



# 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 [<sup>F1</sup>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.

#### Textual Amendments

- F1** Words in s. 1(3)(e) substituted (25.2.2010) by [The Passengers' Council \(Non-Railway Functions\) Order 2010 \(S.I. 2010/439\)](#), art. 1, [Sch. para. 9\(2\)](#)

#### 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(1) in force at 1.12.2006 for specified purposes by [S.I. 2006/2911](#), art. 2, [Sch.](#)
- I6** S. 1(2) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- I7** S. 1(3)(a)-(d)(f) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- I8** S. 1(3)(e) in force at 24.7.2005 by [S.I. 2005/1909](#), art. 2, [Sch.](#)
- I9** S. 1(4)-(9) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)
- I10** S. 1(10) in force at 1.8.2006 by [S.I. 2006/1951](#), [art. 2\(2\)\(a\)](#)

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## 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.

### Commencement Information

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

**I12** 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

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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.”

- (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),

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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.

(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**

**I13** S. 3(1) in force at 8.6.2005 for specified purposes by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

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- I14** S. 3(1) in force at 26.6.2005 for specified purposes by S.I. 2005/1444, art. 2(2), **Sch. 2**
- I15** S. 3(1) in force at 1.4.2006 for specified purposes by S.I. 2006/266, art. 2(2), **Sch.**
- I16** S. 3(1) in force at 1.12.2006 for specified purposes by S.I. 2006/2911, art. 2, **Sch.**
- I17** S. 3(1) in force at 29.1.2007 in so far as not already in force by S.I. 2007/62, **art. 2(2)(a)**
- I18** S. 3(2) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I19** 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.**
- I20** S. 3(3) in force at 26.6.2005 by S.I. 2005/1444, art. 2(2), **Sch. 2**
- I21** S. 3(4) in force at 1.4.2006 by S.I. 2006/266, art. 2(2), **Sch.**
- I22** S. 3(5) in force at 1.12.2006 by S.I. 2006/2911, art. 2, **Sch.**
- I23** S. 3(6) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I24** S. 3(6) in force at 1.12.2006 in so far as not already in force by S.I. 2006/2911, art. 2, **Sch.**
- I25** S. 3(7) in force at 26.6.2005 by S.I. 2005/1444, art. 2(2), **Sch. 2**
- I26** S. 3(8)(a) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I27** S. 3(8)(a) in force at 1.4.2006 in so far as not already in force by S.I. 2006/266, art. 2(2), **Sch.**
- I28** S. 3(8)(b) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I29** S. 3(8)(c) in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I30** S. 3(8)(d) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I31** S. 3(9) in force at 8.6.2005 for specified purposes by S.I. 2005/1444, art. 2(1), **Sch. 1**
- I32** S. 3(9) in force at 1.4.2006 for specified purposes by S.I. 2006/266, art. 2(2), **Sch.**
- I33** S. 3(9) in force at 29.1.2007 in so far as not already in force by S.I. 2007/62, **art. 2(2)(a)**
- I34** S. 3(10) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I35** S. 3(10) in force at 1.4.2006 in so far as not already in force by S.I. 2006/266, art. 2(2), **Sch.**
- I36** S. 3(11)(a) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I37** S. 3(11)(b) in force at 26.6.2005 for specified purposes by S.I. 2005/1444, art. 2(2), **Sch. 2**
- I38** S. 3(11)(b) in force at 1.4.2006 in so far as not already in force by S.I. 2006/266, art. 2(2), **Sch.**

#### **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.

#### **Commencement Information**

- I39** S. 4 in force at 29.1.2007 by S.I. 2007/62, **art. 2(2)(b)**

#### **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.

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**Commencement Information**

**I40** [S. 5](#) in force at 21.8.2005 by [S.I. 2005/2252](#), [art. 2](#)

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**Changes to legislation:**

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