004/827, **art. 4(g)**
- F109** Words in Sch. 4A para. 9(8) substituted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(3)**; S.I. 2007/62, **art. 2**
- F110** Words in Sch. 4A para. 9(9) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, **Sch. 4 para. 7(4)**; S.I. 2007/62, **art. 2**

#### References under paragraph 9: time limits

10            F111 .....

#### Textual Amendments

- F111** Sch. 4A para. 10 repealed (29.1.2007) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2007/62, **art. 2**

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

[F112 10(A)] The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—

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

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

- (a) subsection (2) were omitted; and

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- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F113</sup> “the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.]

#### **Textual Amendments**

**F112** Sch. 4A paras. 10, 10A substituted (20.6.2003) for Sch. 4A para. 10 by 2002 c. 40, ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 8, 12)

**F113** Words in Sch. 4A para. 10A(4) substituted (29.12.2003) by **Communications Act 2003 (c. 21)**, ss. 389, 411(2)(3), **Sch. 16 para. 4(4)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (subject to art. 3(3))

#### *Report on reference*

- 11 (1) In making a report on a reference under paragraph 9 above, the Competition Commission shall include in the report—
  - (a) definite conclusions on the questions comprised in the reference; and
  - (b) such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, they shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have.
- (3) Where they conclude that any adverse effects so specified could be remedied or prevented by the making of relevant changes, they shall in the report—
  - (a) specify the relevant changes by which those effects could be remedied or prevented; and

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- (b) state, in relation to each of the relevant changes, the date on which it should come into operation.
- (4) A date stated in the report as that on which a relevant change should come into operation may be a date before the report is made, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.
- [<sup>F114</sup>(4A) For the purposes of paragraphs 12 to 14 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.]
- [<sup>F114</sup>(4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 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.]
- [<sup>F115</sup>(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.
- (5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (5B) 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.
- (5C) 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.
- (5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.]
- (6) A report of the Competition Commission on a reference under paragraph 9 above shall be made to [<sup>F116</sup>the Office of Rail Regulation] .
- (7) [<sup>F116</sup>the Office of Rail Regulation] shall, on receiving such a report, send a copy of it to the Secretary of State and the Authority.
- (8) Not less than 14 days after that copy is received by the Secretary of State, [<sup>F116</sup>the Office of Rail Regulation] shall send a copy to each of the persons on whom a copy of the review notice was served.
- (9) Not less than 24 hours after complying with sub-paragraph (8) above, [<sup>F116</sup>the Office of Rail Regulation] shall publish the report in such manner as [<sup>F117</sup>it] considers

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appropriate for bringing the report to the attention of persons likely to be affected by it.

- (10) If it appears to the Secretary of State that the publication of any matter in the 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 after he receives his copy of the report, direct [<sup>F116</sup>the Office of Rail Regulation] to exclude that matter from—
- (a) every copy of the report sent under sub-paragraph (8) above, and
  - (b) the version of the report published under sub-paragraph (9) above.

#### Textual Amendments

- F114** Sch. 4A para. 11(4A)(4B) inserted (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(b)(i); S.I. 2003/1397, art. 2(1), Sch.
- F115** Sch. 4A para. 11(5)-(5D) substituted (20.6.2003) for Sch. 4A para. 11(5) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(b)(ii); S.I. 2003/1397, art. 2(1), Sch.
- F116** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)
- F117** Word in Sch. 4A 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)

#### *Changes following report*

- 12 (1) Where a report of the Competition Commission on a reference under paragraph 9 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 the making of relevant changes, and
  - (d) specifies relevant changes by which those effects could be remedied or prevented,
- [<sup>F118</sup>the Office of Rail Regulation] shall, subject to the following provisions of this paragraph and paragraph 13 below, make such relevant changes as appear to [<sup>F119</sup>it] requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making relevant changes under this paragraph, [<sup>F118</sup>the Office of Rail Regulation] shall have regard to the relevant changes specified in the report.
- (3) Before making relevant changes under this paragraph, [<sup>F118</sup>the Office of Rail Regulation] shall give notice—
- (a) stating that [<sup>F119</sup>it] proposes to make the relevant changes and setting out their effect,
  - (b) stating the reasons why [<sup>F119</sup>it] proposes to make the relevant changes,
  - (c) stating, in relation to each of the proposed relevant changes, the date on which [<sup>F119</sup>it] proposes that it should come into operation, and

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- (d) 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 relevant changes may be made,  
and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under sub-paragraph (3) above shall be given—
- (a) by publishing the notice in such manner as [<sup>F118</sup>the Office of Rail Regulation] 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 relevant changes; and
  - (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.
- [<sup>F120</sup>(4A) Where (after considering any representations and objections which are duly made and not withdrawn) the Office of Rail Regulation proposes to make relevant changes under this paragraph, it must give a notice to the relevant authorities which—
- (a) sets out everything that would have to be included in a notice under sub-paragraph (5) with respect to the proposed changes;
  - (b) specifies a period within which the Secretary of State, the Scottish Ministers or each of them has the opportunity of revising, in the light of those proposals, any information provided under paragraph 1D.
- (4B) If in consequence of any revision of that information that is notified to the Office of Rail Regulation within the period specified in that notice, that Office decides to modify its proposals, it must—
- (a) give a new notice with respect to the modified proposals under sub-paragraph (3); and
  - (b) comply again with sub-paragraph (4A) and this sub-paragraph before giving notice of the modified proposals to the Competition Commission.
- (4C) The relevant authorities for the purposes of sub-paragraph (4A) are each of the following—
- (a) where the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, those Ministers; and
  - (c) in each of those cases, the Treasury.]
- (5) Where (after considering any representations or objections which are duly made and not withdrawn [<sup>F121</sup>and any revisions of information provided under paragraph 1D that were notified within the period specified under sub-paragraph (4A)] ) [<sup>F118</sup>the Office of Rail Regulation] proposes to make relevant changes under this paragraph, [<sup>F119</sup>it] shall give notice to the Competition Commission—
- (a) setting out the relevant changes [<sup>F119</sup>it] proposes to make;
  - (b) stating the reasons why [<sup>F119</sup>it] proposes to make the relevant changes; and
  - (c) stating, in relation to each of the proposed relevant changes, the date on which [<sup>F119</sup>it] proposes that it should come into operation.
- (6) [<sup>F118</sup>the Office of Rail Regulation] shall include with the notice under sub-paragraph (5) above a copy of any representations and objections which have been

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considered [<sup>F122</sup>and a copy of any revisions of information provided under paragraph 1D that have been notified within the period specified in the notice under sub-paragraph (4A)].

- (7) A date stated in a notice under sub-paragraph (3) or (5) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.
- (8) If the period within which a direction may be given by the Competition Commission under paragraph 13 below expires without such a direction being given, [<sup>F118</sup>the Office of Rail Regulation] shall make the relevant changes set out in the notice under sub-paragraph (5) above.
- (9) If a direction is given by the Competition Commission under paragraph 13(1)(b) below, [<sup>F118</sup>the Office of Rail Regulation] shall make such of those relevant changes as are not specified in the direction.
- (10) As soon as practicable after making relevant changes under this paragraph, [<sup>F118</sup>the Office of Rail Regulation] shall send a copy of the relevant changes
  - [<sup>F123</sup>(a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State; and
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers.]

#### Textual Amendments

- F118** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)
- F119** Word in Sch. 4A 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\(g\)](#)
- F120** Sch. 4A para. 12(4A)-(4C) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 8\(1\)](#); [S.I. 2007/62](#), [art. 2](#)
- F121** Words in Sch. 4A para. 12(5) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 8\(2\)](#); [S.I. 2007/62](#), [art. 2](#)
- F122** Words in Sch. 4A para. 12(6) inserted (29.1.2007) by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 8\(4\)](#); [S.I. 2007/62](#), [art. 2](#)
- F123** Sch. 4A para. 12(10)(a)(b) substituted (29.1.2007) for words by [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 8\(5\)](#); [S.I. 2007/62](#), [art. 2](#)

#### *Competition Commission's power to veto changes*

- 13 (1) The Competition Commission may, within the period of four weeks beginning with the day on which they are given notice under paragraph 12(5) above, give a direction to [<sup>F124</sup>the Office of Rail Regulation]—
  - (a) not to make the relevant changes set out in the notice; or
  - (b) not to make such of those relevant changes 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 paragraph to one of six weeks beginning with the



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- day on which the Competition Commission are given notice under paragraph 12(5) above.
- (3) The Competition Commission may give a direction under this paragraph only if the relevant changes 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 paragraph 9 above.
- (4) If the Competition Commission give a direction under this paragraph, they shall give notice—
- (a) setting out the relevant changes contained in the notice given under paragraph 12(5) above;
  - (b) setting out the direction; and
  - (c) stating the reasons why they are giving the direction.
- (5) A notice under sub-paragraph (4) 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 direction; and
  - (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.

#### Textual Amendments

**F124** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; S.I. 2004/827, [art. 4\(g\)](#)

#### *Making of changes by Competition Commission*

- 14 (1) If the Competition Commission give a direction under paragraph 13 above, they shall themselves make such relevant changes as appear to them requisite for the purpose of remedying or preventing—
- (a) the adverse effects specified in their report on the reference under paragraph 9 above; or
  - (b) such of those adverse effects as would not be remedied or prevented by the relevant changes made by [<sup>F125</sup>the Office of Rail Regulation] under paragraph 12(9) above.
- (2) In exercising the function conferred by sub-paragraph (1) above, the Competition Commission shall have regard to the matters as respects which duties are imposed on [<sup>F125</sup>the Office of Rail Regulation] by section 4 of this Act.
- (3) Before making relevant changes under this paragraph, the Competition Commission shall give notice—
- (a) stating that they propose to make the relevant changes and setting out their effect,
  - (b) stating the reasons why they propose to make the relevant changes,
  - (c) stating, in relation to each of the proposed relevant changes, the date on which they propose that it should come into operation, and

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- (d) 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 date stated in a notice under sub-paragraph (3) above as that on which a relevant change should come into operation may be a date before the notice is given, provided that it is not before the earliest date specified in the review notice for the coming into operation of a relevant change proposed in it.
- (5) A notice under sub-paragraph (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 relevant changes; and
  - (b) by serving a copy of the notice on the persons on whom a copy of the review notice was served.
- [<sup>F126</sup>(6) As soon as practicable after making relevant changes under this paragraph, the Competition Commission must send a copy of those relevant changes—
- (a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State;
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers; and
  - (c) in each of those cases, to the Office of Rail Regulation.]

#### **Textual Amendments**

- F125** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; S.I. 2004/827, [art. 4\(g\)](#)
- F126** Sch. 4A: para. 14(6) substituted (29.1.2007) "for the last sub-paragraph of paragraph 14" by virtue of [Railways Act 2005 \(c. 14\)](#), ss. 4, 60, [Sch. 4 para. 9](#); S.I. 2007/62, [art. 2](#)

#### *Paragraphs 13 and 14: supplementary*

- 15[<sup>F127</sup>(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.
- (2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (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

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- (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 sub-paragraph (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 sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 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 sub-paragraph (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 [<sup>F128</sup>the Office of Rail Regulation] under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to 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 sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to [<sup>F128</sup>the Office of Rail Regulation] under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act 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 paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a)<sup>F129</sup> “the OFT, OFCOM, ”] and (2), the words and “or the Secretary of State” were omitted.

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- (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 sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.]
- (3) For the purpose of assisting the Competition Commission in exercising their functions under paragraphs 13 and 14 above, [<sup>F128</sup>the Office of Rail Regulation] shall give to the Competition Commission [<sup>F130</sup>(in addition to the information provided in accordance with paragraph 12(5) and (6))] any information in [<sup>F131</sup>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 his opinion, it would be appropriate for that purpose to give to the Competition Commission without any such request;
- and any other assistance which the Competition Commission may require, and which it is within [<sup>F131</sup>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
- [<sup>F132</sup>(a) every revision of which they have been given notice under paragraph 12(6) of information provided under paragraph 1D; and
  - (b) all information]
- given to them for that purpose under sub-paragraph (3) above.

#### Textual Amendments

- F127** Sch. 4A para. 15(1)-(2I) substituted (20.6.2003) for Sch. 4 para. 15(1)(2) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 30(15)(c); S.I. 2003/1397, art. 2(1), Sch.
- F128** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(a) Table; S.I. 2004/827, art. 4(g)
- F129** Words in Sch. 4A para. 15(2G) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389, 411(2)(3), Sch. 16 para. 4(4) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (subject to art. 3(3))
- F130** Words in Sch. 4A para. 15(3) inserted (29.1.2007) by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 10(1); S.I. 2007/62, art. 2
- F131** Words in Sch. 4A substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16, 120, Sch. 2 para. 3(c) Table; S.I. 2004/827, art. 4(g)
- F132** Sch. 4A para. 15(4)(a)(b) substituted (29.1.2007) for words by Railways Act 2005 (c. 14), ss. 4, 60, Sch. 4 para. 10(2); S.I. 2007/62, art. 2

#### *Termination notice in response to proposals after reference*

- 16 (1) Where a notice is served on the beneficiary under paragraph 12(3) or 14(3) above, he may give notice (a “post-reference termination notice”) terminating the access agreement.
- (2) The post-reference termination notice shall specify the date on which the access agreement is to terminate.

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- (3) The post-reference termination notice shall be given by serving a copy on—
- (a) the facility owner or installation owner;
  - (b) any other person who has an estate or interest in, or right over, the railway facility or network installation and who received a copy of the review notice; and
  - (c) [<sup>F133</sup>the Office of Rail Regulation].
- (4) The date specified by the post-reference termination notice as that on which the access agreement is to terminate shall be neither—
- (a) less than six months, nor
  - (b) more than one year,
- after the copy of the post-reference termination notice is served on the facility owner or installation owner.
- (5) The post-reference termination notice may not be given after the end of the period of 28 days beginning with the day on which the copy of the notice under paragraph 12(3) or 14(3) above is served on the beneficiary.

#### Textual Amendments

**F133** Words in Sch. 4A substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 3\(a\)](#) Table; [S.I. 2004/827](#), [art. 4\(g\)](#)

## F134F134 SCHEDULE 5

#### Textual Amendments

**F134** [Sch. 5](#) repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#); [S.I. 2006/2911](#), [art. 2](#), [Sch.](#) (subject to [arts. 3-7](#))

## SCHEDULE 6

Section 59.

### RAILWAY ADMINISTRATION ORDERS

#### Modifications etc. (not altering text)

**C2** [Sch. 6](#) modified (18.12.1996) by [1996 c. 61](#), [s. 19\(2\)\(b\)\(4\)\(5\)](#)  
[Sch. 6](#) restricted (18.12.1996) by [1996 c. 61](#), [s. 19\(7\)](#)

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## PART I

### MODIFICATIONS OF THE 1986 ACT

#### *General application of provisions of 1986 Act*

- 1 Where a railway administration order has been made, sections 11 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—
- (a) as if references in those sections to an administration order were references to a railway administration order and references to an administrator were references to a special railway administrator;
  - [<sup>F153</sup>(aa) as if references in those sections to the appropriate national authority were to be construed in accordance with section 59(6)(za) of this Act;]and
  - (b) where the company in relation to which the order has been made is a protected railway company which is an unregistered company, as if references in those sections to a company included references to such a company.

#### **Textual Amendments**

**F153** Sch. 6 para. 1(aa) inserted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), **ss. 49(5), 60**; S.I. 2005/2812, **art. 2(1)**, Sch. 1

#### *Effect of order*

- 2 In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule,—
- (a) the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the railway administration order in a case where the order is made by virtue of section 61 of this Act; and
  - (b) the reference in subsection (3)(d) to proceedings shall include a reference to any proceedings under or for the purposes of section 55 [<sup>F154</sup>or 57A] of this Act.

#### **Textual Amendments**

**F154** Words in Sch. 6 para. 2(b) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 48**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### *Appointment of special railway administrator*

- 3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—

“(3) An application for an order under subsection (2) may be made—

- (a) by the [<sup>F155</sup>appropriate national authority] ;

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- (b) F156 .....
- (c) by any continuing special railway administrator of the company or, where there is no such special railway administrator, by the company, the directors or any creditor or creditors of the company.”

#### Textual Amendments

**F155** Words in Sch. 6 para. 3 substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. {49(4)(c)}, 60; S.I. 2005/2812, art. 2(1), Sch. 1

**F156** Sch. 6 para. 3: "in the substituted subsection (3), paragraph (b)" repealed (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 13 Pt. 1 (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, art. 2, Sch.

#### *General powers of special railway administrator*

- 4 In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule,—
- (a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be taken to include a reference to a power to act on behalf of the company for the purposes of this Act or any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and
- (b) in subsection (4), the reference to a power conferred by the company’s memorandum or articles of association—
- (i) shall be taken to include a reference to any power conferred by any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and
- (ii) in the case of a company which is an unregistered company, shall be taken also to include a reference to any power conferred by the company’s constitution.

#### *Power to deal with charged property*

- 5 (1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.
- (2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words “in the open market by a willing vendor” there shall be substituted the words “ for the best price which is reasonably available on a sale which is consistent with the purposes of the railway administration order ”.

#### *Duties of special railway administrator*

- 6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect in accordance with the following provisions of this paragraph.
- (2) For subsection (2) there shall be substituted the following subsection—
- “(2) Subject to any directions of the court, it shall be the duty of the special railway administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under

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section 23, which have been prepared for the purposes of that section by him or any predecessor of his.”

- (3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors’ meeting) shall be omitted.

#### *Discharge of order*

- 7 (1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.

- (2) For subsections (1) and (2) there shall be substituted the following subsection—

“(1) An application for a railway administration order to be discharged may be made—

- (a) by the special railway administrator, on the ground that the purposes of the order have been achieved; or  
 (b) by the [<sup>F157</sup>appropriate national authority]<sup>F158</sup> . . . on the ground that it is no longer necessary that the purposes of the order are achieved.”

- (3) In subsection (3), the words “or vary” shall be omitted.

- <sup>F159</sup>(4) In subsection (4), the words “or varied” and “or variation” shall be omitted and for the words “to the registrar of companies” there shall be substituted—

- (a) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the <sup>M5</sup>Companies Act 1985 to deliver any documents to the registrar of companies, the words “to [<sup>F160</sup>the Office of Rail Regulation], the Director of Passenger Rail Franchising and the registrar of companies”; and  
 (b) where the company is an unregistered company which is not subject to such a requirement as is mentioned in paragraph (a) above, the words “to [<sup>F160</sup>the Office of Rail Regulation] and the Director of Passenger Rail Franchising”.

#### **Textual Amendments**

**F157** Words in Sch. 6 para. 7 substituted (16.10.2005) by [Railways Act 2005 \(c. 14\)](#), ss. {49(4)(c)}, 60; S.I. 2005/2812, [art. 2\(1\)](#), Sch. 1

**F158** Sch. 6 para. 7(2): "in the substituted section 18(1)(b)" words repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2](#), Sch.

**F159** By [Railways Act 2005 \(c. 14\)](#), ss. [49\(6\)](#), 60; S.I. 2005/2812, {art. 2(1)}, Sch. 1 it is provided that for the words "the Strategic Rail Authority" the words "the appropriate national authority" are substituted in Sch. 6 para. 7(4) (16.10.2005)

**F160** Words in [Sch. 6 Pt. 1](#) substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 18](#); S.I. 2004/827, [art. 4\(g\)](#)

#### **Marginal Citations**

**M5** 1985 c. 6.



*Status: Point in time view as at 29/01/2007.*

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*Notice of making of order*

- <sup>F161</sup>8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words “to the registrar of companies” there shall be substituted—
- (a) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the <sup>M6</sup>Companies Act 1985 to deliver any documents to the registrar of companies, the words “ to [<sup>F162</sup>the Office of Rail Regulation] , the Director of Passenger Rail Franchising and the registrar of companies ”; and
  - (b) where the company is an unregistered company which is not subject to such a requirement as is mentioned in paragraph (a) above, the words “to [<sup>F162</sup>the Office of Rail Regulation] and the Director of Passenger Rail Franchising”.

**Textual Amendments**

**F161** By [Railways Act 2005 \(c. 14\), ss. 49\(6\), 60](#); S.I. 2005/2812, {art. 2(1)}, Sch. 1 it is provided that for the words “the Strategic Rail Authority” the words “the appropriate national authority” are substituted in Sch. 6 para. 8 (16.10.2005)

**F162** Words in [Sch. 6 Pt. 1](#) (substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\), ss. 16, 120, Sch. 2 para. 18](#); S.I. 2004/827, [art. 4\(g\)](#))

**Marginal Citations**

**M6** 1985 c. 6.

*Statement of proposals*

- 9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—
- “(1) Where a railway administration order has been made, the special railway administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—
- (a) to the Secretary of State ;
  - (b) to [<sup>F163</sup>the Office of Rail Regulation] ;
  - (c) <sup>F164</sup> . . . . .
  - (d) so far as he is aware of their addresses, to all creditors of the company; and
  - (e) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the <sup>M7</sup>Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;
- and may from time to time revise those proposals.
- (2) If at any time—
- (a) the special railway administrator proposes to make revisions of the proposals for achieving the purposes of the railway administration order, and

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- (b) those revisions appear to him to be substantial,  
the special railway administrator shall, before making those revisions,  
send a statement of the proposed revisions to the persons specified in  
subsection (2A).
- (2A) The persons mentioned in subsection (2) are—
- (a) the Secretary of State;
  - (b) [<sup>F163</sup>the Office of Rail Regulation]
  - (c) <sup>F164</sup> . . . . .
  - (d) all creditors of the company, so far as the special railway administrator is aware of their addresses; and
  - (e) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the <sup>M8</sup>Companies Act 1985 to deliver any documents to the registrar of companies, the registrar of companies.
- (2B) Where the special railway administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—
- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or
  - (b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

**Textual Amendments**

**F163** Words in Sch. 6 Pt. 1 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), ss. 16, 120, [Sch. 2 para. 18](#); [S.I. 2004/827](#), [art. 4\(g\)](#)

**F164** Sch. 6 para. 9: words in subsections (1)(c)(2A)(c) "of the substituted section 23" repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); [S.I. 2005/1909](#), [art. 2](#), Sch.

**Marginal Citations**

**M7** 1985 c. 6.

**M8** 1985 c. 6.

*Applications to court*

- 10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.
- (2) After subsection (1) there shall be inserted the following subsections—
- “(1A) At any time when a railway administration order is in force the Secretary of State <sup>F165</sup> . . . may apply to the High Court or the Court of Session by petition for an order under this section on the ground specified in subsection (1B).

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- (1B) The ground mentioned in subsection (1A) is that the special railway administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—
- (a) will not best ensure the achievement of the purposes of the order; or
  - (b) without prejudice to paragraph (a) above, involves a contravention of any of the conditions of any licence under Part I of the Railways Act 1993 held by the company.
- (1C) Where an application is made under subsection (1) in respect of a company in relation to which a railway administration order is in force—
- (a) notice of the application shall be given to the Secretary of State; and
  - (b) he shall be entitled to be heard by the court in connection with that application.”
- (3) Subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator’s proposals) shall be omitted.
- (4) In subsection (4) (provision that may be made in an order), the words “Subject as above” shall be omitted and for paragraph (d) there shall be substituted—
- “(d) without prejudice to the powers exercisable by the court in making a railway administration order—
    - (i) provide that the railway administration order is to be discharged as from such date as may be specified in the order unless, before that date, such measures are taken as the court thinks fit for the purpose of protecting the interests of creditors; and
    - (ii) make such consequential provision as the court thinks fit.”
- <sup>F166</sup>(5) For subsection (6) there shall be substituted—
- “(6) Where a railway administration order is discharged in consequence of such provision in an order under this section as is mentioned in subsection (4)(d) (i), the special railway administrator shall, within 14 days after the date on which the discharge takes effect, send an office copy of the order under this section—
- (a) to [<sup>F167</sup> the Office of Rail Regulation] ;
  - (b) to the Director of Passenger Rail Franchising; and
  - (c) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the <sup>M9</sup>Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;
- and if, without reasonable excuse, the special railway administrator fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.”

#### Textual Amendments

**F165** Sch. 6 para. 10(2): words "in the substituted subsection 21(1A)" repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, [Sch. 13 Pt. 1](#) (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); S.I. 2005/1909, [art. 2](#), [Sch.](#)

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**F166** By [Railways Act 2005 \(c. 14\)](#), [ss. 49\(6\), 60](#); S.I. 2005/2812, {art. 2(1)}, Sch. 1 it is provided that for the words "the Strategic Rail Authority" the words "the appropriate national authority" are substituted in Sch. 6 para. 10(5) (16.10.2005)

**F167** Words in Sch. 6 Pt. 1 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), [ss. 16, 120](#), [Sch. 2 para. 18](#); S.I. 2004/827, [art. 4\(g\)](#)

#### Marginal Citations

**M9** 1985 c. 6.

#### *Particular powers of special railway administrator*

- 11 In the application of Schedule 1 to the 1986 Act (which sets out certain powers of the administrator) by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a company which is an unregistered company, paragraph 22 shall be omitted.

## PART II

### FURTHER MODIFICATIONS OF THE 1986 ACT: APPLICATION IN RELATION TO FOREIGN COMPANIES

#### *Introductory*

- 12 (1) Where a railway administration order has been made in relation to a company which is a foreign company, sections 11 to 23 and 27 of the 1986 Act (as applied by Part I of this Schedule) shall apply in relation to that foreign company with the further modifications set out in the following provisions of this Part of this Schedule.
- (2) In this Part of this Schedule, "foreign company" means a company incorporated outside Great Britain.

#### *Effect of order*

- 13 (1) Section 11 of the 1986 Act (effect of administration order), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.
- (2) In subsection (1), paragraph (b) shall be omitted.
- (3) Subsection (2) shall be omitted.
- (4) In subsection (3)—
- (a) paragraphs (a) and (b) shall be omitted; and
  - (b) in paragraph (d)—
    - (i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and
    - (ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales;
- and any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.

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(5) Subsections (4) and (5) shall be omitted.

(6) At the end of that section there shall be added—

“(6) Where a railway administration order is in force in relation to a company which is a foreign company within the meaning of section 65 of the Railways Act 1993—

(a) any person appointed to perform functions equivalent to those of an administrative receiver, and

(b) if the special railway administrator so requires, any person appointed to perform functions equivalent to those of a receiver,

shall refrain from performing those functions in Great Britain in relation to the foreign company and any of the company’s property for the time being situated in Great Britain, during the period for which that order is in force or, in the case of such a person as is mentioned in paragraph (b) above, during so much of that period as falls after the date on which he is required to do so.”

#### *Notification of order*

14 In section 12 of the 1986 Act (notification of order), as applied by this Part of this Schedule in relation to a foreign company, the reference to a statement that the affairs, business and property of the company are being managed by the administrator shall be taken as a reference to a statement that—

(a) the affairs and business of the foreign company so far as carried on in Great Britain, and

(b) the property of the foreign company so far as that property is for the time being situated within Great Britain,

are being managed by the special railway administrator.

#### *General powers of special railway administrator*

15 (1) Section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.

(2) In subsection (1)(a), the reference to the affairs, business and property of the company shall be taken as a reference to—

(a) the affairs and business of the foreign company so far as carried on in Great Britain, and

(b) the property of that company so far as that property is for the time being situated within Great Britain.

(3) Subsection (2)(a) shall be omitted.

(4) In subsection (4)—

(a) the reference to any power conferred on the company or its officers shall be taken to include any power conferred on the foreign company or its officers under the law under which the foreign company is incorporated; and

(b) any reference (however expressed) to the exercise of any power conferred on the company or its officers shall be taken as a reference to the exercise of that power so far as it relates to—

(i) the affairs and business of the foreign company so far as carried on in Great Britain, or

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- (ii) the property of that company so far as that property is for the time being situated within Great Britain.

*Power to deal with charged property*

- 16 In section 15 of the 1986 Act (power of administrator to deal with charged property etc), as applied by this Part of this Schedule in relation to a foreign company, any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.

*Duties of special railway administrator*

- 17 In section 17 of the 1986 Act (general duties of administrator), as applied by this Part of this Schedule in relation to a foreign company,—
- (a) in subsection (1), the reference to property shall be taken as a reference to property for the time being situated within Great Britain; and
  - (b) in subsection (2), the reference to the affairs, business and property of the company shall be taken as a reference to—
    - (i) the affairs and business of the foreign company so far as carried on in Great Britain, and
    - (ii) the property of that company so far as that property is for the time being situated within Great Britain.

*Statement as to company's affairs*

- 18 In section 22(1) of the 1986 Act (power of administrator to require certain persons to provide him with a statement as to company's affairs), as applied by this Part of this Schedule in relation to a foreign company, the reference to the affairs of the company shall be taken as a reference to the affairs of the foreign company so far as they are carried on in Great Britain, or relate to property of that company for the time being situated within Great Britain.

*Particular powers of special railway administrator*

- 19 (1) The powers conferred on a special railway administrator by virtue of Schedule 1 to the 1986 Act (which sets out certain powers of an administrator), as that Schedule applies by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a foreign company, shall be exercisable only in relation to—
- (a) the affairs and business of that company, so far as carried on in Great Britain; and
  - (b) the property of that company, so far as that property is for the time being situated within Great Britain.
- (2) In that Schedule, as it so applies,—
- (a) without prejudice to sub-paragraph (1) above, references to the property of that company shall be taken as references to that property, so far as that property is for the time being situated within Great Britain; and
  - (b) paragraph 19 shall be omitted.

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## PART III

### SUPPLEMENTAL

#### *General adaptations and saving*

- 20 (1) Subject to the preceding provisions of this Schedule, references in the 1986 Act (except in sections 8 to 10 and 24 to 26), or in any other enactment passed before this Act, to an administration order under Part II of that Act, to an application for such an order and to an administrator shall include references, respectively, to a railway administration order, to an application for a railway administration order and to a special railway administrator.
- (2) Subject as aforesaid and to sub-paragraph (3) below, references in the 1986 Act, or in any other enactment passed before this Act, to an enactment contained in Part II of that Act shall include references to that enactment as applied by section 60, 61, 62 or 65 of this Act or Part I or II of this Schedule.
- (3) Sub-paragraphs (1) and (2) above shall apply in relation to a reference in an enactment contained in Part II of the 1986 Act only so far as necessary for the purposes of the operation of the provisions of that Part as so applied.
- (4) The provisions of this Schedule shall be without prejudice to the power conferred by section 411 of the 1986 Act (company insolvency rules), as modified by sub-paragraphs (1) and (2) above.

#### *Interpretation*

- 21 (1) In this Schedule “the 1986 Act” means the <sup>M10</sup>Insolvency Act 1986.
- (2) In this Schedule, and in any modification of the 1986 Act made by this Schedule, “special railway administrator”, in relation to a railway administration order, means any person appointed in relation to that order for the purposes of section 59(1) of this Act; and in any such modification “railway administration order” has the same meaning as in this Act.

#### **Marginal Citations**

**M10** 1986 c. 45.

## SCHEDULE 7

Section 59.

### TRANSFER OF RELEVANT ACTIVITIES IN CONNECTION WITH RAILWAY ADMINISTRATION ORDERS

#### **Modifications etc. (not altering text)**

**C3** Sch. 7 restricted (18.12.1996) by 1996 c. 61, s. 19(7)

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### *Application of Schedule*

- 1 (1) This Schedule shall apply in any case where—
- (a) the court has made a railway administration order in relation to a protected railway company (“the existing appointee”); and
  - (b) it is proposed that, on and after a date appointed by the court, another company (“the new appointee”) should carry on the relevant activities of the existing appointee, in place of the existing appointee.
- (2) In this Schedule—
- “the court”, in the case of any protected railway company, means the court having jurisdiction to wind up the company;
- “other appointee” means any company, other than the existing appointee or the new appointee, which is the holder of a licence under section 8 of this Act [<sup>F168</sup>or of a European licence] and which may be affected by the proposal mentioned in sub-paragraph (1)(b) above;
- “the relevant date” means such day, being a day before the discharge of the railway administration order takes effect, as the court may appoint for the purposes of this Schedule; and
- “special railway administrator”, in relation to a company in relation to which a railway administration order has been made, means the person for the time being holding office for the purposes of section 59(1) of this Act.
- (3) Any reference in this Schedule to “assignment” shall be construed in Scotland as a reference to assignment.

#### **Textual Amendments**

**F168** Words in Sch. 7 para. 1(2) inserted (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 3, [Sch. 1 para. 3\(10\)\(a\)](#)

### *Making and modification of transfer schemes*

- 2 (1) The existing appointee, acting with the consent of the new appointee and, in relation to the matters affecting them, of any other appointees, may make a scheme under this Schedule for the transfer of property, rights and liabilities from the existing appointee to the new appointee.
- (2) A scheme under this Schedule shall not take effect unless it is approved by [<sup>F169</sup>the appropriate national authority] .
- (3) Where a scheme under this Schedule is submitted to [<sup>F170</sup>“the appropriate national authority, it] may, with the consent of the new appointee, of the existing appointee and, in relation to the matters affecting them, of any other appointees, modify the scheme before approving it.
- (4) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any company [<sup>F169</sup>the appropriate national authority] considers it appropriate to do so and the existing appointee, the new appointee and, in relation to the provisions of the order which affect them, any other appointees consent to the making of the order, [<sup>F169</sup>the appropriate national authority] may by



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order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.

- (5) An order under sub-paragraph (4) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme and, in connection with giving effect to that provision from that time, may contain such supplemental, consequential and transitional provision as [<sup>F169</sup>the appropriate national authority] considers appropriate.
- (6) In determining, in accordance with [<sup>F171</sup>the appropriate national authority's] duties under Part I of this Act, whether and in what manner to exercise any power conferred on him by this paragraph [<sup>F169</sup>the appropriate national authority] , shall have regard to the need to ensure that any provision for the transfer of property, rights and liabilities in accordance with a scheme under this Schedule allocates property, rights and liabilities to the different companies affected by the scheme in such proportions as appear to [<sup>F169</sup>the appropriate national authority] to be appropriate in the context of the different relevant activities of the existing appointee which will, by virtue of this Act, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.
- (7) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide [<sup>F169</sup>the appropriate national authority] with all such information and other assistance as [<sup>F169</sup>the appropriate national authority] may reasonably require for the purposes of, or in connection with, the exercise of any power conferred <sup>F172</sup> . . . by this paragraph.
- (8) Without prejudice to the other provisions of this Act relating to the special railway administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a railway administration order is in force, be effective only if it is done on the company's behalf by its special railway administrator.
- [<sup>F173</sup>(9) A statutory instrument containing an order under this paragraph by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.]

#### Textual Amendments

- F169** Words in Sch. 7 para. 2 substituted (16.10.2005) by Railways Act 2005 (c. 14), s. 49(7); S.I. 2005/2812, art. 2(1), Sch. 1
- F170** Words in Sch. 7 para. 2(3) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 49(8)(a), 60; S.I. 2005/2812, art. 2(1), Sch. 1
- F171** Words in Sch. 7 para. 2(6) substituted (16.10.2005) by Railways Act 2005 (c. 14), ss. 49(8)(b), 60; S.I. 2005/2812, art. 2(1), Sch. 1
- F172** Words in Sch. 7 para. 2(7) omitted (1.2.2001) and repealed (*prosp.*) by 2000 c. 38, ss. 215, 274, Sch. 16 para. 54(5)(c), 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) (which S.I. was amended by S.I. 2001/115)
- F173** Sch. 7 para. 2(9) inserted (26.10.2005) by Railways Act 2005 (c. 14), ss. 49(9), 60; S.I. 2005/2812, art. 2(1), Sch. 1

#### Modifications etc. (not altering text)

- C4** Sch. 7 para. 2 modified (18.12.1996) by 1996 c. 61, s. 19(6)

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### *Transfers by scheme*

- 3 (1) A scheme under this Schedule for the transfer of the existing appointee's property, rights and liabilities shall come into force on the relevant date and, on coming into force, shall have effect, in accordance with its provisions and without further assurance, so as to transfer the property, rights and liabilities to which the scheme relates to the new appointee.
- (2) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—
- (a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;
  - (b) create new rights and liabilities as between any two or more of those companies; and
  - (c) in connection with any provision made by virtue of paragraph (a) or (b) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.
- (3) The property, rights and liabilities of the existing appointee that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;
  - (b) such property, rights and liabilities to which the existing appointee may become entitled or subject after the making of the scheme and before the relevant date as may be described in the scheme;
  - (c) property situated anywhere in the United Kingdom or elsewhere;
  - (d) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (4) The provision that may be made by virtue of sub-paragraph (2)(b) above includes—
- (a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies thereof;
  - (b) provision applying section 64 of the <sup>M11</sup>Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect; and
  - (c) provision that where a scheme under this Schedule transfers any interest in land or other property situated in Scotland, subsections (1) and (2) of section 16 of the <sup>M12</sup>Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words "unless specially qualified" were omitted.
- (5) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (3) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than in accordance with a scheme under this Schedule, by reason of any provision having effect (whether under any enactment or agreement

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or otherwise) in relation to the terms on which the existing appointee is entitled or subject to the property, right or liability in question.

#### Marginal Citations

**M11** 1925 c. 20.

**M12** 1979 c. 33.

#### *Transfer of licences*

- 4 (1) A scheme under this Schedule may provide for a licence held by the existing appointee to have effect as if it had been granted to the new appointee.
- (2) Different schemes under this Schedule may provide for a licence held by the same existing appointee to have effect as if it had been granted as a separate licence to each of the new appointees under those schemes.
- [<sup>F174</sup>(3) Sub-paragraphs (1) and (2) have effect in relation to a European licence as they have effect in relation to a licence.]

#### Textual Amendments

**F174** Sch. 7 para. 4(3) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 3, Sch. 1 para. 3(10)(b)

#### *Supplemental provisions of schemes*

- 5 (1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the provision for the transfers or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—
- (a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the new appointee is to be treated as the same person in law as the existing appointee;
  - (b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things done by or in relation to the existing appointee are to be treated as made, effected or done by or in relation to the new appointee;
  - (c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any officer of, the existing appointee are to have effect with such modifications as are specified in the scheme;
  - (d) that proceedings commenced by or against the existing appointee are to be continued by or against the new appointee;
  - (e) that the effect of any transfer under the scheme in relation to contracts of employment with the existing appointee is not to be to terminate any of those contracts but is to be that periods of employment with the existing

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appointee are to count for all purposes as periods of employment with the new appointee;

- (f) that disputes as to the effect of the scheme between the existing appointee and the new appointee, between either of them and any other appointee or between different companies which are other appointees are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations and certificates given jointly by two or more such appointees as are mentioned in paragraph (f) above as to the effect of the scheme as between the companies giving the certificates are to be conclusive for all purposes.

*Duties of existing appointee after the scheme comes into force*

- 6 (1) A scheme under this Schedule may provide for the imposition of duties on the existing appointee and on the new appointee to take all such steps as may be requisite to secure that the vesting in the new appointee, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a scheme under this Schedule may require the existing appointee to comply with any directions of the new appointee in performing any duty imposed on the existing appointee by virtue of a provision included in the scheme under subparagraph (1) above.
- (3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the existing appointee in the new appointee is effective under the relevant foreign law, it shall be the duty of the existing appointee to hold that property or right for the benefit of, or to discharge that liability on behalf of, the new appointee.
- (4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the new appointee of any foreign property, right or liability.
- (5) A scheme under this Schedule may provide that, in specified cases, foreign property, rights or liabilities that are acquired or incurred by an existing appointee after the scheme comes into force are immediately to become property, rights or liabilities of the new appointee; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the existing appointee when the scheme comes into force.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Any expenses incurred by an existing appointee in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met by the new appointee.
- (8) Duties imposed on a company by virtue of this paragraph shall be enforceable in the same way as if they were imposed by a contract between the existing appointee and the new appointee.

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*Functions under private and local legislation etc.*

- 7 (1) A scheme under this Schedule may provide that any functions of the existing appointee under a statutory provision—
- (a) shall be transferred to the new appointee or any of the other appointees;
  - (b) shall be concurrently exercisable by two or more companies falling within paragraph (a) above; or
  - (c) shall be concurrently exercisable by the existing appointee and one or more companies falling within paragraph (a) above;
- and different schemes under this Schedule may provide for any such functions of the same existing appointee to have effect as mentioned in paragraphs (a) to (c) above in relation to each of the new appointees under those schemes or of all or any of the other appointees.
- (2) Sub-paragraph (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—
- (a) relates to any part of the existing appointee’s undertaking, or to any property, which is to be transferred by the scheme; or
  - (b) authorises the carrying out of works designed to be used in connection with any such part of the existing appointee’s undertaking or the acquisition of land for the purpose of carrying out any such works.
- (3) Sub-paragraph (1) above does not apply to any function of the Board or of any of the Board’s subsidiaries under any provision of this Act or of—
- (a) the <sup>M13</sup>Transport Act 1962;
  - (b) the <sup>M14</sup>Transport Act 1968;
  - (c) section 4 of the <sup>M15</sup>Railways Act 1974; or
  - (d) sections 119 to 124 of the <sup>M16</sup>Transport Act 1985.
- (4) A scheme under this Schedule may define any functions of the existing appointee to be transferred or made concurrently exercisable by the scheme in accordance with sub-paragraph (1) above—
- (a) by specifying the statutory provisions in question;
  - (b) by referring to all the statutory provisions (except those specified in sub-paragraph (3) above) which—
    - (i) relate to any part of the existing appointee’s undertaking, or to any property, which is to be transferred by the scheme, or
    - (ii) authorise the carrying out of works designed to be used in connection with any such part of the existing appointee’s undertaking or the acquisition of land for the purpose of carrying out any such works; or
  - (c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.
- (5) In this paragraph “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

**Marginal Citations**

**M13** 1962 c. 46.

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**M14** 1968 c. 73.

**M15** 1974 c. 48.

**M16** 1985 c. 67.

## SCHEDULE 8

Section 97.

### TRANSFERS BY TRANSFER SCHEME

#### *Allocation of property, rights and liabilities*

- 1 (1) The provisions of this paragraph and paragraph 2 below shall have effect where a transfer to which this Schedule applies is a transfer of all (or of all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.
- (2) Any property, right or liability comprised partly in the part of the transferor's undertaking which is transferred to the transferee and partly in the part of that undertaking which is retained by the transferor shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided—
- (a) any rent payable under a lease in respect of that estate or interest, and
- (b) any rent charged on that estate or interest,
- shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (3) Sub-paragraph (2) above shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rents charged on an estate or interest in land.
- (4) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to—
- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date the transferor or the transferee appears likely to make use of the land to the greater extent,
- (b) in the case of any other property or any right or liability, whether on the transfer date the transferor or the transferee appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,
- subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.
- 2 (1) It shall be the duty of the transferor and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property,

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- rights and liabilities transferred to the transferee or retained by the transferor and as will—
- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
  - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee.
- (2) Any such agreement shall provide so far as it is expedient—
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
  - (b) for the granting of indemnities in connection with the severance of leases and other matters; and
  - (c) for responsibility for registration of any matter in any statutory register.
- (3) If the transferor or the transferee represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (1) above that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining that matter and may include in the direction any provision which might have been included in an agreement under sub-paragraph (1) above; and any property, rights or liabilities required by the direction to be transferred to the transferee shall accordingly be regarded as having been transferred to, and vested in, the transferee by virtue of the scheme.

#### *Variation of transfers by agreement*

- 3 (1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer by virtue of a transfer scheme made otherwise than under section 86 of this Act.
- (2) At any time before the end of the period of twelve months beginning with the transfer date, the transferor and the transferee of the specified part may, with the approval of the Secretary of State, agree in writing that—
- (a) as from such date as may be specified in or determined under the agreement, and
  - (b) in such circumstances (if any) as may be so specified,
- there shall be transferred from the transferee to, and vested in, the transferor any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.
- (3) Subject to sub-paragraphs (4) and (5) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall be transferred and vest in accordance with the agreement.
- (4) Any transfer effected in pursuance of an agreement under sub-paragraph (2) above shall have effect subject to the provisions of any enactment which provides for such transactions to be registered in any statutory register.

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- (5) The following provisions of this Schedule shall have effect as if—
- (a) any reference to a transfer to which this Schedule applies included a reference to a transfer effected in pursuance of an agreement under subparagraph (2) above;
  - (b) any reference to a transaction effected in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above included a reference to such an agreement; and
  - (c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement.

*Right to production of documents of title*

- 4 (1) This paragraph applies where, on any transfer to which this Schedule applies, the transferor is entitled to retain possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee.
- (2) Where the land or other property is situated in England and Wales—
- (a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and
  - (b) section 64 of the <sup>M17</sup>Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.
- (3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the <sup>M18</sup>Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (4) Where the land or other property is situated in Northern Ireland—
- (a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and
  - (b) section 9 of the <sup>M19</sup>Conveyancing Act 1881 (which corresponds to section 64 of the <sup>M20</sup>Law of Property Act 1925) shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

**Marginal Citations**

**M17** 1925 c.20.

**M18** 1979 c. 33.

**M19** 1881 c. 41.

**M20** 1925 c.20.

*Perfection of vesting of foreign property, rights and liabilities*

- 5 (1) This paragraph applies in any case where a transfer scheme provides for the transfer of any foreign property, rights or liabilities.



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- (2) It shall be the duty of the transferor and the transferee to take, as and when the transferee considers appropriate, all such steps as may be requisite to secure that the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law.
- (3) Until the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the transferor to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.
- (4) Nothing in sub-paragraphs (2) and (3) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the transferee by virtue of a transfer scheme of any foreign property, right or liability.
- (5) The transferor shall have all such powers as may be requisite for the performance of his duty under this paragraph, but it shall be the duty of the transferee to act on behalf of the transferor (so far as possible) in performing the duty imposed on the transferor by this paragraph.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Duties imposed on the transferor or the transferee by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the transferor and the transferee.
- (8) Any expenses incurred by the transferor under this paragraph shall be met by the transferee.

*Proof of title by certificate*

- 6 (1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor and the transferee that—
  - (a) any property specified in the certificate, or
  - (b) any such interest in or right over any such property as may be so specified, or
  - (c) any right or liability so specified,is property, or (as the case may be) an interest, right or liability which was intended to be, and was vested by virtue of the scheme in such one of them as may be so specified (and, if it is the transferee who is so specified, that the property, interest, right or liability has not been transferred back to the transferor by virtue of an agreement under paragraph 3(2) above) shall be conclusive evidence for all purposes of that fact.
- (2) If on the expiration of one month after a request from either the transferor or the transferee for the preparation of such a joint certificate as respects any property, interest, right or liability they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as he may direct.
- (3) This paragraph is without prejudice to paragraph 14(6) and (7) below.

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*Restrictions on dealing with certain land*

- 7 (1) If the Secretary of State is satisfied on the representation of the transferor or the transferee—
- (a) that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by the transferor and by the transferee, and
  - (b) that the circumstances are such that this paragraph should have effect,
- the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction.
- (2) While the direction mentioned in sub-paragraph (1) above remains in force—
- (a) neither the transferor nor the transferee shall dispose of any interest to which they may respectively be entitled in any of the specified land, except with the consent of the Secretary of State;
  - (b) if, in connection with any proposal to dispose of any interest of either the transferor or the transferee in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—
    - (i) require either the transferor or the transferee to dispose of any interest to which he may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
    - (ii) require either the transferor or the transferee to acquire from the other any interest in any of the specified land to which that other is entitled; or
    - (iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.
- (3) A person other than the transferor and the transferee dealing with, or with a person claiming under, either the transferor or the transferee shall not be concerned—
- (a) to see or enquire whether this paragraph applies, or has applied, in relation to any land to which the dealing relates; or
  - (b) as to whether the provisions of this paragraph have been complied with in connection with that, or any other, dealing with that land;
- and no transaction between a person other than the transferor or the transferee on the one hand, and the transferor, the transferee or a person claiming under either of them on the other, shall be invalid by reason of any failure to comply with those provisions.

*Construction of agreements, statutory provisions and documents*

- 8 (1) This paragraph applies where, in the case of any transfer to which this Schedule applies, any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities under the agreement could be assigned by the transferor.
- (2) So far as relating to property, rights or liabilities transferred to the transferee, the agreement shall have effect on and after the transfer date as if—
- (a) the transferee had been the party to it;

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- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
  - (c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such a person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the first-mentioned person;
  - (d) any reference in general terms (however worded) to persons employed by, persons engaged in the business of, or agents of, the transferor were, as respects anything to be done on or after the transfer date, a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.
- 9 (1) Except as otherwise provided in any provision of this Act (whether expressly or by necessary implication), paragraph 8 above shall, so far as applicable, apply in relation to—
- (a) any statutory provision,
  - (b) any provision of an agreement to which the transferor was not a party, and
  - (c) any provision of a document other than an agreement,
- if and so far as the provision in question relates to any of the transferred property, rights and liabilities, as it applies in relation to an agreement to which the transferor was a party.
- (2) In relation to any such statutory or other provision as is mentioned in sub-paragraph (1) above, references in sub-paragraph (2)(b), (c) and (d) of paragraph 8 above to the transferor and to any persons employed by, persons engaged in the business of, or agents of, the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.
- 10 On and after the transfer date for any transfer to which this Schedule applies, any statutory provision to which paragraph 2(3) of Schedule 6 to the <sup>M21</sup>Transport Act 1962 applies if and so far as the provision in question relates to any of the transferred property, rights and liabilities, shall have effect as if—
- (a) any of the references modified by paragraph (a) of the said paragraph 2(3) were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint; and
  - (b) any of the references modified by paragraph (b) of the said paragraph 2(3) were, as respects a period beginning with the transfer date, a reference to so much of the undertaking of the transferee as corresponds as mentioned in the said paragraph (b).

**Marginal Citations**

M21 1962 c. 46.

- 11 (1) The transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings

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or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability vested in the transferee by virtue of the scheme as he would have had if that right or liability had at all times been a right or liability of the transferee.

- (2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate—
- (a) to any property, right or liability vested in the transferee by virtue of the scheme, or
  - (b) to any agreement or enactment relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.
- (3) This paragraph is without prejudice to the generality of the provisions of paragraphs 8 to 10 above.
- 12 If, in the case of any transfer to which this Schedule applies, the effect of any agreement (and, in particular, any agreement under the Railway Road Transport Acts of 1928 mentioned in paragraph 1 of Part II of Schedule 2 to the <sup>M22</sup>Transport Act 1962)—
- (a) which was executed before the passing of this Act, and
  - (b) to which the transferee is by virtue of this Act a party,
- depends on whether the transferee has power to carry on any activity, it shall be assumed for the purposes of the agreement that any activity which requires the consent of the Secretary of State under the Transport Act 1962 or the <sup>M23</sup>Transport Act 1968 has been authorised by such a consent.

**Marginal Citations**

**M22** 1962 c. 46.  
**M23** 1968 c. 73.

- 13 (1) References in paragraphs 8 to 12 above to agreements to which the transferor was a party and to statutory provisions include, in particular, references to agreements to which the transferor became a party by virtue of the <sup>M24</sup>Transport Act 1962 and statutory provisions which applied to the transferor by virtue of that Act.
- (2) The provisions of paragraphs 8 to 12 above shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

**Marginal Citations**

**M24** 1962 c.46.

*Third parties affected by vesting provisions*

- 14 (1) Without prejudice to the provisions of paragraphs 8 to 13 above, any transaction effected between the transferor and the transferee in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

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- (2) It shall be the duty of the transferor and the transferee, if they effect any transaction in pursuance of paragraph 2(1) above or a direction under paragraph 2(3) above, to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee; and if, within 28 days of being notified, such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.
- (3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—
  - (a) the rights or liabilities of any person other than the transferor and the transferee which are enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee, and
  - (b) the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the transferor, the transferee or both.
- (4) If it appears to the transferor that a person is or may be entitled to compensation under sub-paragraph (3) above, he shall—
  - (a) notify that person that he is or may be so entitled, and
  - (b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.
- (5) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph (3) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—
  - (a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, or
  - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session, or
  - (c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the <sup>F175</sup>Chairman for the time being of the Royal Institution of Chartered Surveyors in Northern Ireland].
- (6) Where, in the case of a transfer to which this Schedule applies, the transferor or the transferee purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or any other property transferred—
  - (a) which before the transfer date belonged to the transferor, or
  - (b) which is an interest in property which before that date belonged to the transferor,

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the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interests in the property conveyed or transferred.

- (7) Sub-paragraph (6) above applies in relation to the grant of any lease of, or any other estate or interest in, or right over any such land or other property as is there mentioned as it applies in relation to a transfer of any such land or other property; and references in that sub-paragraph to a conveyance or transfer shall be construed accordingly.
- (8) If, in the case of any transfer to which this Schedule applies, it appears to the court at any stage in any court proceedings to which the transferor or the transferee and a person other than the transferor or the transferee are parties that the issues in the proceedings—
- (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or
  - (b) raise a question of construction on the relevant provisions of this Act which would not arise if the transferor and the transferee constituted a single person,
- the court may, if it thinks fit on the application of a party to the proceedings other than the transferor and the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person, and any judgment or order given by the court shall bind both the transferor and the transferee accordingly.
- (9) In the case of any transfer to which this Schedule applies, it shall be the duty of the transferor and the transferee to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (6), (7) or (8) above, and if either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a repayment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by him.

#### **Textual Amendments**

**F175** Words in [Sch. 7 para. 14\(5\)\(c\)](#) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15, 148, Sch. 4 para. 384\(2\)](#); [S.I. 2006/1014, art. 2\(a\)](#), [Sch. 1 para. 11\(cc\)](#)

#### *Interpretation*

- 15 In this Schedule “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

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## SCHEDULE 9

Section 112.

### STAMP DUTY AND STAMP DUTY RESERVE TAX

#### *Interpretation*

- 1 (1) In this Schedule—
- “the Inland Revenue” means the Commissioners of Inland Revenue;
  - “restructuring scheme” means a transfer scheme, if and to the extent that it provides for the transfer of property, rights or liabilities from a body or person falling within any of paragraphs (a) to (e) of section 85(1) of this Act to another such body or person.
- (2) For the purposes of this Schedule a transfer, instrument or agreement shall be regarded as made in pursuance of Schedule 8 to this Act if the making of that transfer, instrument or agreement is required or authorised by or under paragraph 2 or 3 of that Schedule.

#### *Stamp duty*

- 2 (1) Stamp duty shall not be chargeable on any restructuring scheme which is certified to the Inland Revenue by the Secretary of State as made by him or as made pursuant to a direction given by him under this Act.
- (2) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State as made in pursuance of Schedule 8 to this Act, in connection with a restructuring scheme made—
- (a) by the Secretary of State; or
  - (b) pursuant to a direction given by him under this Act.
- (3) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State—
- (a) as made pursuant to an obligation imposed by any provision included, by virtue of section 91(1)(c) of this Act, in a restructuring scheme made by—
    - (i) the Secretary of State;
    - (ii) the Board, pursuant to a direction given by the Secretary of State under this Act; or
    - (iii) the Franchising Director, pursuant to a direction so given; and
  - (b) as operating in favour of no person who does not fall within paragraphs (a) to (e) of section 85(1) of this Act.
- (4) Stamp duty shall not be chargeable on any instrument or agreement which is certified to the Inland Revenue by the Secretary of State as being a transfer, or an agreement for the transfer, to the Board or any of the Board’s subsidiaries of property, rights or liabilities of the Board or any such subsidiary, made for the purpose of facilitating a disposal required to be made pursuant to a direction given by him under this Act.
- (5) No restructuring scheme or other instrument or agreement which is certified as mentioned in any of sub-paragraphs (1) to (4) above shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would be liable, apart from the sub-paragraph in question; or

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- (b) it has, in accordance with section 12 of the <sup>M25</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (6) Section 12 of the Finance Act 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory power) shall not operate to require—
- (a) the delivery to the Inland Revenue of a copy of this Act, or
- (b) the payment of stamp duty under that section on any copy of this Act,
- and shall not apply in relation to any instrument on which, by virtue of the preceding provisions of this paragraph, stamp duty is not chargeable.

#### Marginal Citations

M25 1891 c. 39.

#### Stamp duty reserve tax

- 3 (1) An agreement to transfer chargeable securities, as defined in section 99 of the <sup>M26</sup>Finance Act 1986, to a person falling within paragraphs (a) to (e) of section 85(1) of this Act shall not give rise to a charge to stamp duty reserve tax if the agreement is made for the purposes of, or for purposes connected with, a restructuring scheme made—
- (a) by the Secretary of State;
- (b) by the Board, pursuant to a direction given by the Secretary of State under this Act; or
- (c) by the Franchising Director, pursuant to a direction so given.
- (2) An agreement shall not give rise to a charge to stamp duty reserve tax if the agreement is made in pursuance of Schedule 8 to this Act in connection with a restructuring scheme made as mentioned in paragraph (a), (b) or (c) of sub-paragraph (1) above.

#### Marginal Citations

M26 1986 c. 41.

#### F176F176 SCHEDULE 10

#### Textual Amendments

F176 Sch. 10 repealed (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 73, 118, 120, Sch. 5 para. 2, Sch. 8; S.I. 2004/1572, art. 3(ddd)(hhh)(jjj)(kkk)



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## SCHEDULE 11

Section 134.

### PENSIONS

#### Modifications etc. (not altering text)

- C5** Sch. 11 modified (8.6.2005 for certain purposes and 24.7.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 12, 60, Sch. 2 para. 9(1)(c); S.I. 2005/1444, art. 2(1), Sch. 1; S.I. 2005/1909, art. 2, Sch.
- C6** Sch. 11: power to modify conferred (8.6.2005) by virtue of Railways Act 2005 (c. 14), ss. 1(8)(b), 60; S.I. 2005/1444, art. 2(1), Sch. 1

#### Interpretation

1 (1) In this Schedule—

“eligible persons”, in the case of any pension scheme, means—

- (a) any person who is an employee of—
- (i) the Board or any subsidiary of the Board, or
- (ia) <sup>F179</sup>.....
- (ii) a publicly owned railway company or a [<sup>F180</sup>body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement], and
- (b) <sup>F181</sup>.....

but does not include any such person as is mentioned in paragraph (a) above who participates in the Transport Police scheme;

“employment” means employment under a contract of service or apprenticeship (whether express or implied and, if express, whether oral or in writing), and cognate expressions shall be construed accordingly;

“existing scheme” means any occupational pension scheme (other than a new scheme)—

- (a) which is a scheme for the provision of pensions for or in respect of persons with service in the railway industry (whether or not pensions may also be provided under the scheme for or in respect of persons without such service); and
- (b) which the Secretary of State by order designates as an existing scheme for the purposes of this Schedule;

“the joint industry scheme” means such occupational pension scheme as the Secretary of State may by order designate as the joint industry scheme for the purposes of this Schedule;

“member”, in relation to a pension scheme, means—

- (a) any person who participates in that scheme;
- (b) any pensioner under that scheme; and
- (c) any other person who has pension rights under that scheme;

and “membership” shall be construed accordingly;

“new scheme” means an occupational pension scheme established under paragraph 2 below;

“occupational pension scheme” has the meaning given in section 1 of the <sup>M31</sup>Pension Schemes Act 1993;

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“participant”, in relation to a pension scheme or a section of a pension scheme, means a person to whom pension rights are accruing under the scheme or section by virtue of his employment in a class or description of employment to which the scheme or section relates; and cognate expressions shall be construed accordingly;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) a right of allocation in respect of the present or future payment of a pension;

“prescribed” means specified in, or determined in accordance with, an order made by the Secretary of State;

“protected person” has the meaning given by paragraph 5 below;

“the Transport Police scheme” means such one of the schemes for the provision of pensions for or in respect of persons with service as officers of the British Transport Police Force (whether or not pensions may also be provided under the scheme for or in respect of persons without such service) as the Secretary of State may by order designate as the Transport Police scheme for the purposes of this Schedule;

“trustees”, in relation to any pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

- (2) Any reference in this Schedule to a pension scheme includes a reference to the scheme as amended under or by virtue of this Schedule.
- (3) Any power to make an order under or by virtue of this Schedule in relation to an existing scheme, the joint industry scheme, a new scheme, the Transport Police scheme, or a designated scheme within the meaning of paragraph 10 below shall be exercisable notwithstanding that the occupational pension scheme in question only becomes such a scheme by virtue of its establishment or designation as such in the instrument which contains the order in question; and references to such schemes shall be construed accordingly.
- (4) Subject to sub-paragraph (1) above, expressions used in this Schedule and in Part I<sup>F182</sup> . . . of this Act have the same meaning in this Schedule as they have in that Part.

#### Textual Amendments

- F179** Sch. 11 para. 1(1): para. (a)(ia) in definition of "eligible persons" repealed (1.12.2006) by [Railways Act 2005 \(c. 14\)](#), s.s. 59, 60, {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2006/2911, [art. 2](#), Sch.
- F180** Words in para. (a)(ii) in the definition of “eligible persons” in Sch. 11 para. 1(1) substituted (1.2.2001) by 2000 c. 38, s. 252, [Sch. 27 para. 49\(2\)\(b\)](#); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))
- F181** Sch. 11 para. 1(1): para. (b) in definition of "eligible persons" omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745, [art. 6\(a\)](#))
- F182** Words in Sch. 11 para. 1(4) 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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### Marginal Citations

M31 1993 c. 48.

#### *Establishment of new schemes*

- 2 (1) The Secretary of State may by order provide for the establishment, administration and management of one or more occupational pension schemes for the provision of pensions and other benefits for or in respect of eligible persons.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision with respect to—
- (a) the persons who may participate in, or otherwise be members of, the scheme;
  - (b) the making of contributions by persons participating in the scheme;
  - (c) the making of contributions by employers of persons who participate in the scheme;
  - (d) the amendment of the scheme;
  - (e) the winding up of the scheme, whether in whole or in part;
  - (f) the persons by whom any function under or relating to the scheme is to be exercisable.
- (3) Any occupational pension scheme established under this paragraph shall be treated for all purposes as if it were a pension scheme established under an irrevocable trust.

#### *Amendment of existing schemes*

- 3 (1) The Secretary of State may by order amend—
- (a) the trust deed of any existing scheme;
  - (b) the rules of any such scheme; or
  - (c) any other instrument relating to the constitution, management or operation of any such scheme;
- and any reference in this Schedule to amending an existing scheme accordingly includes a reference to amending any such trust deed, rules or other instrument.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under this paragraph may, in particular, amend an existing scheme so as to alter any provision, or so as to make provision, with respect to any of the matters specified in paragraphs (a) to (f) of paragraph 2(2) above.
- (3) An order under this paragraph shall not make any amendment to a scheme—
- [<sup>F183</sup>(a) which would prejudice registration of that scheme for the purposes of Part 4 of the Finance Act 2004 (pension schemes etc);]
  - (b) which would prevent the scheme from being a contracted-out scheme for the purposes of Part III of the <sup>M32</sup>Pension Schemes Act 1993 or Part III of the <sup>M33</sup>Pension Schemes (Northern Ireland) Act 1993;
  - (c) which would to any extent deprive a member of the scheme of pension rights which accrued to him under the scheme before the coming into force of the amendment; or
  - (d) which would provide for persons who are not eligible persons to become members of the scheme.

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- (4) The Secretary of State shall not make an order under this paragraph except <sup>F184</sup>with the consent of] the trustees of the occupational pension scheme to which the order relates.

#### Textual Amendments

**F183** Sch. 11 para. 3(3)(a) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), [art. 6\(b\)](#)

**F184** Words in Sch. 11 para. 3(4) substituted (1.2.2001) by [2000 c. 38, s. 252](#), [Sch. 27 para. 49\(3\)](#); [S.I. 2001/57](#), [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

#### Marginal Citations

**M32** 1993 c. 48.

**M33** 1993 c. 49.

#### *Transfer of pension rights and corresponding assets and liabilities*

- 4 (1) Where persons with pension rights under any existing or new scheme (“the transferor scheme”) are eligible to be members of another scheme (“the transferee scheme”) which is either—
- (a) an existing or new scheme, or
  - (b) the Transport Police scheme,
- the Secretary of State may by order make provision for those persons to be members of the transferee scheme instead of the transferor scheme and for their pension rights under the transferor scheme to be transferred so as to become pension rights under the transferee scheme.
- (2) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order make provision for—
- (a) such of the assets held for the purposes of the transferor scheme, and
  - (b) such of the liabilities under or in relation to that scheme of any employers or trustees,
- as he may consider appropriate in consequence of that transfer to be correspondingly transferred so as to become assets or, as the case may be, liabilities in relation to the transferee scheme.
- (3) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order—
- (a) impose on the trustees of the transferee scheme, or on the employer (if any) of the person whose pension rights are transferred, duties with respect to—
    - (i) the participation of that person or that employer in the scheme, or
    - (ii) the payment of contributions by that employer under the scheme,
 in accordance with the rules of the scheme; and
  - (b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.
- (4) The Secretary of State may by order make provision for the winding up of the transferor scheme, whether in whole or in part, in connection with, or in consequence of, any transfers under this paragraph.

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- (5) The Secretary of State shall not make an order under this paragraph except <sup>F185</sup>with the consent of] the trustees of the occupational pension schemes which are, or are to be, the transferor scheme and the transferee scheme.

#### Textual Amendments

**F185** Words in Sch. 11 para. 4(5) substituted (1.2.2001) by 2000 c. 38, s. 252, Sch. 27 para. 49(3); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to savings and transitional provisions in Sch. 2 Pt. II)

#### *Protection of pension rights: meaning of “protected person”*

- 5 In this Schedule “protected person” means—
- (a) any person who immediately before the passing of this Act—
    - (i) is an employee of the Board or of a subsidiary of the Board; and
    - (ii) is participating in an existing scheme;
  - (b) any person not falling within paragraph (a) above—
    - (i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;
    - (ii) who has participated in an existing scheme before the passing of this Act; and
    - (iii) who fulfils prescribed conditions;
  - (c) any person who, immediately before the passing of this Act, has pension rights under an existing scheme but is not participating in that scheme;
  - (d) any person who, after the passing of this Act, acquires pension rights—
    - (i) in consequence of the death of a person falling within paragraph (a), (b) or (c) above, and
    - (ii) by virtue of the participation of that other person in an existing scheme, or in an occupational pension scheme from which pension rights of that person have been transferred, whether directly or indirectly, to an existing scheme.

#### *The powers of protection*

- 6 (1) The Secretary of State may by order make provision for the purpose of protecting the interests of protected persons in respect of their pension rights.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision for the purpose of securing—
- (a) that the relevant pension rights of protected persons are no less favourable as a result of—
    - (i) any amendment of an occupational pension scheme,
    - (ii) any transfer of pension rights <sup>F186</sup>(whether made between occupational pension schemes or sections of an occupational pension scheme or otherwise)], or
    - (iii) any winding up of an occupational pension scheme, in whole or in part,
- than they would have been apart from the amendment, transfer or winding up, as the case may be;

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- (b) that a person who is a protected person by virtue of paragraph (a) or (b) of paragraph 5 above is not prevented, otherwise than by reason of either of the following events, that is to say—
  - (i) the continuity of his period of employment is broken, or
  - (ii) he voluntarily withdraws from an occupational pension scheme, from participating in some occupational pension scheme and acquiring pension rights under that scheme which are no less favourable than those which would have been provided under his former scheme in accordance with the rules of that scheme as in force immediately before the coming into force of the order; or
- (c) that the employer of a person falling within paragraph (b) above is required to provide an occupational pension scheme in which the person may participate and to which pension rights of his, and assets and liabilities relating to, or representative of, those pension rights, may be transferred;

and in paragraph (b) above “former scheme”, in relation to a protected person, means the existing scheme mentioned in paragraph (a) or (b), as the case may be, of paragraph 5 above.

- (3) For the purposes of this paragraph, the “relevant pension rights” of a protected person are so much of his pension rights as consist of or otherwise represent—
  - (a) in the case of a person who is a protected person by virtue of paragraph (a), (b) or (c) of paragraph 5 above, any pension rights which, immediately before the passing of this Act, he had under the existing scheme mentioned in the paragraph in question;
  - (b) in the case of a person who is a protected person by virtue of paragraph 5(a) or (b) above, any pension rights which he acquires, or has acquired, by virtue of his participation in an occupational pension scheme during the protected period in his case; and
  - (c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, any pension rights which he acquires, or has acquired, after the passing of this Act and in consequence of the death of the other person mentioned in the said paragraph (d) (“the deceased”), being—
    - (i) pension rights under the existing scheme mentioned in that paragraph, so far as referable to pension rights which the deceased had under that scheme before the passing of this Act;
    - (ii) pension rights under any occupational pension scheme, so far as referable to pension rights which, before the passing of this Act, the deceased had under the existing scheme mentioned in the said paragraph (d) and which have been transferred from that existing scheme, whether directly or indirectly; or
    - (iii) pension rights under any occupational pension scheme, so far as referable to the participation of the deceased in that or any other occupational pension scheme during the protected period.
- (4) For the purposes of sub-paragraph (3) above, “the protected period” means—
  - (a) in the case of a person who is a protected person by virtue of paragraph (a) of paragraph 5 above, the period beginning with the passing of this Act and ending with whichever of the following events first occurs, that is to say—
    - (i) the continuity of the person’s period of employment is broken; or
    - (ii) he voluntarily withdraws from an occupational pension scheme;

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- (b) in the case of a person who is a protected person by virtue of paragraph (b) of paragraph 5 above, a period beginning at such time as may be prescribed and ending with whichever of the following events first occurs, that is to say—
    - (i) the continuity of the person’s period of employment is broken; or
    - (ii) he voluntarily withdraws from an occupational pension scheme; and
  - (c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, the period (if any) which is the protected period in the case of the other person mentioned in the said paragraph (d).
- (5) In determining a person’s relevant pension rights for the purposes of this paragraph, where the rules of a pension scheme make provision requiring pension rights which have accrued to a person to be enhanced in consequence of increases in remuneration after the accrual of the pension rights, that provision, and any enhancement resulting from it, shall be treated, so far as relating to any enhancement in consequence of increases in remuneration after the passing of this Act, as pension rights accruing at the time of the increase in remuneration in question.
- (6) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by protected persons for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them or their surviving dependants except to such extent (if any) as may be specified in the election or subject to such conditions (if any) as may be so specified.
- (7) In sub-paragraph (6) above “surviving dependant”, in relation to a protected person, means any person who may acquire, in consequence of the death of the protected person, pension rights referable to relevant pension rights of the protected person.
- (8) An order under this paragraph may make provision for such orders to cease to have effect in relation to a protected person if—
  - (a) the continuity of his period of employment is broken,
  - (b) he voluntarily withdraws from an occupational pension scheme, or
  - (c) he requests that his pension rights be transferred from an occupational pension scheme,except in such circumstances or to such extent as may be prescribed.
- (9) Circumstances may be prescribed in which—
  - (a) a break in the continuity of a person’s period of employment, or
  - (b) a person’s voluntary withdrawal from an occupational pension scheme,shall be disregarded for prescribed purposes of this paragraph.
- [<sup>F187</sup>(10) Chapter I of Part XIV of the Employment Rights Act 1996, except section 218(6), shall apply for the purposes of this paragraph as it applies for the purposes of that Act.]

#### Textual Amendments

**F186** Words in Sch. 11 para. 6(2)(a)(ii) inserted (10.5.2000) by 2000 c. 38, ss. 245(1), 275(5)

**F187** Sch. 11 para. 6(10) substituted (22.8.1996) for Sch. 11 para. 6(10)-(12) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 60(3)

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*Protection: supplementary provisions*

- 7 (1) Without prejudice to the generality of paragraph 6 above, an order under that paragraph may impose on any person falling within sub-paragraph (2) below duties with respect to—
- (a) the provision of a pension scheme,
  - (b) the terms of any pension scheme required to be provided by virtue of paragraph (a) above,
  - (c) the amendment, or the preservation from amendment, of a pension scheme,
  - (d) the acceptance of protected persons as members of a pension scheme,
  - (e) the acceptance (so as to become included among the property, rights and liabilities held for the purposes of a pension scheme or to which a pension scheme is subject) of property, rights and liabilities relating to, or representative of, pension rights of protected persons,
  - (f) the making or refunding of contributions,
  - (g) the purchase of annuities,
  - (h) the winding up of a pension scheme, in whole or in part,
- and may make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of such an order, so far as relating to matters specified in paragraphs (a) to (h) above, to give that approval or consent.
- (2) The persons mentioned in sub-paragraph (1) above are—
- (a) any person who is or has been the employer of a protected person;
  - (b) any person who contributes to a pension scheme as an employer, whether or not he is or has been the employer of a protected person;
  - (c) the trustees of any pension scheme of which a protected person is a member or to which pension rights of a protected person may be transferred;
  - (d) any person who has power to amend or wind up a pension scheme under which a protected person has pension rights.
- (3) An order under paragraph 5 or 6 above may include provision—
- (a) for disputes arising under the order to be referred to arbitration; or
  - (b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.

*Entitlement to participate in the joint industry scheme*

- 8 (1) The Secretary of State may by order make provision conferring upon any person to whom this paragraph applies—
- (a) who is participating, or who at or after the making of the order begins to participate, in the joint industry scheme, and
  - (b) who fulfils the qualifying conditions,
- the right to continue to participate in the joint industry scheme, in accordance with the rules of that scheme, unless and until the termination conditions become fulfilled in the case of that person.
- (2) The persons to whom this paragraph applies are—
- (a) any person who immediately before the passing of this Act—
    - (i) is an employee of the Board or of a subsidiary of the Board; and



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- (ii) is participating in an existing scheme; and
- (b) any person not falling within paragraph (a) above—
  - (i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;
  - (ii) who has participated in an existing scheme before the passing of this Act; and
  - (iii) who fulfils prescribed conditions.
- (3) For the purposes of this paragraph a person fulfils the “qualifying conditions” if—
  - (a) the continuity of his period of employment has not been broken during the intervening period;
  - (b) he has not withdrawn voluntarily from an occupational pension scheme during that period; and
  - (c) he has at all times during that period been in the employment of an employer engaged in the railway industry.
- (4) In sub-paragraph (3) above, the “intervening period” means the period which begins at the passing of this Act and ends—
  - (a) at the time when the person in question begins to participate in the joint industry scheme, or
  - (b) at the coming into force of the order under this paragraph which confers upon that person the right mentioned in sub-paragraph (1) above (or which would have conferred that right upon him, had he satisfied the qualifying conditions),whichever is the later.
- (5) The “termination conditions” become fulfilled for the purposes of this paragraph in the case of any person if—
  - (a) the continuity of his period of employment is broken;
  - (b) he withdraws voluntarily from the joint industry scheme; or
  - (c) he is not in the employment of any employer engaged in the railway industry.
- (6) Circumstances may be prescribed in which—
  - (a) a break in the continuity of a person’s period of employment,
  - (b) a person’s voluntary withdrawal from an occupational pension scheme, or
  - (c) a period during which a person is not in the employment of an employer engaged in the railway industry,shall be disregarded for the purpose of determining whether the person fulfils the qualifying conditions or whether the termination conditions have become fulfilled in his case.
- (7) The employers who are to be regarded for the purposes of this paragraph as “engaged in the railway industry” are those who carry on activities of a class or description specified for the purposes of this sub-paragraph by the Secretary of State in an order under this paragraph; and the Secretary of State may so specify any class or description of activity which, in his opinion, falls within, or is related to or connected with, the railway industry.
- (8) An order under this paragraph may—

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- (a) impose on the trustees of the joint industry scheme, or on the employer (if any) of a person for the time being entitled to the right conferred by virtue of sub-paragraph (1) above, duties with respect to—
    - (i) the participation of that person or that employer in the scheme, or
    - (ii) the payment of contributions by that employer under the scheme, in accordance with the rules of the scheme; and
  - (b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.
- (9) An order under this paragraph may make provision for the purpose of preventing a person who would otherwise be entitled to the right conferred by virtue of sub-paragraph (1) above from continuing to participate in the joint industry scheme in circumstances where his continued participation in that scheme would in the opinion of a prescribed person—
- (a) prejudice any approval of that scheme for the purposes of Chapter I of Part XIV of the <sup>M34</sup>Income and Corporation Taxes Act 1988 (retirement benefit schemes); or
  - (b) prevent the scheme from being a contracted-out scheme for the purposes of Part III of the <sup>M35</sup>Pension Schemes Act 1993 or Part III of the <sup>M36</sup>Pension Schemes (Northern Ireland) Act 1993.
- (10) An order under this paragraph may include provision—
- (a) for disputes arising under the order to be referred to arbitration; or
  - (b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.
- (11) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by persons who would otherwise be entitled by virtue of sub-paragraph (1) above to the right there mentioned for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them.
- (12) Sub-paragraph (10) of paragraph 6 above shall have effect for the purposes of this paragraph as it has effect for the purposes of that paragraph.

#### **Marginal Citations**

**M34** 1988 c. 1.

**M35** 1993 c. 48.

**M36** 1993 c. 49.

#### *Payments in discharge of liabilities under s.52(1) of the Transport Act 1980*

- 9 (1) In section 52 of the <sup>M37</sup>Transport Act 1980, in subsection (1) (which requires the Secretary of State to make payments each year to B.R. pension schemes in respect of unfunded pension obligations owed by the Board), for the words “Subject to the provisions of this section and section 58,” there shall be substituted the words “Subject to the provisions of this section and sections 52A to 52D and 58,”.
- (2) After that section there shall be inserted—

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**“52A Power to make payments by way of final discharge of liabilities under s.52(1).**

- (1) If the Minister is desirous of making to the persons administering a B.R. pension scheme one or more payments by way of final discharge of his liability to make payments to them under section 52(1) in relation to that scheme, to the extent that that liability relates to so much of the relevant pension obligations as are owed in respect of—
  - (a) all pension rights under the scheme,
  - (b) pension rights of some particular class or description under the scheme, or
  - (c) pension rights of persons of some particular class or description under the scheme,he may give to the persons administering the scheme a notice identifying the pension rights in question and specifying in relation to those pension rights the matters set out in subsection (2), as determined in accordance with the following provisions of this section.
- (2) The matters mentioned in subsection (1) are—
  - (a) the capital value of the attributable unfunded obligations in question, as at the beginning of the next financial year;
  - (b) the amount or amounts, or the method of determining the amount or amounts, of the payment or payments to be made under this section by way of final discharge of the Minister’s liability to make payments under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1); and
  - (c) the date or dates on which that payment or those payments are to be made.
- (3) In making any determination for the purposes of paragraph (b) of subsection (2), the amount or, as the case may be, the aggregate of the amounts mentioned in that paragraph shall be such as to include—
  - (a) a sum equal to the capital value determined under paragraph (a) of that subsection; and
  - (b) interest, payable at such rate as may be determined by the Minister, on so much (if any) of that sum as may from time to time be outstanding after the beginning of the financial year mentioned in the said paragraph (a).
- (4) For the purposes of this section, the capital value mentioned in paragraph (a) of subsection (2) shall either—
  - (a) be determined by the Minister, or
  - (b) if the Minister so requires in the particular case, be determined by the actuary to the scheme in question and approved by the Minister, and it shall be for the Minister to determine the matters mentioned in paragraphs (b) and (c) of that subsection.
- (5) Notice under subsection (1) above shall only be given after consultation—
  - (a) with the persons administering the scheme in question; and

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- (b) with the actuary to that scheme, except in a case where the capital value mentioned in subsection (2)(a) is determined by that actuary pursuant to subsection (4)(b);
- and any such notice must be given not less than one month before the beginning of the financial year mentioned in subsection (2)(a).
- (6) The giving of a notice under subsection (1) shall—
- (a) terminate the liability of the Minister to make payments under section 52(1), so far as relating to the pension rights identified in the notice, for financial years beginning after the giving of the notice; and
- (b) impose upon the Minister a duty—
- (i) to make to the persons administering the scheme in question the payment or payments mentioned in subsection (2)(b); and
- (ii) to do so at the time or times specified in pursuance of subsection (2)(c).
- (7) Where notice has been given under subsection (1), the Minister may—
- (a) at any time before the expiration of the period of eleven months beginning with the financial year mentioned in subsection (2)(a) as it applies in relation to that notice, and
- (b) after consultation with the persons administering the scheme in question and the actuary to the scheme,
- amend that notice by giving notice of the amendment to the persons administering the scheme.
- (8) If notice is given under subsection (7) of an amendment affecting the amount of a payment which has been made pursuant to this section, the Minister may also give notice to the persons administering the scheme in question requiring them—
- (a) to repay to him so much of the payment made as exceeds the amended amount; and
- (b) to pay interest to him, at such rate as he may determine, on the amount to be repaid, as from the date on which the payment in question was made by him;
- and where notice is given under paragraph (a) or (b), the amount required to be repaid or, as the case may be, the amount of interest required to be paid from time to time, shall be treated as a debt due from those persons to the Minister.
- (9) In any case where—
- (a) notice has been given under subsection (1), the effect of which (whether taken alone or with other notices under that subsection) is that notice has been given under that subsection in respect of all pension rights under the scheme in question, and
- (b) for that financial year in which the notice mentioned in paragraph (a) is given, the aggregate amount of the payments made under section 52(1) in relation to the scheme requires adjustment for the reason set out in section 52(3)(a) or (b), but

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- (c) the required adjustment cannot be made as mentioned in section 52(3), because (in consequence of the notice mentioned in paragraph (a)) no payments under section 52(1) fall to be made in relation to that scheme for subsequent financial years, payments by way of adjustment, of an amount equal in the aggregate to the amount of the required adjustment, shall instead be made by the Minister to the persons administering the scheme or, as the case may require, by those persons to the Minister, before the expiration of the period of six months beginning with the date on which the amount of the required adjustment is determined.
- (10) The Minister may give a direction to the persons administering a B.R. pension scheme requiring them to furnish to him—
- (a) information from which the proportion mentioned in section 55(1) (a) can be finally determined for the financial year mentioned in subsection (9)(b) in the case of the scheme; or
- (b) information about any such unforeseen increase or reduction in the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for that financial year as is mentioned in section 52(3)(b).
- (11) Where payments by way of adjustment fall to be made under subsection (9), interest shall be payable from the end of the financial year in which the notice mentioned in subsection (9)(a) is given, by the person liable to make those payments, at such intervals and rates as may be determined by the Minister, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.
- (12) So much of—
- (a) any payment by way of adjustment under subsection (9) which falls to be made, or
- (b) any interest accrued under subsection (11),
- as has not been paid shall be treated as a debt due.
- (13) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (14) For the purposes of this section, the “capital value of the attributable unfunded obligations”, in the case of any B.R. pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (4), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1), for the successive financial years beginning with the one mentioned in subsection (2)(a).
- (15) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.”
- (3) After the section 52A inserted by sub-paragraph (2) above, there shall be inserted—

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**“52B Power to substitute obligations under this section for liabilities under s.52(1).**

- (1) The Minister may make a substitution order in relation to any occupational pension scheme—
  - (a) which is a new scheme, within the meaning of Schedule 11 to the Railways Act 1993;
  - (b) which is designated under paragraph 10(1) of that Schedule (designation of schemes which are to be treated as B.R. pension schemes for certain purposes of this Part); and
  - (c) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;
 and any reference in this section to a “guaranteed pension scheme” is a reference to such an occupational pension scheme.
  
- (2) The Minister may also make a substitution order in relation to any section of a new scheme, within the meaning of Schedule 11 to the Railways Act 1993, if the section is one—
  - (a) which is designated under paragraph 10(1) of that Schedule; and
  - (b) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;
 and the following provisions of this section (and sections 52C and 52D) shall apply in relation to any such section of a new scheme as if any reference to a guaranteed pension scheme included a reference to such a section.
  
- (3) For the purposes of this section, a “substitution order” is an order under this section the effect of which is—
  - (a) to terminate, from the termination date, the Minister’s liability to make to the persons administering the guaranteed pension scheme in question payments under section 52(1) in relation to the scheme; and
  - (b) to impose on the Minister, in substitution for that liability, an obligation to make to those persons, subject to and in accordance with the following provisions of this section, one or more other payments (the “substitution payments”) in relation to that scheme.
  
- (4) Subject to the following provisions of this section, the amount of the substitution payments to be made in the case of a guaranteed pension scheme shall be equal in the aggregate to the sum of—
  - (a) the amount specified pursuant to subsection (5)(a) as the capital value of the unfunded obligations in the case of the scheme; and
  - (b) the aggregate amount of any interest which is dealt with as mentioned in subsection (8)(b)(ii) in the case of the scheme.
  
- (5) A substitution order must specify—
  - (a) the capital value of the unfunded obligations in the case of the guaranteed pension scheme in question, as at the termination date; and
  - (b) the date which, for the purposes of this section, is to be the termination date in relation to that scheme, being a date not earlier than one month after the coming into force of the substitution order.

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- (6) Any determination for the purposes of this section of the capital value of the unfunded obligations in the case of a guaranteed pension scheme shall either—
- (a) be made by the Minister; or
  - (b) if the Minister so requires in the particular case, be made by the actuary to the guaranteed pension scheme in question and approved by the Minister.
- (7) A substitution order may specify—
- (a) the amount or amounts, or the method of determining the amount or amounts, of the substitution payments,
  - (b) the date or dates on which the substitution payments are to be made,
  - (c) circumstances (which may, if the Minister so desires, be defined by reference to the opinion of any person) in which substitution payments are to be made,
- and may provide for the obligation to make substitution payments to be discharged if the guaranteed pension scheme in question has, in the opinion of a person specified or described in, or nominated under, the order, been wound up.
- (8) A substitution order must provide—
- (a) for interest to accrue from the termination date on the outstanding balance of the capital value for the time being at such rate, and at such intervals, as may be specified in, or determined under or in accordance with, the order; and
  - (b) for any such interest which accrues—
    - (i) to be paid to the persons administering the guaranteed pension scheme in question, or
    - (ii) to be added to the outstanding balance of the capital value, (or to be dealt with partly in one of those ways and partly in the other);
- and the provision that may be made by virtue of paragraph (a) includes provision for the rate of interest to be calculated by reference to any variable or to be such rate as the Minister may from time to time determine and specify in a notice to the persons administering the scheme in question.
- (9) For the purposes of subsection (8), the “outstanding balance of the capital value”, in the case of a guaranteed pension scheme, means the capital value of the unfunded obligations in the case of the scheme, as specified pursuant to subsection (5)(a),—
- (a) reduced by the amount of any substitution payments made in relation to that scheme; and
  - (b) increased by any additions of accrued interest under or by virtue of subsection (8)(b)(ii) in relation to that scheme.
- (10) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (11) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.
- (12) In this section—

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“the capital value of the unfunded obligations”, in the case of any guaranteed pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (6), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1) in relation to that scheme after the termination date in the case of that scheme;

“occupational pension scheme” means an occupational pension scheme as defined in section 1 of the <sup>M38</sup>Pension Schemes Act 1993;

“the terminal period”, in the case of any guaranteed pension scheme, means—

- (a) if a financial year of the scheme ends with the termination date, that financial year; or
- (b) in any other case, so much of the financial year of the scheme in which the termination date falls as ends with that date;

“the termination date”, in the case of any guaranteed pension scheme, shall be construed in accordance with subsection (5)(b);

“the termination year”, in the case of any guaranteed pension scheme, means the financial year of the scheme which consists of or includes the terminal period;

“trustees”, in relation to a guaranteed pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

### **52C Adjustments arising in connection with orders under s.52B.**

- (1) As soon as practicable after the termination date in the case of any guaranteed pension scheme, there shall be determined, for the terminal period, what proportion of the pensions, increases and expenses payable under, or incurred in connection with, the scheme corresponds to the relevant pension obligations.
- (2) Any determination under subsection (1) shall either—
  - (a) be made by the Minister; or
  - (b) if the Minister so requires in the particular case, be made by the actuary or auditor to the guaranteed pension scheme in question and approved by the Minister.
- (3) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for the terminal period or the termination year and to notify him in writing of their determination.
- (4) As respects the termination year of a guaranteed pension scheme, the extent of the liability of the Minister to make payments under section 52(1) in relation to that scheme shall be restricted to a liability to make payments of an amount (the “termination year amount”) equal in the aggregate to the product of—
  - (a) the proportion determined under section 54(1) for that scheme;



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- (b) the proportion determined pursuant to subsection (1) in the case of that scheme; and
    - (c) the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with that scheme in the terminal period;
- and payments by way of adjustment shall be made by the Minister to the persons administering the scheme, or (as the case may be) by those persons to the Minister, before the expiration of the period of six months beginning with the date of the last of the determinations made under subsection (1) or (3) with respect to the scheme.
- (5) Where, in the case of a guaranteed pension scheme, the funding of the relevant pension obligations has, by virtue of subsection (3) of section 54, been left out of account in making a determination under subsection (1) of that section, the termination year amount in the case of that scheme shall be the difference between—
    - (a) what that amount would have been, apart from this subsection; and
    - (b) the amount of any income accruing for the terminal period which may be applied towards the payment of such of the pensions, increases and expenses payable under or incurred in connection with the scheme as correspond to those obligations.
  - (6) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the amount mentioned in subsection (5)(b) and to notify him in writing of their determination.
  - (7) Where payments by way of adjustment fall to be made, interest shall be payable, as from the termination date, by the person liable to make those payments, at the rates and intervals from time to time applicable for the purposes of section 52B(8)(a) in the case of the scheme in question, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.
  - (8) So much of—
    - (a) any payment by way of adjustment which falls to be made, or
    - (b) any interest accrued under subsection (7),as has not been paid shall be treated as a debt due.
  - (9) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.
  - (10) In this section, “payments by way of adjustment”, in the case of a guaranteed pension scheme, means—
    - (a) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, exceed the termination year amount, payment to the Minister by the persons administering the scheme of an amount equal to the excess;
    - (b) if the Minister has made no payments under section 52(1) in relation to that scheme for the termination year, payment by the Minister to those persons of the termination year amount; or
    - (c) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, fall

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short of the termination year amount, payment by the Minister to those persons of an amount equal to the shortfall.

- (11) Expressions used in this section and in section 52B have the same meaning in this section as they have in that section.

#### **52D Orders and directions under sections 52A to 52C: supplemental.**

- (1) Any power to make an order under section 52B shall be exercisable by statutory instrument made by the Minister after consultation with the trustees of the guaranteed pension scheme to which the order relates.
  - (2) A statutory instrument containing an order under section 52B shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (3) At the time when a statutory instrument containing an order under section 52B is laid before each House of Parliament pursuant to subsection (2), the Minister shall, if he has not already done so, also lay before each House of Parliament a copy of the guarantee mentioned in subsection (1)(c) of that section; but this subsection is without prejudice to the validity of the order in question.
  - (4) Any power to make an order under section 52B includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the Minister.
  - (5) Any order under section 52B may make different provision for different cases or for different classes or descriptions of case.
  - (6) It shall be the duty of any person to whom a direction is given under section 52A or 52C to comply with and give effect to that direction; and compliance with any such direction shall be enforceable by civil proceedings by the Minister for an injunction or interdict or for any other appropriate relief.
  - (7) Any power to give a direction under section 52A or 52C includes power to vary or revoke the direction.
  - (8) Any direction under section 52A or 52C shall be given in writing.
  - (9) In this section—
    - “guaranteed pension scheme” has the same meaning as in section 52B;
    - “trustees”, in relation to a guaranteed pension scheme, has the same meaning as in section 52B.”
- (4) In section 70 of that Act, in subsection (2) (interpretation), for the definition of “the Minister” there shall be substituted—
- “ “the Minister means the Secretary of State;” ”.

#### **Commencement Information**

- I2** Sch. 11 para. 9 wholly in force at 16.8.1994; para. 9 not in force at Royal Assent see s. 154(2); para. 9(3) in force for specified purpose and para. 9(1)(2)(4) wholly in force at 6.1.1994 by S.I. 1993/3237, art. 2(2); Sch. 11 para. 9 in force at 16.8.1994 insofar as not already in force by S.I. 1994/2142, art. 2

*Status: Point in time view as at 29/01/2007.*

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#### Marginal Citations

M37 1980 c. 34.

M38 1993 c. 48.

#### *Application and modification of Part III of the 1980 Act*

- 10 (1) The Secretary of State may by order designate—
- (a) any occupational pension scheme which would not, apart from this paragraph, be included among the pension schemes which are B.R. pension schemes for the purposes of Part III of the 1980 Act, or
  - (b) any section of an occupational pension scheme, being a section which would not, apart from this paragraph, be included among those schemes,  
as a pension scheme which is to be treated as included among those schemes for the purpose of requiring or enabling him to make to the persons administering the scheme payments under section 52(1), 52A, 52B or 52C of that Act in respect of qualifying pension rights transferred (whether under paragraph 4 above or otherwise) so as to become pension rights under that scheme.
- (2) An order under sub-paragraph (1) above may make provision, in any case where qualifying pension rights of any persons are, or are to be, transferred as mentioned in that sub-paragraph, for treating those persons as constituting a section of the occupational pension scheme to which those qualifying pension rights are, or are to be, so transferred.
- (3) No order shall be made under sub-paragraph (1) above except after consultation with the trustees of the occupational pension scheme to which the qualifying pension rights are, or are to be, transferred.
- (4) Subject to the following provisions of this paragraph, Part III of the 1980 Act shall have effect as if any reference in that Part to a B.R. pension scheme included a reference to a designated scheme.
- (5) Where qualifying pension rights are transferred to a designated scheme as mentioned in sub-paragraph (1) above, the proportion referred to in section 52(1)(a) of the 1980 Act in its application by virtue of this paragraph in relation to the designated scheme shall, instead of being determined under section 54 of that Act, be taken to be the proportion which has been determined under that section in relation to the B.R. pension scheme from which the qualifying pension rights are transferred; and references in Part III of that Act to that proportion shall be construed accordingly.
- (6) In the application of Part III of the 1980 Act in relation to a designated scheme, references in that Part to “the relevant pension obligations” shall, in relation to the designated scheme, be construed—
- (a) as if the reference in section 53(1)(a) of that Act to obligations of the Board which were owed on 1st January 1975 in connection with the scheme were a reference to so much of the obligations of the Board which were owed on that date in connection with a B.R. pension scheme as are obligations in respect of qualifying pension rights transferred to the designated scheme; and
  - (b) as if the reference in section 53(1)(c) of that Act to an obligation<sup>F188</sup> . . . arising after that date to pay or secure the payment of increases payable under the scheme included a reference to so much of any such obligation<sup>F188</sup> . . . in

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respect of a B.R. pension scheme as is an obligation in respect of qualifying pension rights transferred to the designated scheme.

- (7) In the application of section 55 of the 1980 Act in relation to a designated scheme, paragraph (a) of subsection (1) (which requires the proportion of the scheme's outgoings which corresponds to the relevant pension obligations to be determined before the beginning of each financial year or, in the case of the first financial year, as soon as practicable after the passing of that Act) shall be taken to require the proportion mentioned in that paragraph to be determined—
- (a) before the beginning of the financial year in question, or
  - (b) as soon as practicable after the coming into force of the order under sub-paragraph (1) above by virtue of which the scheme in question is a designated scheme,
- and paragraph (b) of that subsection shall be construed accordingly.
- (8) The power to give a direction under section 57 of the 1980 Act (which provides for certain determinations to be made as if no transfer had taken place and as if no payment representing the pension rights in question had been made) shall be exercisable in any case where the whole or any part of a person's accrued pension rights under a B.R. pension scheme or a designated scheme are transferred (whether under paragraph 4 above or otherwise) to—
- (a) a designated scheme, or
  - (b) a pension scheme established by the Board,
- as it is in the case of any such transfer as is mentioned in that section.
- (9) Without prejudice to sub-paragraph (8) above, where in any financial year the whole or any part of a person's accrued pension rights under a B.R. pension scheme are transferred to a designated scheme, it shall be assumed, for the purposes of any determination of the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the B.R. pension scheme in that financial year, that the payment of any sum representing those pension rights had not been made.
- (10) Without prejudice to section 59(1) of the 1980 Act (which provides that the making of payments under section 52(1) does not discharge certain relevant pension obligations), the making of any payment under section 52(1) of the 1980 Act to the persons administering a designated scheme shall not discharge any relevant pension obligation, so far as it is an obligation to pay pensions or increases of pensions under that or any other designated scheme, or under a B.R. pension scheme, or is an obligation to secure the payment of those pensions or increases.
- (11) Without prejudice to section 59(2) of the 1980 Act (power to amend pension scheme for certain purposes), if the persons administering an occupational pension scheme would not otherwise have power to do so, they may amend the scheme by instrument in writing for the purpose of enabling persons to be admitted as members of the scheme on the basis that payments will fall to be made under Part III of the 1980 Act in respect of qualifying pension rights of theirs which are transferred so as to become pension rights under the scheme.
- (12) Where the persons administering an occupational pension scheme have power, apart from sub-paragraph (11) above, to amend the scheme for the purpose mentioned in that sub-paragraph, they may exercise that power for that purpose without regard to any limitations on the exercise of the power and without compliance with any procedural provisions applicable to its exercise.

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- (13) Any reference in Part III of the 1980 Act to a “financial year” shall, in relation to a designated scheme, be taken as a reference—
- (a) to such period as—
    - (i) begins with the transfer of the qualifying pension rights in question, and
    - (ii) ends with the last day of an accounting year of the scheme, and is a period of not less than twelve months and less than two years; and
  - (b) to each successive accounting year of that scheme.
- (14) Where any provision of Part III of the 1980 Act requires anything to be done in, or in relation to, the first financial year of a B.R. pension scheme, that provision shall (so far as so requiring) be disregarded in the application of that Part in relation to a designated scheme.
- (15) In any case where—
- (a) the whole or any part of a person’s accrued pension rights under a B.R. pension scheme are transferred so as to become pension rights under a designated scheme, and
  - (b) immediately before that transfer takes effect, relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded are owed in respect of those pension rights by the [F189Authority] to the persons administering the pension scheme from which the pension rights are so transferred,
- an order under sub-paragraph (1) above may provide for the benefit of that proportion of so much of those relevant pension obligations as are owed in respect of those pension rights to be transferred, so as to become relevant pension obligations owed by the [F189Authority] to the persons administering the pension scheme to which the pension rights are transferred.
- (16) Where the benefit of any relevant pension obligations is transferred by virtue of sub-paragraph (15) above, the persons administering the pension scheme to which the benefit of those obligations is transferred shall have, in relation to the relevant pension obligations the benefit of which is so transferred, all the rights of the persons administering the pension scheme from which the benefit of those obligations is transferred.
- (17) In this paragraph—
- “the 1980 Act” means the <sup>M39</sup>Transport Act 1980;
  - “designated scheme” means an occupational pension scheme or, as the case may be, a section of any such scheme, which is designated under sub-paragraph (1) above;
  - “pension scheme” includes a section of a pension scheme;
  - “qualifying pension rights” means any pension rights as respects the whole or some part of which there are subsisting relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded;
- and, subject to that, expressions used in this paragraph and in Part III of the 1980 Act have the same meaning in this paragraph as they have in that Part.

*Status: Point in time view as at 29/01/2007.*

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#### Textual Amendments

- F188** Words in **Sch. 11 para. 10(6)(b)** 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**)
- F189** Words in **Sch. 11 para. 10(15)** substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

#### Marginal Citations

- M39** 1980 c. 34.

#### *Government guarantees to trustees of certain new schemes*

- 11 (1) Subject to the following provisions of this paragraph, the Secretary of State—
- (a) shall give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (3) below, and
  - (b) may give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (4) below,
- a guarantee in respect of their liabilities to make payments in respect of pension rights under the scheme.
- (2) This paragraph applies in relation to a section of a new scheme as it applies in relation to a new scheme; and any reference in this paragraph to a new scheme, a closed scheme, a pension scheme or a member shall be construed accordingly.
- (3) A new scheme satisfies the conditions in this sub-paragraph if—
- (a) all the members of the scheme are persons whose pension rights under the scheme are pension rights which have been transferred, so as to become pension rights under that scheme, pursuant to an order under paragraph 4 above; and
  - (b) the rules of the scheme prevent any member of the scheme from being a participant in the scheme.
- (4) A new scheme satisfies the conditions in this sub-paragraph if—
- (a) the scheme is a closed scheme; and
  - (b) at the date on which the scheme becomes a closed scheme, all the members of the scheme are—
    - (i) participants in the scheme to whom pension rights under the scheme are accruing by virtue of their employment with a relevant employer; or
    - (ii) pensioners or deferred pensioners under the scheme whose pension rights under the scheme derive in whole or in part from their, or some other person's, participation in an occupational pension scheme as an employee of a relevant employer.
- (5) Classes or descriptions of person may be prescribed whose membership of, or participation in, a new scheme is to be disregarded for the purpose of determining whether the new scheme satisfies the conditions in sub-paragraph (3) or (4) above.
- (6) The power to give a guarantee under sub-paragraph (1)(b) above becomes exercisable in the case of any new scheme if the Secretary of State is of the opinion that it is desirable to give such a guarantee for the purpose of ensuring that the trustees

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of the scheme are, or will be, able to meet their liabilities to make payments in respect of pension rights under the scheme as those liabilities fall to be met.

- (7) The Secretary of State shall consider any representations made by the trustees of a new scheme which satisfies the conditions in sub-paragraph (4) above concerning their ability to meet their liabilities to make payments in respect of pension rights under the scheme.
- (8) Any guarantee under this paragraph shall be given in such manner, and on such terms and conditions, as the Secretary of State may, after consultation with the trustees of, and the actuary to, the scheme in question, think fit; and, without prejudice to the generality of the foregoing provisions of this sub-paragraph, the terms and conditions on which a guarantee under this paragraph may be given include terms and conditions—
- (a) with respect to any matter relating to payment under the guarantee, including—
    - (i) the circumstances in which payment under the guarantee falls to be made;
    - (ii) the amounts, or the method of determining the amounts, of any payments that fall to be so made;
    - (iii) the persons to whom any such payments are to be made;
  - (b) with respect to any matter relating to the management, affairs or winding up of the scheme, including—
    - (i) the policy to be followed in relation to the investment of assets held for the purposes of the scheme; and
    - (ii) the distribution of any surplus which may arise under the scheme; or
  - (c) requiring or precluding, or otherwise with respect to, amendment of the rules of the scheme;

and the sub-paragraphs of paragraphs (a) and (b) above are without prejudice to the generality of the preceding provisions of the paragraph in question.

- (9) Any sums required by the Secretary of State to fulfil a guarantee given under this section shall be paid out of money provided by Parliament.
- (10) In this paragraph—
- “closed scheme” means a pension scheme—
    - (a) to which no new members are to be admitted; but
    - (b) under which pensions and other benefits continue to be provided;
  - “deferred pensioner”, in the case of any pension scheme, means a person who has pension rights under the scheme but who (so far as relating to those pension rights) is neither a participant in the scheme nor a pensioner under the scheme;
  - “relevant employer” means—
    - (a) the Board;
    - (b) a wholly owned subsidiary of the Board; <sup>F190</sup> . . .
    - (c) a publicly owned railway company <sup>F190</sup> . . .
  - <sup>F191</sup>(d) the Authority; or
  - (e) a wholly owned subsidiary of the Authority.]

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### Textual Amendments

- F190** Words in paras. (b)(c) in the definition of “relevant employer” in Sch. 11 para. 11(10) 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**)
- F191** Paras. (d)(e) in the definition of “relevant employer” in Sch. 11 para. 11(10) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

### *Supplementary*

- 12 If it appears to the Secretary of State necessary or expedient to do so, in consequence of any provision made by order under this Schedule, he may by provision made in the same manner—
- (a) repeal or amend, or modify the operation of, any private or local Act of Parliament; or
  - (b) revoke or amend, or modify the operation of, any statutory instrument (whether local or general).

### *Parliamentary procedure*

- 13 (1) A statutory instrument containing an order under this Schedule, other than an order under paragraph 11 above, shall not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.
- (2) At or before the time when a draft of a statutory instrument containing an order under paragraph 3 or 4 above is laid before each House of Parliament pursuant to sub-paragraph (1) above, the Secretary of State shall also lay before each House of Parliament a copy of any comments on the order in question—
- (a) which have been made in writing to the Secretary of State by the trustees mentioned in paragraph 3(4) or, as the case may be, paragraph 4(5) above;
  - (b) which are designated by those trustees as comments which they wish the Secretary of State to consider as comments on that order; and
  - (c) which have been received by the Secretary of State before the expiration of such period as has been notified by him to those trustees as being the consultation period in relation to the order in question;
- but this sub-paragraph is without prejudice to the validity of the order in question.
- (3) If, apart from the provisions of this sub-paragraph, the draft of an instrument containing an order under this Schedule would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

### *Transitory provision*

- 14 In this Schedule, and in any amendment made by this Schedule to any other enactment,—
- (a) any reference to section 1 of the <sup>M40</sup>Pension Schemes Act 1993 shall, until the coming into force of that section, be construed as a reference to section 66(1) of the <sup>M41</sup>Social Security Pensions Act 1975;



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- (b) any reference to Part III of the Pension Schemes Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part III of the <sup>M42</sup>Social Security Pensions Act 1975; and
- (c) any reference to Part III of the <sup>M43</sup>Pension Schemes (Northern Ireland) Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part IV of the <sup>M44</sup>Social Security Pensions (Northern Ireland) Order 1975.

#### Marginal Citations

- M40** 1993 c. 48.
- M41** 1975 c. 60.
- M42** 1975 c. 60.
- M43** 1993 c. 49.
- M44** S.I. 1975/1503 (N.I. 15).

## SCHEDULE 12

Section 152.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### Commencement Information

- I3** Sch. 12 is partly in force; Sch. 12 not in force at Royal Assent, see s. 154(2); Sch. 12 in force at 6.1.1994 for specified purposes by S.I. 1993/3237, art.1; Sch. 12 in force at 1.4.1994 for specified purposes by S.I. 1994/571, art. 5

#### *The Regulation of Railways Act 1889*

- 1 Section 6 of the <sup>M45</sup>Regulation of Railways Act 1889 (which provides that every passenger ticket issued by any railway company in the United Kingdom shall show on its face the fare chargeable for the journey for which it was issued) shall cease to have effect.

#### Marginal Citations

- M45** 1889 c. 57.

#### *The Railway Fires Act 1905*

- 2 (1) In section 1 of the <sup>M46</sup>Railway Fires Act 1905 (liability of railway companies to make good damage to crops caused by their engines), after subsection (2) there shall be inserted—
  - “(2A) Any reference in subsection (2) above to a “company” includes a reference to any person—
    - (a) who holds a network licence, station licence or light maintenance depot licence under Part I of the Railways Act 1993; or

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- (b) who is exempt, by virtue of a licence exemption under section 7 of that Act, from the requirement to be authorised by licence under that Part to be the operator of a network, station or light maintenance depot.

(2B) A person such as is mentioned in subsection (2A) above shall be regarded for the purposes of subsection (2) above as working a railway which consists of the track (if any) comprised in any network, station or light maintenance depot of which he lawfully acts as the operator by virtue of the licence or licence exemption in question.”

- (2) In section 4 of that Act (definitions and application) after the definition of “ railway ” there shall be inserted—

“The expression “railway company” includes any person—

- (a) who holds a licence under Part I of the Railways Act 1993;  
or  
(b) who is exempt, by virtue of a licence exemption under section 7 of that Act, from the requirement to be authorised by licence under that Part to be the operator of a railway asset;

The expressions “light maintenance depot”, “network”, “operator”, “railway asset”, “station” and “track” have the same meaning as they have in Part I of the Railways Act 1993.”

**Marginal Citations**

M46 1905 c. 11.

*The Railway Fires Act (1905) Amendment Act 1923*

- 3 In section 2 of the <sup>M47</sup>Railway Fires Act (1905) Amendment Act 1923 (conditions precedent to application of the Act of 1905) after the words “any railway company” there shall be inserted the words “ (as defined in section 4 of that Act) ”.

**Marginal Citations**

M47 1923 c. 27.

*The British Transport Commission Act 1950*

- 4 Section 43 of the <sup>M48</sup>British Transport Commission Act 1950 (power to supply railway equipment to the Ulster Transport Authority) shall cease to have effect.

**Marginal Citations**

M48 1950 c. liii.

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### *The Transport Act 1962*

- 5 (1) The <sup>M49</sup>Transport Act 1962 shall be amended in accordance with this paragraph.
- (2) The following provisions shall cease to have effect, that is to say—
- (a) section 4(1)(b), (2) and (7) (which relate to the provision by the Board of certain services for the carriage of goods by road),
  - (b) section 5 (which gives the Board power to provide certain air transport services),
  - (c) section 13(3) (saving for section 43 of the British Transport Commission Act 1950), and
  - (d) section 53 (complaints by operators of coastal shipping about the Board's railway charges).
- (3) In section 12 (power of the Boards to construct and operate pipe-lines), in subsection (1), after the words "the Boards" there shall be inserted the words " , other than the Railways Board, ”.
- (4) In section 14(4), after the words "Each of the Boards" there shall be inserted the words " , except the Railways Board, ”.

#### **Marginal Citations**

**M49** 1962 c. 46.

### *The Transport Act 1968*

- 6 (1) The <sup>M50</sup>Transport Act 1968 shall be amended in accordance with this paragraph.
- (2) In section 42 of that Act, subsection (3) (which confers power to vary commencing capital debt of the Board to take account of transfers under section 7(5) or (6) or 8(4) of that Act and which is spent) shall be omitted.
- (3) Section 45 of that Act (duty of the Board periodically to review its organisation) shall cease to have effect.
- (4) Section 48 of that Act (which confers power on the Boards and the new authorities to undertake activities including manufacture for sale) shall cease to have effect in relation to the Board.
- (5) In section 50 of that Act—
- (a) subsection (2) (power of the Board to provide and manage hotels) shall cease to have effect;
  - (b) in subsection (4), for the words "In subsections (2) and (3) of this section the references to hotels include references" there shall be substituted the words " In subsection (3) of this section the reference to hotels includes a reference ”; and
  - (c) subsection (7) (which confers power on the Boards and the new authorities to provide technical advice and assistance and which is superseded, in the case of the Board, by section 127 of this Act) shall cease to have effect in relation to the Board.
- (6) In section 55 of that Act (amendments concerning Transport Consultative Committees under section 56 of the <sup>M51</sup>Transport Act 1962), in subsection (1)

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(services and facilities in relation to which Consultative Committees’ duties are to apply)—

<sup>F192</sup>(a) .....

- (b) the following shall be omitted, namely—
  - (i) in paragraph (a), the words from “or provided” onwards,
  - (ii) paragraph (b),
  - (iii) paragraphs (i) and (iii), and
  - (iv) the words from “and for the purposes” onwards,

and subsections (2), (3) and (4) (duties of Consultative Committees in relation to certain services and facilities provided in Scotland, and provision as to office accommodation for, defrayment of expenditure incurred by, and certain payments to members of, Consultative Committees) shall cease to have effect.

<sup>F192</sup>(7) .....

**Textual Amendments**

**F192** Sch. 12 para. 6(6)(a)(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)

**Commencement Information**

**I4** Sch. 12 para. 6 wholly in force at 1.4.1994; para. 6 not in force at Royal Assent see s. 154(2); para. 6(1)-(5)(7) in force at 6.1.1994 by S.I. 1993/3237, **art. 2(2)**; Sch. 12 para. 6 in force at 1.4.1994 insofar as not already in force by S.I. 1994/571, **art. 5**

**Marginal Citations**

- M50** 1968 c. 73.
- M51** 1962 c. 46.

*The Fair Trading Act 1973*

7 <sup>F193</sup> .....

**Textual Amendments**

**F193** Sch. 12 para. 7 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

*The Consumer Credit Act 1974*

8 <sup>F194</sup> .....

**Textual Amendments**

**F194** Sch. 12 para. 8 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 10)

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### *The Railways Act 1974*

- 9 In the <sup>M52</sup>Railways Act 1974, section 9 (which provides for an alternative basis of remuneration for chairmen of Consultative Committees set up under section 56 of the <sup>M53</sup>Transport Act 1962) shall cease to have effect.

#### **Marginal Citations**

**M52** 1974 c. 48.

**M53** 1962 c. 46.

### *The Restrictive Trade Practices Act 1976*

- 10 In section 41(1) of the <sup>M54</sup>Restrictive Trade Practices Act 1976 (exceptions from the general restriction on the disclosure of information obtained under or by virtue of that Act), in paragraph (a)—
- (a) after the words “the Director General of Electricity Supply for Northern Ireland” (which were inserted by paragraph 16(a) of Schedule 12 to the <sup>M55</sup>Electricity (Northern Ireland) Order 1992) there shall be inserted the words “ the Rail Regulator ”; and
  - (b) after the words “Courts and Legal Services Act 1990” there shall be inserted the words “ or the Railways Act 1993 ”.

#### **Marginal Citations**

**M54** 1976 c. 34.

**M55** S.I. 1992/231 (N.I. 1).

### *The Estate Agents Act 1979*

- 11 <sup>F195</sup> .....

#### **Textual Amendments**

**F195** Sch. 12 para. 11 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)

### *The Competition Act 1980*

- 12 (1) In section 11 of the <sup>M56</sup>Competition Act 1980, in subsection (3) (public bodies and other persons who may be the subject of a reference to the Monopolies Commission under that section), after paragraph (a) there shall be inserted—
- “(aa) any publicly owned railway company, within the meaning of the Railways Act 1993, which supplies network services or station services, within the meaning of Part I of that Act; or”.
- (2) <sup>F196</sup> .....
- (3) <sup>F196</sup> .....

*Status: Point in time view as at 29/01/2007.*

*Changes to legislation: Railways Act 1993 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F196** Sch. 12 para. 12(2)(3) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)

**Marginal Citations**

**M56** 1980 c. 21.

*The Telecommunications Act 1984*

- 13 (1) In subsection (2) of section 101 of the <sup>M57</sup>Telecommunications Act 1984 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after the words “the Director General of Electricity Supply for Northern Ireland” (which were inserted by paragraph 29(a) of Schedule 12 to the <sup>M58</sup>Electricity (Northern Ireland) Order 1992) there shall be inserted the words “ the Rail Regulator ”.
- (2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (l) (which was inserted by paragraph 29(b) of Schedule 12 to the <sup>M59</sup>Electricity (Northern Ireland) Order 1992) there shall be added—  
“(m) the Railways Act 1993”.

**Marginal Citations**

**M57** 1984 c. 12.

**M58** S.I. 1992/231 (N.I. 1).

**M59** S.I. 1992/231 (N.I. 1).

*The London Regional Transport Act 1984*

- 14 (1) Section 2 of the <sup>M60</sup>London Regional Transport Act 1984 (provision of passenger transport services for Greater London) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (which requires London Regional Transport, in conjunction with the Board, to provide or secure the provision of public passenger transport services in Greater London), before the words “in conjunction with the Railways Board” there shall be inserted the words “ (if and to the extent that the Railways Board continues to be under a duty by virtue of section 3 of the <sup>M61</sup>Transport Act 1962 to provide railway services in Greater London) ”.
- (3) At the beginning of subsection (3) (duty of London Regional Transport and the Board to co-operate for the purpose of co-ordinating services etc) there shall be inserted the words “ If and so long as the Railways Board continues to be under a duty by virtue of section 3 of the <sup>M62</sup>Transport Act 1962 to provide railway services in Greater London, ”.
- (4) After that subsection there shall be inserted—

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“(3A) It shall be the duty of London Regional Transport (either acting directly, or acting indirectly through subsidiaries of theirs) and the Franchising Director to co-operate with one another in the exercise and performance of their respective functions for the purpose—

(a) of co-ordinating the passenger transport services for persons travelling within, to, or from Greater London—

(i) which are provided by London Regional Transport or their subsidiaries; and

(ii) which are provided under franchise agreements, or whose provision is secured by the Franchising Director pursuant to section 30, 37 or 38 of the Railways Act 1993; and

(b) of securing or facilitating the proper discharge of London Regional Transport’s duty under subsection (1) above;

and to afford to one another such information as to the services mentioned in paragraph (a) above as may reasonably be required for those purposes.”

(5) In subsection (4) (power of London Regional Transport and the Board to enter into arrangements for the purposes of the co-operation required by the section)—

(a) for the words “subsection (3) above” there shall be substituted the words “subsection (3) or, as the case may be, subsection (3A) above—

(a)”;  
and

(b) after the words “the Railways Board” there shall be inserted the words “or

(b) London Regional Transport and the Franchising Director,”.

(6) After that subsection there shall be inserted—

“(4A) The references in subsections (3A) and (4) above to the respective functions of London Regional Transport and the Franchising Director shall be taken, in the case of the functions of the Franchising Director, as a reference to—

(a) his functions under sections 23 to 31 of the Railways Act 1993 (franchising of passenger services); and

(b) the duties imposed upon him by sections 37 and 38 of that Act (discontinuance of railway passenger services) to secure the provision of services.”

#### Commencement Information

**I5** Sch. 12 para. 14 wholly in force at 1.4.1994; para. 14 not in force at Royal Assent see s. 154(2); para. 14(1)-(3) in force at 6.1.1994 by S.I. 1993/3237, art. 2(2); Sch. 12 para. 14 in force at 1.4.1994 insofar as not already in force by S.I. 1994/ 571, art. 5

#### Marginal Citations

**M60** 1984 c. 32.

**M61** 1962 c. 46.

**M62** 1962 c. 46.

15 In section 7 of that Act (planning of passenger transport services for Greater London) in subsection (4) (which specifies the persons with whom London Regional Transport are to consult in preparing statements under that section)—

(a) after paragraph (a), there shall be inserted—

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- “(aa) the Franchising Director;” and
- (b) for the word “and” at the end of paragraph (c) there shall be substituted—
- “(cc) such other persons as the Secretary of State may specify in a direction given to London Regional Transport; and”.
- 16 In section 31 of that Act (duty of Board to consult London Regional Transport as to fares and services in London) for the words “The Railways Board shall” there shall be substituted the words “ If and so long as the Railways Board continues to be under a duty by virtue of section 3 of the <sup>M63</sup>Transport Act 1962 to provide railway services in Greater London, the Board shall ”.

**Marginal Citations**

**M63** 1962 c. 46.

- 17 After that section there shall be inserted—
- “31A Duty of Franchising Director to consult London Regional Transport as to fares and services in London.**
- The Franchising Director shall from time to time consult with London Regional Transport as to—
- (a) the general level and structure of the fares to be charged for the carriage of passengers by railway on journeys wholly within Greater London on services—
- (i) which are, or are to be, provided under franchise agreements; or
- (ii) whose provision the Franchising Director is under a duty to secure, by virtue of section 30, 37 or 38 of the Railways Act 1993; and
- (b) the general level of the provision to be made for such journeys.”
- 18 (1) Section 40 of that Act shall have effect with the following amendments.
- (2) Without prejudice to the continuing validity of appointments made before the coming into force of this sub-paragraph, for subsection (2) (appointment of chairman and members by the Secretary of State) there shall be substituted—
- “(2) The Committee shall consist of—
- (a) a chairman, appointed by the Secretary of State after consultation with the Rail Regulator; and
- (b) such other members (not exceeding thirty) as the Secretary of State may appoint after consultation with the Rail Regulator and the chairman.”
- (3) In subsection (4), there shall be omitted—
- (a) the words “ Subject to subsection (6) below, ”; and
- (b) paragraph (c) (which confers functions with respect to matters affecting the services and facilities provided by the Board or any subsidiary of theirs) and the word “ or ” immediately preceding it.
- (4) In subsection (5)—



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- (a) in paragraph (b) (which provides that a matter falls to be considered by the committee if it has been referred to it by certain persons or bodies), for the words “by London Regional Transport or by the Railways Board” there shall be substituted the words “or by London Regional Transport”; and
  - (b) the words following paragraph (c) (which relate to services provided by the Board or its subsidiaries) shall be omitted.
- (5) Subsection (6) (which precludes the committee from considering charges for services and questions relating to the discontinuance or reduction of railway services) shall be omitted.
- (6) In subsection (7), paragraph (b) (which requires copies of the committee’s minutes, requirements and recommendations in the case of certain matters affecting the Board to be sent to the Board) shall be omitted.
- (7) In subsection (8) (power of the Secretary of State to give directions to certain bodies) the words “or (as the case may require) to the Railways Board” shall be omitted.
- (8) In subsection (9) (requirement for certain bodies and persons to give notice of certain decisions to the committee) the words “the Railways Board” shall be omitted.
- (9) In subsection (10) (committee to make annual report to the Secretary of State), after the words “Secretary of State” where first occurring there shall be inserted the words “and the Rail Regulator”.
- (10) In subsection (11) (certain companies not to be treated as subsidiaries of certain bodies), the words “or the Railways Board” shall be omitted.
- 19 Section 41 of that Act (which provides for the committee to be treated as an Area Transport Users’ Consultative Committee for certain purposes and which makes other provision in connection therewith) shall cease to have effect.
- 20 In section 59 of that Act (which confers power on London Borough Councils and the Common Council to enter into certain agreements with the Board) for the words “the Railways Board” there shall be substituted—
  - “(a) the Railways Board,
  - (b) the Franchising Director, or
  - (c) any person who is the holder of a passenger licence, a network licence or a station licence, within the meaning of Part I of the Railways Act 1993.”.
- 21 In section 68 of that Act (interpretation) the following definitions shall be inserted at the appropriate places—
  - (a) ““franchise agreement” has the same meaning as in Part I of the Railways Act 1993;”; and
  - (b) ““the Franchising Director” means the Director of Passenger Rail Franchising;”.
- 22 (1) In Schedule 3 to that Act, in paragraph 5 (Secretary of State to provide the committee with funds with which to meet certain expenses) after sub-paragraph (2) there shall be added—
  - “(3) The Committee shall prepare and send to the Secretary of State not less than two months, or such other period as the Secretary of State may specify, before the beginning of each financial year a statement of the

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expenses which they expect to incur in respect of that year for the purposes of, or in connection with, the carrying on of their functions.

- (4) The Secretary of State shall consider any statement sent to him under sub-paragraph (3) above and shall either approve the statement or approve it with such modifications as he considers appropriate.”
- (2) In paragraph 9 of that Schedule, at the end of sub-paragraph (3) (which requires minutes to be kept of the proceedings of every meeting of the committee) there shall be added the words “ ; and copies of those minutes shall be sent to the Secretary of State, the Rail Regulator and the Central Rail Users’ Consultative Committee. ”
- (3) In sub-paragraph (4) of that paragraph (power of committee to determine own procedure) after the words “Subject to the preceding provisions of this paragraph” there shall be inserted the words “ and the provisions of paragraph 11A below ” and after paragraph 11 of that Schedule there shall be inserted—

*“ Admission of public to meetings*

- 11A (1) Subject to sub-paragraph (2) below, meetings of the Committee shall be open to the public.
- (2) The public shall be excluded during any item of business where—
- (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the Committee by the Rail Regulator or the Franchising Director would be disclosed in breach of the obligation of confidence;
  - (b) the Committee have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded; or
  - (c) it is likely, were members of the public to be present during that item, that there would be disclosed to them—
    - (i) any matter which relates to the affairs of an individual, or
    - (ii) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate,
 where public disclosure of that matter would or might, in the opinion of the committee, seriously and prejudicially affect the interests of that individual or body.
- (3) The Committee shall give such notice—
- (a) of any meeting of the Committee which is open to the public, and
  - (b) of the business to be taken at that meeting (other than items during which the public is to be excluded),
- as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.”.

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### *The Airports Act 1986*

- 23 (1) In subsection (2) of section 74 of the <sup>M64</sup>Airports Act 1986 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (a), after the words “the Director General of Electricity Supply for Northern Ireland” (which were inserted by paragraph 30(a) of Schedule 12 to the <sup>M65</sup>Electricity (Northern Ireland) Order 1992) there shall be inserted the words “ the Rail Regulator ”.
- (2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (m) (which was inserted by paragraph 30(b) of Schedule 12 to the <sup>M66</sup>Electricity (Northern Ireland) Order 1992) there shall be added—  
“(n) the Railways Act 1993”.

#### **Marginal Citations**

**M64** 1986 c. 31.

**M65** S.I. 1992/231 (N.I. 1).

**M66** S.I. 1992/231 (N.I. 1).

### *The Gas Act 1986*

- 24 (1) In subsection (2) of section 42 of the <sup>M67</sup>Gas Act 1986 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after the words “the Director General of Electricity Supply” there shall be inserted the words “ the Rail Regulator ”.
- (2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (m) there shall be added—  
“(n) the Railways Act 1993”.

#### **Marginal Citations**

**M67** 1986 c. 44.

### *The Insolvency Act 1986*

- 25 In section 413 of the <sup>M68</sup>Insolvency Act 1986, at the end of subsection (2) (which imposes a requirement to consult with the Insolvency Rules Committee, except in the case of certain provisions there specified) there shall be added the words “ or by any of sections 59 to 65 of, or Schedule 6 or 7 to, the Railways Act 1993. ”

#### **Marginal Citations**

**M68** 1986 c. 45.

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### *The Consumer Protection Act 1987*

26      F197      .....

#### **Textual Amendments**

**F197** Sch. 12 para. 26 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)

### *The Channel Tunnel Act 1987*

27      In Schedule 6 to the <sup>M69</sup>Channel Tunnel Act 1987, in paragraph 2 (sections 4 and 6 of the <sup>M70</sup>Regulation of Railways Act 1889 not to apply to Concessionaires and through service operators, within the meaning of that Act), for the word “Sections” there shall be substituted the word “ Section ”.

#### **Marginal Citations**

**M69** 1987 c. 53.

**M70** 1889 c. 57.

### *The Electricity Act 1989*

28      (1) In subsection (2) of section 57 of the <sup>M71</sup>Electricity Act 1989 (which provides that the general restriction, in subsection (1) of that section, on the disclosure of information obtained under or by virtue of that Act does not apply in relation to the performance by certain authorities of their functions under the provisions listed in subsection (3) of that section) in paragraph (b), after sub-paragraph (vii) there shall be inserted—  
    “(viiia) the Rail Regulator;”.

   (2) In subsection (3) of that section (list of provisions referred to in subsection (2) of that section) after paragraph (n) there shall be added—  
    “(nn) the Railways Act 1993”.

#### **Marginal Citations**

**M71** 1989 c. 29.

### *The New Roads and Street Works Act 1991*

29      In section 10 of the <sup>M72</sup>New Roads and Street Works Act 1991 (application of the <sup>M73</sup>Fair Trading Act 1973 etc in relation to persons authorised by virtue of that Act to charge tolls for the use of roads), in subsection (2), paragraph (b) (which provides that, for certain purposes, section 51(3) of the <sup>M74</sup>Fair Trading Act 1973 is to have effect as if the Secretary of State for Transport were among the Ministers listed in that provision, and which is superseded by the amendment made by section 66(2) of this Act), and the word “and” immediately preceding it, shall cease to have effect.

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**Marginal Citations**

M72 1991 c. 22.

M73 1973 c. 41.

M74 1973 c. 41.

*The Water Industry Act 1991*

30 In the <sup>M75</sup>Water Industry Act 1991 (subsection (3)(d) of section 206 of which provides that the general restriction contained in subsection (1) of that section on the disclosure of certain information obtained under or by virtue of that Act does not apply in relation to disclosures facilitating the performance by persons mentioned in Part I of Schedule 15 to that Act of their functions under the provisions listed in Part II of that Schedule), in Schedule 15—

(a) in Part I, after the entry relating to the Director General of Electricity Supply, there shall be inserted the entry—

“The Rail Regulator”; and

(b) in Part II, after the entry relating to the Electricity Act 1989, there shall be inserted the entry—

“The Railways Act 1993”.

**Marginal Citations**

M75 1991 c. 56.

*The Water Resources Act 1991*

31 In the <sup>M76</sup>Water Resources Act 1991 (subsection (2)(d) of section 204 of which provides that the general restriction contained in subsection (1) of that section on the disclosure of certain information obtained under or by virtue of that Act does not apply in relation to disclosures facilitating the performance by persons mentioned in Part I of Schedule 24 to that Act of their functions under the provisions listed in Part II of that Schedule), in Schedule 24—

(a) in Part I, after the entry relating to the Director General of Electricity Supply, there shall be inserted the entry—

“The Rail Regulator”; and

(b) in Part II, after the entry relating to the Electricity Act 1989, there shall be inserted the entry—

“The Railways Act 1993”.

**Marginal Citations**

M76 1991 c. 57.

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PROSPECTIVE

*The British Coal and British Rail (Transfer Proposals) Act 1993*

32

The <sup>M77</sup>British Coal and British Rail (Transfer Proposals) Act 1993 (which provides for the Board and the British Coal Corporation to have certain powers to act to facilitate the implementation of proposals of the Secretary of State to transfer property, rights, liabilities or functions of the Board or that Corporation to other persons or bodies) shall cease to have effect, so far as relating to the Board.

**Marginal Citations**

M77 1993 c. 2.

F198 SCHEDULE 13

Section 152.

**Textual Amendments**

F198 Sch. 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)

SCHEDULE 14

Section 152.

REPEALS

**Commencement Information**

I6 Sch. 14 partly in force; Sch. 14 not in force at Royal Assent see s. 154(2); Sch. 14 in force in relation to specified repeals at 6.1.1994 by S.I. 1993/3237, art. 2(2); Sch. 14 in force in relation to specified repeals at 8.3.1994 by S.I. 1994/571, art. 2; Sch. 14 in force in relation to specified repeals at 31.3.1994 by S.I. 1994/571, art. 4; Sch. 14 in force in relation to specified repeals at 1.4.1994 by S.I. 1994/571, art. 5; Sch. 14 in force in relation to specified repeals at 15.7.1994 by S.I. 1994/1648, art. 2

Chapter	Short title	Extent of repeal
52 & 53 Vict. c. 57.	The Regulation of Railways Act 1889.	Section 6.
18 & 19 Geo. 5 c. ci.	The London Midland and Scottish Railway (Road Transport) Act 1928.	The whole Act.

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18 & 19 Geo. 5 c. cii.	The Great Western Railway (Road Transport) Act 1928.	The whole Act.
18 & 19 Geo. 5 c. ciii.	The London and North Eastern Railway (Road Transport) Act 1928.	The whole Act.
18 & 19 Geo. 5 c. civ.	The Southern Railway (Road Transport) Act 1928.	The whole Act.
19 & 20 Geo. 5 c. liv.	The Great Western Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lv.	The London and North Eastern Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lvi.	The London Midland and Scottish Railway (Air Transport) Act 1929.	The whole Act.
19 & 20 Geo. 5 c. lvii.	The Southern Railway (Air Transport) Act 1929.	The whole Act.
14 Geo. 6 c. liii.	The British Transport Commission Act 1950.	Section 43.
1 & 2 Eliz. 2 c. 36.	The Post Office Act 1953.	In section 29(1), the words “Without prejudice to section forty-two of this Act” Sections 33 to 42. In section 87(1), the definitions of “railway undertakers”, “regular mail train services” and “sorting carriage”.
10 & 11 Eliz. 2 c. 46.	The Transport Act 1962.	In section 4, subsections (1) (b), (2) and (7). Section 5. Section 13(3).
10 & 11 Eliz. 2 c. 46.— <i>contd.</i>	The Transport Act 1962.— <i>contd.</i>	Section 53. Section 54(1)(b) and (2). In section 56, subsections (1) to (3), in subsection (5), the words from the beginning to “section; and”, and subsections (7) to (10), (12) to (15) and (17). Section 56A. Sections 69, 70 and 71. In section 92(1), in the definition of “subsidiary”, the words “(taking references in that section to a company as being references to any body corporate)”.

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		Schedule 2, Part II.
1968 c. 73.	The Transport Act 1968.	<p>Sections 7 and 8.          Section 40.          In section 42, subsections (3) to (5) and (6)(b).          Section 45.          Section 50(2).          Section 54.          In section 55, in subsection (1), in paragraph (a), the words from “or provided” onwards, paragraph (b), paragraphs (i) and (iii) and the words from “and for the purposes” onwards, and subsections (2) to (4)          In section 135(1)(a), the words “7, 8,”.          In section 136(4)(a), the words “7(5) or (6), 8(4),”          In section 137, in subsection (1)(a), the words “the Railways Board,”.          In section 159(1), in the definition of “the Minister”, the words “7(7), 8(5),”.          In section 160(5), the words “otherwise than by virtue of section 7(7)(b) thereof”.          In Schedule 17, in Part I, in the entry relating to Part IV, the word “40,”.</p>
1969 c. 48.	The Post Office Act 1969.	In section 20, subsection (1) (b) and (d), and, in subsection (2), in paragraph (a), the words
1969 c. 48.— <i>contd.</i>	The Post Office Act 1969.— <i>contd.</i>	<p>“33 to 36, 38”, paragraph (b) and the word “and” immediately preceding it.          In Schedule 4, in paragraph 2(1), in the Table, the entries relating to sections 33, 34, 38, 41 and 42 of the <sup>M86</sup>Post Office Act 1953.</p>
1971 c. xlv.	The British Railways Act 1971.	Section 34.
1974 c. 48.	The Railways Act 1974.	Section 3.



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		In section 4(5)(b), the words “section 3 of the Transport Act 1981”. Section 8. Section 9. In section 10(2), the definition of “the relevant transport regulations”.
1977 c. 20.	The Transport (Financial Provisions) Act 1977.	The whole Act.
1978 c. 55.	The Transport Act 1978.	Section 16.
1980 c. 34.	The Transport Act 1980.	In Schedule 7, paragraphs 1, 2 and 4.
1981 c. 32.	The Transport Act 1962 (Amendment) Act 1981.	The whole Act.
1981 c. 56.	The Transport Act 1981.	Part I. Section 36. Schedule 1.
1982 c. 6.	The Transport (Finance) Act 1982.	Section 2.
1984 c. 32.	The London Regional Transport Act 1984.	Part II.  In section 40, in subsection (4), paragraph (c) and the word “or” immediately preceding it; in subsection (5), the words following paragraph (c); subsection (6); in subsection (7), paragraph (b); in subsection (8), the words “or (as the case may require) to the Railways Board”; in subsection (9), the words “the Railways Board”; in subsection (11), the words “or the Railways Board” Section 41. In section 42, subsections (3), (4) and (5). In Schedule 6, paragraph 2.
1985 c. 67.	The Transport Act 1985.	Section 118(2)(a)(ii).
1987 c. 53.	The Channel Tunnel Act 1987.	Section 33(11). In section 41, in subsection (3)(b), the words “and section 41(3) and (5) to (7)”, and subsection (5).

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*Status: Point in time view as at 29/01/2007.*

*Changes to legislation: Railways Act 1993 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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		In Schedule 6, in paragraph 2, the words from “and 6” to “the fare)”.
1991 c. 22.	The New Roads and Street Works Act 1991.	In section 10(2), paragraph (b) and the word “and” immediately preceding it.
1991 c. 63.	The British Railways Board (Finance) Act 1991.	Section 2.

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**Marginal Citations**

**M86** [1953 c. 36.](#)

**Status:**

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**Changes to legislation:**

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