



# Railways Act 1993

## 1993 CHAPTER 43

### PART III

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

*Safety, emergencies, security etc.*

#### **117 Safety of railways and other guided transport systems.**

- (1) Part I of the <sup>M1</sup>Health and Safety at Work etc. Act 1974 ("the 1974 Act") shall have effect as if the provisions mentioned in subsection (4) below (which relate to the proper construction and safe operation of certain transport systems, and of the vehicles used on those systems, and the protection of railway employees or the general public from personal injury and other risks arising therefrom)—
  - (a) were existing statutory provisions, within the meaning of that Part; and
  - (b) in the case of the enactments mentioned in paragraphs (a) to (m) of that subsection, were specified in the third column of Schedule 1 to that Act.
- (2) If to any extent they would not do so apart from this subsection, the general purposes of Part I of the 1974 Act shall include—
  - (a) securing the proper construction and safe operation of transport systems to which this section applies, and of any locomotives, rolling stock or other vehicles used, or to be used, on those systems; and
  - (b) protecting the public (whether passengers or not) from personal injury and other risks arising from the construction and operation of transport systems to which this section applies.
- (3) Without prejudice to the generality of subsection (1) of section 15 of the 1974 Act (health and safety regulations), regulations under that section may—
  - (a) repeal or modify any of the provisions mentioned in subsection (4) below; and
  - (b) make any provision which, but for any such repeal or modification, could be made by regulations or orders made under any enactment there mentioned.
- (4) The provisions referred to in subsections (1) and (3) above are—

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- (a) the <sup>M2</sup>Highway (Railway Crossings) Act 1839;
  - (b) sections 9 and 10 of the <sup>M3</sup>Railway Regulation Act 1842;
  - (c) section 22 of the <sup>M4</sup>Regulation of Railways Act 1868;
  - (d) the <sup>M5</sup>Regulation of Railways Act 1871;
  - (e) sections 1 and 4 of the <sup>M6</sup>Regulation of Railways Act 1889;
  - (f) the <sup>M7</sup>Railway Employment (Prevention of Accidents) Act 1900;
  - (g) section 42 of the <sup>M8</sup>Road and Rail Traffic Act 1933;
  - (h) section 40 of the <sup>M9</sup>British Transport Commission Act 1954;
  - (j) section 66 of the <sup>M10</sup>British Transport Commission Act 1957;
  - (k) sections 124 and 125 of the <sup>M11</sup>Transport Act 1968;
  - (l) the <sup>M12</sup>Level Crossings Act 1983;
  - (m) sections 41 to 45 of the <sup>M13</sup>Transport and Works Act 1992;
  - (n) any regulations made under section 2 of the <sup>M14</sup>European Communities Act 1972 for the purpose of implementing the Council 91/440/EEC. Directive of 29th July 1991 on the development of the Community's railways, so far as the regulations are made for safety purposes.
- (5) In consequence of subsection (1) above and the resulting application of sections 38 and 50 of the 1974 Act (consent to prosecutions, and procedural requirements for making regulations)—
- (a) in section 57 of the <sup>M15</sup>Transport and Works Act 1992 (duty to consult before making regulations under, among other provisions, section 38(2), 41 or 43 of that Act) for the words “38(2), 41 or 43” there shall be substituted the words “ or 38(2) ”; and
  - (b) in section 58 of that Act (which requires the consent of the Secretary of State or the Director of Public Prosecutions to a prosecution for an offence under Part II of that Act) after the words “offence under this Part” there shall be inserted the words “ , other than an offence under section 41 or 43 above, ”.
- (6) This section applies to the following transport systems, that is to say—
- (a) any railway, tramway or trolley vehicle system; or
  - (b) any transport system using any other mode of guided transport.
- (7) The definitions of “guided transport”, “railway”, “tramway”, “trolley vehicle system” and “vehicle” in section 67(1) of the <sup>M16</sup>Transport and Works Act 1992 shall have effect for the purposes of this section as they have effect for the purposes of that Act, but disregarding for the purposes of this section paragraph (b) of the definition of “railway” (which includes a condition as to the minimum gauge of the track).

#### **Marginal Citations**

<b>M1</b>	1974 c. 37.
<b>M2</b>	1839 c. 45.
<b>M3</b>	1842 c. 55.
<b>M4</b>	1868 c. 119.
<b>M5</b>	1871 c. 78.
<b>M6</b>	1889 c. 57.
<b>M7</b>	1900 c. 27.
<b>M8</b>	1933 c. 53.
<b>M9</b>	1954 c. lv.
<b>M10</b>	1957 c. xxxiii.

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- M11 1968 c. 73.
- M12 1983 c. 16.
- M13 1992 c. 42.
- M14 1972 c. 68.
- M15 1992 c. 42.
- M16 1992 c. 42.

VALID FROM 08/03/1994

**118 Control of railways in time of hostilities, severe international tension or great national emergency.**

- (1) In time of hostilities, whether actual or imminent, severe international tension or great national emergency, the Secretary of State may give directions under this subsection to such of the following persons as he may consider appropriate, that is to say—
  - (a) the Regulator;
  - (b) the Franchising Director;
  - (c) any person who is the owner or operator of a relevant asset;
  - (d) any person who provides railway services.
- (2) The Secretary of State may at any time give directions under this subsection to any person falling within paragraphs (a) to (d) of subsection (1) above whom he may consider appropriate, requiring that person to participate in the planning of steps that might be taken in time of actual or imminent hostilities, severe international tension or great national emergency.
- (3) The power to give directions under subsection (1) above to the Regulator or the Franchising Director includes power to direct him to carry out his functions in such manner or for such purposes as may be specified in the direction.
- (4) The power to give directions under subsection (1) above to a person who is the owner or operator of a relevant asset or who provides railway services includes power—
  - (a) in the case of a person who is the owner of a relevant asset, to direct that person to permit the use of, or to exercise his rights over, the relevant asset in such manner or for such purposes as may be specified in the direction;
  - (b) in the case of a person who is the operator of a relevant asset, to direct that person to exercise his powers of management over the relevant asset in such manner or for such purposes as may be so specified; and
  - (c) in the case of a person who provides railway services, to direct that person to do so in such manner or for such purposes as may be so specified.
- (5) The Regulator and the Franchising Director shall each be under a duty to comply with a direction given to him under this section, notwithstanding the requirements of any other enactment or instrument relating to him.
- (6) A person who is the owner or operator of a relevant asset or who provides railway services shall be under a duty to comply with a direction given to him under this section, notwithstanding the requirements of any other enactment or instrument relating to him or to—
  - (a) the use of, or the exercise of rights over, the relevant asset,

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- (b) the management of the relevant asset, or
- (c) the railway services,

as the case may be, and notwithstanding any other duty or obligation to which he may be subject.

- (7) Any person who, without reasonable excuse, contravenes or fails to comply with a direction given to him under this section is guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.
- (8) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or with the consent of the Secretary of State or the Director of Public Prosecutions.
- (9) Any person (other than the Regulator and the Franchising Director) who suffers direct injury or loss arising from compliance with a direction under subsection (1) above shall be entitled to receive compensation from the Secretary of State of such amount as may be agreed by that person and the Secretary of State or, in default of agreement, of such amount as may be determined—
- (a) where the proceedings are to be held in England and Wales, by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, or
  - (b) where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (10) Any sums required by the Secretary of State for paying compensation under this section shall be paid out of money provided by Parliament.
- (11) In this section—
- “great national emergency” means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to give rise to such disruption of the means of transport that the population, or a substantial part of the population, of Great Britain is or may be likely to be deprived of essential goods or services;
  - “operator”, in relation to a relevant asset, means the person having the management of the relevant asset for the time being;
  - “owner”, in relation to a relevant asset, means any person—
    - (a) who is the owner of, or who has any right over or interest in, the relevant asset; and
    - (b) whose consent is needed to the use of the relevant asset by any other person;
  - “relevant asset” means a network, a station, a light maintenance depot or any track or rolling stock;
- and, subject to that, expressions used in this section and in Part I or II above have the same meaning in this section as they have in that Part.
- (12) In consequence of this section, section 27(6) of the <sup>M17</sup>Transport Act 1962 (directions to Boards in the interests of national defence) shall cease to have effect so far as relating to the Board.

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## Marginal Citations

M17 1962 c. 46.

VALID FROM 08/03/1994

### 119 Security: power of Secretary of State to give instructions.

- (1) The Secretary of State may from time to time give—
  - (a) to any person who is the owner or operator of a relevant asset, or
  - (b) to any person who provides railway services,such instructions as the Secretary of State considers appropriate for the purpose of ensuring that relevant assets within Great Britain, or persons or property on or in any such relevant asset, are protected against acts of violence.
- (2) An instruction may be given to any person who appears to the Secretary of State to be about to become such a person as is mentioned in paragraph (a) or (b) of subsection (1) above, but an instruction given to a person by virtue of this subsection shall not take effect until he becomes such a person and, in relation to an instruction so given, the provisions of this section shall apply with the necessary modifications.
- (3) Without prejudice to the generality of subsection (1) above, an instruction may, in particular, require the person to whom it is given ("the recipient")—
  - (a) not to cause or permit any persons, or any designated persons, or more than a specified number of persons or designated persons, to enter any relevant asset or any designated relevant asset, or not to cause or permit them to do so unless they submit to a search or unless or until some other specified condition is complied with;
  - (b) not to cause or permit any goods, or any designated goods, or more than a specified quantity of goods or designated goods, to be brought or loaded on to or into any relevant asset or any designated relevant asset, or not to do so unless the goods in question are subjected to a search or unless or until some other specified condition is complied with;
  - (c) to run no trains, or to restrict the running of trains, or to run no train unless it is subjected to a search, or unless or until some other specified condition is complied with;
  - (d) to secure the carrying out of a search of—
    - (i) any designated relevant assets, or
    - (ii) any persons or designated persons who, or any goods or designated goods which, are on or in any such assets;
  - (e) to furnish to the Secretary of State such information as he may require for the purpose mentioned in subsection (1) above;
  - (f) to prepare plans specifying action to be taken by the recipient and his servants or agents—
    - (i) in the event that an act of violence of a specified description occurs, or
    - (ii) in times when there is an increased likelihood of such acts occurring,and to conduct, at specified intervals, exercises in connection with the implementation of such plans;

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- (g) to employ specified numbers of suitably trained staff for the purpose of preventing the occurrence of acts of violence;
  - (h) to meet specified requirements with respect to the construction of, or to make specified modifications to—
    - (i) any relevant assets, or any designated relevant assets, of which the recipient is the owner or operator, or
    - (ii) any apparatus or equipment, or any designated apparatus or equipment, on or in any such assets.
- (4) Where an instruction requires the carrying out of a search, it may also specify—
- (a) the kind of search which is to be carried out;
  - (b) the manner in which the search is to be carried out; and
  - (c) the persons, or the class or description of persons, who are to carry out the search.
- (5) Where any person refuses to submit himself or any goods in his possession to a search required by an instruction, any person authorised to carry out that search may take any steps that are necessary, including the use of reasonable force—
- (a) to prevent the person concerned from entering the relevant asset in relation to which the search is being carried out; or
  - (b) to eject him, and any goods in his possession, from that asset;
- but this subsection is without prejudice to any other powers of the person carrying out the search.
- (6) An instruction—
- (a) shall be in writing;
  - (b) shall specify the time at which, or the period within which, it is to be complied with, and the period during which it is to have effect;
  - (c) may be varied or revoked by the Secretary of State.
- (7) No instruction shall have effect in relation to any rolling stock which is for the time being in use in police service or in the service of the armed forces of the Crown.
- (8) A person who is the owner or operator of a relevant asset or who provides railway services shall be under a duty to comply with an instruction given to him under this section, notwithstanding the requirements of any other enactment or instrument relating to him or to—
- (a) the use of, or the exercise of rights over, the relevant asset,
  - (b) the management of the relevant asset, or
  - (c) the railway services,
- as the case may be, and notwithstanding any other duty or obligation to which he may be subject.
- (9) A person who without reasonable excuse fails to do anything required of him by an instruction is guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.
- (10) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (9) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

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(11) In this section—

“act of violence” means—

- (a) any act which constitutes, or
- (b) any potential act which, if carried out, would constitute,

the offence of murder, attempted murder, manslaughter, culpable homicide, assault, real injury or malicious mischief, or an offence under section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the<sup>M18</sup>Person Act 1861, under section 2 of the<sup>M19</sup>Explosive Substances Act 1883 or under section 1 of the<sup>M20</sup>Criminal Damage Act 1971;

“designated” means specified in an instruction, or of a class or description so specified;

“instruction” means an instruction given under this section, and any reference to an instruction includes a reference to an instruction as varied under subsection (6)(c) above;

“operator” and “owner” have the same meaning as in section 118 above;

“relevant asset” has the same meaning as in section 118 above, and any reference to such an asset includes a reference to any part of any such asset;

“specified” means specified in an instruction;

and, subject to that, expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

#### Marginal Citations

**M18** 1861 c. 100.

**M19** 1883 c. 3.

**M20** 1971 c. 48.

VALID FROM 08/03/1994

#### 120 Security: enforcement notices.

- (1) Where it appears to the Secretary of State that a person upon whom an instruction has been served has failed, is failing or is likely to fail to comply with that instruction, he may serve on that person a notice (in this section referred to as an “enforcement notice”) containing such provision as the Secretary of State may consider requisite for the purpose of ensuring that the person complies with the instruction and specifying, in particular—
  - (a) the things, or the description of things, which the person is required to do, or refrain from doing, in order to comply with the instruction;
  - (b) the time within which, or after which, the person must do, or refrain from doing, those things; and
  - (c) the period during which the person is to do, or refrain from doing, those things.
- (2) The Secretary of State may vary or revoke an enforcement notice, and any reference in this section to an enforcement notice includes a reference to such a notice as varied under this subsection.

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- (3) Where the Secretary of State varies or revokes an enforcement notice under subsection (2) above he shall serve notice of the variation or revocation on the person on whom the enforcement notice in question was served.
- (4) A person who without reasonable excuse fails to do anything required of him by an enforcement notice is guilty of an offence and shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding two years, or to both.
- (5) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (4) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.
- (6) Section 119(8) above shall have effect in relation to an enforcement notice as it has effect in relation to an instruction.
- (7) Expressions used in this section and in section 119 above have the same meaning in this section as they have in that section.

VALID FROM 08/03/1994

## 121 Security: inspections.

- (1) For the purpose of enabling the Secretary of State to determine whether to give an instruction to any person, or of ascertaining whether any instruction or enforcement notice is being or has been complied with, a person authorised for the purpose by the Secretary of State in writing (in this section referred to as “an authorised person”) shall have power, on production (if required) of his credentials, to inspect any relevant asset.
- (2) An authorised person inspecting a relevant asset under subsection (1) above shall have power—
  - (a) to subject any property found by him on or in the relevant asset, or any apparatus or equipment installed in the relevant asset, to such tests as he considers necessary for the purpose for which the inspection is carried out;
  - (b) to take such steps as he considers necessary for that purpose—
    - (i) to ascertain what practices or procedures are being followed in relation to security; or
    - (ii) to test the effectiveness of any practice or procedure relating to security; or
  - (c) to require the owner or operator of the relevant asset to furnish to him such information as the authorised person considers necessary for that purpose;
 but nothing in paragraph (a) above shall entitle an authorised person to subject any rolling stock, or any part of any rolling stock, to any test.
- (3) An authorised person, for the purpose of exercising any power conferred on him by subsection (1) or (2) above in relation to any relevant asset, shall have power—
  - (a) to board any rolling stock and to take all such steps as are necessary to ensure that it is not moved; or



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- (b) to enter any land or other property comprised either in any track or in a network, station or light maintenance depot;  
but nothing in this subsection authorises any use of force.
- (4) A person is guilty of an offence if he—
- (a) intentionally obstructs an authorised person acting in the exercise of any power conferred on him by this section;
  - (b) fails, without reasonable excuse, to comply with a requirement imposed on him under paragraph (c) of subsection (2) above to furnish information to an authorised person; or
  - (c) in furnishing any information required under that paragraph, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.
- (5) A person guilty of an offence under subsection (4) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (6) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (4) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.
- (7) Expressions used in this section and in section 119 or 120 above have the same meaning in this section as they have in that section.

VALID FROM 30/03/2004

### **[<sup>F1</sup>121A Railway security services: approved providers**

- (1) In this section “railway security service” means a process or activity carried out for the purpose of—
- (a) complying with a requirement of an instruction under section 119, or
  - (b) facilitating a person’s compliance with a requirement of an instruction under section 119.
- (2) Regulations may provide for the Secretary of State to maintain a list of persons who are approved by him for the provision of a particular railway security service.
- (3) The regulations may—
- (a) prohibit the provision of a railway security service by a person who is not listed in respect of that service;
  - (b) prohibit the use or engagement for the provision of a railway security service of a person who is not listed in respect of that service;
  - (c) create a criminal offence;
  - (d) make provision about application for inclusion in the list (including provision about fees);
  - (e) make provision about the duration and renewal of entries on the list (including provision about fees);

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- (f) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess;
  - (g) make provision about removal from the list which shall include provision for appeal;
  - (h) make provision about the inspection of activities carried out by listed persons;
  - (i) confer functions on the Secretary of State or on a specified person;
  - (j) confer jurisdiction on a court.
- (4) Regulations under subsection (3)(c)—
- (a) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum,
  - (b) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine), and
  - (c) may create a criminal offence of purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person.
- (5) An instruction under section 119 may—
- (a) include a requirement to use a listed person for the provision of a railway security service;
  - (b) provide for all or part of the instruction not to apply or to apply with modified effect where a listed person provides a railway security service.
- (6) Regulations under this section—
- (a) may make different provision for different cases,
  - (b) may include incidental, supplemental or transitional provision,
  - (c) shall be made by the Secretary of State by statutory instrument,
  - (d) shall not be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations, and
  - (e) shall be subject to annulment in pursuance of resolution of either House of Parliament.]

#### **Textual Amendments**

- F1** S. 121A inserted (30.3.2004) by *Railways and Transport Safety Act 2003 (c. 20)*, ss. 106, 120; S.I. 2004/827, art. 3(aa)

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