



Railway and Canal Traffic Act 1888

1888 CHAPTER 25

PART I

COURT AND PROCEDURE OF RAILWAY AND CANAL COMMISSIONERS

Establishment of Railway and Canal Commission

2 Establishment of new Railway and Canal Commission

On the expiration of the provisions of the Regulation of Railways Act, 1873, with respect to the Commissioners therein mentioned, there shall be established a new Commission, styled the Railway and Canal Commission (in this Act referred to as the Commissioners), and consisting of two appointed and three ex officio Commissioners; and such Commission shall be a court of record, and have an official seal, which shall be judicially noticed. The Commissioners may act notwithstanding any vacancy in their body.

3 Appointment and tenure of office of appointed Commissioners

- (1) The two appointed Commissioners may be appointed by Her Majesty at any time after the passing of this Act, and from time to time as vacancies occur.
- (2) They shall be appointed on the recommendation of the President of the Board of Trade, and one of them shall be of experience in railway business.
- (3) Section five of the Regulation of Railways Act, 1873, shall apply to each appointed Commissioner.
- (4) There shall be paid to each appointed Commissioner such salary not exceeding three thousand pounds a year as the President of the Board of Trade may, with the concurrence of the Treasury, determine.
- (5) It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehaviour any appointed Commissioner.

4 Appointment and attendance of ex officio Commissioners

- (1) Of the three ex officio Commissioners of the Railway and Canal Commission one shall be nominated for England, one for Scotland, and one for Ireland ; and an ex officio Commissioner shall not be required to attend out of the part of the United Kingdom for which he is nominated.
- (2) The ex officio Commissioner in each case shall be such judge of a superior court as—
 - (a) in England the Lord Chancellor ; and
 - (b) in Scotland the Lord President of the Court of Session ; and
 - (c) in Ireland the Lord Chancellor of Ireland;may from time to time by writing under his hand assign, and such assignment shall be made for a period of not less than live years.
- (3) For the purpose of the attendance of the ex officio Commissioners, regulations shall be made from time to time by the Lord Chancellor, the Lord President of the Court of Session, and the Lord Chancellor of Ireland respectively, in communication with the ex officio Commissioners for England, Scotland, or Ireland, as the case may be, as to the arrangements for securing their attendance, as to the times and place of sitting in each case, and otherwise for the convenient and speedy hearing thereof.

5 Sittings of Commissioners

- (1) Subject to the provisions of this Act, and to general rules under this Act, the Commissioners may hold sittings in any part of the United Kingdom, in such place or places as may be most convenient for the determination of proceedings before them.
- (2) The central office of the Commissioners shall be in London, and the Commissioners when holding a public sitting in London shall hold the same at the Royal Courts of Justice, or at such other place as the Lord Chancellor may from time to time appoint.
- (3) Not less than three Commissioners shall attend at the hearing of any case, and the ex officio Commissioner shall preside, and his opinion upon any question which in the opinion of the Commissioners is a question of law shall prevail.
- (4) Save as aforesaid, section twenty-seven of the Regulation of Railways Act, 1873, shall apply, and any act may be done by any two Commissioners.
- (5) Every judge who may with his consent be assigned to hold the office of ex officio Commissioner shall attend to hear any cases before the Commission, which as ex officio Commissioner he is required to hear, when and as soon as the cases are ready to be heard, or as soon thereafter as reasonably may be; and any such judge shall be required to perform any of the other duties of a judge of a superior court only when his attendance on the Commission is not required.
- (6) If and when any judge who may be assigned to hold the office of ex officio Commissioner is temporarily unable to attend, the Lord Chancellor in England, the Lord President of the Court of Session in Scotland, and the Lord Chancellor in Ireland, may respectively nominate any judge of a superior court to sit as ex officio Commissioner in place of the judge who is so temporarily unable to attend as aforesaid, and the judge so nominated shall for the purpose of any case which he may hear be an ex officio Commissioner.
- (7) If the President of the Board of Trade is satisfied either of the inability of an appointed Commissioner to attend at the hearing of any case, or of there being a vacancy in

the office, and in either case of the necessity of a speedy hearing of the case, he may appoint a temporary Commissioner to hear such case, and such Commissioner, for all purposes connected with such case, shall, until the final determination thereof, have the same jurisdiction and powers as if he were an appointed Commissioner. A temporary Commissioner shall be paid such sum by the Commissioner so unable to sit, or, if the office is vacant, out of the salary of the office, as the President of the Board of Trade may assign.

6 Appointment of additional judge

On an address from both Houses of Parliament representing that, regard being had to the duties imposed by this Act on the ex officio Commissioners, the state of business of the High Court in England requires the appointment of an additional judge of that court, it shall be lawful for Her Majesty to appoint an additional judge of such court, and from time to time, on a like address but not otherwise, to fill any vacancy in such judgeship, and the law relating to the appointment and qualification of the judges of such superior court, to their duties and tenure of office, to their precedence, salary and pension, and otherwise, shall apply to any judge so appointed under this section, and a judge so appointed under this section shall be attached to such division or branch of the court as Her Majesty may direct, subject to such power of transfer as may exist in the case of any other judge of such division or branch.

7 Provision for complaints by public authority in certain cases

(1) Any of the following authorities, that is to say—

- (a) any of the following local authorities, namely, any harbour board, or conservancy authority, the Common Council of the City of London, any council of a city or borough, any representative county body which may be created by an Act passed in the present or any future session of Parliament, any justices in quarter sessions assembled, the Commissioners of Supply of any county in Scotland, the Metropolitan Board of Works, or any urban sanitary authority not being a council as aforesaid, or any rural sanitary authority ; or
- (b) any such association of traders or freighters, or chamber of commerce or agriculture as may obtain a certificate from the Board of Trade that it is, in the opinion of the Board of Trade, a proper body to make such complaint,

may make to the Commissioners any complaint which the Commissioners have jurisdiction to determine, and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authorities may appear in opposition to any complaint which the Commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the Commissioners to be likely to be affected by any determination of the Commissioners upon such Complaint.

- (2) The Board of Trade may, if they think fit, require, as a condition of giving a certificate under this section, that security be given in such manner and to such amount as they think necessary, for any costs which the complainants may be ordered to pay or bear.
- (3) Any certificate granted under this section shall, unless withdrawn, be in force for twelve months from the date on which it was given.

Jurisdiction

8 Jurisdiction of Railway Commissioners transferred to the Commission

There shall be transferred to and vested in the Commissioners all the jurisdiction and powers which at the commencement of this Act were vested in, or capable of being exercised by the Railway Commissioners, whether under the Regulation of Railways Act, 1873, or any other Act, or otherwise, and any reference to the Railway Commissioners in the Regulation of Railways Act, 1873, or in any other Act, or in any document, shall, from and after the commencement of this Act, be construed to refer to the Railway and Canal Commission established by this Act.

9 Jurisdiction of Commissioners under special Acts

Where any enactment in a special Act—

- (a) contains provisions relating to traffic facilities, undue preference, or other matters mentioned in section two of the Railway and Canal Traffic Act, 1854, or
- (b) requires a company to which this part of this Act applies to provide any station, road, or other similar work for public accommodation, or
- (c) otherwise imposes on a company to which this part of this Act applies any obligation in favour of the public or any individual,

or where any Act contains provisions relating to private branch railways or private sidings, the Commissioners shall have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the Commissioners have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

10 Jurisdiction over tolls and rates

Where any question or dispute arises, involving the legality of any toll, rate, or charge, or portion of a toll, rate, or charge, charged or sought to be charged for merchandize traffic by a company to which this part of this Act applies, the Commissioners shall have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the Commissioners decide to be legal.

11 Jurisdiction to order traffic facilities, notwithstanding agreements

Nothing in any agreement, whether made before or after the passing of this Act, which has not been confirmed by Act or by the Board of Trade, or by the Commissioners under the Regulation of Railways Act, 1873, or this Act, shall render a company to which this part of this Act applies unable to afford, or shall authorise such company to refuse, such reasonable facilities for traffic as may in the opinion of the Commissioners be required in the interests of the public, or shall prevent the Commissioners from making or enforcing any order with respect to such facilities.

12 Power to award damages

Where the Commissioners have jurisdiction to hear and determine any matter, they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find hi in to have sustained; and such

award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which, but for this Act, such party would have had by reason of the matter of complaint.

Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery by the party aggrieved of the matter complained of.

The Commissioners may ascertain the amount of such damages either by trial before themselves, or by directing an inquiry to be taken before one or more of themselves or before some officer of their court.

13 No damages where rates published under certain conditions

In cases of complaint of undue preference no damages shall be awarded if the Commissioners shall find that the rates complained of have, for the period during which such rates have been in operation, been duly published in the rate books of the railway company kept at their stations in accordance with section fourteen of the Regulation of Railways Act, 1873, as amended by this Act, unless and until the party complaining shall have given written notice to the railway company requiring them to abstain from or remedy the matter of complaint, and the railway company shall have failed, within a reasonable time, to comply with such requirements in such a manner as the Commissioners shall think reasonable.

14 Orders on two or more companies

The Commissioners may order two or more companies to which this part of this Act applies to carry into effect an order of the Commissioners, and to make mutual arrangements for that purpose, and may further order the companies or, in case of difference, any of them, to submit to the Commissioners for approval a scheme for carrying into effect the order, and when the Commissioners have finally approved the scheme, they may order each of the companies to do all that is necessary on the part and within the power of such company to carry into effect the scheme, and may determine the proportions in which the respective companies are to defray the expense of so doing, and may for the above purposes make, if they think fit, separate orders on any one or more of such

Provided that nothing in this section shall authorise the Commissioners to require two companies to do anything which they would not have jurisdiction to require to be done if such two companies were a single company.

15 Amendment of 36 & 37 Vict. c.48 s.8 as to references to arbitration under special Act

For the purposes of section eight of the Regulation of Railways Act, 1873, and any other enactment relating to the reference to the Railway Commission of any difference between companies which under the provisions of any general or special Act is required or authorised to be referred to arbitration; the provisions of any agreement confirmed or authorised by any such Act shall be deemed to be provisions of such Act.

16 Power to apportion expenses between railway company and applicants for works

- (1) Where the Board of Trade or the Commissioners, in the exercise of any power given by any general or special Act, on application order a company to which this part of this Act applies, to provide a bridge, subway, or approach, or any work of a similar character, the Board of Trade or the Commissioners, as the case may be, may require as a condition of making the order that an agreement to pay the whole or a portion of the expenses of complying with the order shall be entered into by the applicants or some of them, or such other persons as the Board of Trade or Commissioners think fit, and any of the following local authorities, namely, any sanitary authority, highway board, surveyor of highways acting with the consent of the vestry of his parish, or any other authority having power to levy rates, shall have power, if such authority think fit, to enter into any such agreement as is sanctioned by the Board of Trade or Commissioners for the purpose of the order.
- (2) In such case any question respecting the persons by whom or the proportions in which the expenses of complying with the order are to be defrayed may, on the application of any party to the application, or on a certificate of the Board of Trade, be determined by the Commissioners.
- (3) In this section the expression "parish" shall have the same meaning as the same expression has in the Acts relating to highways ; and the expression " the consent of the vestry of his parish " shall, in any place where there is no vestry meeting, mean the consent of a meeting of inhabitants contributing to the highway rates, provided that the same notice shall have been given of such a meeting as would be required by law for the assembling of a meeting in vestry.

Appeals

17 Appeals on certain questions to superior court of appeal

- (1) No appeal shall lie from the Commissioners upon a question of fact, or upon any question regarding the locus standi of a complainant.
- (2) Save as otherwise provided by this Act, an appeal shall lie from the Commissioners to a superior court of appeal.
- (3) An appeal shall not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by the authority having power to make rules of court for the superior court of appeal.
- (4) On the hearing of an appeal the court of appeal may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a superior court, and may make any order which the Commissioners could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal shall be in the discretion of the court of appeal, but no Commissioner shall be liable to any costs by reason or in respect of any appeal.
- (5) The decision of the superior court of appeal shall be final: Provided that where there has been a difference of opinion between any two of such superior courts of appeal, any superior court of appeal in which a matter affected by such difference of opinion

is pending may give leave to appeal to the House of Lords, on such terms as to costs as such court shall determine.

- (6) Save as provided by this Act, an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, certiorari, or otherwise, either at the instance of the Crown or otherwise.

Supplemental

18 General powers and enforcement of orders

- (1) For the purposes of this Act the Commissioners shall have full jurisdiction to hear and determine all matters whether of law or of fact, and shall as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement; of their orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of their jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights, and privileges as are vested in a superior court: Provided that no person shall be punished for contempt of court, except with the consent of au ex officio Commissioner.
- (2) The Commissioners may review and rescind or vary any order made by them ; but, save as is by this Act provided, every decision or order of the Commissioners shall be final.

19 Costs

The costs of and incidental to every proceeding before the Commissioners shall be in the discretion of the Commissioners, who may order by whom and to whom the same are to be paid, and by whom the same are to be taxed and allowed.

20 Power to make rules

- (1) The Commissioners may from time to time, with the approval of the Lord Chancellor and the President of the Board of Trade, make, rescind, and vary general rules for their procedure and practice under this Act, and generally for carrying into effect this part of this Act.
- (2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if they were enacted by this Act.

21 Appointment of officers, clerks, &c

- (1) There shall be attached to the Railway and Canal Commission such officers, clerks, and messengers as the Lord Chancellor, with the consent of the Treasury as to number, from time to time appoints.
- (2) There shall be paid to each of such officers, clerks, and messengers, such salaries as the Treasury from time to time determine.

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

22 Salaries, expenses, &c

The salaries of the appointed Commissioners, and of all officers, clerks, and messengers attached to the Railway and Canal Commission, and all the expenses of the said Commission of and incidental to the carrying out of this Act, shall be paid out of moneys to be provided by Parliament.

23 Company to which this part of this Act applies

This part of this Act shall apply to any railway company, and to any canal company, and to any railway and canal company.