

SCHEDULES

SCHEDULE 6

RAILWAY ADMINISTRATION ORDERS

PART I

MODIFICATIONS OF THE 1986 ACT

General application of provisions of 1986 Act

- 1 Where a railway administration order has been made, sections 11 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—
- (a) as if references in those sections to an administration order were references to a railway administration order and references to an administrator were references to a special railway administrator; and
 - (b) where the company in relation to which the order has been made is a protected railway company which is an unregistered company, as if references in those sections to a company included references to such a company.

Effect of order

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

Appointment of special railway administrator

- 3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—
- “(3) An application for an order under subsection (2) may be made—
- (a) by the Secretary of State;
 - (b) if the company is the holder of a passenger licence under Part I of the Railways Act 1993, by the Director of Passenger Rail Franchising with the consent of the Secretary of State;

Status: This is the original version (as it was originally enacted).

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

General powers of special railway administrator

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

Power to deal with charged property

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

Duties of special railway administrator

- 6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect in accordance with the following provisions of this paragraph.
- (2) For subsection (2) there shall be substituted the following subsection—
- “(2) Subject to any directions of the court, it shall be the duty of the special railway administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his.”
- (3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors’ meeting) shall be omitted.

Discharge of order

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

Status: This is the original version (as it was originally enacted).

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

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

- (a) by the special railway administrator, on the ground that the purposes of the order have been achieved; or
- (b) by the Secretary of State or, if the company is the holder of a passenger licence under Part I of the Railways Act 1993, by the Director of Passenger Rail Franchising with the consent of the Secretary of State, on the ground that it is no longer necessary that the purposes of the order are achieved.”

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

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

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

Notice of making of order

8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words “to the registrar of companies” there shall be substituted—

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

Statement of proposals

9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—

“(1) Where a railway administration order has been made, the special railway administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—

- (a) to the Secretary of State;
- (b) to the Rail Regulator;
- (c) to the Director of Passenger Rail Franchising;

Status: This is the original version (as it was originally enacted).

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

Applications to court

- 10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.
- (2) After subsection (1) there shall be inserted the following subsections—
- “(1A) At any time when a railway administration order is in force the Secretary of State or, if the company is the holder of a passenger licence under Part I of the Railways Act 1993, the Director of Passenger Rail Franchising with the consent of the Secretary of State may apply to the High Court or the Court of Session by petition for an order under this section on the ground specified in subsection (1B).

Status: This is the original version (as it was originally enacted).

(1B) The ground mentioned in subsection (1A) is that the special railway administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—

- (a) will not best ensure the achievement of the purposes of the order; or
- (b) without prejudice to paragraph (a) above, involves a contravention of any of the conditions of any licence under Part I of the Railways Act 1993 held by the company.

(1C) Where an application is made under subsection (1) in respect of a company in relation to which a railway administration order is in force—

- (a) notice of the application shall be given to the Secretary of State; and
- (b) he shall be entitled to be heard by the court in connection with that application.”

(3) Subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator’s proposals) shall be omitted.

(4) In subsection (4) (provision that may be made in an order), the words “Subject as above” shall be omitted and for paragraph (d) there shall be substituted—

- “(d) without prejudice to the powers exercisable by the court in making a railway administration order—
 - (i) provide that the railway administration order is to be discharged as from such date as may be specified in the order unless, before that date, such measures are taken as the court thinks fit for the purpose of protecting the interests of creditors; and
 - (ii) make such consequential provision as the court thinks fit.”

(5) For subsection (6) there shall be substituted—

“(6) Where a railway administration order is discharged in consequence of such provision in an order under this section as is mentioned in subsection (4)(d) (i), the special railway administrator shall, within 14 days after the date on which the discharge takes effect, send an office copy of the order under this section—

- (a) to the Rail Regulator;
- (b) to the Director of Passenger Rail Franchising; and
- (c) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;

and if, without reasonable excuse, the special railway administrator fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.”

Particular powers of special railway administrator

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