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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 2005, SCHEDULE 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 1

#### TRANSFER ETC. OF FUNCTIONS OF THE STRATEGIC RAIL AUTHORITY

##### PART 1

##### TRANSFER AND ABOLITION OF FUNCTIONS

###### *Transfer to ORR of consumer protection and other functions relating to licensing*

- 1 (1) In section 7 of the 1993 Act—
- (a) in subsections (1) and (3) (consultation with SRA about exemptions), omit “and the Authority”; and
  - (b) subsections (5A), (6A) and (8A) (consumer protection conditions) shall cease to have effect.
- (2) In subsection (9) of that section, for “subsections (6) and (6A)” substitute “subsection (6)”.

###### **Commencement Information**

**11** Sch. 1 para. 1 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 2 Section 7A of the 1993 Act (consumer protection conditions) shall cease to have effect.

###### **Commencement Information**

**12** Sch. 1 para. 2 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 3 (1) In section 8 of the 1993 Act (licences), in subsection (1)—
- (a) in paragraph (a), omit “and the Authority”;
  - (b) in paragraph (b), omit “given after consultation with the Authority”.
- (2) In subsection (2) of that section, paragraph (a) shall cease to have effect.
- (3) In subsection (6) of that section (consent required for surrender of licence), for “and the Authority consent” substitute “consents”.
- (4) In subsection (7) of that section—
- (a) in paragraph (a), omit “, to the Authority”; and
  - (b) in paragraph (b), for “Authority” substitute “Secretary of State”.
- (5) In subsection (8) of that section, omit “and the Authority”.

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**Commencement Information**

**I3** Sch. 1 para. 3 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 4 In section 11 of the 1993 Act (assignment of licences)—
- (a) in subsection (2)(b), omit “and the Authority”;
  - (b) in subsection (4), omit “or persons”.

**Commencement Information**

**I4** Sch. 1 para. 4 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 5 (1) In section 12 of the 1993 Act, subsections (1A) to (1C) (modification of consumer protection conditions) shall cease to have effect.
- (2) In subsection (2) of that section, for “of any conditions of a licence which do not relate to consumer protection” substitute “ under this section ”.

**Commencement Information**

**I5** Sch. 1 para. 5 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 6 In section 13 of the 1993 Act (modification references to Competition Commission)
- (a) for “the appropriate authority”, wherever occurring, substitute “ the Office of Rail Regulation ”; and
  - (b) subsections (1A) to (1C) shall cease to have effect.

**Commencement Information**

**I6** Sch. 1 para. 6 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 7 In section 13A of the 1993 Act (time limits under section 13), for “the appropriate authority”, wherever occurring, substitute “ the Office of Rail Regulation ”.

**Commencement Information**

**I7** Sch. 1 para. 7 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 8 In section 14 of the 1993 Act (reports on modification references)—
- (a) for “the appropriate authority”, wherever occurring, substitute “ the Office of Rail Regulation ”; and
  - (b) subsection (5A) shall cease to have effect.

**Commencement Information**

**I8** Sch. 1 para. 8 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 9 In section 15 of the 1993 Act (modification following report)—
- (a) subsections (1B) and (3A) (reports to the SRA) shall cease to have effect;

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- (b) in subsections (2), (4A), (4B), (4C) and (4D), omit “or Authority”, wherever occurring; and
- (c) in subsection (4), omit “or (3A)” and “or the Authority”.

#### Commencement Information

**I9** Sch. 1 para. 9 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

- 10 (1) This paragraph applies to things done under or for the purposes of any provision of sections 13 to 15C of the 1993 Act (modification of licences) so far as they were done before the commencement of this paragraph by or in relation to the Strategic Rail Authority as the appropriate authority.
- (2) In relation to times after the commencement of this paragraph, those things shall have effect, so far as necessary for giving them continuing validity or effect, as if done by or in relation to the Office of Rail Regulation.

#### Commencement Information

**I10** Sch. 1 para. 10 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

#### *Transfers relating to the provision, improvement or development of railway facilities*

- 11 (1) In sections 16A, 16C(3), 16D, 16E(2)(a), 16F(3)(a) and 16G of the 1993 Act (directions by Office of Rail Regulation, on applications made by or with the consent of the SRA, to provide, improve or develop railway facilities), for “Authority”, wherever occurring, substitute “ appropriate facilities authority ”.
- (2) In section 16A of that Act, in subsection (3), for “Authority's consent” substitute “ consent of the appropriate facilities authority ”.
- (3) In that section, after that subsection insert—
- “(3A) In this section and sections 16B to 16G below ‘the appropriate facilities authority’—
- (a) in relation to facilities in Scotland, means the Scottish Ministers; and
  - (b) in relation to any other facilities, means the Secretary of State.”
- (4) In section 16B(1) and (4) of that Act (exemptions of facilities from section 16A), for “Secretary of State”, in each place, substitute, “ appropriate facilities authority ”.
- (5) In section 16B of that Act, after subsection (6) insert—
- “(7) A statutory instrument containing an order made under this section by the Scottish Ministers shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”
- (6) An exemption granted under subsection (1) of section 16B of that Act before the commencement of this paragraph—
- (a) which is in force at the time of the commencement of this paragraph or is to come into force after that time, and
  - (b) is contained in an order the power to make which is exercisable after that time by the Scottish Ministers,

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is to have effect after that time as if contained in an order made by those Ministers which is not subject to subsection (7) of that section.

**Commencement Information**

**I11** Sch. 1 para. 11 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

*Transfer of functions relating to access agreements*

- 12 (1) In sections 17 to 19 of the 1993 Act (access agreements) except in sections 17(4) and 19(7), for “the Authority”, wherever occurring, substitute “ the Secretary of State ”.
- (2) In each of sections 17(4) and 19(7) (references to operating on behalf of SRA)—
- (a) for “Authority”, where first occurring, substitute “ Secretary of State ”;
  - (b) for “Authority”, in the second place, substitute “ Secretary of State or the Scottish Ministers ”; and
  - (c) for “the Authority”, in the third and fourth places, substitute “ him or them ”.
- (3) In section 18(6A)(b) of that Act, for “its” substitute “ his ”.

**Commencement Information**

**I12** Sch. 1 para. 12 in force at 1.12.2006 by S.I. 2006/2911, art. 2, Sch.

*Transfer of functions relating to franchise agreements*

- 13 (1) In section 23 of the 1993 Act (passenger services to be subject to franchise agreements), in subsections (1) and (2), for “Authority”, wherever occurring, substitute “ appropriate designating authority ”.
- (2) After subsection (2) of that section insert—
- “(2ZA) Where the Scottish Ministers designate Scotland-only services, they may also designate cross-border services which—
- (a) they consider should be provided under the same franchise agreement as particular Scotland-only services or a particular class of them; and
  - (b) are not exempt from designation under subsection (1) by virtue of section 24.
- (2ZB) Nothing in this section requires the Secretary of State to designate a cross-border service already designated by the Scottish Ministers.
- (2ZC) Before the Secretary of State or the Scottish Ministers designate a cross-border service he or they must consult the other.”
- (3) Subsection (2B) of that section (publication of designations etc.) shall cease to have effect.
- (4) In subsection (3) of that section—
- (a) before the definition of “franchise agreement” insert—
- ““the appropriate designating authority”—

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- (a) in relation to Scotland-only services, means the Scottish Ministers; and
  - (b) in relation to all other services, means the Secretary of State;
- “the appropriate franchising authority”—
- (a) in relation to a Scottish franchise agreement, means the Scottish Ministers; and
  - (b) in relation to any other franchise agreement, means the Secretary of State;”
- (b) in the definition of “franchise agreement”, for “with the Authority” substitute “with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly, ”.
- (5) Every designation made by the Strategic Rail Authority under section 23 of the 1993 Act which is in force immediately before the commencement of sub-paragraph (1) shall have effect after the commencement of that sub-paragraph as a designation in accordance with that section—
- (a) in the case of services that at that time were being provided under a franchise agreement the franchised services under which consist of or include Scotland-only services, by the Scottish Ministers; and
  - (b) in any other case, by the Secretary of State.

#### Commencement Information

- I13** Sch. 1 para. 13(1)(3) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I14** Sch. 1 para. 13(2) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**
- I15** Sch. 1 para. 13(4)(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**
- I16** Sch. 1 para. 13(4)(a) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I17** Sch. 1 para. 13(4)(b) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I18** Sch. 1 para. 13(5) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**

- 14 (1) Section 24 of the 1993 Act (franchise exemptions granted by the Secretary of State) is amended as follows.
- (2) In subsections (1) to (5) and (9), for “Secretary of State”, wherever occurring, substitute “ appropriate designating authority ”.
  - (3) In subsection (3)(a) and (b), for “he” in each place substitute “ the appropriate designating authority ”.
  - (4) After subsection (3) insert—

“(3A) Before granting a franchise exemption in respect of a cross-border service, the Secretary of State must consult the Scottish Ministers.”
  - (5) In subsection (4), for “he”, in both places, substitute “ it ”.
  - (6) In subsection (6), for “is not complied with, the Secretary of State” substitute “ granted by the appropriate designating authority is not complied with, it ”.
  - (7) In subsection (9), for “him”, in each place, substitute “ it ”.
  - (8) After subsection (12) insert—

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“(12A) A statutory instrument containing an order under this section by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

**Commencement Information**

**I19** Sch. 1 para. 14 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

- 15 (1) Section 26 of the 1993 Act (invitation to tender for franchises) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “Authority” substitute “ The appropriate franchising authority may select the person who is to be the franchisee in relation to a franchise agreement ”.
- (3) In subsections (2) and (3), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.
- (4) Subsection (4) shall cease to have effect.
- (5) For subsections (5) to (10) (statement by the Secretary of State about his power to give directions) substitute—
- “(4A) The Secretary of State and the Scottish Ministers shall each publish a statement of policy about how he proposes, or (as the case may be) they propose, to exercise the power under subsection (1) above.
- (4B) The statement must in particular include the policy of the Secretary of State or the Scottish Ministers about—
- (a) when his or their selection of the person to be a franchisee under a franchise agreement is likely to be from those submitting tenders in response to an invitation to do so;
- (b) when it is likely such an invitation will not be issued; and
- (c) the means by which he is, or they are, proposing that the selection will be made in cases where there is no such invitation.
- (4C) In deciding whether to select the person who is to be the franchisee under a franchise agreement by means of an invitation to tender and whom so to select, the appropriate franchising authority must have regard to its statement of policy.
- (4D) The Secretary of State or Scottish Ministers—
- (a) may at any time alter or replace the statement of policy which he has made or (as the case may be) which they have made; and
- (b) where that statement is altered or replaced, must publish the altered or replacement statement.
- (4E) Before preparing, altering or replacing a statement of policy—
- (a) the Secretary of State must consult the National Assembly for Wales and undertake such other consultation as he considers appropriate; and
- (b) the Scottish Ministers must undertake such consultation as they consider appropriate.

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(4F) Where a statement of policy is prepared, altered or replaced, a copy of it must be laid—

- (a) in the case of a statement prepared, altered or replaced by the Secretary of State, before Parliament; and
- (b) in the case of a statement prepared, altered or replaced by the Scottish Ministers, before the Scottish Parliament.”

(6) The fact that a statement of policy has not been published by any person under section 26(4A) of the 1993 Act does not affect the validity of any selection made as mentioned in section 26(1) of that Act.

#### Commencement Information

**I20** Sch. 1 para. 15 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

**I21** Sch. 1 para. 15 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

16 For sections 26A, 26B and 26C of the 1993 Act (directions of the Secretary of State where no tenders or tenders appear unsatisfactory) substitute—

#### “26ZA No adequate tender for franchise received

(1) This section applies in the case of an invitation to tender under section 26 for the provision of services if—

- (a) the appropriate franchising authority receives no tender in response to the invitation; or
- (b) it receives a tender but considers that the services would be provided more economically and efficiently if they were provided otherwise than under a franchise agreement entered into in response to the tender.

(2) The appropriate franchising authority may —

- (a) issue a new invitation to tender under section 26 for the provision of the services;
- (b) decide to secure the provision of the services under a franchise agreement with a person who did not submit a tender; or
- (c) decide not to seek to secure the provision of the services under a franchise agreement.

(3) Nothing in this section prevents the appropriate franchising authority, where it has decided not to seek to secure the provision of services under a franchise agreement, from subsequently making a decision to issue a new invitation to tender for the provision of those services.”

#### Commencement Information

**I22** Sch. 1 para. 16 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

**I23** Sch. 1 para. 16 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

17 (1) In section 27 of the 1993 Act (transfer of franchise assets or shares), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.

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- (2) In subsection (8) and (9) of that section, for “Schedule 21 to the Transport Act 2000” substitute “ section 12 of the Railways Act 2005 ”.

**Commencement Information**

- I24** Sch. 1 para. 17 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.  
**I25** Sch. 1 para. 17 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 18 (1) In section 28 of the 1993 Act (fares and approved discount fare schemes), in subsection (2), for “Authority”, substitute “ appropriate franchising authority ”.
- (2) In subsection (4)—
- (a) after “regarded” insert “ , in relation to a franchise agreement, ”; and
- (b) for “Authority” substitute “ appropriate franchising authority ”.
- (3) Discount fare schemes which immediately before the commencement of this paragraph are approved for the purposes of section 28 of the 1993 Act are to be treated after the commencement of this paragraph as approved for the purposes of that section by the appropriate franchising authority.

**Commencement Information**

- I26** Sch. 1 para. 18 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.  
**I27** Sch. 1 para. 18 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

- 19 In section 29 of the 1993 Act (other terms and conditions of franchise agreements), for “Authority”, wherever occurring, substitute “ appropriate franchising authority ”.

**Commencement Information**

- I28** Sch. 1 para. 19 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.  
**I29** Sch. 1 para. 19 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

*Transfer of functions as operator of last resort*

- 20 (1) In section 30 of the 1993 Act (operator of last resort to provide or secure provision of service where no franchise agreement), for “Authority”, wherever occurring, substitute “ relevant franchising authority ”.
- (2) Subsection (1)(a) shall cease to have effect.
- (3) In subsection (2), for “begin (or again begin) to be provided” substitute “ begin to be provided again ”.
- (4) After subsection (3) of that section, insert—
- “(3A) For the purposes of this section the Secretary of State and the Scottish Ministers shall each have power—
- (a) to provide or operate network services, station services or light maintenance services; or



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- (b) to store goods or consign them from a place to which they have been carried by rail;
- and the Scottish Ministers shall have power to provide Scotland-only services and cross-border services.
- (3B) In this section “relevant franchising authority” means the person who was the appropriate franchising authority in relation to the franchise agreement that has been terminated or otherwise come to an end.”
- (5) Where immediately before the commencement of this paragraph any service is being provided or secured by the Strategic Rail Authority by virtue of section 30 of the 1993 Act, that section is to have effect after the commencement of this paragraph as if—
- (a) the condition in subsection (1)(b) of that section were satisfied; and
  - (b) the relevant franchising authority were—
    - (i) except where sub-paragraph (ii) applies, the Secretary of State; and
    - (ii) where the franchised services under the franchise agreement in accordance with which the services in question were last provided included Scotland-only services, the Scottish Ministers.

#### Commencement Information

- I30** Sch. 1 para. 20(1) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I31** Sch. 1 para. 20(1) 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** Sch. 1 para. 20(2)(3) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**
- I33** Sch. 1 para. 20(4) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**
- I34** Sch. 1 para. 20(5) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**

#### *Transfer etc. of functions relating to enforcement*

- 21 (1) Section 55 of the 1993 Act (orders for securing compliance) is amended as follows.
- (2) In subsections (1), (2) and (4), for “(5B)”, in each place, substitute “(5C)”.
- (3) In subsection (5), omit “or, as the case may be, section 207 of the Transport Act 2000”.
- (4) In subsection (5ZA)—
- (a) for “The Authority shall not” substitute “Neither the Secretary of State nor the Scottish Ministers shall”;
  - (b) in paragraph (a), for “it has” and “the Authority” substitute, respectively “the Secretary of State has or (as the case may be) those Ministers have” and “him or them”; and
  - (c) in paragraph (c), for “the Authority” substitute “the Secretary of State or (as the case may be) the Scottish Ministers”.
- (5) After subsection (5B) insert—
- “(5C) Neither the Secretary of State nor the Scottish Ministers shall be required, in respect of any contravention or apprehended contravention of the terms of a franchise agreement, to make a final order, or to make or to confirm a provisional order, if he considers or (as the case may be) they consider—
- (a) that the contravention or apprehended contravention is trivial; and

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- (b) that it would be inappropriate, for that reason, to make or to confirm the order.
- (5D) The appropriate authority must comply with subsection (6)—
- (a) in a case where the appropriate authority is the Secretary of State or the Scottish Ministers, if that authority decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5) or (5ZA) above; or
- (b) in the case of the Office of Rail Regulation, if it decides not to make a final order, or not to make or to confirm a provisional order, because of provision contained in subsection (5), (5A) or (5B) above.”
- (6) In subsection (6) (notice of decisions), for the words from the beginning to the end of paragraph (a) substitute—
- “(6) Where the appropriate authority must comply with this subsection, it must—
- (a) serve notice of its decision on the relevant operator; and”.
- (7) In subsection (7A), for “to the Authority in the event of any specified contravention of the order such” substitute “in the event of a specified contravention of the order—
- (a) in the case of an order made by the Scottish Ministers, to them, and
- (b) in any other case, to the Secretary of State,
- such ”.
- (8) In subsection (10)—
- (a) in paragraph (a) of the definition of “the appropriate authority”, omit “apart from a condition which relates to consumer protection,”;
- (b) for paragraph (b) substitute—
- “(aa) in relation to any relevant condition or requirement in the case of—
- (i) a franchisee under a Scottish franchise agreement,
- (ii) a franchise operator in relation to such an agreement, or
- (iii) a person under Scottish closure restrictions, the Scottish Ministers; and
- (b) in relation to any relevant condition or requirement in the case of—
- (i) a franchisee not falling within paragraph (aa)(i),
- (ii) a franchise operator not falling within paragraph (aa)(ii), or
- (iii) a person under closure restrictions that are not Scottish closure restrictions, the Secretary of State;”.

#### **Commencement Information**

**I35** Sch. 1 para. 21(1) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, [Sch.](#)

**I36** Sch. 1 para. 21(1) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), [Sch. 1](#)

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- I37** Sch. 1 para. 21(1) in force at 1.12.2006 in so far as not already in force by [S.I. 2006/2911](#), art. 2, **Sch.**
- I38** Sch. 1 para. 21(2) in force at 24.7.2005 by [S.I. 2005/1909](#), art. 2, **Sch.**
- I39** Sch. 1 para. 21(3) in force at 1.12.2006 by [S.I. 2006/2911](#), art. 2, **Sch.**
- I40** Sch. 1 para. 21(4)-(8) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, **Sch.**
- I41** Sch. 1 para. 21(4)-(8) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), **Sch. 1**
- I42** Sch. 1 para. 21(4)-(8) in force at 1.12.2006 in so far as not already in force by [S.I. 2006/2911](#), art. 2, **Sch.**

- 22 In section 56(2A) of the 1993 Act (procedural requirements for section 55 orders), for the words from “Authority”, where first occurring, to the end of the subsection substitute “ Secretary of State and on the Scottish Ministers. ”

#### Commencement Information

- I43** Sch. 1 para. 22 in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, **Sch.**
- I44** Sch. 1 para. 22 in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), **Sch. 1**
- I45** Sch. 1 para. 22 in force at 1.12.2006 in so far as not already in force by [S.I. 2006/2911](#), art. 2, **Sch.**

- 23 (1) Section 57A of the 1993 Act (penalties) is amended as follows.
- (2) In subsection (2), for “to the Authority” substitute—
- “(a) in the case of a penalty imposed by the Scottish Ministers, to them; and
  - (b) in any other case, to the Secretary of State”.
- (3) In subsection (5)—
- (a) for “The Authority shall not” substitute “ Neither the Secretary of State nor the Scottish Ministers shall ”;
  - (b) in paragraph (a), for “it has” and “the Authority” substitute, respectively, “ the Secretary of State has or (as the case may be) those Ministers have ” and “ him or them ”; and
  - (c) in paragraph (c), for “the Authority” substitute “ the Secretary of State or (as the case may be) the Scottish Ministers ”.

#### Commencement Information

- I46** Sch. 1 para. 23 in force at 1.12.2006 in so far as not already in force by [S.I. 2006/2911](#), art. 2, **Sch.**
- I47** Sch. 1 para. 23(1) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, **Sch.**
- I48** Sch. 1 para. 23(1) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), **Sch. 1**
- I49** Sch. 1 para. 23(2)(3) in force at 24.7.2005 for specified purposes by [S.I. 2005/1909](#), art. 2, **Sch.**
- I50** Sch. 1 para. 23(2)(3) in force at 16.10.2005 for specified purposes by [S.I. 2005/2812](#), art. 2(1), **Sch. 1**

- 24 (1) In section 57B of the 1993 Act—
- (a) for “Authority”, wherever occurring, substitute “ Secretary of State, the Scottish Ministers ”; and
  - (b) in subsections (3) and (4), after “statement of” insert “ his, their or ”.
- (2) The fact that a statement of policy has not been published by the Secretary of State, by the Scottish Ministers or by the Office of Rail Regulation under section 57B of the 1993 Act does not affect—
- (a) the validity of any decision to impose a penalty under section 57A;
  - (b) any determination of the amount of any such penalty;

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- (c) the inclusion in a final or provisional order of any requirement to pay a sum; or
- (d) any determination of the amount of the sum payable in accordance with such an order.

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

- C1** Sch. 1 para. 24(2) applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), **Sch. 3 para. 1(h)**

**Commencement Information**

- I51** Sch. 1 para. 24(1) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**  
**I52** Sch. 1 para. 24(1) in force at 16.10.2005 for specified purposes by S.I. 2005/2812, art. 2(1), **Sch. 1**  
**I53** Sch. 1 para. 24(1) in force at 1.12.2006 in so far as not already in force by S.I. 2006/2911, art. 2, **Sch.**  
**I54** Sch. 1 para. 24(2) in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**  
**I55** Sch. 1 para. 24(2) in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), **Sch. 1**

- 25 In section 57C(3) of the 1993 Act (service of penalty notices), for the words from “Authority”, where first occurring, to the end of the subsection substitute “Secretary of State and on the Scottish Ministers.”

**Commencement Information**

- I56** Sch. 1 para. 25 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**  
**I57** Sch. 1 para. 25 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), **Sch. 1**  
**I58** Sch. 1 para. 25 in force at 1.12.2006 in so far as not already in force by S.I. 2006/2911, art. 2, **Sch.**

- 26 (1) This paragraph applies to things done under or for the purposes of any provision of sections 55 to 58 of the 1993 Act (enforcement) so far as they were done before the commencement of this paragraph by or in relation to the Strategic Rail Authority as the appropriate authority.
- (2) In relation to times after the commencement of this paragraph, those things shall have effect, so far as necessary for giving them continuing validity or effect—
- (a) so far as they are things done by or in relation to the Strategic Rail Authority as the appropriate authority in relation to a condition relating to consumer protection, as if they were done by or in relation to the Secretary of State or the Scottish Ministers, as the case may require; and
  - (b) in any other case, as if they were done by or in relation to the Office of Rail Regulation.

**Commencement Information**

- I59** Sch. 1 para. 26 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, **Sch.**  
**I60** Sch. 1 para. 26 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), **Sch. 1**  
**I61** Sch. 1 para. 26 in force at 1.12.2006 in so far as not already in force by S.I. 2006/2911, art. 2, **Sch.**

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*Abolition of functions relating to railway administration orders*

- 27 (1) The following provisions of the 1993 Act (which relate to applications by the SRA for railway administration orders and to notices to the SRA about insolvency proceedings against protected railway companies) shall cease to have effect—
- (a) section 61(1)(a)(ii) and (2)(b); and
  - (b) section 62(2)(a)(ii), (3)(b), (5)(a)(ii), (6)(b) and (7)(b).
- (2) Where a railway administration order is in force immediately before the commencement of this paragraph in relation to a company, things done by or in relation to the Strategic Rail Authority 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 appropriate national authority (within the meaning of Part 1 of the 1993 Act).

**Commencement Information**

**I62** [Sch. 1 para. 27](#) in force at 24.7.2005 by [S.I. 2005/1909](#), [art. 2](#), [Sch.](#)

*Abolition of duty to investigate contravention of consumer protection conditions*

- 28 Section 71A of the 1993 Act (duty to investigate contraventions of consumer protection conditions) shall cease to have effect.

**Commencement Information**

**I63** [Sch. 1 para. 28](#) in force at 24.7.2005 by [S.I. 2005/1909](#), [art. 2](#), [Sch.](#)

*Transfer of function of maintaining code of practice for protection of disabled rail users*

- 29 (1) In section 71B of the 1993 Act (code of practice for protection of disabled rail users), for “Authority”, in each place, substitute “ Secretary of State ”.
- (2) The code of practice under section 71B of the 1993 Act that is in force immediately before the commencement of this paragraph is to have effect after the commencement of this paragraph as if prepared and published by the Secretary of State.
- (3) The Strategic Rail Authority must provide the Secretary of State with particulars of any consultation under section 71B(2) of the 1993 Act which was undertaken before the commencement of this paragraph by that Authority in relation to future revisions of the code; and that consultation is to be treated for the purposes of any revision after the commencement of this paragraph as having been undertaken by the Secretary of State.

**Commencement Information**

**I64** [Sch. 1 para. 29](#) in force at 26.6.2005 by [S.I. 2005/1444](#), [art. 2\(2\)](#), [Sch. 2](#)

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*Changes to legislation: There are currently no known outstanding effects for the Railways Act 2005, SCHEDULE 1. (See end of Document for details)*

*Transfer of functions relating to maintenance of register*

- 30 (1) In section 73 of the 1993 Act (register maintained by the SRA), for “Authority”, wherever occurring, substitute “ Secretary of State ”.
- (2) In subsection (1) of that section, for “it” substitute “ he ”.
- (3) In subsection (2) of that section—
- (a) for the words from “subsection (3)” to “subsection (4)” substitute “ subsections (3) and (4) ”;
  - (b) after “in the register” insert “ (except so far as they are required to be entered in the register maintained under section 73A below) ”;
  - (c) in paragraph (e) for “it”, in each place, substitute “ he ”; and
  - (d) after paragraph (g) insert—
 

“(ga) every designation under section 23 and every variation or revocation of such a designation;”.
- (4) For subsection (3) of that section substitute—
- “(3) The Secretary of State may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as he considers it appropriate to exclude for the purpose of maintaining the confidentiality of—
- (a) matters relating to the affairs of an individual the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Secretary of State's opinion, seriously and prejudicially affect the interests of that body.”
- (5) In subsection (4) of that section, for the words from “or” to “Authority” substitute “ he may decide ”.
- (6) Subsections (5) and (6) of that section shall cease to have effect.
- (7) In subsection (7) of that section—
- (a) after “by”, where first occurring, insert “ the Scottish Ministers or ”; and
  - (b) for “the Office of Rail Regulation may” substitute “ the Scottish Ministers and the Office of Rail Regulation may each ”.

**Commencement Information**

**I65** Sch. 1 para. 30(1)(2) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**

**I66** Sch. 1 para. 30(3)(a)(c)(d) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**

**I67** Sch. 1 para. 30(3)(b) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), **Sch. 1**

**I68** Sch. 1 para. 30(4)-(7) in force at 24.7.2005 by S.I. 2005/1909, art. 2, **Sch.**

- 31 After that section insert—

**“73A Keeping of register by the Scottish Ministers**

- (1) The Scottish Ministers must maintain a register.

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- (2) The register must be kept in such form and at such premises as the Scottish Ministers determine.
- (3) Subject to subsections (4) and (5) below, the Scottish Ministers must cause the provisions of each of the following to be entered in the register—
  - (a) every designation made by them under section 23 of this Act, and every variation or revocation of such a designation;
  - (b) every franchise exemption granted by them;
  - (c) every franchise agreement to which they are a party;
  - (d) every amendment of such a franchise agreement, other than those that are unlikely to have a material effect on the provision of services under the agreement or on the sums payable under it;
  - (e) every determination made by them under section 34 of the Railways Act 2005 that a closure is a minor modification or that closures of a particular description are minor modifications;
  - (f) every revocation of a determination made by them under that section in relation to a description of closures;
  - (g) every condition agreed to under subsection (5) of that section in connection with a determination made by them;
  - (h) every final or provisional order made by them;
  - (i) every revocation by them of such an order;
  - (j) every notice given by them under section 55(6) of this Act of a decision not to make such an order;
  - (k) every penalty imposed by them under section 57A of this Act;
  - (l) every statement of policy published by them under section 57B of this Act.
- (4) The Scottish Ministers may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as they consider it appropriate to exclude for the purpose of maintaining the confidentiality of—
  - (a) matters relating to the affairs of an individual the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Scottish Ministers' opinion, seriously and prejudicially affect the interests of that body.
- (5) If it appears to the Scottish Ministers that the entry of any provision in the register would be against the public interest, they may decide not to enter it in the register.
- (6) The contents of the register must be available for inspection, at any time and free of charge, by the Secretary of State or the Office of Rail Regulation.
- (7) The Secretary of State and the Office of Rail Regulation may each require the Scottish Ministers to supply him or (as the case may be) it free of charge with a certified copy of a part of the register or with a certified extract from it.

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- (8) The references in subsection (7) to a certified copy or a certified extract are references to a copy or extract that has been certified by the Scottish Ministers to be a true copy or extract.
- (9) In subsection (3)(d) “amendment”, in relation to a franchise agreement, means any amendment however described, including variations (whether or not effected in accordance with the terms of the agreement or by a modification of it) of the property, rights and liabilities which from time to time constitute the franchise assets.”

#### Commencement Information

**I69** Sch. 1 para. 31 in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

#### *Transfer of functions relating to the [F<sup>1</sup>Passengers’ Council]*

#### Textual Amendments

**F1** Words in Sch. 1 para. 32 heading substituted (25.2.2010) by The Passengers’ Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, Sch. para. 9(6)(b)

- 32 (1) In section 76 of the 1993 Act (general duties of [F<sup>2</sup>Passengers’ Council]), for “Authority”, wherever occurring (except in subsection (6)(a)), substitute “ Secretary of State ”.
- (2) In subsection (4) of that section, for “service” substitute “ secured service (within the meaning of Part 4 of the Railways Act 2005) which is ”.
- (3) In subsection (5) of that section, in the words after paragraph (b)—
- (a) for “its” substitute “ his ”; and
  - (b) for the word “it”, in the last place where it occurs, substitute “ he ”.
- (4) In subsection (6)(a) of that section, omit “and the Authority”.
- (5) Subsection (8) of that section shall cease to have effect.

#### Textual Amendments

**F2** Words in Sch. 1 para. 32(1) substituted (25.2.2010) by The Passengers’ Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), art. 1, Sch. para. 9(6)(a)

#### Commencement Information

**I70** Sch. 1 para. 32(1)(3)-(5) in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

**I71** Sch. 1 para. 32(2) in force at 1.12.2006 for specified purposes by S.I. 2006/2911, art. 2, Sch.

#### *Transfer of power to require information from licence holders*

- 33 (1) In section 80 of the 1993 Act (duty to provide information to the SRA on request), for “Authority”, wherever occurring, substitute “ Secretary of State, the Scottish Ministers or the Office of Rail Regulation ”.



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- (2) In subsection (1) of that section—
- (a) for “it”, in each place, substitute “ he, they or it ”; and
  - (b) for “of its functions” substitute “ functions of the Secretary of State, the Scottish Ministers or (as the case may be) that Office ”.

**Commencement Information**

**I72** Sch. 1 para. 33 in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.

*Abolition of functions relating to penalty fares*

- 34 In section 130 of the 1993 Act—
- (a) for paragraph (p) of subsection (2) (power to allow Secretary of State or SRA to prohibit the charging of penalty fares by person suspected of contraventions) substitute—
    - “(p) the imposition by the Secretary of State or the Scottish Ministers of prohibitions on the charging of penalty fares by prescribed persons and in prescribed circumstances.”;
  - (b) subsections (5), (6) and (10) (functions conferred on the SRA by penalty fare regulations) shall cease to have effect.

**Commencement Information**

**I73** Sch. 1 para. 34 in force at 1.12.2006 by S.I. 2006/2911, art. 2, Sch.

*Transfer of functions relating to concessionary travel*

- 35 (1) Section 135 of the 1993 Act (concessionary travel) is amended as follows.
- (2) In subsections (2) and (3), for “Authority may” substitute “ Secretary of State and the Scottish Ministers may each ”.
  - (3) In subsection (6), for “The Authority may perform any of its functions” substitute “ The Secretary of State and the Scottish Ministers may exercise powers and perform duties conferred or imposed on him or them ”.
  - (4) In subsection (7), for “Authority undertakes” substitute “ Secretary of State undertakes, or the Scottish Ministers undertake, ”.

**Commencement Information**

**I74** Sch. 1 para. 35 in force at 24.7.2005 for specified purposes by S.I. 2005/1909, art. 2, Sch.

**I75** Sch. 1 para. 35 in force at 16.10.2005 in so far as not already in force by S.I. 2005/2812, art. 2(1), Sch. 1

*Abolition of certain functions under the 2000 Act*

- 36 The following provisions of the 2000 Act shall cease to have effect—
- (a) section 213 (powers to provide railway services);
  - (b) section 214 (substitute bus and taxi services); and

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(c) section 219 (power to make bye-laws).

**Commencement Information**

- I76** Sch. 1 para. 36(a) in force at 24.7.2005 by S.I. 2005/1909, art. 2, Sch.  
**I77** Sch. 1 para. 36(b) in force at 1.12.2006 by S.I. 2006/2911, art. 2, Sch.  
**I78** Sch. 1 para. 36(c) in force at 16.10.2005 by S.I. 2005/2812, art. 2(1), Sch. 1

**PART 2**

DEFINITIONS FOR PURPOSES OF TRANSFERS TO SCOTTISH MINISTERS

37 (1) Section 83(1) of the 1993 Act (expressions defined for the purposes of that Act, Part 4 of the 2000 Act and this Act) is amended as follows.

(2) After the definition of “closure consent” insert—

““cross-border service” means a railway passenger service starting either in England and Wales or in Scotland and ending, or otherwise making at least one scheduled call, in the other;”.

(3) After the definition of “rolling stock” insert—

““scheduled call”, in relation to a service or journey, means a scheduled stop at a station for the purpose of allowing passengers to join or leave the service or train (including the stops where the service or journey starts and ends);

“Scotland-only service” means a railway passenger service which starts and ends in Scotland and is not a cross-border service;

“Scottish franchise agreement” means a franchise agreement the franchised services under which—

- (a) consist of or include Scotland-only services; and
- (b) so far as they include other services, include only cross-border services designated by the Scottish Ministers;”.

**Commencement Information**

- I79** Sch. 1 para. 37 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Railways Act 2005, SCHEDULE 1.