



# Railways Act 2005

## 2005 CHAPTER 14

### PART 1

#### TRANSFER OF FUNCTIONS AND RAILWAY STRATEGY

##### *Transfer of functions*

#### **1 Transfer etc. of SRA functions and abolition**

- (1) Schedule 1 (which transfers consumer protection functions of the SRA to the ORR, transfers other functions of the SRA to the Secretary of State and to devolved authorities and also abolishes some functions of the SRA) has effect.
- (2) The Secretary of State may make a scheme for the transfer of property, rights and liabilities from—
  - (a) the Strategic Rail Authority, or
  - (b) a company which is wholly owned by that Authority,to a person specified in subsection (3) or to two or more of those persons.
- (3) Those persons are—
  - (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the National Assembly for Wales;
  - (d) the Office of Rail Regulation;
  - (e) the Rail Passengers' Council established by section 19(1); and
  - (f) a company which is wholly owned by a person falling within any of paragraphs (a) to (d) or is jointly owned by more than one of them.
- (4) But a transfer of—
  - (a) rights and liabilities arising under a Scottish franchise agreement, or
  - (b) property created or vested in any person by such an agreement,may be made by a transfer scheme under subsection (2) only to the Scottish Ministers.

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- (5) Before making a scheme under subsection (2) the Secretary of State must consult every person to whom property, rights or liabilities would be transferred under the proposed scheme.
- (6) Schedule 2 (which contains supplemental provisions about transfer schemes) has effect in relation to schemes under subsection (2).
- (7) If the Secretary of State considers it appropriate to do so in connection with or in anticipation of the commencement of any provision of this Act, or of the abolition of the Strategic Rail Authority, he may—
- (a) terminate the appointment of any person as chairman or member of the Strategic Rail Authority; and
  - (b) direct a reduction, pending its abolition, in the minimum membership of the Authority.
- (8) The Secretary of State may by order make such modifications of any provision of—
- (a) Part 3 of the Transport Act 1980 (c. 34) (railway pensions),
  - (b) Schedule 11 to the 1993 Act (pensions), or
  - (c) section 244 of the 2000 Act (indexation of pensions),
- as appear to him to be necessary or expedient in consequence of the provisions of this section or of any scheme made under this section.
- (9) The power under subsection (8) to make modifications by order is subject to the affirmative resolution procedure.
- (10) Where, after consulting the Strategic Rail Authority, the Secretary of State is satisfied—
- (a) that all such transfers have been provided for as will secure that the dissolution of the Authority will not extinguish any of its liabilities, and
  - (b) that it is no longer necessary, for any other reason, for that Authority to continue to exist,
- the Secretary of State may by order provide for it to cease to exist.

#### Commencement Information

- I1** S. 1(1) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), **Sch. 1**
- I2** S. 1(1) in force at 26.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(2), **Sch. 2**
- I3** S. 1(1) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, **Sch.**
- I4** S. 1(1) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), **Sch. 1**
- I5** S. 1(2) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), **Sch. 1**
- I6** S. 1(3)(a)-(d)(f) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), **Sch. 1**
- I7** S. 1(3)(e) in force at 24.7.2005 by [S.I. 2005/1909](#), art. 2, **Sch.**
- I8** S. 1(4)-(9) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), **Sch. 1**
- I9** S. 1(10) in force at 1.8.2006 by [S.I. 2006/1951](#), art. 2(2)(a)

## 2 Transfer of safety functions to ORR

Schedule 3 (which makes provision for and in connection with the transfer to the ORR of safety functions conferred by or under the Health and Safety at Work etc. Act 1974 (c. 37)) has effect.

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#### Commencement Information

- I10** S. 2 in force at 7.2.2006 for specified purposes by S.I. 2006/266, art. 2(1)(a)  
**I11** S. 2 in force at 1.4.2006 for specified purposes by S.I. 2006/266, art. 2(2), Sch.

### Railway strategy

## 3 General duties under s. 4 of the 1993 Act

- (1) Section 4 of the 1993 Act (general duties of the Secretary of State and the ORR) is amended as follows.
- (2) In subsections (1) to (3), after “this Part”, in each place, insert “ or the Railways Act 2005 that are not safety functions ”.
- (3) In subsection (1), for paragraphs (za) and (a) (duties to further the strategies of the SRA and to protect the interests of rail users) substitute—
  - “(zb) to promote improvements in railway service performance;
  - (a) otherwise to protect the interests of users of railway services;”.
- (4) In subsection (3)(a)(duty of ORR to have regard to safety matters), the words from “taking into account” to “Executive” (which require the ORR to take into account advice from the HSE) shall cease to have effect.
- (5) In subsection (3A) (functions of Secretary of State excluded from duty), after paragraph (b) insert “and
  - (c) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to the Secretary of State under or by virtue of the provisions of Part 4 of that Act other than section 39.”
- (6) After that subsection insert—
  - “(3B) Subsections (1) to (3) above shall have effect in relation to the Scottish Ministers as in relation to the Office of Rail Regulation except that, in relation to those Ministers—
    - (a) the references in each of the subsections to functions transferred or assigned to those Ministers under or by virtue of Part 1 of this Act include only the functions transferred or assigned under or by virtue of sections 16A to 16G of this Act; and
    - (b) the references in each of the subsections to the functions transferred or assigned under or by virtue of the Railways Act 2005 include only the functions transferred or assigned to those Ministers under or by virtue of Part 4 of that Act.
  - (3C) Subsections (1) to (3) above shall have effect in relation to the National Assembly for Wales as in relation to the Office of Rail Regulation except that, in relation to that Assembly, the references in each of the subsections to functions transferred or assigned under or by virtue of Part 1 of this Act or the Railways Act 2005 include only the functions transferred or assigned to the Assembly under or by virtue of the provisions of Part 4 of that Act of 2005 other than section 39.”

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- (7) In subsection (4), after “this Part” insert “ or the Railways Act 2005 ”.
- (8) In subsection (5) (supplementary duties)—
- (a) in the words before paragraph (a), after “this Part” insert “ or the Railways Act 2005 that are not safety functions ”;
  - (b) after paragraph (a) (guidance from the Secretary of State) insert—
    - “(aa) to have regard to any general guidance given to it by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in or as regards Scotland that relate to railways;
    - (ab) in having regard to any guidance falling within paragraph (aa), to give what appears to it to be appropriate weight to the extent (if any) to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers;”
  - (c) in paragraph (b), after “this Part” insert “ or that Act ”;
  - (d) for paragraph (c) (duty to have regard to financial position of the SRA) substitute—
    - “(c) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services;
    - (ca) to have regard to any notified strategies and policies of the National Assembly for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;
    - (cb) to have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on it by or under any enactment;”.
- (9) After that subsection insert—
- “(5A) Before giving any guidance for the purposes of subsection (5)(a) above the Secretary of State must consult the National Assembly for Wales.
  - (5B) In exercising its safety functions, other than its functions as an enforcing authority for the purposes of the Health and Safety at Work etc. Act 1974, the Office of Rail Regulation shall be under a duty to have regard to any general guidance given to it by the Secretary of State.
  - (5C) In performing its duties under subsections (1) to (5A) above in relation to—
    - (a) any matter affecting the interests of users or potential users of railway services,
    - (b) any matter affecting the interests of persons providing railway services, or
    - (c) any matter not falling within paragraph (a) or (b) but falling within subsection (5D),
 the Office of Rail Regulation must have regard, in particular, to the interests, in securing value for money, of the persons mentioned in paragraphs (a) and (b) above, of the persons who make available the resources and other funds mentioned in that subsection and of the general public.

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(5D) A matter falls within this subsection if the Office of Rail Regulation has been informed that—

- (a) public financial resources (within the meaning of paragraph 1D of Schedule 4A to this Act), or
- (b) funds that do not comprise such resources but are provided in whole or in part by Transport for London, the National Assembly for Wales, a Passenger Transport Executive or any other body in receipt of such resources,

are or are likely to become available to be applied for purposes connected with that matter.”

(10) For subsection (7ZA) substitute—

“(7ZA) Where any general guidance is given to the Office of Rail Regulation for the purposes of subsection (5)(a) or (aa) or (5B)—

- (a) it may be varied or revoked by the person giving it at any time; and
- (b) the guidance, and any variation or revocation of the guidance, must be published by that person in such manner as he considers appropriate.”

(11) In subsection (9)—

(a) after the definition of “the environment” insert—

““notified strategies and policies”, in relation to the National Assembly for Wales, means the strategies and policies of that Assembly that have been notified by that Assembly for the purposes of this section to the Office of Rail Regulation;”

(b) after the definition of “the passenger transport market” insert—

““railway service performance” includes, in particular, performance in securing each of the following in relation to railway services—

- (a) reliability (including punctuality);
- (b) the avoidance or mitigation of passenger overcrowding; and
- (c) that journey times are as short as possible;

“safety functions” means functions assigned or transferred to the Office of Rail Regulation—

- (a) under this Part,
- (b) under or by virtue of the Railways Act 2005, or
- (c) under or by virtue of the Health and Safety at Work etc. Act 1974,

so far as they are being exercised for the railway safety purposes (within the meaning of Schedule 3 to the Railways Act 2005) or for purposes connected with those purposes.”

#### Commencement Information

- I12** S. 3(1) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- I13** S. 3(1) in force at 26.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(2), [Sch. 2](#)
- I14** S. 3(1) in force at 1.4.2006 for specified purposes by [S.I. 2006/266](#), art. 2(2), [Sch.](#)
- I15** S. 3(2) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- I16** S. 3(2) in force at 1.4.2006 in so far as not already in force by [S.I. 2006/266](#), art. 2(2), [Sch.](#)

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- I17** S. 3(3) in force at 26.6.2005 by S.I. 2005/1444, art. 2(2), **Sch. 2**
- I18** S. 3(4) in force at 1.4.2006 by S.I. 2006/266, art. 2(2), **Sch.**
- I19** S. 3(6) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I20** S. 3(8)(a) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I21** S. 3(8)(b) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I22** S. 3(8)(c) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I23** S. 3(8)(d) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I24** S. 3(9) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I25** S. 3(9) in force at 1.4.2006 for specified purposes by S.I. 2006/266, art. 2(2), **Sch.**
- I26** S. 3(10) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I27** S. 3(11)(b) in force at 26.6.2005 for specified purposes by S.I. 2005/1444, art. 2(2), **Sch. 2**

VALID FROM 29/01/2007

#### **4 Use of access charges reviews for application of strategy**

Schedule 4 (which amends Schedule 4A to the 1993 Act to broaden the scope of access charges reviews and to increase the influence of the Secretary of State and the Scottish Ministers over such reviews) has effect.

#### **5 Railway strategy for Scotland**

- (1) The Scottish Ministers may prepare a strategy for carrying out their functions in relation to railways and railway services.
- (2) The Scottish Ministers may from time to time revise that strategy.
- (3) Where the Scottish Ministers prepare or revise such a strategy, they must publish the strategy or revised strategy in such manner as they consider appropriate for bringing it to the attention of those likely to be affected by it.
- (4) The reference in subsection (1) to the functions of the Scottish Ministers in relation to railways and railway services includes, in particular, their functions under Part 1 of the 1993 Act and their functions under this Act.

#### **Commencement Information**

- I28** S. 5 in force at 21.8.2005 by S.I. 2005/2252, art. 2

## **PART 2**

### PUBLIC SECTOR FUNDING AUTHORITIES FOR RAILWAYS

#### *Assisting and securing the provision of services*

#### **6 Financial assistance etc. from the Secretary of State**

- (1) The Secretary of State may provide, or agree to provide, financial assistance to any person—

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- (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
  - (b) for any other purpose relating to a railway or to railway services.
- (2) For the purposes of this section the provision of financial assistance includes each of the following—
- (a) the making of grants or loans;
  - (b) the giving of guarantees; and
  - (c) investments in bodies corporate.
- (3) Agreements or other arrangements entered into by the Secretary of State under this section may be entered into on whatever terms, and subject to whatever conditions, he considers appropriate.
- (4) In exercising his powers under this section—
- (a) for any purpose mentioned in section 9(1) in relation to which powers are exercisable by the Scottish Ministers under section 8, or
  - (b) for any purpose mentioned in section 11(1) in relation to which powers are exercisable by the National Assembly for Wales under section 10,
- the Secretary of State must have regard to the desirability of acting consistently with anything notified to him under section 9 or 11.
- (5) A power of the Secretary of State under this section or otherwise to enter into agreements or other arrangements (other than franchise agreements) for a purpose set out in subsection (1) may be exercised by his entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or arrangement is entered into in accordance with that franchise agreement.
- (6) For the purposes of subsection (5) a person is a relevant person in relation to a franchise agreement if he is—
- (a) the franchise operator;
  - (b) the franchisee; or
  - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (7) In this section “railway” has its wider meaning.
- (8) Paragraph (a) of subsection (1) of section 17 of the Ministry of Transport Act 1919 (c. 50) (grants or loans for the construction, improvement or maintenance of railways, light railways or tramways) shall cease to have effect.

#### Commencement Information

**I29** S. 6(1)-(3) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), **Sch. 1**

**I30** S. 6(4) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**

**I31** S. 6(4) in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), **Sch. 1**

**I32** S. 6(5)-(8) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), **Sch. 1**

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## 7 Notification of assistance from Secretary of State for freight services

- (1) This section applies if the Secretary of State makes or modifies a scheme setting out how he proposes to exercise his powers under section 6 for the purpose of securing the provision, improvement or development of—
  - (a) services for the carriage of goods by railway; or
  - (b) facilities for or in connection with—
    - (i) the carriage of goods by railway; or
    - (ii) the loading or unloading of goods carried or intended to be carried by railway.
- (2) This section also applies if the Secretary of State makes or modifies a determination of the criteria that he will apply in exercising his functions under such a scheme.
- (3) The Secretary of State must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified—
  - (a) to the Scottish Ministers; and
  - (b) to the National Assembly for Wales.
- (4) In this section—
 

“facilities” includes track, rolling stock, depots, access roads and equipment;  
 and  
 “railway” has its wider meaning.

### Commencement Information

**I33** S. 7 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

## 8 Franchising and financial assistance in relation to Scotland

- (1) For the purposes of being a party to a franchise agreement the Scottish Ministers shall have power to provide, or to agree to provide, financial assistance to the franchisee—
  - (a) for the purpose of securing the provision, improvement or development of the Scottish services to which the agreement relates; or
  - (b) for any other purpose relating to the provision of those services.
- (2) The Scottish Ministers shall also have power, where they do so wholly or primarily for Scottish purposes, to provide, or to agree to provide, financial assistance to persons otherwise than under franchise agreements—
  - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
  - (b) for any other purpose relating to a railway or to railway services.
- (3) In subsection (2) “Scottish purposes” means any of the following—
  - (a) any purposes connected with a Scottish service or proposed Scottish service;
  - (b) the provision, improvement or development of services for the carriage of goods by railway where the services are to be or are provided wholly or partly in Scotland;
  - (c) the provision, improvement or development of facilities for use for or in connection with—



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- (i) the carriage of goods by railway using services that are to be or are provided wholly or partly in Scotland; or
  - (ii) the loading or unloading of goods so carried or intended to be so carried.
- (4) For the purposes of this section the provision of financial assistance includes each of the following—
  - (a) the making of grants or loans;
  - (b) the giving of guarantees; and
  - (c) investments in bodies corporate.
- (5) Agreements and other arrangements entered into by the Scottish Ministers under subsection (1) or (2) may be entered into on whatever terms, and subject to whatever conditions, they consider appropriate.
- (6) In exercising their powers under this section for any purpose mentioned in subsection (1) of section 7, the Scottish Ministers must have regard to the desirability of acting consistently with anything notified to them under that section.
- (7) The power of the Scottish Ministers under subsection (2) may be exercised by their entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or other arrangement is entered into in accordance with that franchise agreement.
- (8) For the purposes of subsection (7) a person is a relevant person in relation to a franchise agreement if he is—
  - (a) the franchise operator;
  - (b) the franchisee; or
  - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (9) In this section—
  - “facilities” includes track, rolling stock, depots, access roads and equipment;
  - “railway” has its wider meaning;
  - “Scottish service” means any service which is a Scotland-only service or a cross-border service.

#### Commencement Information

**I34** S. 8 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

## 9 Notification of assistance from Scottish Ministers for freight services

- (1) This section applies if the Scottish Ministers make or modify a scheme setting out how they propose to exercise their powers under section 8 for the purpose of securing the provision, improvement or development of—
  - (a) services for the carriage of goods by railway; or
  - (b) facilities for or in connection with—
    - (i) the carriage of goods by railway; or
    - (ii) the loading or unloading of goods carried or intended to be carried by railway.

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- (2) This section also applies if the Scottish Ministers make or modify a determination of the criteria that they will apply in exercising their functions under such a scheme.
- (3) The Scottish Ministers must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified, to the Secretary of State.
- (4) In this section—
  - “facilities” includes track, rolling stock, depots, access roads and equipment; and
  - “railway” has its wider meaning.

#### **Commencement Information**

**I35** S. 9 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

## **10 Franchising and financial assistance in relation to Wales**

- (1) Before—
  - (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include Welsh services, or
  - (b) entering into a franchise agreement in respect of services that are or include Welsh services in a case in which no such invitation has been issued,
 the Secretary of State must consult the National Assembly for Wales.
- (2) The Secretary of State may not enter into a franchise agreement relating to services that are or include Wales-only services unless the National Assembly for Wales joins with him as a party to the agreement.
- (3) For the purposes of being a party to a franchise agreement (whether or not in a case falling within subsection (2)) the National Assembly for Wales shall have power to provide, or to agree to provide, financial assistance to the franchisee—
  - (a) for the purpose of securing the provision, improvement or development of any Welsh services to which the agreement relates; or
  - (b) for any other purpose relating to the provision of those services.
- (4) The National Assembly for Wales shall also have power, where it does so wholly or primarily for Welsh purposes, to provide, or to agree to provide, financial assistance to persons otherwise than under franchise agreements—
  - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
  - (b) for any other purpose relating to a railway or to railway services.
- (5) In subsection (4) “Welsh purposes” means any of the following—
  - (a) any purposes connected with a Welsh service or proposed Welsh service;
  - (b) the provision, improvement or development of services for the carriage of goods by railway where the services are to be or are provided wholly or partly in Wales;
  - (c) the provision, improvement or development of facilities for use for or in connection with—
    - (i) the carriage of goods by railway using services that are to be or are provided wholly or partly in Wales; or

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- (ii) the loading or unloading of goods so carried or intended to be so carried.
- (6) The National Assembly for Wales may make payments to the Secretary of State or the Scottish Ministers in respect of the performance of his or their duty under section 30 of the 1993 Act (provision of services by operator of last resort) in relation to a Welsh service.
- (7) For the purposes of this section the provision of financial assistance includes each of the following—
  - (a) the making of grants or loans;
  - (b) the giving of guarantees; and
  - (c) investments in bodies corporate.
- (8) Agreements and other arrangements entered into by the National Assembly for Wales under subsection (3) or (4) may be entered into on whatever terms, and subject to whatever conditions, the Assembly considers appropriate.
- (9) In exercising its powers under this section for any purpose mentioned in subsection (1) of section 7, the National Assembly for Wales must have regard to the desirability of acting consistently with anything notified to it under that section.
- (10) The power of the National Assembly for Wales under subsection (4) may be exercised by its entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or other arrangement is entered into in accordance with that franchise agreement.
- (11) For the purposes of subsection (10) a person is a relevant person in relation to a franchise agreement if he is—
  - (a) the franchise operator;
  - (b) the franchisee; or
  - (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.
- (12) In this section—
  - “facilities” includes track, rolling stock, depots, access roads and equipment;
  - “railway” has its wider meaning.

#### **Commencement Information**

**I36** S. 10(1)-(5)(7)-(12) in force at 8.6.2005 by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)

**I37** S. 10(6) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), [art. 2](#), [Sch.](#)

**I38** S. 10(6) in force at 16.10.2005 in so far as not already in force by [S.I. 2005/2812](#), [art. 2\(1\)](#), [Sch. 1](#)

## **11 Notification of assistance from Welsh Assembly for freight services**

- (1) This section applies if the National Assembly for Wales makes or modifies a scheme setting out how it proposes to exercise its powers under section 10 for the purpose of securing the provision, improvement or development of—
  - (a) services for the carriage of goods by railway; or
  - (b) facilities for or in connection with—
    - (i) the carriage of goods by railway; or

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**Changes to legislation:** Railways Act 2005 is up to date with all changes known to be in force on or before 14 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)

- (ii) the loading or unloading of goods carried or intended to be carried by railway.
- (2) This section also applies if the National Assembly for Wales makes or modifies a determination of the criteria that it will apply in exercising its functions under such a scheme.
- (3) The National Assembly for Wales must send a copy of the scheme or determination, or (as the case may be) of the scheme or determination as modified, to the Secretary of State.
- (4) In this section—
  - “facilities” includes track, rolling stock, depots, access roads and equipment;
  - and
  - “railway” has its wider meaning.

#### **Commencement Information**

**I39** S. 11 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

## **12 Transfer schemes at end of franchising agreements**

- (1) This section applies where a franchise agreement is or has been in force.
- (2) The appropriate national authority may make a scheme for the transfer, at or after the end of the franchise period, of relevant franchise assets from the franchise company to a person specified in subsection (3), or to two or more of those persons.
- (3) Those persons are—
  - (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) a company which is wholly owned by the Secretary of State or the Scottish Ministers;
  - (d) a company which is jointly owned by the Secretary of State and the Scottish Ministers; and
  - (e) a franchise company.
- (4) Before making a scheme under this section, the appropriate national authority must consult every person to whom relevant franchise assets would be transferred under the proposed scheme.
- (5) On the day on which a scheme made under this section comes into force—
  - (a) the transferee or transferees must pay to the transferor, or
  - (b) the transferor must pay to the transferee or transferees,
 such sums as may be specified in, or determined in accordance with, the franchise agreement.
- (6) Subsection (5) is subject to any other agreement between the transferor and the transferee or transferees.
- (7) Schedule 2 (which contains supplemental provisions about transfer schemes) has effect in relation to schemes under this section.

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(8) In this section—

“the appropriate national authority” means—

- (a) in relation to a franchise agreement to which the Secretary of State is a party, the Secretary of State; and
- (b) in relation to a franchise agreement to which the Scottish Ministers are a party, the Scottish Ministers;

“franchise company” means a person who is, or is to be, the franchisee or the franchise operator under a franchise agreement;

“relevant franchise assets” means property, rights and liabilities which, immediately before the end of the franchise period which is ending or has ended, will be or were designated as franchise assets for the purposes of the agreement;

“transferee”, in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and

“transferor”, in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme.

#### Commencement Information

**I40** S. 12(1)-(7) in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

**I41** S. 12(8) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

**I42** S. 12(8) in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

### *Passenger Transport Executives*

## **13 Railway functions of Passenger Transport Executives**

(1) Before—

- (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include services in which a Passenger Transport Executive for an area in England have an interest, or
- (b) entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued,

the Secretary of State must consult the Executive for that area.

(2) For the purposes of subsection (1) the services in which a Passenger Transport Executive have an interest are—

- (a) services for the carriage of passengers by railway within the passenger transport area of that Executive; and
- (b) services which are not such services but are services for the carriage of passengers by railway to or from such an area.

(3) A Passenger Transport Executive for a passenger transport area in England and the Secretary of State may enter into arrangements under which one or both of the following occurs—

- (a) sums become due from the Executive to the Secretary of State in respect of services for the carriage of passengers by railway within that area or in respect of station services or bus substitution services provided within that area; and

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- (b) the Secretary of State undertakes to exercise or perform his powers and duties in relation to or in connection with such services in a particular way.
- (4) A Passenger Transport Executive for a passenger transport area in England may enter into agreements for purposes relating to or connected with the provision, by a person who is a franchisee or franchise operator in relation to a franchise agreement, of—
- (a) services for the carriage of passengers by railway within that area; and
  - (b) station services provided for purposes connected with any such services.
- (5) A Passenger Transport Executive for a passenger transport area in England may not enter into an agreement (whether by virtue of subsection (4) or otherwise)—
- (a) with a person who is a franchisee or franchise operator in relation to a franchise agreement, or
  - (b) with a person who is proposing to become such a franchisee or franchise operator,
- unless the agreement is approved by the Secretary of State.
- (6) The Secretary of State may—
- (a) give a general approval for the purposes of subsection (5) in relation to a description of agreements, as well as specific approvals for particular agreements; and
  - (b) withdraw his approval in relation to any agreement at any time before the agreement is entered into.
- (7) The agreements to which a Passenger Transport Executive for a passenger transport area in England may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway within that area.
- (8) The Secretary of State and the Passenger Transport Executive for a passenger transport area in England must each provide to the other any information which—
- (a) the other reasonably requires for purposes connected with his or their functions in relation to railways or railway services; and
  - (b) is information which it would have been lawful for him or (as the case may be) them to disclose apart from this subsection.
- (9) In this section—
- (a) a reference to a service for the carriage of passengers by railway within a passenger transport area is a reference to a service for the carriage of passengers by railway between places in that area or between places in that area and places outside it which are within the permitted distance;
  - (b) a reference to station services provided within such an area is a reference to station services provided in connection with any such service for the carriage of passengers by railway; and
  - (c) a reference to a bus substitution service provided within such an area is a reference to a bus substitution service for the carriage of passengers between places in that area or between places in that area and places outside it which are within the permitted distance;

and in this subsection “the permitted distance” has the same meaning as in section 10(1)(ii) of the Transport Act 1968 (c. 73) (25 miles).

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#### Commencement Information

**I43** S. 13 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

## 14 Repeals and savings relating to Passenger Transport Executives

- (1) The following provisions shall cease to have effect—
  - (a) in section 10(1) of the Transport Act 1968, paragraphs (vi) and (viza) (powers to enter into agreements with the SRA);
  - (b) section 20(2)(b) and (3) of that Act (duty of PTE to enter into agreements to secure the provision of railway passenger services and to provide information for that purpose); and
  - (c) sections 34 and 35 of the 1993 Act (role of PTAs and PTEs in relation to franchising and the termination and variation of agreements under section 20(2) of the 1968 Act).
- (2) Subject to subsection (3), a Passenger Transport Executive who are a party to a franchise agreement immediately before the commencement of subsection (1) may continue to be a party to that agreement after that time, notwithstanding anything in subsection (1) of this section or in section 13.
- (3) Where a Passenger Transport Executive are a party to a franchise agreement immediately before the commencement of subsection (1) of this section—
  - (a) subsection (2) of this section and section 13(4) and (7) are to be disregarded for the purpose of giving effect to any provision of the agreement by virtue of which a person may cause the Executive to cease to be a party to it; and
  - (b) the Executive must comply with all such directions as may be given to them by the Secretary of State to take steps for the purpose of ceasing to be a party to the agreement.
- (4) The provisions of this section and the repeals made by this Act do not affect the application of the following provisions in relation to a franchise agreement into which a Passenger Transport Executive entered before the commencement of subsection (1) of this section, that is to say—
  - (a) subsection (17) of section 34 of the 1993 Act (disputes); and
  - (b) any other enactment so far as it has effect for the purposes of or in relation to that subsection of that section.
- (5) In the operation of any enactment by virtue of subsection (4) of this section references in that enactment to the Strategic Rail Authority are to have effect as references to the Secretary of State.

#### Commencement Information

**I44** S. 14 in force at 24.7.2005 for E.W. by S.I. 2005/1909, art. 2, Sch.

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## *London*

### **15 Duty of Secretary of State and Transport for London to co-operate**

(1) Section 175 of the Greater London Authority Act 1999 (c. 29) (duty of Transport for London and the SRA to cooperate) is amended as follows.

(2) In subsection (1) (duty of co-operation)—

- (a) for “Strategic Rail Authority”, where first occurring, substitute “ Secretary of State ”; and
- (b) omit the words after paragraph (b) (which relate to the exchange of information).

(3) After that subsection insert—

“(1A) Before—

- (a) issuing an invitation to tender for a franchise agreement in a case in which the services to be provided under the agreement are or include London railway passenger services, or
- (b) entering into a franchise agreement in respect of such services in a case in which no such invitation has been issued,

the Secretary of State must consult Transport for London.

(1B) The Secretary of State and Transport for London must each provide to the other any information which—

- (a) the other reasonably requires for a purpose mentioned in subsection (1)(a) or (b); and
- (b) is information which it would have been lawful for him or (as the case may be) it to disclose apart from this subsection.”

(4) In subsection (2) (power of Transport for London and SRA to enter into arrangements as to how they will exercise and perform their functions), for “Strategic Rail Authority” substitute “ Secretary of State ”.

(5) After that subsection insert—

“(2A) Those arrangements may include arrangements under which sums become due from Transport for London to the Secretary of State—

- (a) in respect of London railway passenger services;
- (b) in respect of station services provided in connection with such services; or
- (c) in respect of bus substitution services provided as alternatives for London railway passenger services.”

(6) In subsection (3) (references to functions of the SRA), for “Strategic Rail Authority”, “its” and “it” substitute, respectively, “ Secretary of State ”, “ his ” and “ him ”.

(7) After that subsection insert—

“(3A) A reference in this section to a London railway passenger service is a reference to—

- (a) a service for the carriage of passengers by railway between places in Greater London; or



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- (b) a service for the carriage of passengers by railway between places in Greater London and places outside Greater London.

(3B) Expressions used in this section and in Part 1 of the Railways Act 1993 have the same meanings in this section as in that Part.”

#### Commencement Information

**I45** S. 15 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

## 16 Relaxation of contractual restrictions on Transport for London

- (1) Section 201 of the Greater London Authority Act 1999 (c. 29) (restriction on Transport for London entering into agreements that involve the holding of a licence under the 1993 Act) shall cease to have effect.
- (2) Transport for London may not enter into an agreement—
  - (a) with a person who is a franchisee or franchise operator in relation to a franchise agreement, or
  - (b) with a person who is proposing to become such a franchisee or franchise operator,unless the agreement is approved by the Secretary of State.
- (3) An agreement that relates exclusively to the grant of permission by a facility owner for a person to use a railway facility of his does not require the approval of the Secretary of State under subsection (2) in any case in which Transport for London or a subsidiary of its is the facility owner or the person granted permission.
- (4) The Secretary of State may—
  - (a) give a general approval for the purposes of subsection (2) in relation to a description of agreements, as well as specific approvals for particular agreements; and
  - (b) withdraw his approval in relation to any agreement at any time before the agreement is entered into.
- (5) The agreements to which Transport for London may become a party with the approval of the Secretary of State include franchise agreements under which services are provided which are or include services for the carriage of passengers by railway between places in Greater London.
- (6) In this section “subsidiary” has the meaning given to it by section 736 of the Companies Act 1985 (c. 6).

#### Commencement Information

**I46** S. 16 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

**Status:** Point in time view as at 08/11/2006. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 08/08/2007

## 17 Membership of Transport for London

- (1) Paragraph 2 of Schedule 10 to the Greater London Authority Act 1999 (c. 29) (membership of Transport for London) is amended as follows.
- (2) In sub-paragraph (1) (which imposes a maximum of fifteen on the number of members appointed by the Mayor), for “fifteen” substitute “seventeen”.
- (3) In sub-paragraph (2) (which imposes a maximum of fourteen on the number so appointed where the Mayor is himself a member), for “fourteen” substitute “sixteen”.
- (4) After sub-paragraph (2) insert—
 

“(2A) The Mayor must exercise his powers under this paragraph so as to secure that at least two members of Transport for London are able to represent the interests of the persons living, working and studying in areas outside Greater London that are served by railway passenger services in respect of which Transport for London carries out functions, or is likely to do so.”
- (5) After sub-paragraph (3) insert—
 

“(3A) Before making an appointment for the purposes of sub-paragraph (2A) above, the Mayor must consult the regional planning body for each of the regions where the areas served by the services mentioned in that sub-paragraph are situated.”
- (6) After sub-paragraph (5) insert—
 

“(5A) Notwithstanding sub-paragraphs (4) and (5)—

  - (a) a person who is a member of a principal council may be appointed to be, and remain, a member of Transport for London if his appointment is one in performance of the Mayor's duty under paragraph (2A); but
  - (b) no more than two such persons may be members of Transport for London at the same time.”
- (7) After sub-paragraph (7) insert—
 

“(8) In this paragraph—

“railway passenger service” has the same meaning as in Part 1 of the Railways Act 1993; and

“regional planning body” and “region” have the same meanings as in Part 1 of the Planning and Compulsory Purchase Act 2004.”
- (8) It shall be the duty of the Mayor of London, within the period of six months beginning with the commencement of subsection (4)—
  - (a) to review the existing membership of Transport for London; and
  - (b) to decide whether it is necessary for the purposes of the sub-paragraph inserted by that subsection for him to exercise any of his powers under paragraph 2 of Schedule 10 to the Greater London Authority Act 1999.

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- (9) Before making that decision the Mayor must consult the same regional planning bodies (within the meaning of that paragraph) as he is required to consult before making an appointment for the purposes of that sub-paragraph.

*Provision of service by provider of last resort*

**18 Qualification of duty in respect of services funded by others**

- (1) In subsection (3) of section 30 of the 1993 Act (restrictions on duty to provide service as provider of last resort) after paragraph (a) insert—

- “(aa) require the relevant franchising authority to provide or secure the provision of a Welsh service where it appears to the authority that it will not be receiving funds from the National Assembly for Wales that are reasonably equivalent to those provided by that Assembly (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;
- (ab) require the Secretary of State to provide or secure the provision of a service within the area of a Passenger Transport Executive where it appears to him that he will not be receiving funds from the Executive that are reasonably equivalent to those provided by that Executive (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;
- (ac) require the Secretary of State to provide or secure the provision of a service that makes scheduled calls in Greater London where it appears to him that he will not be receiving funds from Transport for London that are reasonably equivalent to those that were provided by Transport for London (whether directly to the previous franchisee or otherwise) in respect of the service provided by the previous franchisee;”.

- (2) In that section, at the end, insert—

“(3C) In this section—

“previous franchisee”, in relation to a railway passenger service, means the franchisee in relation to the franchise agreement under which the service was previously provided; and

“Welsh service” has the same meaning as in the Railways Act 2005;

and references in this section to a Passenger Transport Executive and to a service within the area of a Passenger Transport Executive are to be construed as they are to be construed for the purposes of section 13 of that Act.”

**Commencement Information**

**I47** S. 18 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

*Status: Point in time view as at 08/11/2006. This version of this Act contains provisions that are not valid for this point in time.*

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### PART 3

#### RAIL PASSENGERS' COUNCIL AND RAIL PASSENGERS' COMMITTEES

#### 19 The Rail Passengers' Council

- (1) There shall be a body corporate to be known as the Rail Passengers' Council.
- (2) That Council shall consist of—
  - (a) a chairman appointed by the Secretary of State;
  - (b) a member appointed by the Scottish Ministers;
  - (c) a member appointed by the National Assembly for Wales;
  - (d) a member appointed by the London Assembly from the members of the London Transport Users' Committee; and
  - (e) not more than twelve other members appointed by the Secretary of State after consultation with the chairman.
- (3) The chairman and other members of that Council—
  - (a) shall each hold and vacate office in accordance with the terms and conditions of his appointment; and
  - (b) on ceasing to hold office, shall be eligible for re-appointment.
- (4) The consent of the Secretary of State is required for the terms and conditions of an appointment under subsection (2)(b) or (c).
- (5) The London Assembly must consult the Secretary of State before fixing the terms and conditions of an appointment under subsection (2)(d).
- (6) On the day appointed for the commencement of this subsection the council known as the Rail Passengers' Council that was established by section 3(2) of the 1993 Act shall cease to exist.
- (7) References in enactments, instruments and other documents to the Rail Passengers' Council established by section 3(2) of the 1993 Act shall have effect from the commencement of this subsection as references to the Council established by subsection (1).
- (8) If the Secretary of State considers it appropriate to do so in connection with or in anticipation of the establishment of the Rail Passengers' Council by subsection (1), he may terminate the appointment of any person as chairman or member of the Council established by section 3(2) of the 1993 Act.
- (9) If a person's appointment is terminated under subsection (8) before his term of office would have expired apart from this Act, the Secretary of State may, if he thinks it appropriate to do so, pay that person such sum by way of compensation as the Secretary of State determines.
- (10) Schedule 5 (which makes provision about the Council established by subsection (1)) has effect.

#### **Commencement Information**

**I48** S. 19 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

*Status: Point in time view as at 08/11/2006. This version of this Act contains provisions that are not valid for this point in time.*

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## 20 Delegation of functions by Council

After section 76 of the 1993 Act (functions of Rail Passengers' Council)—

### “76A Delegation of duties under section 76(7A)

- (1) The Rail Passengers' Council and any other public body may enter into an agreement for that other body to be responsible, in accordance with the agreement, for —
  - (a) determining what is expedient for the purposes of subsection (7A) of section 76 above in relation to an area specified in the agreement; and
  - (b) otherwise performing that Council's duties under that subsection in relation to that area.
- (2) So long as an agreement under this section is in force—
  - (a) the duties of the Rail Passengers' Council under subsection (7A) of section 76 above shall be deemed, in relation to the area specified in the agreement, to fall on the other party to it, instead of on that Council; but
  - (b) that Council is not to be prevented from doing anything mentioned in that subsection in relation to that area.
- (3) An agreement under this section—
  - (a) may be entered into on such terms and conditions as the parties to it may agree; and
  - (b) may contain provision for determining for the purposes of this section in what circumstances things done under or for the purposes of section 76(7A) are to be treated as done in relation to the area specified in the agreement.
- (4) The consent of the Secretary of State is required before the Rail Passengers' Council and another public body may enter into an agreement under this section.
- (5) In this section “public body” means any authority or other body on which functions are conferred by or under an enactment.
- (6) In subsection (5) “enactment” includes an enactment comprised in an Act of the Scottish Parliament.”

#### Commencement Information

**I49** S. 20 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

## 21 Rail Passengers' Committees

- (1) On the day appointed for the commencement of this subsection the Rail Passengers' Committees established under section 2(2) of the 1993 Act shall cease to exist.
- (2) In section 68(2) of the 1993 Act (power of ORR to require Rail Passengers' Committee to investigate a matter), for “a Rail Passengers' Committee” substitute “ the Rail Passengers' Council ”.

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- (3) Schedule 6 (which provides for the London Transport Users' Committee to continue to have functions it previously had by virtue of being treated as a Rail Passengers' Committee) has effect.
- (4) If the Secretary of State considers it appropriate to do so in connection with or in anticipation of the abolition of a Rail Passengers' Committee, he may terminate the appointment of any person as chairman or member of the Committee.
- (5) If a person's appointment is terminated under subsection (4) before his term of office would have expired apart from this Act, the Secretary of State may, if he thinks it appropriate to do so, pay that person such sum by way of compensation as the Secretary of State determines.

#### Commencement Information

**I50** S. 21 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

## PART 4

### NETWORK MODIFICATIONS ETC.

VALID FROM 01/12/2006

#### *Discontinuance of railway passenger services*

#### **22 Proposal by service operator to discontinue non-franchised services**

- (1) This section applies where—
  - (a) all the relevant railway passenger services on a particular line or from a particular station are provided otherwise than in satisfaction of requirements imposed by a franchise agreement;
  - (b) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is made by the person providing them (“the service operator”); and
  - (c) the proposal is not a proposal for a minor modification.
- (2) The references in subsection (1) to relevant railway passenger services are references to railway passenger services that are not—
  - (a) secured services;
  - (b) experimental passenger services;
  - (c) services involving travel through the Channel Tunnel;
  - (d) services that are provided otherwise than as regular scheduled services for the line or station in question; or
  - (e) services excluded from the application of this section by an order under section 38.
- (3) The service operator must give notice to the national authority setting out—
  - (a) particulars of the proposal to discontinue those services; and

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- (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (4) The particulars set out in the notice must include, in particular—
  - (a) the services to which the proposal relates; and
  - (b) the proposal date;and the proposal date must be a date not less than three months after the date of the notice.
- (5) Before giving the notice under subsection (3), the service operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) The national authority to which a notice is given under subsection (3) must—
  - (a) consider whether the closure in question should be allowed; and
  - (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance.
- (7) If the national authority forms the opinion that the closure should be allowed, it must—
  - (a) carry out a consultation under Schedule 7 about the proposal; and
  - (b) after carrying out that consultation, either notify the service operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (8) The service operator must not discontinue the services in question before the end of the interim period.
- (9) If—
  - (a) the national authority forms the opinion under subsection (6)(b) that the closure should not be allowed,
  - (b) the national authority changes its opinion following the consultation under subsection (7)(a), or
  - (c) on a reference to the Office of Rail Regulation under subsection (7)(b), that Office issues a closure non-ratification notice,the national authority must secure the provision of the services to which proposal relates after the end of the interim period.
- (10) The duty imposed by subsection (9) in relation to any services ceases if the services begin to be provided under a franchise agreement.
- (11) In this section “the national authority”—
  - (a) in relation to a proposal relating to services all of which are Scotland-only services, means the Scottish Ministers; and
  - (b) in any other case, means the Secretary of State.

## **23 Proposal by funding authority to discontinue non-franchised services**

- (1) This section applies where—
  - (a) all the relevant railway passenger services on a particular line or from a particular station are provided otherwise than in satisfaction of requirements imposed by a franchise agreement;

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- (b) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is made, in accordance with section 41, by a railway funding authority; and
  - (c) the proposal is not a proposal for a minor modification.
- (2) The references in subsection (1) to relevant railway passenger services are references to railway passenger services that are not—
- (a) secured services;
  - (b) experimental passenger services;
  - (c) services involving travel through the Channel Tunnel;
  - (d) services that are provided otherwise than as regular scheduled services for the line or station in question; or
  - (e) services excluded from the application of this section by an order under section 38.
- (3) The railway funding authority making the proposal must—
- (a) give notice of its proposal to the national authority, if it is not itself that authority;
  - (b) carry out a consultation under Schedule 7 about the proposal; and
  - (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (4) A notice to the national authority under subsection (3)(a) must set out—
- (a) particulars of the proposal for the closure including, in particular—
    - (i) the services to which the proposal relates; and
    - (ii) the proposal date; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (5) Before—
- (a) giving a notice under subsection (3)(a), in a case where it is not itself the national authority, or
  - (b) in any other case, carrying out the consultation under subsection (3)(b),
- the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) If arrangements under or in accordance with which the services are being provided do not require the services to be provided until the end of the interim period, the national authority must secure the provision of the services until the end of that period.
- (7) If on a reference under subsection (3)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the provision of the services to which the proposal relates after the end of the interim period.
- (8) The duty imposed by subsection (7) in relation to any services ceases if the services begin to be provided under a franchise agreement.
- (9) In this section “the national authority”—
- (a) in relation to a proposal relating to services all of which are Scotland-only services, means the Scottish Ministers; and
  - (b) in any other case, means the Secretary of State.



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## **24 Proposals to discontinue franchised or secured services**

- (1) This section applies where—
  - (a) all the relevant railway passenger services on a particular line or from a particular station fall within subsection (2);
  - (b) a proposal for the discontinuance of all the relevant railway passenger services provided on that line, or from that station, is made, in accordance with section 41, by a railway funding authority; and
  - (c) the proposal is not a proposal for a minor modification.
- (2) A service falls within this subsection if it is—
  - (a) a franchised service; or
  - (b) a secured service.
- (3) The references in subsection (1) to relevant railway passenger services are references to railway passenger services that are not—
  - (a) experimental passenger services;
  - (b) services involving travel through the Channel Tunnel;
  - (c) services that are provided otherwise than as regular scheduled services for the line or station in question; or
  - (d) services excluded from the application of this section by an order under section 38.
- (4) The railway funding authority making the proposal must—
  - (a) give notice of its proposal to the national authority, if it is not itself that authority;
  - (b) carry out a consultation under Schedule 7 about the proposal; and
  - (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (5) A notice to the national authority under subsection (4)(a) must set out—
  - (a) particulars of the proposal for the closure including, in particular—
    - (i) the services to which the proposal relates; and
    - (ii) the proposal date; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (6).
- (6) Before—
  - (a) giving a notice under subsection (4)(a), in a case where it is not itself the national authority, or
  - (b) in any other case, carrying out the consultation under subsection (4)(b),the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (7) If the franchise agreement or any other arrangement under or in accordance with which the services are being provided does not require the services to be provided until the end of the interim period, the national authority must secure the provision of the services until the end of that period.

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- (8) If on a reference under subsection (4)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the provision of the services to which the proposal relates after the end of the interim period.
- (9) The duty of the national authority under subsection (8)—
- (a) is discharged without its taking further steps so long as the provisions of the franchise agreement or other arrangements, in force at the time of the proposal, so far as they require the provision of the services, continue in force without modification; and
  - (b) ceases if the services begin to be provided under a franchise agreement.
- (10) Nothing in subsection (7) or (8) requires the Secretary of State to secure the provision of a Welsh service unless it appears to him that he will be receiving funds from the National Assembly for Wales that are reasonably equivalent to those provided by the Assembly in respect of the service previously provided.
- (11) In this section “the national authority”—
- (a) in relation to a proposal relating to services all of which are—
    - (i) Scotland-only services, or
    - (ii) relevant cross-border services,
 means the Scottish Ministers; and
  - (b) in any other case, means the Secretary of State.
- (12) For the purposes of subsection (11), a cross-border service is a “relevant cross-border service” if it—
- (a) does not begin or end or otherwise make a scheduled call in Wales; and
  - (b) is a service in respect of which more funding is provided by the Scottish Ministers than the Secretary of State.

## **25 Proposal to discontinue excluded services**

- (1) Where a proposal for the discontinuance of all the excluded services provided by a particular person (“the service operator”) on a particular line, or from a particular station, is made by the service operator—
- (a) the following provisions of this section apply to so much of the proposal as relates to special procedure excluded services which are not excluded London services; and
  - (b) Schedule 8 applies to so much of it as relates to special procedure excluded services which are excluded London services.
- (2) The service operator must give notice to the national authority setting out—
- (a) particulars of the proposal to discontinue the services; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (4).
- (3) The particulars set out in the notice must include, in particular—
- (a) the services to which the proposal relates; and
  - (b) the proposal date;
- and the proposal date must be a date not less than three months after the date of the notice.

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- (4) Before giving the notice under subsection (2), the service operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (5) The national authority to which a notice is given under subsection (2) must—
- (a) consider whether the closure in question should be allowed; and
  - (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance.
- (6) If the national authority is of the opinion that the closure should be allowed, it must—
- (a) carry out a consultation under Schedule 7 about the proposal; and
  - (b) after carrying out that consultation, either notify the service operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation;
- and the service operator must not discontinue the services in question before the Office of Rail Regulation has issued a closure ratification notice.
- (7) In this section—
- “excluded service” means a railway passenger service other than one which is—
- (a) a relevant railway passenger service for the purposes of any of sections 22(1), 23(1) and 24(1); or
  - (b) an experimental passenger service;
- “excluded London service” means an excluded service which—
- (a) is provided by Transport for London or a subsidiary of Transport for London; or
  - (b) is designated as a London service for the purposes of this section by an order made by the Secretary of State, or is of a description of services so designated;
- “special procedure excluded service” means an excluded service which is designated as a special procedure service for the purposes of this section by an order made by the national authority, or is of a description of services so designated;
- “the national authority”—
- (a) in relation to a proposal relating to one or more services each of which is—
    - (i) a Scotland-only service, or
    - (ii) a cross-border service in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers,means those Ministers; and
  - (b) in any other case, means the Secretary of State.
- (8) A service may be designated by order made by the Secretary of State as a London service for the purposes of this section, or may fall within a description of services so designated, only if it is a service that begins and ends in Greater London and does not otherwise make any scheduled call outside Greater London.

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- (9) An order under this section designating an excluded service, or a description of excluded service—
- (a) as a London service, or
  - (b) as a special procedure service,
- is subject to the negative resolution procedure.
- (10) Where any order under section 49(3) of the 1993 Act (application of Schedule 5 to that Act) is in force immediately before the commencement of this section, that order shall have effect after commencement of this section as an order under this section designating any services, or descriptions of service, to which it applies as special procedure services; and any other service, or description of services, which immediately before the commencement of this section is treated as a service, or description of services, in relation to which Schedule 5 to that Act is to have effect is to be treated after commencement of this section as designated by an order under this section as a special procedure service, or description of special procedure services.
- (11) Where any order under paragraph 5A(1)(b)(ii) of Schedule 5 to that Act (application of that Schedule to London services) is in force immediately before the commencement of this section, that order shall have effect after commencement of this section as an order under this section designating any services, or descriptions of service, to which it applies as London services.
- (12) For the purposes of this section (apart from the reference, in the definition of “excluded service” in subsection (7), to “relevant railway passenger service”) “railway” has its wider meaning.

VALID FROM 01/12/2006

*Discontinuance of operation of passenger networks*

**26 Proposal by operator to close passenger network**

- (1) This section applies where—
- (a) the operator of a network proposes to discontinue the operation of the network or of some part of it;
  - (b) the network or, as the case may be, that part of it has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
  - (c) the network or that part of it is not secured;
  - (d) the network or that part of it is not excluded from the application of this section by an order under section 38; and
  - (e) the proposal is not a proposal for a minor modification.
- (2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—
- (a) an experimental passenger service;
  - (b) a service involving travel through the Channel Tunnel;
  - (c) a service that is provided otherwise than as a regular scheduled service.
- (3) The operator must give notice to the national authority setting out—

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- (a) particulars of the proposal for the closure in question; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (4) The particulars set out in the notice must include, in particular—
- (a) the network, or part of a network, to which the proposal relates; and
  - (b) the proposal date;
- and the proposal date must be a date not less than three months after the date of the notice.
- (5) Before giving the notice under subsection (3), the operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) The national authority to which a notice is given under subsection (3) must—
- (a) consider whether the closure in question should be allowed; and
  - (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance.
- (7) If the national authority forms the opinion that the closure should be allowed, it must—
- (a) carry out a consultation under Schedule 7 about the proposal; and
  - (b) after carrying out that consultation, either notify the operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (8) The operator must not discontinue the operation of the network, or part of a network, in question before the end of the interim period.
- (9) If—
- (a) the national authority forms the opinion under subsection (6)(b) that the closure should not be allowed,
  - (b) the national authority changes its opinion following the consultation under subsection (7)(a), or
  - (c) on a reference to the Office of Rail Regulation under subsection (7)(b), that Office issues a closure non-ratification notice,
- the national authority must secure the continued operation of the network, or part of a network, in question after the end of the interim period.
- (10) In this section “the national authority”—
- (a) in relation to a proposal relating to a network or part of a network that is wholly in Scotland, means the Scottish Ministers; and
  - (b) in relation to a network or part of a network that is wholly in England and Wales, means the Secretary of State;
- and a proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of this section as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland.

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## **27 Proposal by funding authority to close passenger network**

- (1) This section applies where—
  - (a) a railway funding authority makes a proposal, in accordance with section 41, that the operation of a network or of some part of it should be discontinued;
  - (b) the network or, as the case may be, that part of it has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
  - (c) the network or that part of it is not secured;
  - (d) the network or that part of it is not excluded from the application of this section by an order under section 38; and
  - (e) the proposal is not a proposal for a minor modification.
- (2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—
  - (a) an experimental passenger service;
  - (b) a service involving travel through the Channel Tunnel;
  - (c) a service that is provided otherwise than as a regular scheduled service.
- (3) The railway funding authority making the proposal must—
  - (a) give notice of its proposal to the national authority, if it is not itself that authority;
  - (b) carry out a consultation under Schedule 7 about the proposal; and
  - (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (4) A notice to the national authority under subsection (3)(a) must set out—
  - (a) particulars of the proposal for the closure including, in particular—
    - (i) the network, or part of a network, to which the proposal relates; and
    - (ii) the proposal date; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (5) Before—
  - (a) giving the notice under subsection (3)(a), in a case where it is not itself the national authority, or
  - (b) in any other case, carrying out the consultation under subsection (3)(b),
 the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) If arrangements under or in accordance with which the network, or part of a network, is being operated do not require it to be operated until the end of the interim period, the national authority must secure the operation of the network, or that part of it, until the end of that period.
- (7) If on a reference under subsection (3)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the continued operation of the network, or part of a network, in question after the end of the interim period.
- (8) In this section “the national authority”—

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- (a) in relation to a proposal relating to a network or part of a network that is wholly in Scotland, means the Scottish Ministers; and
- (b) in relation to a proposal relating to a network or part of a network that is wholly in England and Wales, means the Secretary of State;

and a proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of this section as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland.

## **28 Proposal to discontinue operation of secured network**

(1) This section applies where—

- (a) a railway funding authority makes a proposal, in accordance with section 41, that the operation of a secured network or of a secured part of a network should be discontinued;
- (b) the network or, as the case may be, that part of it has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
- (c) the network or part of it is not excluded from the application of this section by an order under section 38; and
- (d) the proposal is not a proposal for a minor modification.

(2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—

- (a) an experimental passenger service;
- (b) a service involving travel through the Channel Tunnel;
- (c) a service that is provided otherwise than as a regular scheduled service.

(3) The railway funding authority making the proposal must—

- (a) give notice of its proposal to the national authority, if it is not itself that authority;
- (b) carry out a consultation under Schedule 7 about the proposal; and
- (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.

(4) A notice to the national authority under subsection (3)(a) must set out—

- (a) particulars of the proposal for the closure including, in particular—
  - (i) the network, or part of a network, to which the proposal relates; and
  - (ii) the proposal date; and
- (b) a summary of the results of the assessment carried out in accordance with subsection (5).

(5) Before—

- (a) giving the notice under subsection (3)(a), in a case where it is not itself the national authority, or
- (b) in any other case, carrying out the consultation under subsection (3)(b),

the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.

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- (6) If arrangements under or in accordance with which the network, or part of a network, is being operated do not require it to be operated until the end of the interim period, the national authority must secure the operation of the network, or that part of it, until the end of that period.
- (7) If on a reference under subsection (3)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the continued operation of the network, or part of a network, in question after the end of the interim period.
- (8) The duty of the national authority under subsection (7) is discharged without its taking further steps so long as the provisions of the arrangements, in force at the time of the proposal, so far as they require the operation of the network or part of a network, continue in force without modification.
- (9) In this section “the national authority”—
- (a) in relation to a proposal relating to a network or part of a network that is wholly in Scotland, means the Scottish Ministers; and
  - (b) in relation to a proposal relating to a network or part of a network that is wholly in England and Wales, means the Secretary of State;
- and a proposal that relates to a network or part of a network that is partly in England and Wales and partly in Scotland is to be treated for the purposes of this section as two separate proposals, one in relation to the part in England and Wales and one in relation to the part in Scotland.

VALID FROM 01/12/2006

*Discontinuance of use or operation of stations*

**29 Proposal by operator to close station**

- (1) This section applies where—
- (a) the operator of a station proposes to discontinue the use of a station or of some part of it;
  - (b) the station or, as the case may be, that part of it has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
  - (c) the station or that part of it is not secured;
  - (d) the station or that part of it is not excluded from the application of this section by an order under section 38; and
  - (e) the proposal is not a proposal for a minor modification.
- (2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—
- (a) an experimental passenger service;
  - (b) a service involving travel through the Channel Tunnel;
  - (c) a service that is provided otherwise than as a regular scheduled service.
- (3) The operator must give notice to the national authority setting out—
- (a) particulars of the proposal for the closure in question; and



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- (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (4) The particulars set out in the notice must include, in particular—
  - (a) the station, or part of a station, to which the proposal relates; and
  - (b) the proposal date;and the proposal date must be a date not less than three months after the date of the notice.
- (5) Before giving the notice under subsection (3), the operator must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) The national authority to which a notice is given under subsection (3) must—
  - (a) consider whether the closure in question should be allowed; and
  - (b) before the proposal date, form an opinion on that matter in accordance with the criteria set out in the relevant part of the closures guidance.
- (7) If the national authority forms the opinion that the closure should be allowed, it must—
  - (a) carry out a consultation under Schedule 7 about the proposal; and
  - (b) after carrying out that consultation, either notify the operator that it has changed its opinion or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (8) The operator must not discontinue the use of the station, or part of a station, before the end of the interim period.
- (9) If—
  - (a) the national authority forms the opinion under subsection (6)(b) that the closure should not be allowed,
  - (b) the national authority changes its opinion following the consultation under subsection (7)(a), or
  - (c) on a reference to the Office of Rail Regulation under subsection (7)(b), that Office issues a closure non-ratification notice,the national authority must secure the continued operation of the station, or part of a station, in question after the end of the interim period.
- (10) In this section “the national authority”—
  - (a) in relation to a proposal relating to a station or part of a station that is wholly in Scotland, means the Scottish Ministers; and
  - (b) in relation to a station or part of a station that is wholly in England and Wales, means the Secretary of State.

### **30 Proposal by funding authority to close station**

- (1) This section applies where—
  - (a) a railway funding authority makes a proposal, in accordance with section 41, that the operation of a station or of some part of it should be discontinued;

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- (b) the station or, as the case may be, that part of it has at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
  - (c) the station or that part of it is not secured;
  - (d) the station or that part of it is not excluded from the application of this section by an order under section 38; and
  - (e) the proposal is not a proposal for a minor modification.
- (2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—
- (a) an experimental passenger service;
  - (b) a service involving travel through the Channel Tunnel;
  - (c) a service that is provided otherwise than as a regular scheduled service.
- (3) The railway funding authority making the proposal must—
- (a) give notice of its proposal to the national authority, if it is not itself that authority;
  - (b) carry out a consultation under Schedule 7 about the proposal; and
  - (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (4) A notice to the national authority under subsection (3)(a) must set out—
- (a) particulars of the proposal for the closure including, in particular—
    - (i) the station, or part of a station, to which the proposal relates; and
    - (ii) the proposal date; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (5) Before—
- (a) giving the notice under subsection (3)(a), in a case where it is not itself the national authority, or
  - (b) in any other case, carrying out the consultation under subsection (3)(b),
- the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) If arrangements under or in accordance with which the station or part of a station is being operated do not require it to be operated until the end of the interim period, the national authority must secure the operation of the station, or that part of it, until the end of that period.
- (7) If on a reference under subsection (3)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the continued operation of the station, or part of a station, in question after the end of the interim period.
- (8) In this section “the national authority”—
- (a) in relation to a proposal relating to a station or part of a station that is wholly in Scotland, means the Scottish Ministers; and
  - (b) in relation to a proposal relating to a station or part of a station that is wholly in England and Wales, means the Secretary of State.

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### **31 Proposal to discontinue operation of secured station**

- (1) This section applies where—
  - (a) a railway funding authority makes a proposal, in accordance with section 41, that the operation of a secured station or of a secured part of a station should be discontinued;
  - (b) the station or, as the case may be, that part of it has, at any time within the preceding five years, been used for or in connection with the provision of services for the carriage of passengers by railway;
  - (c) the station or that part of it is not excluded from the application of this section by an order under section 38; and
  - (d) the proposal is not a proposal for a minor modification.
- (2) Use for or in connection with the provision of any of the following services is to be disregarded for the purposes of subsection (1)(b)—
  - (a) an experimental passenger service;
  - (b) a service involving travel through the Channel Tunnel;
  - (c) a service that is provided otherwise than as a regular scheduled service.
- (3) The railway funding authority making the proposal must—
  - (a) give notice of its proposal to the national authority, if it is not itself that authority;
  - (b) carry out a consultation under Schedule 7 about the proposal; and
  - (c) after carrying out that consultation, either withdraw the proposal or refer the proposal (with or without modifications) to the Office of Rail Regulation.
- (4) A notice to the national authority under subsection (3)(a) must set out—
  - (a) particulars of the proposal for the closure including, in particular—
    - (i) the station, or part of a station, to which the proposal relates; and
    - (ii) the proposal date; and
  - (b) a summary of the results of the assessment carried out in accordance with subsection (5).
- (5) Before—
  - (a) giving the notice under subsection(3)(a) , in a case where it is not itself the national authority, or
  - (b) in any other case, carrying out the consultation under subsection (3)(b),the railway funding authority making the proposal must carry out an assessment of whether the proposal satisfies the criteria set out in the relevant part of the closures guidance; and that assessment must be carried out in accordance with that guidance.
- (6) If arrangements under or in accordance with which the station, or part of a station, is being operated do not require it to be operated until the end of the interim period, the national authority must secure the operation of the station, or that part of it, until the end of that period.
- (7) If on a reference under subsection (3)(c) the Office of Rail Regulation issues a closure non-ratification notice, the national authority must secure the continued operation of the station, or part of a station, in question after the end of the interim period.
- (8) The duty of the national authority under subsection (7) is discharged without its taking further steps so long as the provisions of the arrangements, in force at the time

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of the proposal, so far as they require the operation of the station or part of a station, continue in force without modification.

- (9) In this section “the national authority”—
- (a) in relation to a proposal relating to a station or part of a station that is wholly in Scotland, means the Scottish Ministers; and
  - (b) in relation to a proposal relating to a station or part of a station that is wholly in England and Wales, means the Secretary of State.

VALID FROM 01/12/2006

### *References to the ORR*

## **32 References to the ORR**

- (1) This section applies to a reference of a proposal to the Office of Rail Regulation under any provision of this Part.
- (2) The reference may be made only if the person making it considers that the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.
- (3) The reference must set out particulars of the proposal including, in particular—
  - (a) the services or the network or station, or part of a network or station, to which the proposal relates; and
  - (b) the proposal date.
- (4) The reference must be accompanied by—
  - (a) a report by the person making the reference on the outcome of the consultation carried out by that person;
  - (b) a statement by that person as to whether the proposal that is referred is a modified proposal;
  - (c) a statement, if it is a modified proposal, setting out what modifications have been made; and
  - (d) a full assessment of whether the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.
- (5) The duty of the Office of Rail Regulation on the reference is—
  - (a) to consider whether the person making the reference properly carried out the consultation he was required to carry out in accordance with this Part; and
  - (b) unless it is satisfied that—
    - (i) there has been a failure or other defect in the carrying out of the consultation, and
    - (ii) the failure or defect makes it inappropriate for the Office to make the determination required by this paragraph,
 to determine whether the proposal, or (as the case may be) the proposal as modified, satisfies the criteria set out in the relevant part of the closures guidance.

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- (6) The person making the reference must provide the Office of Rail Regulation with all such information as it may require for the purpose of carrying out its functions under this section.
- (7) If the Office of Rail Regulation is satisfied—
- (a) that the proposal, or (as the case may be) the proposal as modified, fails to satisfy the criteria set out in the relevant part of the closures guidance, or
  - (b) that there has been a failure or other defect in the carrying out of the consultation that makes it inappropriate for that Office to make a determination of whether the proposal, or (as the case may be) the proposal as modified, satisfies those criteria,
- it must issue a notice to that effect (a “closure non-ratification notice”).
- (8) If, on completing its functions under subsection (5), the Office of Rail Regulation is not so satisfied, it must issue a notice to that effect (a “closure ratification notice”).
- (9) Where, on a reference, the Office of Rail Regulation issues a closure non-ratification notice or a closure ratification notice it must—
- (a) give a copy of that notice to every person mentioned in subsection (10); and
  - (b) require every operator of a station in the area affected by the proposal, or (as the case may be) the proposal as modified, to whom it gives a copy of the notice to secure that a copy of the notice is published by being displayed at that station until the end of the interim period.
- (10) The persons to whom a copy of the closure ratification notice or closure non-ratification notice must be given under subsection (9) are—
- (a) the person who made the reference;
  - (b) every person to whom a notice was required to be sent under paragraph 3 of Schedule 7 in the consultation relating to the proposal;
  - (c) every person otherwise consulted under that paragraph in that consultation; and
  - (d) such other persons as the Office of Rail Regulation consider appropriate.
- (11) In subsection (9) “the area affected”, in relation to a proposal, means—
- (a) in the case of a proposal for the discontinuance of services on a particular line or from a particular station, the area in which the line or station is situated;
  - (b) in the case of a proposal relating to a network, or part of a network, the area in which the network, or part of a network, is situated;
  - (c) in the case of a proposal relating to a station, or part of a station, the area served by the station, or that part.
- (12) The issue of a closure ratification notice does not authorise anything which (but for that notice) would constitute a contravention of any franchise agreement or other arrangements under or in accordance with which—
- (a) any franchised service or secured service or other railway passenger service is being provided or is being funded (whether in whole or in part); or
  - (b) any network or station or part of a network or station is being operated or is being funded (whether in whole or in part);
- and in the carrying out of any functions conferred on that Office under or in relation to any such agreement or arrangements that Office may have regard to the issue of the closure ratification notice but is not required to secure that the closure takes place.

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### **33 Closure requirements**

- (1) This section applies where, following a reference under this Part, the Office of Rail Regulation issues a closure ratification notice.
- (2) The Office of Rail Regulation may, when it issues the closure ratification notice, impose such requirements relevant to the proposal as it considers appropriate on such one or more of the following as it thinks fit, namely—
  - (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the National Assembly for Wales;
  - (d) a Passenger Transport Authority;
  - (e) a Passenger Transport Executive;
  - (f) the Mayor of London;
  - (g) Transport for London;
  - (h) a person designated as a railway funding authority by an order under section 45(4);
  - (i) a relevant operator.
- (3) For the purposes of subsection (2), a requirement is relevant to a proposal if it relates to any matter which fell to be taken into account in making an assessment whether the proposal or (as the case may be) the proposal as modified satisfied the criteria set out in the relevant part of the closures guidance.
- (4) In subsection (2)(i) “relevant operator” means—
  - (a) in the case of a proposal to which section 22 or 25 applies, the service operator within the meaning of the section in question;
  - (b) in the case of a proposal to which section 26 or 29 applies, the operator of the network or station, or part of a network or station, in question; and
  - (c) in the case of a proposal to which section 37(2) applies, the person providing the experimental passenger service in question.
- (5) A person on whom a requirement is imposed under this section must comply with it.
- (6) The Office of Rail Regulation may from time to time vary or revoke a requirement imposed under this section.
- (7) Before exercising its power under this section to vary or revoke a requirement, the Office of Rail Regulation must consult such persons as it thinks appropriate.
- (8) Where the Office of Rail Regulation exercises its power under this section to impose, vary or revoke a requirement, it must—
  - (a) give notice of that requirement, variation or revocation to every person to whom a copy of the closure ratification notice relating to the reference was given under section 32(9); and
  - (b) require every operator of a station in the area affected by the requirement, variation or revocation to whom it gives notice of the requirement, variation or revocation to secure that a copy of the notice is published by being displayed at that station—
    - (i) in the case of the imposition of a requirement, until the end of the interim period;

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(ii) in the case of the variation or revocation of a requirement, for such period as the Office of Rail Regulation may specify at the time of giving notice under paragraph (a).

(9) In subsection (8) “the area affected”, in relation to a requirement imposed under this section in relation to a closure, means—

- (a) in the case of a closure consisting in the discontinuance of services on a particular line, or from a particular station, the area in which the line or station is situated;
- (b) in the case of a closure relating to a network, or part of a network, the area in which the network, or part of a network, is situated;
- (c) in the case of a closure relating to a station, or part of a station, the area served by the station, or that part;

and “the area affected”, in relation to the variation or revocation of such a requirement, is to be construed accordingly.

VALID FROM 01/12/2006

### *Excluded proposals*

#### **34 Minor modifications**

- (1) A proposal is a proposal for a minor modification if—
  - (a) it is a proposal for a closure which has been determined under the following provisions of this section to be a minor modification; or
  - (b) it is a proposal for a closure of a description of closures in relation to which such a determination has been made.
- (2) It is the Scottish Ministers who may make a determination that a closure is a minor modification, or that closures of a particular description are minor modifications, where the only closures to which the determination relates consist in—
  - (a) the discontinuance of one or more Scotland-only services;
  - (b) the discontinuance of one or more cross-border services in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers;
  - (c) the discontinuance of two or more services none of which is a service not mentioned in paragraph (a) or (b);
  - (d) the discontinuance of a network or part of a network that is wholly in Scotland; or
  - (e) the discontinuance of a station or part of a station that is wholly in Scotland.
- (3) It is the Secretary of State who, in any other case, may make a determination that a closure is a minor modification, or that closures of a particular description are minor modifications.
- (4) A determination may be made under this section only if the person making it considers—
  - (a) in the case of a determination relating to a particular closure, that the closure is eligible under section 35 to be regarded as a minor modification; or

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- (b) in the case of a determination relating to a description of closures, that all the closures falling within that description are or will be so eligible.
- (5) A person who makes a determination under this section in relation to a particular closure for the purposes of section 22, 26 or 29 may make it subject to conditions; and, in such a case, the closure is not to be treated as a minor modification unless, as the case may be—
- (a) the person providing the service or services to be discontinued, or
  - (b) the person operating or using the network or station, or the part of a network or station, in question,
- has agreed to comply with those conditions.
- (6) The person who makes a determination under this section in relation to a particular closure must notify the Office of Rail Regulation about that determination.
- (7) A determination under this section in relation to a description of closures may be revoked at any time by the person who made it.
- (8) A person who makes or revokes a determination under this section in relation to a description of closures must—
- (a) send a copy of the determination or revocation to the Office of Rail Regulation; and
  - (b) publish it in such manner as he considers appropriate.
- (9) The revocation of such a determination shall not affect any closure if its status has been relied on before the revocation as grounds for—
- (a) a failure to give a notice under this Part; or
  - (b) the carrying out of any closure.
- (10) Any general determination which—
- (a) has been made under section 46A of the 1993 Act,
  - (b) is a determination that closures of a particular class or description are minor closures, and
  - (c) is in force immediately before the coming into force of this section,
- shall have effect after that time as a determination made under this section that closures of that class or description are minor modifications for the purposes of this Part.
- (11) Any conditions agreed to under section 37(1), 39(1) or 41(1) of the 1993 Act in connection with any determination under the section in question that a closure is a minor closure shall have effect after the commencement of this section as if agreed to for the purposes of subsection (5).

### **35 Closures eligible to be treated as minor modifications**

- (1) The discontinuance of a railway passenger service is eligible to be treated as a minor modification so far as the service is a service on a stretch of line along which there is no station (or no station in use) and the circumstances are such that—
- (a) trains that would otherwise use that stretch of line in travelling between two stations will instead pass along an alternative route; and
  - (b) passengers travelling on such a train will not be required to make additional changes and will not incur significant increases of journey times.



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- (2) The discontinuance of the operation of a part of a network is eligible to be treated as a minor modification so far as that part of the network consists in a stretch of track along which there is no station (or no station in use) and the circumstances are such that—
  - (a) trains that would otherwise use that stretch of line in travelling between two stations will instead pass along an alternative route; and
  - (b) passengers travelling on such a train will not be required to make additional changes and will not incur significant increases of journey times.
- (3) The discontinuance of the operation of a part of a network is eligible to be treated as a minor modification so far as that part of the network consists of a stretch of track which does no more than serve a station or light maintenance depot, or some part of it, and the circumstances are such that—
  - (a) that part of the network is not necessary for the operation or use of a station, or part of a station, for the purposes of or in connection with the provision of railway passenger services; or
  - (b) the operation or use of such station or part of a station as is served by that part of the network is or has been the subject of a proposal which is a proposal for a minor modification.
- (4) The discontinuance of the operation of a part of a network is eligible to be treated as a minor modification so far as—
  - (a) that part of the network consists of installations associated with any such stretch of track as is mentioned in subsection (2) or (3); and
  - (b) the circumstances are as mentioned in that subsection.
- (5) The discontinuance of the operation or use of—
  - (a) a part of a network (other than track), or
  - (b) a part of a station,is eligible to be treated as a minor modification so far as the operation or use of that part of the network or that part of the station is not necessary for the operation or use of the network or station for or in connection with the provision of railway passenger services.
- (6) Where it appears to the Secretary of State or the Scottish Ministers that closures of any description not specified in this section should, because of their temporary nature or limited effect on the provision of railway passenger services, be treated as minor modifications, the Secretary of State or, as the case may be, the Scottish Ministers may, by order, provide for closures of that description to be treated for the purposes of section 34 as eligible under this section to be so treated.
- (7) It is the Scottish Ministers who may make an order under subsection (6) where the only closures to which the order relates consist in—
  - (a) the discontinuance of one or more Scotland-only services;
  - (b) the discontinuance of one or more cross-border services in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers;
  - (c) the discontinuance of two or more services none of which is a service not mentioned in paragraph (a) or (b);
  - (d) the discontinuance of a network or part of a network that is wholly in Scotland; or

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(e) the discontinuance of a station or part of a station that is wholly in Scotland; and it is the Secretary of State who may make such an order in any other case.

(8) An order under subsection (6) is subject to the negative resolution procedure.

### **36 Designation of experimental passenger services**

(1) The power to designate a railway passenger service as experimental for the purposes of this Part is exercisable—

- (a) if it is a Scotland-only service, by the Scottish Ministers;
- (b) if it is a cross-border service in respect of which more funding is provided by the Scottish Ministers than the Secretary of State, by those Ministers;
- (c) if it is a Welsh service in respect of which more funding is provided by the National Assembly for Wales than the Secretary of State, by the National Assembly for Wales; and
- (d) in the case of any other service, by the Secretary of State.

(2) The designation must be in relation to a line or station on or from which the service will be provided.

(3) A service may not be designated as experimental for a period exceeding five years.

(4) Where a service is designated as experimental for a period of less than five years—

- (a) the designation may subsequently be extended (on one or more occasions) by the person who made it; but
- (b) the aggregate of the periods for which the service is designated as experimental must not exceed five years.

(5) In determining for the purposes of this section the period or aggregate period for which a service is designated as experimental, any period before the service is introduced is to be disregarded.

(6) The person who designates a service as experimental or extends such a designation must—

- (a) send a copy of the designation or extension to the Office of Rail Regulation; and
- (b) publish notice of the designation or extension in two successive weeks—
  - (i) in a local newspaper circulating in the area affected by the designation or extension; and
  - (ii) in two national newspapers.

(7) Where—

- (a) a service is designated as experimental or its designation is extended, and
- (b) the service is to be provided otherwise than in satisfaction of requirements imposed by a franchise agreement,

the person designating must give notice of the designation or extension to the person who is to provide the service.

(8) For the purposes of subsection (6)(b)(i) the area affected by a designation, or by the extension of a designation, is the area in which is situated the line or station in relation to which the designation is or was made.

(9) For the purposes of subsection (6)(b)(ii) as it applies in relation to—

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- (a) a Scotland-only service, or
- (b) a Wales-only service,

a newspaper which circulates generally in Scotland or, as the case may be, Wales is to be regarded as being a national newspaper.

(10) Where any railway passenger service is treated immediately before the commencement of this section as an experimental passenger service for the purposes of Part 1 of the 1993 Act—

- (a) that service shall be treated as designated as experimental for the purposes of this Part; and
- (b) the period for which it is treated as having been designated at that time shall be taken into account in determining the period or aggregate period for which it may be designated under this section.

### **37 Discontinuance of experimental passenger services**

(1) Where—

- (a) a railway funding authority is a party to a franchise agreement under which an experimental passenger service is provided,
- (b) the person providing the service proposes to discontinue it after the requirement to provide it has come to an end, and
- (c) that authority does not propose to secure the continued provision of the service,

that authority must give notice of the proposed discontinuance of the service.

(2) Where—

- (a) an experimental passenger service is provided otherwise than in satisfaction of requirements imposed by a franchise agreement, and
- (b) the person providing the service proposes to discontinue it,

that person must give notice of his proposal and must not discontinue the service before the end of the notice period.

(3) The notice required to be given under this section is a notice which—

- (a) sets out the details of the proposed discontinuance; and
- (b) is published in the required manner.

(4) A notice is published in the required manner if it is published, in two successive weeks—

- (a) in a local newspaper circulating in the area affected by the proposal;
- (b) in two national newspapers; and
- (c) in such other manner as appears to the person giving the notice to be appropriate.

(5) A person giving notice of a proposed discontinuance under subsection (2) must send to the Office of Rail Regulation a copy of the notice published under subsection (3) (b).

(6) In this section “the notice period”, in relation to a proposal to discontinue a service, means the period of six weeks after the notice of that proposal has been published in the required manner.

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(7) For the purposes of subsection (4)(a) the area affected by a proposal to discontinue an experimental passenger service is the area in which is situated the line or station in relation to which the service is designated as experimental.

(8) For the purposes of subsection (4)(b) as it applies in relation to—

- (a) a Scotland-only service, or
- (b) a Wales-only service,

a newspaper which circulates generally in Scotland or, as the case may be, Wales is to be regarded as being a national newspaper.

### **38 Services, networks and stations excluded by order**

(1) The national authority may by order—

- (a) exclude a railway passenger service, or all railway passenger services of a specified description, from the application of any one or more of sections 22 to 24;
- (b) exclude a network or part of a network, or all networks or parts of them of a specified description, from the application of any one or more of sections 26 to 28;
- (c) exclude a station or part of a station, or all stations or parts them of a specified description, from the application of any one or more of sections 29 to 31.

(2) In subsection (1) “the national authority”—

- (a) as respects a railway passenger service which is—
  - (i) a Scotland-only service, or
  - (ii) a cross-border service in relation to which so much of the funding as is provided by a railway funding authority is funding provided by the Scottish Ministers,
 means those Ministers;
- (b) as respects a network or station, or part of a network or station, that is wholly in Scotland, means the Scottish Ministers; and
- (c) as respects any other railway passenger service, network or station, or part of a network or station, means the Secretary of State.

(3) An order under this section is subject to the negative resolution procedure.

(4) Where any order under section 49(2), (4) or (5) of the 1993 Act (exclusions from closure procedures under that Act) is in force immediately before the commencement of this section, that order shall have effect after the commencement of this section—

- (a) in the case of an order under section 49(2), as an order under this section excluding the services to which it applies from sections 22 to 24 of this Act;
- (b) in the case of an order under section 49(4), as an order under this section excluding the networks, or parts of networks, to which it applies from sections 26 to 28; and
- (c) in the case of an order under section 49(5), as an order under this section excluding any stations, or parts of stations, to which it applies from sections 29 to 31.

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### Substitution services

VALID FROM 01/12/2006

## 39 Quality contracts schemes in connection with service modifications

(1) After subsection (1) of section 124 of the 2000 Act insert—

“(1A) A Passenger Transport Authority, or a Passenger Transport Authority jointly with one or more other local transport authorities, may also make a quality contracts scheme covering the whole or part of their area or combined area if they are satisfied—

- (a) that making a quality contracts scheme is an appropriate way of securing that the transport needs of the potential users of a relevant railway service that has been or is to be reduced or discontinued are met;
- (b) that the making of the scheme will contribute, in an appropriate way, to meeting the transport needs of other persons living, working or studying in the localities served by that service;
- (c) that the scheme is compatible with the local transport plan of the Passenger Transport Authority who make the scheme or (as the case may be) of each of the authorities who join in making the scheme; and
- (d) that the scheme will meet the needs of the persons mentioned in paragraphs (a) and (b) in a way which is economic, efficient and effective.

(1B) A local transport authority may join in making a scheme under subsection (1A) by reference to the reduction or discontinuance of a railway passenger service only if—

- (a) they are the Passenger Transport Authority, or one of the Passenger Transport Authorities, by reference to which that service is a relevant railway service in relation to the scheme;
- (b) the relevant railway service by reference to which the scheme is made is or was operating in the authority's area; or
- (c) the persons who live, work or study in localities served by that service include persons living, working or studying in that area.”

(2) After subsection (9) of that section insert—

“(10) In subsection (1A) the references to a local transport plan, in the case of a local transport authority not having a local transport plan, are references to the policies developed by that authority under section 108(1)(a).

(11) In this section “relevant railway service”—

- (a) in relation to a scheme made by a single Passenger Transport Authority acting alone, means—
  - (i) a railway passenger service operating entirely within the area of that Authority; or
  - (ii) the part of a railway passenger service so operating;

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(b) in relation to a scheme made jointly by more than one local transport authority, means—

- (i) a railway passenger service operating wholly or primarily within the area of a Passenger Transport Authority who join in making the scheme;
- (ii) a railway passenger service operating wholly or primarily within the combined area of two or more Passenger Transport Authorities who join in making the scheme; or
- (iii) the part of a railway passenger service operating as mentioned in sub-paragraph (i) or (ii).

(12) In this section—

“potential users”, in relation to a relevant railway service, means persons who (but for the reduction or discontinuance of the service) would have made use of it; and

“railway passenger service” has the same meaning as in the Railways Act 1993 (c. 43) (see section 83(1) of that Act).

(13) For the purposes of references in this section to where a railway passenger service or part of such a service operates—

- (a) a service shall be treated as operating at each of the places where stops are made at stations for the purpose of allowing passengers to join or leave the service; and
- (b) a part of a service is any part of that service so far as it operates at any one or more of those places.”

(3) In section 126(4) of that Act (approval of scheme), after “section 124(1)” insert “ or (as the case may be) paragraphs (a) to (d) of section 124(1A) ”.

(4) In section 132 of that Act (variation of scheme)—

- (a) in subsection (2), for “paragraphs (a) and (b) of section 124(1)” substitute “ subsection (1)(a) and (b) of section 124 or those set out in subsection (1A) (a) to (d) of that section ”;
- (b) in subsection (3) and (4), for “those conditions”, in each place, substitute “ the relevant conditions ”; and
- (c) after subsection (4) insert the subsection set out in subsection (5) of this section.

(5) The subsection inserted after section 132(4) of that Act is—

“(4A) In subsections (3) and (4) “the relevant conditions” means—

- (a) in the case of a scheme made under section 124(1) and not subsequently varied under subsection (1)(a) of this section, the conditions set out in section 124(1)(a) and (b);
- (b) in the case of a scheme made under section 124(1A) and not subsequently varied under subsection (1)(a) of this section, the conditions set out in section 124(1A)(a) to (d); and
- (c) in the case of a scheme that has been varied under subsection (1) (a) of this section, the conditions by reference to which it was last so varied.”

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#### 40 Substitute road services

- (1) Where a railway passenger service—
  - (a) is temporarily interrupted, or
  - (b) has been discontinued,the appropriate national authority may secure the provision of a substitute service for the carriage of passengers by road by means of public service vehicles or private hire vehicles.
- (2) Where a railway passenger service has been temporarily interrupted, the route and stopping places of the substitute service need not correspond precisely to those of the interrupted service if it is not practicable for them to do so.
- (3) Where a railway passenger service has been discontinued, the route and stopping places of the substitute service need not correspond precisely to those of the discontinued service if—
  - (a) it is not practicable for them to do so; or
  - (b) the substitute service broadly corresponds to the discontinued service in terms of the localities served.
- (4) For the purposes of this section the appropriate national authority is—
  - (a) in a case where the railway passenger service that is interrupted or discontinued is a service beginning or ending in England or otherwise making at least one scheduled call in England, the Secretary of State;
  - (b) in a case where that railway passenger service is a relevant Scottish passenger service, the Scottish Ministers;
  - (c) and in the case where that railway passenger service is a Wales-only service or is secured by the National Assembly for Wales, that Assembly;and where in any case there is more than one appropriate national authority they shall each have the powers conferred by this section.
- (5) In this section a “relevant Scottish passenger service” is—
  - (a) a railway passenger service provided under a Scottish franchise agreement; or
  - (b) a railway passenger service not falling within paragraph (a) which is a Scotland-only service or (without being such a service) is a service the provision of which is secured by the Scottish Ministers.
- (6) In this section “private hire vehicles” means—
  - (a) vehicles licensed under section 37 of the Town Police Clauses Act 1847 (c. 89), section 6 of the Metropolitan Public Carriage Act 1869 (c. 115), section 48 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) or section 7 of the Private Hire Vehicles (London) Act 1998 (c. 34) or under any similar enactment; or
  - (b) taxis or private hire cars licensed under section 10 of the Civic Government (Scotland) Act 1982 (c. 45).
- (7) In this section—

“public service vehicles” has the meaning given by section 1 of the Public Passenger Vehicles Act 1981 (c. 14); and

“stopping place”, in relation to a service, means a place at which a service makes a stop for the purposes of allowing passengers to join or leave the service.

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### Commencement Information

- I51** S. 40(1)-(3) in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.  
**I52** S. 40(4) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.  
**I53** S. 40(4)(b)(5) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1  
**I54** S. 40(6)(7) in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

### *Supplemental provisions of Part*

VALID FROM 01/12/2006

#### **41 Proposals by funding authorities**

- (1) A railway funding authority may make a proposal—
  - (a) for the discontinuance of a railway passenger service,
  - (b) for the discontinuance of the operation of a network or part of a network, or
  - (c) for the discontinuance of the operation of a station or part of a station,
 if, and only if, the requirements of subsection (3), (4) or (5) are satisfied.
- (2) The requirements of subsection (3) apply to the making of such a proposal by a railway funding authority other than a Passenger Transport Executive, the Mayor of London or Transport for London.
- (3) The requirements of this subsection are—
  - (a) that the proposal is made in association with another proposal by the authority;
  - (b) that the other proposal relates to any agreement or other arrangements to which the authority is a party and which relate to the provision of financial assistance in connection with the service or the operation or use of the network or station; and
  - (c) that it appears to the authority that the other proposal would have an effect which is reasonably likely to create or contribute to a need for the service to be discontinued or the operation or use of the network or station to be discontinued.
- (4) The requirements of this subsection apply in relation to the making of a proposal by a Passenger Transport Executive and are—
  - (a) that no funding in relation to a service or, as the case may be, network or station, or part of a network or station, to which the proposal relates is provided by a railway funding authority other than the Passenger Transport Executive; or
  - (b) that—
    - (i) every service to which the proposal relates operates entirely within their area; and
    - (ii) every network or station, or part of a network or station, to which the proposal relates is wholly in their area.
- (5) The requirements of this subsection apply in relation to the making of a proposal by the Mayor of London or Transport for London and are—



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- (a) that no funding in relation to a service or (as the case may be) network or station, or part of a network or station, to which the proposal relates is provided by a railway funding authority other than the Mayor of London or Transport for London; or
- (b) that—
  - (i) every service to which the proposal relates operates entirely within Greater London; and
  - (ii) every network or station, or part of a network or station, to which the proposal relates is wholly in Greater London.
- (6) The arrangements referred to in subsection (3)(b) include arrangements between the railway funding authority in question and another such authority.
- (7) For the purposes of subsections (4) and (5) a service operates entirely within an area if it starts and ends in that area and does not make any other scheduled calls outside that area.

## 42 Closures guidance

- (1) It shall be the duty of the Scottish Ministers to publish guidance for the purposes of the provisions of this Part so far as they have effect in relation to—
  - (a) proposals to discontinue any Scotland-only service or services;
  - (b) proposals to discontinue any cross-border service or services in relation to which no funding is provided by a railway funding authority other than the Scottish Ministers;
  - (c) proposals to discontinue the operation of a network or part of a network that is wholly in Scotland; or
  - (d) proposals to discontinue the use or operation of any station or part of a station that is wholly in Scotland.
- (2) It shall be the duty of the Scottish Ministers acting jointly with the Secretary of State or the National Assembly for Wales, or both of them, to publish guidance for the purposes of the provisions of this Part so far as they have effect in relation to proposals to discontinue any cross-border services in relation to which, as the case may be—
  - (a) the Secretary of State provides funding;
  - (b) the National Assembly for Wales provides funding; or
  - (c) both of them provide funding.
- (3) It shall be the duty of the Secretary of State acting jointly with the National Assembly for Wales to publish guidance for the purposes of the provisions of this Part so far as they have effect in relation to—
  - (a) proposals to discontinue any Welsh service or services;
  - (b) proposals to discontinue the operation of a network or part of a network that is wholly in Wales; or
  - (c) proposals to discontinue the use or operation of any station or part of a station that is wholly in Wales.
- (4) It shall be the duty of the Secretary of State to publish guidance for the purposes of the provisions of this Part so far as they have effect in relation to proposals as respects which none of the preceding subsections imposes any duty.

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- (5) Guidance published under this section may include different provision for different descriptions of proposals and for different purposes.
- (6) A person who is under a duty to publish guidance under this section may from time to time—
  - (a) modify the guidance; and
  - (b) publish revised guidance.
- (7) Before publishing or modifying any guidance under this section the person with the duty of publishing the guidance must consult—
  - (a) such persons operating railway passenger services, networks and stations that are affected by the proposed guidance as he thinks appropriate; and
  - (b) such other persons as he thinks appropriate.
- (8) For the purposes of subsection (7) a railway passenger service, network or station is affected by proposed guidance if the proposed guidance would have effect in relation to a proposal relating to that service, network or station.

#### **Commencement Information**

**I55** S. 42 in force at 1.8.2006 by S.I. 2006/1951, art. 2(2)(b)

### **43 Procedure relating to publication and modification of closures guidance**

- (1) The Secretary of State must lay before each House of Parliament a copy of any guidance or revised guidance, or modifications of guidance, which he publishes or makes (whether or not jointly with any other person) under section 42.
- (2) The Scottish Ministers must lay before the Scottish Parliament a copy of any guidance or revised guidance, or modifications of guidance, which they publish or make (whether or not jointly with any other person) under that section.
- (3) Any guidance or revised guidance published under section 42 is to have effect, and any modifications of guidance made under that section are to have effect, in accordance with an order made—
  - (a) if subsection (1) applies in relation to the guidance or modifications, by the Secretary of State;
  - (b) if subsection (2) applies in relation to the guidance or modifications, by the Scottish Ministers; and
  - (c) if both subsections (1) and (2) apply in relation to the guidance or modifications, jointly by the Secretary of State and the Scottish Ministers.
- (4) An order under subsection (3) which relates to guidance or revised guidance published, or modifications of guidance made, by the National Assembly for Wales jointly with the Secretary of State or the Scottish Ministers, or both of them, may be made only with the consent of the National Assembly for Wales.
- (5) An order under subsection (3) is subject to the negative resolution procedure.
- (6) If a statutory instrument containing an order under subsection (3) is annulled—
  - (a) the guidance or revised guidance, or modifications of guidance, to which it relates is, or are, treated as having been withdrawn; and

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- (b) where revised guidance or modifications is or are so withdrawn, any guidance published under section 42 which had effect before the publication of the revised guidance or the making of the modifications is to continue to have effect.
- (7) The withdrawal of guidance or revised guidance or modifications of guidance under subsection (6)—
- (a) does not affect anything done in consequence of the guidance before the withdrawal; and
  - (b) does not preclude the publication of further guidance or revised guidance or the making of further modifications.

#### Commencement Information

**I56** S. 43 in force at 1.8.2006 by S.I. 2006/1951, art. 2(2)(b)

VALID FROM 01/12/2006

#### 44 Exclusion of liability for breach of statutory duty

- (1) Subject to section 57 of the 1993 Act (validity and effect of final and provisional orders under section 55 of that Act), the obligations specified in subsection (2) shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.
- (2) Those obligations are—
- (a) any obligation of a person under section 22(8) not to discontinue a railway passenger service;
  - (b) any obligation of a person under section 26(8) not to discontinue the operation of a network or part of a network;
  - (c) any obligation of a person under section 29(8) not to discontinue the use of a station or part of a station;
  - (d) any obligation of a person to comply with a requirement imposed under section 33(2) ;
  - (e) any obligation of a person to comply with conditions to which he has agreed under section 34(5) ;
  - (f) any obligation of a person under section 37(2) not to discontinue an experimental passenger service;
  - (g) any obligation of the Secretary of State or the Scottish Ministers under this Part to secure the provision of a railway passenger service, network or station or of a part of a network or station.

#### 45 Interpretation of Part 4

- (1) In this Part—
- “closure” means—
- (a) the discontinuance of a railway passenger service or of railway passenger services;

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- (b) the discontinuance of the operation of the whole or a part of a network; or
- (c) the discontinuance of the use or operation of the whole or a part of a station;

“closure non-ratification notice” is to be construed in accordance with section 32(7);

“closure ratification notice” is to be construed in accordance with section 32(8);

“closures guidance” means the guidance published under section 42, and references to the relevant part of the closures guidance are to be construed in accordance with subsection (2);

“the end of the interim period” is to be construed in accordance with subsection (3);

“excluded proposal” is to be construed in accordance with section 38;

“experimental passenger service” means a railway passenger service which, before its introduction, was designated under section 36 as experimental;

“proposal date”, in relation to a proposal for the discontinuance of any service or services, or any network or station or part of a network or station, means the date after which, according to the proposal, the service or services will no longer be provided or, as the case may be, the operation or use of the network or station or part of a network or station will be discontinued;

“railway funding authority” means—

- (a) the Secretary of State;
- (b) the Scottish Ministers;
- (c) the National Assembly for Wales;
- (d) a Passenger Transport Executive;
- (e) the Mayor of London;
- (f) Transport for London;
- (g) a person designated as such an authority by an order under subsection (4);

“secured service” means a service which is provided by or on behalf of the Secretary of State or the Scottish Ministers under—

- (a) section 30 of the 1993 Act;
- (b) section 22(9), 23(7) or 24(7) or (8) of this Act; or
- (c) a requirement imposed under section 33(2) of this Act;

“secured”, in relation to a network or station, or a part of a network or station, means provided on behalf of the Secretary of State or the Scottish Ministers under—

- (a) section 26(9), 27(7) or 28(6) or (7) of this Act (networks);
- (b) section 29(9), 30(7) or 31(6) or (7) of this Act (stations); or
- (c) a requirement imposed under section 33(2) of this Act.

(2) In this Part “the relevant part of the closures guidance”—

- (a) in relation to a proposal to discontinue any railway passenger service or services, means the part of the closures guidance relating to the discontinuance of any such services that is applicable to that proposal;
- (b) in relation to a proposal to discontinue the operation of a network or part of a network, means the part of the closures guidance relating to the discontinuance of the operation of networks or parts of networks that is applicable to that proposal; and

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- (c) in relation to a proposal to discontinue the use or operation of a station or part of a station, means the part of the closures guidance relating to the discontinuance of the use or operation of such stations or parts of such stations that is applicable to that proposal.
- (3) For the purposes of this Part the interim period, in relation to a proposal for the discontinuance of any service or services, or any network or station or part of a network or station, is a period ending—
- (a) in a case where the national authority forms the opinion in accordance with the criteria set out in the relevant part of the closures guidance that the proposal should not be allowed, with the proposal date; and
  - (b) otherwise, as the case may be—
    - (i) with the date on which notification is given to the person who made the proposal that the national authority has changed its opinion with respect to the proposal;
    - (ii) with the withdrawal of the proposal; or
    - (iii) four weeks after the date on which a closure ratification notice or closure non-ratification notice is issued by the Office of Rail Regulation on any reference to it relating to the proposal.
- (4) The appropriate authority may by order designate a person as a railway funding authority if—
- (a) that person is a person on whom functions are conferred by or under any enactment; and
  - (b) the appropriate authority is satisfied that that person, in the carrying out of those functions, provides financial assistance for purposes that are connected with railways or the provision of railway services.
- (5) In subsection (4), “appropriate authority”—
- (a) in relation to a person who provides no financial assistance for purposes mentioned in subsection (4)(b) other than—
    - (i) funding in relation to the provision of Scotland-only services,
    - (ii) Scottish majority funding in relation to cross-border services, or
    - (iii) funding in relation to the operation or use of a network or station, or part of a network or station, that is wholly in Scotland,means the Scottish Ministers;
  - (b) in any other case, means the Secretary of State.
- (6) For the purposes of subsection (5)(a)(ii), a person provides Scottish majority funding in relation to particular services if—
- (a) the person is—
    - (i) a body established by or under an Act of the Scottish Parliament; or
    - (ii) a body which has its principal office in Scotland; and
  - (b) in relation to those services, the person provides more funding than is provided in aggregate by railway funding authorities.
- (7) An order under subsection (4) is subject to the negative resolution procedure.
- (8) In subsection (4)(a), “enactment” includes an enactment contained in an Act of the Scottish Parliament.

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- (9) In this Part references to financial assistance include references to each of the following—
- (a) the making of grants or loans;
  - (b) the giving of guarantees; and
  - (c) investments in bodies corporate.

#### **Commencement Information**

**I57** S. 45(1) in force at 1.8.2006 for specified purposes by S.I. 2006/1951, **art. 2(2)(c)**

**I58** S. 45(2) in force at 1.8.2006 by S.I. 2006/1951, **art. 2(2)(d)**

## **PART 5**

### FURTHER MISCELLANEOUS PROVISIONS

#### *Conduct and accessibility on railways*

#### **46 Bye-laws**

- (1) A railway operator may make bye-laws regulating one or more of the following—
- (a) the use and working of a relevant asset;
  - (b) travel on or by means of a relevant asset;
  - (c) the maintenance of order on relevant assets;
  - (d) the conduct of persons while on relevant assets.
- (2) Those bye-laws may include, in particular—
- (a) bye-laws with respect to tickets issued for entry on relevant assets or for travel by railway or with respect to evasion of the payment of fares or other charges;
  - (b) bye-laws with respect to the obstruction of a railway;
  - (c) bye-laws with respect to any other interference with the working of a railway, with a relevant asset or with the provision of a railway service;
  - (d) bye-laws prohibiting or restricting smoking in railway carriages and elsewhere;
  - (e) bye-laws for the prevention of nuisance;
  - (f) bye-laws with respect to the receipt and delivery of goods; and
  - (g) bye-laws for regulating the passage of bicycles and other vehicles on footways and other premises controlled by the railway operator in question and intended to be used by those on foot.
- (3) Schedule 9 (which makes provisions about bye-laws under this section) has effect.
- (4) Bye-laws which—
- (a) were made by the Strategic Rail Authority under section 219 of the 2000 Act, and
  - (b) are in force immediately before the repeal of that section by this Act,
- shall continue to have effect after the coming into force of that repeal as if every reference in those bye-laws to that Authority were a reference to the Secretary of State.

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- (5) The Secretary of State may by order revoke or amend—
- (a) any bye-laws having effect in accordance with subsection (4); or
  - (b) any bye-laws saved by the 2000 Act.
- (6) In subsection (5), “bye-laws saved by the 2000 Act” means bye-laws which—
- (a) were made (or have effect as if they were made) under section 67 of the Transport Act 1962 (c. 46) or section 129 of the 1993 Act;
  - (b) were continued in force by paragraph 5(2) of Schedule 28 to the 2000 Act; and
  - (c) are in force immediately before the commencement of this section.
- (7) In this section “railway operator” means an operator of a railway asset who is—
- (a) authorised to be the operator of that asset by a licence granted under section 8 of the 1993 Act; <sup>F1</sup>...
  - (b) exempt by virtue of section 7 of that Act or any other enactment from the requirement to be so authorised [<sup>F2</sup>or
  - (c) authorised to provide train services by a European licence.]
- (8) In this section “relevant asset”, in relation to a railway operator, means—
- (a) a railway asset of which he is the operator; or
  - (b) any rolling stock not falling within paragraph (a) of which he has the management for the time being.

#### Textual Amendments

**F1** Word in s. 46(7)(a) omitted (28.11.2005) by virtue of [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), [Sch. 1 para. 5\(a\)](#)

**F2** [S. 46\(7\)\(c\)](#) and word added (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), [Sch. 1 para. 5\(b\)](#)

#### Commencement Information

**I59** [S. 46\(1\)\(2\)\(7\)\(8\)](#) in force at 24.7.2005 by [S.I. 2005/1909](#), art. 2, [Sch.](#)

**I60** [S. 46\(3\)](#) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, [Sch.](#)

**I61** [S. 46\(3\)](#) in force at 16.10.2005 in so far as not already in force by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

**I62** [S. 46\(4\)-\(6\)](#) in force at 16.10.2005 by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

## 47 Power of Scottish Ministers to make penalty fare regulations

- (1) In section 130 of the 1993 Act (penalty fare regulations), in subsection (1), for “The Secretary of State may by regulations” substitute “ The Secretary of State and the Scottish Ministers shall each have power by regulations to ”.

- (2) After subsection (1) insert—

“(1A) The power of the Scottish Ministers under this section shall be exercisable only in relation to trains and stations used for the purposes of—

- (a) railway passenger services provided under Scottish franchise agreements; or
- (b) a railway passenger service not falling within paragraph (a) which is a Scotland-only service or (without being such a service) is a service the provision of which is secured by the Scottish Ministers.”

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(3) After subsection (11) insert—

“(11A) A statutory instrument containing regulations made by the Scottish Ministers under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

**Commencement Information**

**I63** S. 47 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

**48 Code of practice for disabled rail users in Scotland**

- (1) The Scottish Ministers shall have power to prepare, and from time to time to revise, a code of practice for protecting the interests of users of relevant Scottish services who are disabled.
- (2) The Scottish Ministers must publish a code prepared by them under this section, and every revision of it, in such manner as they consider appropriate.
- (3) Before preparing or revising a code under this section the Scottish Ministers must consult the Disabled Persons Transport Advisory Committee established under section 125 of the Transport Act 1985 (c. 67).
- (4) In this section “relevant Scottish service” means—
  - (a) a railway passenger service provided under a Scottish franchise agreement;
  - (b) a railway passenger service not falling within paragraph (a) which is a Scotland-only service or (without being such a service) is a service the provision of which is secured by the Scottish Ministers; or
  - (c) a station service provided in relation to a station in Scotland at which a service falling within paragraph (a) or (b) makes a scheduled call.

**Commencement Information**

**I64** S. 48 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

*Railway administration orders for companies providing Scottish services*

**49 Functions of Scottish Ministers in relation to railway administration**

- (1) In subsection (6) of section 59 of the 1993 Act (interpretation of expressions used in connection with railway administration)—
  - (a) after “Part—” insert—
    - “(za) “appropriate national authority”—
      - (i) in relation to a Scottish protected railway company or a company subject to a railway administration order that was such a company when the order was made, means the Scottish Ministers; and
      - (ii) in relation to any other protected railway company or company subject to a railway administration order, means the Secretary of State;”



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- (b) after paragraph (b) insert—
- “(c) “Scottish protected railway company” means a protected railway company that is such a company only in respect of activities carried on by it as franchise operator in relation to a Scottish franchise agreement.”
- (2) In subsection (1) of section 60 (petition for railway administration order), for the words from the beginning to the end of paragraph (b) substitute—
- “(1) If, on an application relating to a protected railway company”.
- (3) After that subsection insert—
- “(1A) An application under subsection (1) for the making of a railway administration order may be made—
- (a) in the case of an application on the ground specified in paragraph (a) of subsection (2), only by the appropriate national authority; and
- (b) in the case of an application on the ground specified in paragraph (b) of that subsection, only by the Secretary of State.”
- (4) In each of the following provisions of the 1993 Act, for “Secretary of State”, wherever occurring, substitute “ appropriate national authority ”, namely—
- (a) section 61(1)(a)(i) and (2)(a) (notice and power to petition for railway administration order in the case of a winding-up petition);
- (b) section 62(2)(a)(i), (3)(a), (5)(a)(i), (6)(a) and (7)(a) (notice and power to petition for railway administration order in the case of voluntary winding-up and other insolvency proceedings); and
- (c) paragraphs 3, 7, 9 and 10 of Schedule 6 (modifications of the Insolvency Act 1986 (c. 45)).
- (5) In paragraph 1 of Schedule 6 to the 1993 Act, before the “and” at the end of paragraph (a) insert—
- “(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;”.
- (6) In paragraphs 7(4), 8, and 10(5) of Schedule 6 to the 1993 Act, for “the Strategic Rail Authority” substitute “ the appropriate national authority ”.
- (7) In paragraph 2 of Schedule 7 to the 1993 Act (making and modification of transfer schemes in connection with railway administration orders), for each of the following substitute “ the appropriate national authority ”, namely—
- (a) in sub-paragraph (2), the words from “the Secretary of State” onwards;
- (b) in sub-paragraphs (4) and (5), “the Secretary of State”, wherever occurring;
- (c) in sub-paragraph (6), “the Secretary of State or Authority”, in each place, and “the Secretary of State or the Authority”; and
- (d) in sub-paragraph (7), the words from “the Secretary of State or, in” to “the Authority” and “the Secretary of State or Authority”.
- (8) In that paragraph—
- (a) in sub-paragraph (3), for the words from “the Secretary of State”, where first occurring, to “or Authority” substitute “ “the appropriate national authority, it ”; and

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- (b) in sub-paragraph (6), for “his” substitute “ the appropriate national authority's ”.
- (9) After sub-paragraph (8) of that paragraph insert—
- “(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.”
- (10) Where a railway administration order is in force immediately before the commencement of this section in relation to a Scottish protected railway company, things done by or in relation to the Secretary of State for the purposes of or in connection with that order and by virtue of—
- (a) any provision of sections 59 to 62 of the 1993 Act, or
- (b) any provision of Schedule 6 or 7 to that Act, or of the Insolvency Act 1986 (c. 45) as modified by Schedule 6 to the 1993 Act,
- are to have effect, so far as necessary for giving them continuing validity and effect, as if done by the Scottish Ministers.
- (11) The power to amend Schedule 6 to the 1993 Act under section 249 of the Enterprise Act 2002 (c. 40) applies to the modifications of that Schedule by this Act, as it applies to that Schedule.

**Commencement Information**

**I65** S. 49 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

**50 Assistance by Scottish Ministers for companies in railway administration**

- (1) In section 63 of the 1993 Act (financial assistance by the Secretary of State where railway administration orders made)—
- (a) in subsection (1), after “a company” insert “ other than a Scottish protected railway company ”; and
- (b) in subsection (2), for the words from “in relation to which” onwards substitute “where that company—
- (a) is a company in relation to which a railway administration order is in force at the time when the guarantee is given; and
- (b) is not a Scottish protected railway company.”
- (2) After section 64 of that Act insert—

**“64A Financial assistance by Scottish Ministers**

- (1) Where a railway administration order is for the time being in force in relation to a Scottish protected railway company, the Scottish Ministers may—
- (a) make grants or loans to the company of such sums as appear to them to be appropriate for the purpose of facilitating the achievement of the purposes of the order; or
- (b) agree to indemnify a relevant person in respect of—

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- (i) liabilities incurred by that person in connection with the carrying out by the railway administrator of his functions under the order; and
  - (ii) loss or damage incurred by that person in that connection.
- (2) The Scottish Ministers may guarantee—
  - (a) the repayment of the principal of any sum borrowed by a Scottish protected railway company in relation to which a railway administration order is in force when the guarantee is given;
  - (b) the payment of interest on a sum so borrowed; and
  - (c) the discharge of any other financial obligation in relation to a sum so borrowed.
- (3) A grant, loan, indemnity or guarantee under this section may be made or given in whatever manner, and on whatever terms and subject to whatever conditions, the Scottish Ministers consider appropriate.
- (4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Scottish Ministers if there is a contravention of the other terms on which the grant is made.
- (5) The terms on which a loan may be made under this section include, in particular, terms requiring—
  - (a) the loan to be repaid at such times and by such methods, and
  - (b) interest to be paid on the loan at such rates and at such times, as the Scottish Ministers may from time to time direct.
- (6) The power of the Scottish Ministers under this section to agree to indemnify a relevant person—
  - (a) is confined to a power to agree to indemnify that person in respect of liabilities, loss and damage incurred or sustained by him as a relevant person; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (7) A person is a relevant person for the purposes of this section if he is—
  - (a) the railway administrator;
  - (b) an employee of the railway administrator;
  - (c) a member or employee of a firm of which the railway administrator is a member;
  - (d) a member or employee of a firm of which the railway administrator is an employee;
  - (e) a member of a firm of which the railway administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the railway administrator; or
  - (g) an officer, employee or member of such a body corporate.
- (8) In this section—

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- (a) references to the railway administrator, in relation to a railway administration order, are references to the person appointed to achieve the purposes of the order and, where two or more persons are so appointed, are to be construed as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.
- (9) If sums are paid out by the Scottish Ministers in respect of an indemnity or guarantee under this section, the company in relation to which the indemnity or guarantee was given must pay them—
- (a) such amounts in or towards the repayment to them of those sums as they may direct; and
  - (b) interest, at such rates as they may direct, on amounts outstanding under this subsection.
- (10) Payments to the Scottish Ministers under subsection (9) must be made at such times and in such manner as they may determine.
- (11) Subsection (9) does not apply in the case of a sum paid by the Scottish Ministers for indemnifying a person in respect of a liability to the company in relation to which the railway administration order in question was made.”

**Commencement Information**

**I66** S. 50 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

*Duties of co-operation*

**51 ORR to assist and advise national authorities**

- (1) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the Secretary of State—
- (a) to provide him with information or advice about a matter connected with a function or other activity of his in relation to railways or railway services;
  - (b) to provide him with information or advice about a matter relevant to the railway safety purposes; or
  - (c) otherwise to provide him with assistance in relation to a matter that is connected with such a function or activity or is relevant to those purposes.
- (2) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the Scottish Ministers—
- (a) to provide them with information or advice about a matter connected with a function or other activity of theirs in relation to railways or railway services; or
  - (b) otherwise to provide them with assistance in relation to a matter that is connected with such a function or activity.
- (3) It shall be the duty of the Office of Rail Regulation to comply with every reasonable requirement of the National Assembly for Wales to provide the Assembly with

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information or advice about a matter connected with a function or other activity of the Assembly in relation to railways or railway services.

- (4) References in this section to the functions of a person in relation to railways or railway services include references, in particular, to all that person's functions under Part 1 of the 1993 Act, Part 4 of the 2000 Act or this Act.
- (5) In this section “railway safety purposes” has the same meaning as in Schedule 3.

#### Commencement Information

- I67** S. 51(1)(a)(c)(3)(4) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), **Sch. 1**  
**I68** S. 51(1)(b)(5) in force at 1.4.2006 by S.I. 2006/266, art. 2(2), **Sch.**  
**I69** S. 51(2) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**

## 52 Duty of Passenger Transport Executives to advise Secretary of State

- (1) It shall be the duty of a Passenger Transport Executive to comply with every requirement of the Secretary of State to provide him with advice about a matter connected with a function or other activity of his in relation to railways or railway services.
- (2) A Passenger Transport Executive are not required to do anything under this section to the extent that it would involve an unreasonable administrative burden for the Executive.
- (3) In determining the extent to which anything would involve an unreasonable administrative burden regard must be had (where relevant) to so much of whatever else the Passenger Transport Executive are required to do under this section as they have accepted does not involve such a burden.
- (4) References in this section to the functions of the Secretary of State in relation to railways or railway services—
  - (a) include references, in particular, to all his functions under Part 1 of the 1993 Act, Part 4 of the 2000 Act or this Act; but
  - (b) do not include references to any functions of his so far as they are exercisable, or fall to be performed, for or in connection with the railway safety purposes (within the meaning of Schedule 3).

#### Commencement Information

- I70** S. 52 in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**

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## PART 6

### GENERAL AND SUPPLEMENTAL

#### *General*

### 53 Taxation

Schedule 10 (which makes taxation provision in relation to transfer schemes under sections 1(2) and 12) has effect.

#### Commencement Information

- I71** S. 53 in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), Sch. 1  
**I72** S. 53 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

### 54 Further amendments of the 1993 Act

- (1) In sections 118 and 119 of the 1993 Act (powers in emergency and security powers etc.), at the end of subsection (11), in each case, insert “ with “railway” having its wider meaning for the purposes of this section. ”
- (2) After section 119(5) of that Act insert—
  - “(5A) The Secretary of State may give an instruction under this section for the protection of a relevant asset that is wholly in Scotland, or of persons or property on or in such an asset, only if—
    - (a) the asset would be a relevant asset even if railway did not have its wider meaning for the purposes of this section; or
    - (b) the instruction is given in the interests of national security.
  - (5B) In subsection (5A) the reference to an instruction given in the interests of national security includes a reference to any instruction given for the purpose of ensuring that protection against terrorism is provided to the asset, persons or property in question.”
- (3) In section 119(11) of that Act, after the definition of “specified” insert—
 

““terrorism” has the same meaning as in the Terrorism Act 2000 (c. 11) (see section 1 of that Act);”.
- (4) Schedule 11 (which makes further miscellaneous minor and consequential amendments of the 1993 Act) has effect.

#### Commencement Information

- I73** S. 54(1)-(3) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1  
**I74** S. 54(4) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), Sch. 1  
**I75** S. 54(4) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.  
**I76** S. 54(4) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), Sch. 1

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## Supplemental

### 55 Expenses etc.

- (1) There shall be paid out of money provided by Parliament—
  - (a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of any of his functions under this Act; and
  - (b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.
- (2) Sums received by the Secretary of State by virtue of any of the following provisions of this Act must be paid into the Consolidated Fund—
  - (a) section 6;
  - (b) section 10(6);
  - (c) section 13(3);
  - (d) paragraph 7 of Schedule 5.

#### Commencement Information

I77 S. 55 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

### 56 Powers exercisable by statutory instrument

- (1) Every power conferred by this Act on the Secretary of State or the Scottish Ministers to make an order or regulations is a power exercisable by statutory instrument.
- (2) Where—
  - (a) this Act provides for an order or regulations to be subject to the negative resolution procedure, and
  - (b) a draft of the order or regulations is not required, in accordance with subsection (4) or any other enactment, to have been laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons or of the Scottish Parliament,the statutory instrument containing the order or regulations shall be subject to annulment in pursuance of a relevant resolution.
- (3) In subsection (2) “a relevant resolution”—
  - (a) in relation to an order or regulations made by the Secretary of State, means a resolution of either House of Parliament;
  - (b) in relation to an order or regulations made by the Scottish Ministers, means a resolution of the Scottish Parliament; and
  - (c) in relation to an order made by the Secretary of State and the Scottish Ministers jointly, means a resolution of either House of Parliament or of the Scottish Parliament.
- (4) Where this Act specifies that a power to make provision of a particular description by order is subject to the affirmative resolution procedure, no order may be made containing provision of that description (with or without other provision) unless a draft of the order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of each House.

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- (5) Subject to subsection (6), every power under this Act of the Secretary of State or Scottish Ministers to make an order or regulations includes power—
- (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit; and
  - (c) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit.
- (6) Subsection (5) does not apply to the power of the Secretary of State to make an order under section 60(2).

#### Commencement Information

- I78** S. 56(1) in force for specified purposes at 7.4.2005, see s. 60(2).  
**I79** S. 56(1) in force at 1.8.2006 in so far as not already in force by [S.I. 2006/1951](#), [art. 2\(2\)\(e\)](#)  
**I80** S. 56(2) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)  
**I81** S. 56(2) in force at 1.8.2006 in so far as not already in force by [S.I. 2006/1951](#), [art. 2\(2\)\(e\)](#)  
**I82** S. 56(3)(a) in force at 8.6.2005 by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)  
**I83** S. 56(3)(b)(c) in force at 1.8.2006 by [S.I. 2006/1951](#), [art. 2\(2\)\(e\)](#)  
**I84** S. 56(4) in force at 8.6.2005 by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)  
**I85** S. 56(5) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)  
**I86** S. 56(5) in force at 16.10.2005 in so far as not already in force by [S.I. 2005/2812](#), [art. 2\(1\)](#), [Sch. 1](#)  
**I87** S. 56(6) in force at 8.6.2005 by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)

## 57 Meaning of “Wales-only service” and “Welsh service”

- (1) In this Act—
- “Wales-only service” means a railway passenger service which—
- (a) starts and ends in Wales and does not make any other scheduled calls outside Wales; and
  - (b) has not been excluded from this definition by an order made by the Secretary of State;
- “Welsh service” means a railway passenger service which starts in Wales, ends in Wales or otherwise makes at least one scheduled call in Wales.
- (2) Before making an order for the purposes of paragraph (b) of the definition of “Wales-only service”, the Secretary of State must consult the National Assembly for Wales.
- (3) An order for those purposes is subject to the negative resolution procedure.

#### Commencement Information

- I88** [S. 57](#) in force at 8.6.2005 by [S.I. 2005/1444](#), [art. 2\(1\)](#), [Sch. 1](#)

## 58 General interpretation

- (1) In this Act—
- “the 1993 Act” means the Railways Act 1993 (c. 43);
- “the 2000 Act” means the Transport Act 2000 (c. 38);



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“contravention” includes a failure to comply and cognate expressions are to be construed accordingly;

“Wales-only service” and “Welsh service” have the meanings given by section 57.

- (2) An expression which is given a meaning by any provision of the 1993 Act for the purpose either of that Act or of Part 1 of it has the same meaning in this Act as in that Act or (as the case may be) that Part.
- (3) In this Act a reference to a Passenger Transport Authority, to a Passenger Transport Executive or to a passenger transport area is a reference to the authority, executive or area which is such an Authority, Executive or area for the purposes of Part 2 of the Transport Act 1968 (c. 73).
- (4) For the purposes of this Act a company is wholly owned by a person at any time when it has no members other than one or more persons falling within the following paragraphs—
  - (a) that person;
  - (b) a company which is wholly owned by that person;
  - (c) a person acting on behalf of that person or of such a company.
- (5) For the purposes of this Act a company is jointly owned by two or more persons (“the relevant persons”) at any time when (without being wholly owned by a person) it has no members other than two or more persons falling within the following paragraphs—
  - (a) the relevant persons;
  - (b) a company which is jointly owned by two or more of the relevant persons or which is wholly owned by one of them;
  - (c) a person acting on behalf of one or more of the relevant persons or of such a company.

#### Commencement Information

**189** S. 58 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

## 59 Consequential amendments, transitional provisions and repeals

- (1) Schedule 12 (which contains consequential and minor amendments) has effect.
- (2) The Secretary of State may make a scheme making such modifications of the provisions of any licence or licence exemption granted under section 7(3) of the 1993 Act as appear to him to be necessary or expedient in consequence of any provision falling within subsection (3) by virtue of which—
  - (a) functions are transferred (with or without modifications) from one person to another; or
  - (b) functions corresponding (with or without modifications) to functions previously conferred on one person become functions of another.
- (3) Those provisions are—
  - (a) section 1 and Schedule 1;
  - (b) section 2 and Schedule 3;
  - (c) section 21 and Schedule 6; and

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- (d) section 48.
- (4) A scheme under subsection (2) may include provision for things done by or in relation to a person who previously had a function to be treated as done by or in relation to the person on whom that function, or the corresponding function, is conferred by virtue of this Act.
- (5) Where a scheme under subsection (2) makes a modification of the provisions of a licence or licence exemption, the Secretary of State must—
- (a) in the case of a modification of the provisions of a licence, notify the licence holder; and
  - (b) in the case of a modification of the provisions of a licence exemption granted under section 7(3) of the 1993 Act, give such notice as he considers appropriate for bringing the modification to the attention of persons likely to be affected by it.
- [<sup>F3</sup>(5A) Subsections (2) to (5) have effect in relation to a European licence and a holder of a European licence as they have effect in relation to a licence and a licence holder respectively.]
- (6) The provisions in Part 1 of Schedule 13 (which include some that are spent) are repealed to the extent shown in the second column of that Part.
- (7) Those repeals have effect subject to the savings in Part 2 of that Schedule.

#### Textual Amendments

**F3** S. 59(5A) added (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), [Sch. 1 para. 6](#)

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

**C1** S. 59(2)-(5) applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), [Sch. 3 para. 1\(g\)](#)

#### Commencement Information

**I90** S. 59(1) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

**I91** S. 59(1) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, [Sch.](#)

**I92** S. 59(1) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

**I93** S. 59(1) in force at 21.11.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(2), [Sch. 2](#)

**I94** S. 59(1) in force at 1.4.2006 for specified purposes by [S.I. 2006/266](#), art. 2(2), [Sch.](#)

**I95** S. 59(1) in force at 1.8.2006 for specified purposes by [S.I. 2006/1951](#), [art. 2\(2\)\(f\)](#)

**I96** S. 59(2)-(5) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

**I97** S. 59(6) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

**I98** S. 59(6) in force at 26.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(2), [Sch. 2](#)

**I99** S. 59(6) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, [Sch.](#)

**I100** S. 59(6) in force at 21.11.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(2), [Sch. 2](#)

## 60 Short title, commencement and extent

- (1) This Act may be cited as the Railways Act 2005.

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**Status:** Point in time view as at 08/11/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Railways Act 2005 is up to date with all changes known to be in force on or before 14 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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- (2) This Act (apart from this section and section 56(1)) shall come into force on such day as the Secretary of State by order appoints; and different days may be appointed for different purposes.
- (3) The Secretary of State may by order make such transitional provisions and savings in connection with the bringing into force of—
  - (a) section 21,
  - (b) Part 4 of this Act, or
  - (c) the repeal of sections 37 to 49 of the 1993 Act or of Schedule 5 to that Act (closures),as he thinks fit.
- (4) An order containing provision made by virtue of subsection (3) is subject to the negative resolution procedure.
- (5) The following provisions of this Act extend to England and Wales only—
  - (a) section 13;
  - (b) section 39; and
  - (c) section 52.
- (6) This Act does not extend to Northern Ireland.

**Status:**

Point in time view as at 08/11/2006. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Railways Act 2005 is up to date with all changes known to be in force on or before 14 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.