

1989 No. 1903

HEALTH AND SAFETY

**The Health and Safety (Enforcing Authority)
Regulations 1989**

<i>Made</i> - - - -	<i>16th October 1989</i>
<i>Laid before Parliament</i>	<i>24th October 1989</i>
<i>Coming into force</i>	<i>1st April 1990</i>

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The Secretary of State, in exercise of the powers conferred on him by sections 15(1) and (3)(a) and (c), 18(2) and 82(3)(a) of the Health and Safety at Work etc. Act 1974^(a) ("the 1974 Act") and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Enforcing Authority) Regulations 1989 and shall come into force on 1st April 1990.

^(a) 1974 c.37: sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraphs 6 and 16 respectively.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“agricultural activities” includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, including the management of livestock up to the point of slaughter or export from Great Britain, forestry, the use of land as grazing land, market gardens and nursery grounds and the preparation of land for agricultural use; and for this purpose “livestock breeding and keeping” does not include activities the main purpose of which is entertainment or the breeding or keeping of livestock at a shop;

“the Commission” means the Health and Safety Commission;

“common parts” means those parts of premises used in common by, or for providing common services to or common facilities for, the occupiers of the premises;

“construction work” means a “building operation” or a “work of engineering construction” within the meanings assigned to those expressions by section 176(1) of the Factories Act 1961(a);

“contractor” means a self-employed person, or an employer of persons, carrying out construction work, except that in the case of a self-employed person who contracts to provide his labour only to another person, it shall mean that other person;

“dangerous substance” has the meaning assigned to it by regulation 2(1) of the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984(b);

“dock premises” has the meaning assigned to it by regulation 2(1) of the Docks Regulations 1988(c);

“electricity system” does not include the consumer’s installation within the meaning of regulation 3(1) of the Electricity Supply Regulations 1988(d);

“the Executive” means the Health and Safety Executive;

“fairground” means any part of premises which is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered childrens’ playground equipment or a swimming pool slide;

“gas” has the meaning assigned to it by section 48 of the Gas Act 1986(e);

“gas fitting” has the meaning assigned to it by section 48 of the Gas Act 1986;

“gas system” does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance;

“ionising radiation” has the meaning assigned to it by regulation 2(1) of the Ionising Radiations Regulations 1985(f);

“livestock” means any creature kept for the production of food, wool, skins or fur or for the purpose of any agricultural activity;

“local authority” means—

(a) in relation to England and Wales, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple or the Council of the Isles of Scilly;

(b) in relation to Scotland, an islands or district council;

“mine” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954(g);

“office activities” includes any activity for the purposes of administration, clerical work, handling money, telephone and telegraph operating and the production of computer software by the use of computers; and for this purpose “clerical work” includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine

(a) 1961 c.34.

(b) S.I. 1984/1244, amended by S.I. 1986/1922 and 1988/766.

(c) S.I. 1988/1655.

(d) S.I. 1988/1057.

(e) 1986 c.44.

(f) S.I. 1985/1333.

(g) 1954 c.70.

calculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed;

“pleasure craft” has the meaning assigned to it by regulation 2(1) of the Docks Regulations 1988(a);

“quarry” has the meaning assigned to it by section 180 of the Mines and Quarries Act 1954;

“railway” means a railway or tramway with (in either case) a gauge of 350 millimetres or more;

“theatre” does not include a cinema;

“transport undertaking” means an undertaking primarily engaged in the transport of passengers or goods;

“veterinary surgery” has the meaning assigned to it by section 27 of the Veterinary Surgeons Act 1966(b);

“work” in relation to a gas fitting has the meaning assigned to it by regulation 2(1) of the Gas Safety (Installation and Use) Regulations 1984(c);

“zoo” has the meaning assigned to it by section 1(2) of the Zoo Licensing Act 1981(d).

(2) In these Regulations (except regulation 4(8)), unless the context otherwise requires, any reference to the enforcing authority for premises or parts of premises is a reference to the enforcing authority for the relevant statutory provisions in relation to those premises or parts, as the case may be, and to any activity carried on in them.

(3) In these Regulations, unless the context otherwise requires, any reference to—

(a) a numbered regulation or Schedule is a reference to the regulation of or Schedule to these Regulations so numbered; and

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference appears.

Local authorities to be enforcing authorities in certain cases

3.—(1) Where the main activity carried on in non-domestic premises is specified in Schedule 1, the local authority for the area in which those premises are situated shall be the enforcing authority for them, and the Executive shall be the enforcing authority in any other case.

(2) Where such premises are occupied by more than one occupier each part separately occupied shall be regarded as being separate premises for the purposes of paragraph (1).

(3) Where paragraph (2) applies, the local authority shall be the enforcing authority for the common parts, except that if the Executive is the enforcing authority for—

(a) all other parts of the premises, the Executive shall be the enforcing authority for the common parts;

(b) any other part of the premises and the occupier of that part has any obligations under the relevant statutory provisions for any matters appertaining to the common parts, the Executive shall be the enforcing authority for those provisions in respect of such matters.

(4) Paragraph (2) shall not apply to—

(a) any land within the perimeter of an airport;

(b) the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987 (e);

(c) an offshore installation within the meaning of section 1(4) of the Mineral Workings (Offshore Installations) Act 1971(f);

(d) a building or construction site, that is to say, premises where the only activities being undertaken are construction work and activities for the purpose of or in connection with such work;

(a) S.I. 1988/1655.

(b) 1966 c.36.

(c) S.I. 1984/1358.

(d) 1981 c.37.

(e) 1987 c.53.

(f) 1971 c.61; section 1 was substituted by section 24 of the Oil and Gas (Enterprise) Act 1982 (c.23).

(e) the campus of a university, polytechnic, college, school or similar educational establishment;

(f) a hospital;

and the Executive shall be the enforcing authority for the whole of any such premises.

(5) In relation to a railway operated by the British Railways Board, London Regional Transport or a subsidiary of that body, Tyne and Wear Passenger Transport Executive or Strathclyde Passenger Transport Executive, notwithstanding paragraph (3), the Executive shall be the enforcing authority for the common parts in a railway station or in a goods yard served by the railway.

(6) Where any part of premises at or adjacent to a railway track or railway station is occupied by a railway undertaking not mentioned in paragraph (5), then notwithstanding paragraph (2), the Executive shall be the enforcing authority for the whole premises.

(7) This regulation shall have effect subject to regulations 4, 5 and 6.

Exceptions

4.—(1) The Executive shall be the enforcing authority for—

(a) the enforcement of any of the relevant statutory provisions against a body specified in paragraph (3) or the officers or servants of such a body;

(b) any part of premises occupied by such a body.

(2) Where premises are mainly occupied by a body specified in paragraph (3) and are partly occupied by another person for the purpose of providing services at the premises for that body, the Executive shall be the enforcing authority for the part of the premises occupied by that other person.

(3) The bodies referred to in paragraphs (1) and (2) are—

(a) a local authority as defined in regulation 2;

(b) Parish Councils in England and Community Councils in Wales and Scotland;

(c) any other local authority within the meaning of section 53(1) of the 1974 Act;

(d) a police authority or the Receiver for the Metropolitan Police District;

(e) a fire authority within the meaning of section 43(1) of the Fire Precautions Act 1971(a);

(f) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964(b); or a service authority of a visiting force within the meaning of section 12 of the Visiting Forces Act 1952(c);

(g) the United Kingdom Atomic Energy Authority;

(h) the Crown, but regulation 3 shall apply to any part of premises occupied by the Executive and to any activity carried on there.

(4) The Executive shall be the enforcing authority for premises if the main activity carried on there is indoor sports and any body referred to in paragraph (3)(a) to (c) has any duty under section 4 of the 1974 Act in respect of those premises or any plant therein.

(5) The Executive shall be the enforcing authority for—

(a) section 6 of the 1974 Act;

(b) the other relevant statutory provisions in respect of any activity specified in Schedule 2 (whether or not it is the main activity carried on in premises).

(6) Regulation 3 and the preceding provisions of this regulation shall have effect subject to any provisions made for enforcement responsibility by other regulations made under the 1974 Act or by any of the existing statutory provisions.

(7) The preceding provisions of this regulation shall have effect subject to regulations 5 and 6.

(8) Notwithstanding regulation 3 and the preceding provisions of this regulation, an authority empowered to grant a licence for a factory, magazine or store or to register premises under the 1875 Act shall be the enforcing authority for the 1875 Act in relation to such factory, magazine, store or premises, as the case may be; and in this paragraph "the 1875 Act" means such provisions of the Explosives Act 1875(d) and such Orders in Council, Orders, Byelaws, Regulations and Rules made thereunder as are relevant statutory provisions.

(a) 1971 c.40.

(b) 1964 c.5.

(c) 1952 c.67.

(d) 1875 c.17; the relevant amending instrument is S.I. 1974/1885.

Arrangements enabling responsibility for enforcement to be transferred

5.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises, or any activity carried on there may be transferred from the Executive to the local authority or from the local authority to the Executive.

(2) A transfer may be made only by agreement between the enforcing authority which has the current responsibility and the authority to which it proposed to transfer it, or by the Commission.

(3) Where a transfer has been made, the authority to which responsibility has been transferred shall cause notice of the transfer to be given to persons affected by it, and where a transfer has been made by the Commission the Commission shall cause notice of it to be given to both enforcing authorities concerned.

(4) The preceding provisions of this regulation shall not apply to any part of premises occupied by the Crown or to any activity carried on there but responsibility for enforcing any of the relevant statutory provisions in respect of office activities and the premises used for them may be transferred by an agreement between the Executive, the local authority concerned and the Government Department or other public body concerned.

Arrangements enabling responsibility for enforcement to be assigned in cases of uncertainty

6.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises or any activity carried on there may be assigned to the Executive or to the local authority; and an assignment under this paragraph may be made only by the Executive and the local authority jointly and only where they agree—

- (a) that there is uncertainty in the particular case as to what are their respective responsibilities by virtue of regulations made under section 18(2) of the 1974 Act; and
- (b) which authority is more appropriate to be responsible for enforcement in that case;

and where such an assignment is made the authority to which responsibility has been assigned shall cause notice of assignment to be given to persons affected by it.

(2) For the purpose of removing uncertainty in any particular case as to what are their respective responsibilities by virtue of regulations made under section 18(2) of the 1974 Act either the Executive or the local authority may apply to the Commission and where the Commission considers that there is uncertainty it shall, after considering the circumstances and any views which may have been expressed to them by either enforcing authority or by persons affected, assign responsibility to whichever authority it considers appropriate; and where such an assignment is made the Commission shall cause notice of the assignment to be given to both enforcing authorities concerned and to persons affected by it.

Repeals and revocations

7.—(1) Sections 52(5) and 83(5) of the Offices, Shops and Railway Premises Act 1963(a) are hereby repealed.

(2) The following Regulations are hereby revoked—

- (a) The Health and Safety (Enforcing Authority) Regulations 1977(b);
- (b) The Health and Safety (Enforcing Authority) (Amendment) Regulations 1980(c);
- (c) The Health and Safety (Enforcing Authority) (Amendment) Regulations 1985(d).

Signed by order of the Secretary of State

Patrick Nicholls
Parliamentary Under Secretary of State,
Department of Employment

16th October 1989

(a) 1963 c.41.
(b) S.I. 1977/746.
(c) S.I. 1980/1744.
(d) S.I. 1985/1107.

**MAIN ACTIVITIES WHICH DETERMINE WHETHER LOCAL
AUTHORITIES WILL BE ENFORCING AUTHORITIES**

1. The sale or storage of goods for retail or wholesale distribution except—
 - (a) where it is part of the business of a transport undertaking;
 - (b) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway;
 - (c) where the main activity is the sale or storage for wholesale distribution of any dangerous substance;
 - (d) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas;

and for the purposes of this paragraph where the main activity carried on in premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs the main activity shall be deemed to be the sale of goods.

2. The display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale.
3. Office activities.
4. Catering services.
5. The provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.
6. Consumer services provided in a shop except dry cleaning or radio and television repairs, and in this paragraph "consumer services" means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not).
7. Cleaning (wet or dry) in coin operated units in launderettes and similar premises.
8. The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984(a), a physiotherapist, an osteopath or a chiropractor.
9. The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where carried on in a museum, art gallery or theatre or where the main activity is the exhibition of a cave to the public.
10. The hiring out of pleasure craft for use on inland waters.
11. The care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or veterinary surgery.
12. The activities of an undertaker, except where the main activity is embalming or the making of coffins.
13. Church worship or religious meetings.

SCHEDULE 2

**ACTIVITIES IN RESPECT OF WHICH THE HEALTH AND SAFETY
EXECUTIVE IS THE ENFORCING AUTHORITY**

1. Any activity in a mine or quarry other than a quarry in respect of which notice of abandonment has been given under section 139(2) of the Mines and Quarries Act 1954.
2. Any activity in a fairground.
3. Any activity in premises occupied by a radio, television or film undertaking in which the activity of broadcasting, recording or filming is carried on, and the activity of broadcasting, recording or filming wherever carried on, and for this purpose "film" includes video.

(a) 1984 c.24.

4. The following activities carried on at any premises by persons who do not normally work in the premises—

(a) construction work if—

- (i) section 127(6) of the Factories Act 1961 (which requires certain work to be notified to an inspector) applies to such work; or
- (ii) the whole or part of the work contracted to be undertaken by the contractor at the premises is to the external fabric or other external part of a building or structure; or
- (iii) it is carried out in a physically segregated area of the premises, the activities normally carried out in that area have been suspended for the purpose of enabling the construction work to be carried out, the contractor has authority to exclude from that area persons who are not attending in connection with the carrying out of the work and the work is not the maintenance of insulation on pipes, boilers or other parts of heating or water systems or its removal from them;

(b) the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting;

(c) the installation, maintenance or repair of electricity systems;

(d) work with ionising radiations except work in one or more of the categories set out in Schedule 3 to the Ionising Radiations Regulations 1985.

5. The use of ionising radiations for medical exposure (within the meaning of regulation 2(1) of the Ionising Radiations Regulations 1985).

6. Any activity in premises occupied by a radiography undertaking in which there is carried on any work with ionising radiations.

7. Agricultural activities, and any activity at an agricultural show which involves the handling of livestock or the working of agricultural equipment.

8. Any activity on board a sea-going ship.

9. Any activity in relation to a ski slope, ski lift, ski tow or cable car.

10. Fish, maggot and game breeding except in a zoo.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations re-enact the Health and Safety (Enforcing Authority) Regulations 1977 ("the 1977 Regulations") with amendments. The 1977 Regulations made provision with respect to enforcement by local authorities of the Health and Safety at Work etc. Act 1974 ("the 1974 Act") and the other relevant statutory provisions within the meaning of that Act. In addition to minor and drafting amendments, these Regulations make the following changes of substance:—

The Regulations re-enact the main provision of the 1977 Regulations which provided that where the main activity carried on in any premises was specified in Schedule 1 to those Regulations then, subject to specified exceptions, the local authority was the enforcing authority in respect of all activities carried on in those premises (*regulation 3(1)*). Schedule 1 to these Regulations includes activities not specified in Schedule 1 to the 1977 Regulations. The new activities are:— the display or demonstration of goods at exhibitions; cosmetic or therapeutic treatments; sports, cultural or recreational activities; hiring out of pleasure craft for use on inland waters; care, treatment, accommodation or exhibition of animals, activities of an undertaker; and church worship or religious meetings.

The Regulations introduce a new provision for multi-occupied premises. Subject to specified exceptions, each part separately occupied is to be regarded as being separate premises for the purposes of enforcement allocation (*regulation 3(2)*).

Regulation 4(1) of the 1977 Regulations is replaced with the following changes:— Notwithstanding that the main activity carried on in premises is listed in Schedule 1, the Health and Safety Executive is made the enforcing authority for any part of premises

occupied by a body specified in the regulation, and for enforcement against such a body or its officers or servants. The Executive is also made the enforcing authority for any part of the premises occupied by another person for the purpose of providing services at the premises for a specified body. The provision in the 1977 Regulations which made the Executive the enforcing authority for premises "controlled" by a specified body has not been re-enacted. Parish Councils, Community Councils, visiting forces, international headquarters and defence organisations are added to the list of bodies which were specified in the 1977 Regulations (*regulation 4(1) to (3)*).

The Regulations make the Executive the enforcing authority for premises where the main activity is indoor sports if specified conditions are met (*regulation 4(4)*).

The Regulations make the Executive the enforcing authority for the enforcement of section 6 of the 1974 Act (general duties of manufacturers etc. as regards activities and substances) even though the main activity carried on in the premises is listed in Schedule 1 (*regulation 4(5)(a)*).

The activities set out in Schedule 2 to these Regulations are allocated for enforcement by the Executive even though the main activity carried on in the premises is listed in Schedule 1 (*regulation 4(5)(b)*). Schedule 2 replaces regulation 4(2) of the 1977 Regulations. It excludes the previous references to work with water and telecommunications systems, modifies the references to construction work and to work with gas and electricity systems, and includes other activities.

The Regulations provide that, regardless of main activity, the licensing or registration authority for an explosives factory, magazine, store or premises for keeping explosives shall be the enforcing authority for such provisions of the Explosives Act 1875 and legislation made thereunder as are relevant statutory provisions (*regulation 4(8)*).

The Regulations enable enforcement responsibility to be assigned by the Executive and local authority jointly (to either of them) where they agree there is uncertainty in the particular case as to which one is the enforcing authority. Under the 1977 Regulations an assignment could only be made by the Health and Safety Commission (*regulation 6(1)*).

The Regulations repeal sections 52(5) and 83(5) of the Offices, Shops and Railway Premises Act 1963 (which relate to enforcement of that Act in places of public entertainment). The Regulations also revoke the 1977 Regulations and Regulations amending them, namely the Health and Safety (Enforcing Authority) (Amendment) Regulations 1980 and the Health and Safety (Enforcing Authority) (Amendment) Regulations 1985 (*regulation 7*).

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DRAFT STATUTORY INSTRUMENTS

1989 No.

MONOPOLIES AND MERGERS

The Supply of Beer (Tied Estate) Order 1989

<i>Made</i>	- - - -	1989
<i>Coming into force</i>	-	1989

Whereas the Secretary of State, in accordance with section 91(1) of and Schedule 9 to the Fair Trading Act 1973(a), caused notice of his intention to lay a draft of this Order to be published in the London Gazette and the Edinburgh Gazette on 22nd August 1989, the Belfast Gazette, the Daily Telegraph and the Financial Times on 25th August 1989 and the Morning Advertiser on 26th August 1989, stating that it was proposed to lay a draft of this Order before Parliament, indicating the nature of the provisions to be embodied in it, stating that a copy of the draft would be available to be seen at all reasonable times in the offices of the Department of Trade and Industry at 1 Victoria Street (Room 020), London SW1 and stating that any person whose interests were likely to be affected by this Order and who was desirous of making representations in respect of it should do so in writing before 10th October 1989;

And whereas the Secretary of State considered the representations duly made to him with respect to the draft of this Order and not withdrawn;

And whereas on 6th December 1989 the Secretary of State laid the draft of this Order before Parliament;

And whereas the said draft as so laid has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1, 2 and 14 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "The Supply of Beer—a report on the supply of beer for retail sale in the United Kingdom"(b), hereby makes the following Order:—

1.—(1) This Order may be cited as the Supply of Beer (Tied Estate) Order 1989.

(2) In this Order—

"alcoholic strength" has the same meaning as in the Alcoholic Liquor Duties Act 1979(c);

"beer" includes any beverage of an alcoholic strength exceeding 1.2 per cent which is made with beer;

(a) 1973 c.41; Schedule 9 was amended by the Companies Act 1989 (c.40), section 153 and Schedule 20, paragraph 20.

(b) Cm. 651.

(c) 1979 c.4.

“brewer” means a person who carries on business in the manufacture of beer which is supplied by retail in the United Kingdom;

“brewery group” means a group which is—

- (a) a group of interconnected bodies corporate, or
- (b) a group consisting of a body corporate, or a group of interconnected bodies corporate, all other bodies corporate in which it, or any of them, has a substantial minority holding, and all subsidiaries of those other bodies corporate,

and at least one member of which is a brewer; and a brewery group is a “large brewery group” if one or more of its members holds interests in licensed premises, and the total number of licensed premises in which members of the group hold interests exceeds two thousand;

“interest in shares” includes an entitlement, by a person who is not the registered holder, to exercise any right conferred by the holding of the shares in question or an entitlement to control the exercise of any such right;

“licensed premises” means—

- (a) in England and Wales, premises for which a justices’ on-licence (within the meaning of the Licensing Act 1964(a)), other than a Part IV licence (within the meaning of that Act), is in force, or in respect of which a club is registered within the meaning of that Act;
- (b) in Scotland, premises in respect of which a public house licence, a hotel licence or a refreshment licence (within the meaning of the Licensing (Scotland) Act 1976(b)) is in force or which are occupied by a registered club within the meaning of that Act;
- (c) in Northern Ireland, premises in which the sale of intoxicating liquor is authorised by a licence granted under the Licensing Act (Northern Ireland) 1971(c), being premises of a kind mentioned in paragraph (a) or (f) of section 3(1) of that Act, or in respect of which a club is registered within the meaning of the Registration of Clubs (Northern Ireland) Order 1987(d);

“notified tied house” means licensed premises of which the name (if any) and address have been notified to the Director General of Fair Trading as premises to be treated as a notified tied house; and for that purpose—

- (a) notification may be made or withdrawn at any time, and
- (b) the making or withdrawal of notification may be effected only by or on behalf of the brewer, or a member of the group, in respect of which the notification is, or is no longer, required for the purposes of the Schedule to this Order;

“relevant purchase”, in the context of an agreement to which a brewer or a member of a brewery group is a party, means purchase by any person who is not a member of the same group, for retail sale on licensed premises, of beer or other drink manufactured or supplied by any person not a party to the agreement;

“subsidiary” has the same meaning as in section 736 of the Companies Act 1985(e);

“substantial minority holding” means a holding by a body corporate of fifteen per cent or more, or an interest in shares conferring fifteen per cent or more, of the voting rights in another body corporate, other than its subsidiary;

“voting rights” means rights conferred on shareholders in respect of their shares, either at all times or for the time being, to vote at general meetings of the body corporate in question on all, or substantially all, matters.

(3) For the purpose of determining whether a body corporate has a substantial minority holding in another body corporate—

- (a) it is immaterial whether a holding is direct or through a nominee or trustee,
- (b) the holdings of the subsidiaries of a body corporate shall be treated as its own,
- (c) where one body corporate has a holding in a second body corporate (not being

(a) 1964 c.26.

(b) 1976 c.66.

(c) 1971 c.13 (N.I.).

(d) S.I. 1987/1278 (N.I. 14).

(e) 1985 c.6.

its subsidiary) and the second body corporate has a holding in a third body corporate (not being its subsidiary), the first body corporate shall be treated as having a holding in the third equivalent to the product of the two actual holdings expressed as percentages, and

- (d) where a body corporate has, in consequence of the application of subparagraphs (a), (b) and (c) above, more than one holding in another body corporate, the holdings shall be aggregated and treated as a single holding.

(4) In the case of a body corporate which is both a brewer and a member of a brewery group, the provisions of this Order shall apply in relation to that body corporate both as a brewer and as a member of a brewery group.

(5) For the purpose of determining whether an agreement is an agreement to which article 5, 6 or 7 below applies, a person shall be regarded as a brewer who holds interests in more than two thousand licensed premises or a member of a large brewery group if he is for the time being such a brewer or a member of such a group, and it is immaterial that he may not have been such a person when the agreement was made.

(6) For the purposes of this Order—

- (a) in England and Wales and Northern Ireland, an interest is an interest in licensed premises if it is—

- (i) a right of occupation, or
(ii) a legal or equitable estate or interest conferring an actual or prospective right of possession,

except for any such interest which is merely by way of mortgage, charge or other security or an equitable interest created by a contract to convey, transfer or assign an existing legal estate;

- (b) in Scotland, an interest is an interest in licensed premises if it is—

- (i) any right of ownership in such premises (other than in the superiority of them), or
(ii) any right or interest of a tenant or sub-tenant of such premises, or
(iii) any other right to occupy such premises,

but not including any right or interest which arises under any heritable security or floating charge or other security;

- (c) a person shall not be treated as carrying out an agreement by reason only that he refrains from doing something the doing of which is the subject of a prohibition or restriction imposed by the agreement; and

- (d) an agreement precludes or restricts a relevant purchase whether it does so wholly or only in part, whether that is the object or merely the effect of the agreement, and whether the provisions in question are expressed as negative or positive obligations.

(7) Except as provided in article 6(2)(b) below, this Order shall extend so as to prohibit the carrying out of agreements already in existence on the date on which this Order is made as it prohibits the carrying out of agreements made subsequently.

(8) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order shall extend to his acts and omissions outside the United Kingdom.

2.—(1) Every brewer who before 1st November 1992 holds interests in more than two thousand licensed premises shall do all such things as may be necessary to secure that on that date either—

- (a) he is no longer a brewer, or
(b) he no longer holds interests in more than two thousand licensed premises, or
(c) the provisions of the Schedule to this Order are satisfied with respect to him.

(2) Every body corporate which before 1st November 1992 is a member of a large brewery group shall, subject to paragraphs (3), (4) and (5) below, do all such things as may be necessary to secure that on that date either—

- (a) it is no longer a member of such a group, or

(b) the provisions of the Schedule to this Order are satisfied with respect to the group.

(3) The obligations under this article of a member of a brewery group which is a body corporate, or a subsidiary of a body corporate, in which another member of the group has a substantial minority holding shall be determined as if the holding did not exist.

(4) Paragraph (2) above shall impose no obligation on any body corporate which—

- (a) neither is a brewer nor holds any interest in any licensed premises, and
- (b) would not be a member of a brewery group or of a group one or more members of which hold interests in licensed premises were it not that it was a subsidiary of another body corporate.

(5) In any case in which both paragraph (2) above and article 4 below apply, the extent of the obligation imposed by paragraph (2) above shall be no greater than it would have been if the acquisition which caused article 4 below to apply had not been made.

3.—(1) Subject to paragraph (2) and article 8 below, it shall be unlawful on and after 1st November 1992 for any person to make or carry out an agreement if the carrying out of the agreement would result in any person becoming either—

- (a) a brewer who holds interests in more than two thousand licensed premises and with respect to whom the provisions of the Schedule to this Order are not satisfied, or
- (b) a member of a large brewery group with respect to which the provisions of the Schedule to this Order are not satisfied.

(2) This article shall not apply in respect of any agreement by which a body corporate, by acquiring shares in another body corporate or any interest in such shares, would become a member of a large brewery group or cause the other body corporate to become a member of such a group.

4. Where a body corporate, by acquiring shares in another body corporate or any interest in such shares, becomes after 1st May 1992 a member of a large brewery group or causes the other body corporate to become a member of such a group and as a result (in either case) the provisions of the Schedule to this Order are not satisfied with respect to the group, it shall do all such things as may be necessary to secure that at the end of the period of six months beginning on the day of the acquisition in question, either—

- (a) the group is no longer a large brewery group, or
- (b) the provisions of the Schedule are satisfied with respect to the group.

5.—(1) This article applies, except as provided in paragraph (4) below, to any agreement which is, or has the effect of, a lease or a licence and under which a brewer who holds interests in more than two thousand licensed premises or a member of a large brewery group permits another person not a member of the same group to occupy licensed premises other than a notified tied house, and to any agreement relating to any such agreement.

(2) Subject to article 8 below—

- (a) the parties to any agreement to which this article applies made before 1st November 1992 shall terminate it before that date to the extent that it precludes or restricts relevant purchases; and
- (b) it shall be unlawful on and after 1st November 1992 for any person to make or carry out an agreement to which this article applies except to the extent that it does not preclude or restrict any relevant purchase.

(3) For the purposes of this article, an agreement under which one person permits another to occupy premises and which does not preclude use of those premises as licensed premises shall be regarded as an agreement under which one person permits another to occupy licensed premises.

(4) This article does not apply to an agreement made before 1st November 1992 if immediately before that date no party to it is any longer a brewer who holds interests in more than two thousand licensed premises or a member of large brewery group unless

subsequently a party to it becomes or, as the case may be, becomes again such a brewer or a member of such a group.

6.—(1) This article applies to any agreement which is, or has the effect of, a lease or a licence and to which article 5 above applies, except an agreement—

- (a) which does not impose upon the brewer or any member of the group, as the case may be, any obligation on or after 1st November 1992 to put or keep all or any part of the premises in repair at any time when the premises are licensed premises, and
- (b) under which the rent or other consideration for occupation on or after 1st November 1992 is an amount which, at the time when the agreement is (or was) made, might reasonably be (or might have reasonably been) sought and obtained on the open market by a lessor or licensor who was not a brewer or a member of a brewery group.

(2) Subject to article 8 below—

- (a) the parties to any agreement to which this article applies made after the date on which this Order is made and before 1st November 1992 shall terminate it before the latter date; and
- (b) it shall be unlawful on and after 1st November 1992 for any person to make an agreement to which this article applies or to carry out such an agreement if it was made after the date on which this Order was made.

7.—(1) This article applies, except as provided in paragraph (4) below, to any agreement to which one of the parties is—

- (a) a brewer who holds interests in more than two thousand licensed premises, or
- (b) a member of a large brewery group,

and which precludes or restricts relevant purchases.

(2) Subject to article 8 below—

- (a) the parties to any agreement to which this article applies made before 1st May 1990 shall terminate it before that date—
 - (i) so far as it relates to beer of an alcoholic strength exceeding 1.2 per cent, to the extent that the person who is precluded or restricted from making relevant purchases is prevented by the agreement from purchasing from whomsoever he may choose at least one brand of draught cask-conditioned beer selected by him, and
 - (ii) so far as it relates to beer of an alcoholic strength not exceeding 1.2 per cent or any drink other than beer, to the extent of every provision which precludes or restricts relevant purchases, and
- (b) it shall be unlawful on and after 1st May 1990 for any person to make or carry out an agreement to which this article applies except to the extent that subparagraph (a) above would not require it to be terminated if made before that date.

(3) In this article, “cask-conditioned beer” means beer which undergoes fermentation in the container from which it is served for consumption; and a person is prevented by an agreement from purchasing from whomsoever he may choose at least one brand of draught cask-conditioned beer selected by him if the agreement imposes any prohibition or restriction on his so doing or if it subjects him to any disadvantage should he do so (including liability to pay as rent, interest or the price of goods or services an amount greater than he would otherwise pay).

(4) This article does not apply to an agreement made before 1st May 1990 if immediately before that date no party to it is any longer a brewer who holds interests in more than two thousand licensed premises or a member of a large brewery group unless subsequently a party to it becomes or, as the case may be, becomes again such a brewer or a member of such a group.

8.—(1) This Order shall not apply in respect of an agreement so far as it is or, if made, would be an agreement to which the Restrictive Trade Practices Act 1976(a) applies or, as the case may be, would apply.

(a) 1976 c.34.

(2) Articles 5, 6 and 7 above shall not apply in respect of an agreement so long as none of the parties to it is a brewer who holds interests in more than two thousand licensed premises and every member of a large brewery group party to it—

- (a) is a body corporate, or a subsidiary of a body corporate, in which another member of the group has a substantial minority holding, and
- (b) would not be a member of a large brewery group if the holding did not exist.

1989

SCHEDULE

Articles 2(1) and (2),
3(1) and 4

PROVISIONS GOVERNING LARGE BREWERS AND LARGE BREWERY GROUPS

1. The provisions of this Schedule are satisfied with respect to a brewer only if each of the licensed premises—

- (a) on which he carries on business in the supply of beer by retail, or
- (b) which he permits another person not a member of the same group to occupy under an agreement precluding or restricting relevant purchases,

is a notified tied house and if the total number of the notified tied houses falling within subparagraph (a) or (b) above does not exceed the permitted maximum determined in accordance with paragraph 3 below.

2. The provisions of this Schedule are satisfied with respect to a group only if each of the licensed premises—

- (a) on which any member of the group carries on business in the supply of beer by retail, or
- (b) which a member of the group permits another person not a member of the group to occupy under an agreement precluding or restricting relevant purchases,

is a notified tied house and if the total number of the notified tied houses falling within subparagraph (a) or (b) above does not exceed the permitted maximum determined in accordance with paragraph 3 below.

3.—(1) In respect of each brewer and each group, the permitted maximum referred to in paragraphs 1 and 2 above is the sum of—

- (a) two thousand, and
- (b) subject to the following provisions of this paragraph, one half of the total number of licensed premises in excess of two thousand in which the brewer in question or one or more members of the group in question hold, or at any time on or after 10th July 1989 have held, interests.

(2) No licensed premises may be taken into account in determining the permitted maximum in respect of more than one brewer or group; and if, apart from this subparagraph, any licensed premises would fall to be taken into account in respect of more than one brewer or group—

- (a) they shall be taken into account in respect of that one of those brewers or groups in respect of which they first fall to be taken into account (or would first have fallen to be taken into account during the period beginning on 10th July 1989 and ending immediately before the making of this Order if this Order had then been in force), and
- (b) where subparagraph (a) above fails to determine the matter in a case in which one of the brewers in question, or a member of one of the groups in question, holds an interest in the premises which is superior to that held by another of the brewers in question or by a member of another of the groups in question, they shall be taken into account in respect of the holder of the first-mentioned interest or (as the case may be) the group of which the holder of that interest is a member,

unless (in either case) that brewer or a member of that group, with the agreement of another of the brewers in question or of a member of another of the groups in question, gives notice to the

Director General of Fair Trading that they should be taken into account in respect of that other brewer or group.

(3) No licensed premises may be taken into account in determining the permitted maximum in respect of a brewer or a group in any case in which the brewer does not hold, or (as the case may be) no member of the group holds, any interest in them for the time being if the brewer or a member of the group is party to an agreement in respect of the premises the carrying out of which is unlawful by virtue of article 7 above, or would be so unlawful but for article 8 above.

(4) No licensed premises which are not a notified tied house may be taken into account in determining the permitted maximum in respect of a brewer or a group if the brewer or (as the case may be) a member of the group is party to an agreement in respect of the premises the carrying out of which is not unlawful by virtue of article 7 above but would be so unlawful but for article 8 above.

(5) Premises which are not licensed premises shall be deemed to be licensed premises for the purpose of taking them into account in determining the permitted maximum in respect of a brewer or a group if—

- (a) the brewer does not hold, or (as the case may be) no member of the group holds, any interest in them for the time being, and
- (b) they were licensed premises immediately after—
 - (i) the brewer ceased to hold an interest in them, or
 - (ii) the member of the group last to hold an interest in them ceased to do so.

(6) In determining the permitted maximum in respect of a brewer or a group, no account shall be taken of any number of premises in excess of the greatest number of licensed premises in which the brewer or members of the group in question actually held interests at one and the same time on or after 10th July 1989.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that brewers, and groups of companies including brewers, which own more than two thousand licensed premises have until 31st October 1992 to dispose of either their brewery business or the excess of licensed premises or to release their ties on half the excess. (A "group" for this purpose is defined as companies related by holdings of or interests in fifteen per cent or more of voting rights.) Any person who finds himself in the position of owning a prohibited interest by the acquisition of shares after 1st May 1992 has six months to get out of that position.

The half-excess on which ties must be released must be sold or let at a market rent without an obligation on the brewer, or on a member of the group, to put or keep the premises in repair.

From 1st May 1990, brewers and brewery groups owning more than two thousand licensed premises must allow their 'tied' premises to sell a draught cask-conditioned beer supplied by someone else and may not impose any ties relating to non-alcohol beers, low alcohol beers and non-beer drinks.

The Order does not apply in respect of agreements so far as they are agreements to which the Restrictive Trade Practices Act 1976 applies, and imposes no obligations on companies which are members of a brewery group because of a minority holding by another member of the group.

Copies of the report of the Monopolies and Mergers Commission on which the Order is based (Cm. 651) may be obtained from Her Majesty's Stationery Office.

Draft Order laid before Parliament under section 91(1) of the Fair Trading Act 1973 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

1989 No.

MONOPOLIES AND MERGERS

The Supply of Beer (Tied Estate) Order 1989

£1.65 net

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DRAFT STATUTORY INSTRUMENTS

1989 No.

RATING AND VALUATION

The Railways (Rateable Values) Order 1989

Made - - - -

Coming into force -

The Secretary of State for the Environment as respects England and the Secretary of State for Wales as respects Wales, in exercise of the powers conferred on them by sections 140(4), 143(1) and 146(6) of and paragraph 3(2) of Schedule 6 to the Local Government Finance Act 1988(a), and of all other powers enabling them in that behalf, hereby make the following Order in the terms of a draft laid before, and approved by resolution of, each House of Parliament:-

PART I
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Railways (Rateable Values) Order 1989 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order-

“the Act” means the Local Government Finance Act 1988;

“class of hereditaments” means a class of railway hereditaments in relation to which amounts are specified in each column of the Schedule;

“railway hereditaments” means non-domestic hereditaments required by virtue of Part 4 of the Schedule to the Central Rating Lists Regulations 1989(b) to be shown in a central rating list; and

“English railway hereditaments” means such hereditaments as are so required to be shown in the central rating list for England; and

“Welsh railway hereditaments” means such hereditaments as are so required to be shown in the central rating list for Wales;

“relevant year” means any year for which a rateable value falls to be determined in accordance with this Order, and “relevant preceding year” means the year preceding a relevant year;

(a) 1988 c.41. Paragraph 3(2) of Schedule 6 is amended by paragraph 38(13) of Schedule 5 to the Local Government and Housing Act 1989, c.42.

(b) S.I. 1989/2263.

“year” means a chargeable financial year; and any reference to hereditaments occupied by a person includes a reference to hereditaments which, if unoccupied, are owned by that person; and references to occupation shall be construed accordingly.

Rounding of numbers

3. Where (apart from this article) any rateable value determined under this Order would include a fraction of a pound—

- (a) the fraction shall be made up to one pound if it would exceed 50p, and
- (b) the fraction shall be ignored if it would be 50p or less.

Disapplication of normal basis of valuation

4. In the case of railway hereditaments, paragraphs 2 to 2B of Schedule 6 to the Act(a) shall not apply, and the rateable values of such hereditaments shall be as specified in, or determined under the rules in, the following provisions of this Order.

PART II

DOCKLANDS LIGHT RAILWAY

Rateable values in 1990/4

5.—(1) The rateable value of railway hereditaments occupied by Docklands Light Railway Limited (“Docklands hereditaments”) shall be—

- (a) in the year beginning on 1st April 1990, £227,500;
- (b) in the year beginning on 1st April 1991, £341, 250;
- (c) in the year beginning on 1st April 1992—
 - (i) £455,000 during the period ending with 25th April 1992, and
 - (ii) £700,000 thereafter;
- (d) in the year beginning on 1st April 1993, £700,000.

Rateable values in subsequent years

6. In any subsequent year, the rateable value of Docklands hereditaments shall be determined by calculating in accordance with the formula—

$$£700,000 + U,$$

where U is the recalculation factor determined in accordance with article 7.

Recalculation factor

7.—(1) In this article—

j is the estimated number of millions of passenger journeys undertaken on the railways of Docklands Light Railway Limited in the relevant preceding year, and J, subject to paragraph (4), is the estimated number of millions of passenger journeys undertaken on those railways in the year beginning on 1st April 1992,

estimated to the nearest tenth part of a million.

(2) Where in relation to any year the value attributable to j is less than that produced by calculating in accordance with the formula—

$$J \left(\frac{105}{100} \right)$$

(a) Paragraph 2 is amended and paragraphs 2A and 2B are inserted by paragraph 38(3) to (11) of Schedule 5 to the Local Government and Housing Act 1989.

("the upper threshold") and greater than that produced by calculating in accordance with the formula—

$$J\left(\frac{95}{100}\right)$$

("the lower threshold"), the recalculation factor applicable—

- (a) in the first such year shall be 0, and
- (b) in any subsequent such year, shall be the recalculation factor applicable in accordance with this article in the relevant preceding year.

(3) Where in relation to any year the value attributable to j is equal to or exceeds the upper threshold, or is equal to or lower than the lower threshold, the recalculation factor applicable in that year shall be the figure produced by calculating in accordance with the formula—

$$£700,000\left(\frac{j-J}{3J}\right).$$

(4) In relation to any year beginning after the year in which paragraph (3) first applies, paragraphs (2) and (3) shall apply as if for J there were substituted K , where K is a number having the same value as j in the last foregoing year in which the applicable recalculation factor was that determined in accordance with paragraph (3).

(5) Where in any year the provision of a railway service by Docklands Light Railway Limited has been temporarily interrupted, any estimate required to be made for the purposes of this Part shall be made as if during the period of the interruption a normal service had been maintained.

PART III

OTHER RAILWAY HEREDITAMENTS: INITIAL RATEABLE VALUES

Interpretation

8. In this Part—

(a) in any formula—

B is the figure applicable in relation to the relevant year for the purposes of paragraph 5(3) of Schedule 7 to the Act;

C is the figure applicable in relation to the relevant year for the purposes of paragraph 5(4) of Schedule 7 to the Act;

I is the figure for the retail prices index for September in the relevant preceding year;

and in relation to any class of hereditaments—

R is the recalculation factor applicable to that class determined under Part V in respect of the relevant preceding year;

RV is the rateable value of that class in the relevant preceding year;

(b) T is the amount specified in relation to a class of hereditaments in column 1 of the Schedule, and

U is the recalculation factor applicable to that class determined in accordance with Part V in respect of the relevant year; and

"the standard formula" means the formula $T+U$;

(c) "intermediate year", in relation to a class of hereditaments to which paragraph (a) or (b) of article 9 applies, means any year beginning on or after 1st April 1992 and ending no later than the end of the year in which the rateable value of that class first falls by virtue of this Part to be determined in accordance with the standard formula;

and any reference to a class of hereditaments is to a class of railway hereditaments in relation to which an amount is specified in each column of the Schedule.

Rateable values in 1990/1

9. In relation to each class of hereditaments—

- (a) where T is greater than the relevant maximum amount calculated in relation to that class under article 10, the rateable value of that class in the year beginning on 1st April 1990 shall be the relevant maximum amount;
- (b) where T is less than the relevant minimum amount calculated in relation to that class under article 10, the rateable value of that class in the year beginning on 1st April 1990 shall be the relevant minimum amount;
- (c) where neither paragraph (a) nor paragraph (b) applies, the rateable value of that class in that year shall be T.

10. The relevant maximum amount in respect of a class of hereditaments is the amount produced by calculating in accordance with the formula—

$$\frac{1.2A}{M}$$

and the relevant minimum amount in respect of a class of hereditaments is the amount produced by calculating in accordance with the formula—

$$\frac{0.895A}{M}$$

where A is the amount specified in relation to that class in column 2 of the Schedule, and M is the non-domestic rating multiplier applicable to that class in pursuance of paragraph 2 of Schedule 7 to the Act.

Increasing rateable values

11.—(1) This article applies to any class of hereditaments in relation to which the rateable value in the year beginning on 1st April 1990 is determined as provided in paragraph (a) of article 9.

(2) The rateable value in the year beginning on 1st April 1991 of any class of hereditaments to which this article applies shall be determined in accordance with paragraph (3).

(3) For the purposes of paragraph (2), where in relation to a class of hereditaments a calculation in respect of that year according to formula 1, that is to say—

$$RV \times 1.2 \left(1 + \frac{I-B}{C} \right) + U$$

produces an amount less than that produced by a calculation in accordance with the standard formula, the rateable value of that class of hereditaments in that year shall be the amount calculated in accordance with formula 1; and in any other case that rateable value shall be the amount calculated in accordance with the standard formula.

12.—(1) This article applies to any class of hereditaments in relation to which the rateable value in the year beginning on 1st April 1991 falls in pursuance of article 11 to be determined in accordance with formula 1.

(2) The rateable value in any intermediate year of any class of hereditaments to which this article applies shall be determined in accordance with paragraph (3).

(3) Where in relation to a class of hereditaments and any such year a calculation in respect of that year according to formula 2, that is to say—

$$(RV - R) \times 1.2 \left(1 + \frac{I-B}{C} \right) + U$$

produces an amount less than that produced by a calculation in respect of that year in accordance with the standard formula, the rateable value of that class of hereditaments in that year shall be the amount calculated in accordance with formula 2; and in any other case it shall be the amount calculated in accordance with the standard formula.

Decreasing rateable values

13.—(1) This article applies to any class of hereditaments in relation to which the rateable value in the year beginning on 1st April 1990 is determined as provided in paragraph (b) of article 9.

(2) The rateable value in the year beginning on 1st April 1991 of any class of hereditaments to which this article applies shall be determined in accordance with paragraph (3).

(3) For the purposes of paragraph (2), where in relation to a class of hereditaments a calculation in respect of that year according to formula 3, that is to say—

$$RV \times 0.87 \left(1 + \frac{I-B}{C} \right) + U$$

produces an amount greater than that produced by a calculation in accordance with the standard formula, the rateable value of that class of hereditaments shall be the amount calculated in accordance with formula 3; and in any other case it shall be the amount calculated in accordance with the standard formula.

14.—(1) This article applies to any class of hereditaments in relation to which the rateable value in the year beginning on 1st April 1991 falls in pursuance of article 13 to be determined in accordance with formula 3.

(2) The rateable value in any intermediate year of any class of hereditaments to which this article applies shall be determined in accordance with paragraph (3).

(3) Where in relation to a class of hereditaments and any such year a calculation according to formula 4, that is to say—

$$(RV - R) \times 0.87 \left(1 + \frac{I-B}{C} \right) + U$$

produces an amount greater than that produced by a calculation in accordance with the standard formula, the rateable value of that class of hereditaments in that year shall be the amount calculated in accordance with formula 4; and in any other case it shall be the amount calculated in accordance with the standard formula.

PART IV

OTHER RAILWAY HEREDITAMENTS: GENERAL PROVISION FOR RATEABLE VALUES

15. In the case of—

- (a) any class of hereditaments to which paragraph (c) of article 9 applies, in any year beginning on or after 1st April 1991,
- (b) any class of hereditament the rateable value of which falls in pursuance of article 11(3) or 13(3) to be determined in accordance with the standard formula, in any year beginning on or after 1st April 1992, and
- (c) any class of hereditaments to which article 12 or 14 applies, in any year beginning after an intermediate year,

the rateable value of that class in such a year shall be the amount produced by calculating in respect of that year in accordance with the standard formula.

PART V
ANNUAL RECALCULATION OF RATEABLE VALUES

Interpretation

16.—(1) In this Part, in any formula—

(a) F is the figure produced by calculating in accordance with the formula—

$$\frac{g-G}{G},$$

where—

g is the estimated annual average number of millions of tonnes of revenue-earning freight carried on the railways of the British Railways Board in the period of three years ending on 31st March in the relevant preceding year; and G, subject to article 17(4), is the estimated annual average of millions of tonnes of revenue-earning freight carried on those railways in the period of three years ending on 31st March 1990, calculated to the nearest tenth part of a million;

(b) P is the figure produced by calculating in accordance with the formula—

$$\frac{j-J}{J},$$

where—

j is the estimated annual average number of millions of passenger journeys undertaken on the railways of the relevant designated person in the period of three years ending on 31st March in the relevant preceding year, and J, subject to articles 17(4) and 18(4), is the estimated annual average number of such passenger journeys in the period of three years ending on 31st March 1990, calculated to the nearest tenth part of a million; and

(c) T has the same meaning as in article 8(b).

(2) In this Part “designated person” means a person named in the Schedule and in relation to a class of hereditaments “relevant designated person” means the person in occupation of those hereditaments.

(3) Where in any year the provision of a railway service by a designated person has been temporarily interrupted, any estimate required to be made for the purposes of this Part in relation to that person shall be made as if during the period of the interruption a normal service had been maintained.

British Railways Board

17.—(1) This article applies to railway hereditaments occupied by the British Railways Board.

(2) Where in relation to any year the figure produced by calculating in relation to each class of hereditament in accordance with the formula—

$$\frac{2P+F}{3}$$

is less than 0.05 and greater than -0.05 , the recalculation factor applicable to that class—

(a) in the first such year shall be 0, and

(b) in any subsequent such year, shall be the recalculation factor applicable in accordance with this article in the relevant preceding year.

(3) Where in relation to any year the figure produced by calculating in accordance with paragraph (2) is either—

(i) equal to or greater than 0.05, or

(ii) equal to or less than -0.05 ,

the recalculation factor applicable to that class in that year shall be calculated in accordance with the formula—

$$\frac{T(2P+F)}{9.}$$

(4) In relation to either class and any year beginning after the year in which paragraph (3) first applies, paragraph (2) shall apply as if for J and G respectively there were substituted K and H, where—

K is a number equal to the value applicable to j in the last foregoing year in which the applicable recalculation factor for that class was determined under paragraph (3), and

H is a number equal to that determined as g for that class in that year.

London Underground and Tyne and Wear Metro

18.—(1) This article applies to railway hereditaments occupied by London Underground Limited and such hereditaments occupied by the Tyne and Wear Passenger Transport Executive.

(2) Where in relation to any year the value attributable to j in respect of either class of hereditaments to which this article applies is less than that produced by calculating in respect of the class in accordance with the formula—

$$J\left(\frac{105}{100}\right)$$

(“the upper threshold”) and greater than that produced by calculating in accordance with the formula—

$$J\left(\frac{95}{100}\right)$$

(“the lower threshold”) the recalculation factor applicable to that class—

(a) in the first such year shall be 0, and

(b) in any subsequent such year shall be an amount equal to the recalculation factor applicable in accordance with this article in the relevant preceding year.

(3) Where in relation to any year the value attributable to j in respect of either class of hereditaments is equal to or exceeds the upper threshold or is equal to or lower than the lower threshold, the recalculation factor applicable to that class in that year shall be the figure produced by calculating in accordance with the formula—

$$\frac{T \times P}{3.}$$

(4) In relation to either class of hereditaments and any year beginning after the year in which paragraph (3) first applies to that class, paragraph (2) shall apply as if for J there were substituted K, where K is a number having the same value as j in the last foregoing year in relation to which the applicable recalculation factor for that class was that determined in accordance with paragraph (3).

1989

Secretary of State for the Environment

1989

Secretary of State for Wales

SCHEDULE

Articles 8 to 10

<i>Class of railway hereditaments</i>	<i>Specified amounts in millions</i>	
	<i>Column 1</i>	<i>Column 2</i>
	£	£
English railway hereditaments occupied by the British Railways Board	203.414	44.316
Welsh railway hereditaments occupied by the British Railways Board	9.906	1.794
Hereditaments occupied by London Underground Limited	38.4	9.797
Hereditaments occupied by the Tyne and Wear Passenger Transport Executive	1.585	0.716

EXPLANATORY NOTE

(This note is not part of the Order)

Under paragraph 3(2) of Schedule 6 to the Local Government Finance Act 1988, the Secretary of State may by order provide in the case of non-domestic hereditaments to be shown in the central rating lists for England and Wales that the normal rules of valuation for rating contained in paragraphs 2 to 2B of that Schedule shall not apply, and instead their rateable value shall be such as is specified, or determined in accordance with rules set out, in the order.

Article 4 provides that paragraphs 2 to 2B shall not apply in respect of railway hereditaments entered in the central rating list for England or the central rating list for Wales in accordance with the Central Rating Lists Regulations 1989 (S.I. 1989/2263), and that the rateable value of such hereditaments is to be determined in accordance with the Order.

Part II provides for valuation of railway hereditaments occupied (or, if unoccupied, owned) by Docklands Light Railway Limited. In the years 1990/4 their rateable value is to be as specified in the Order. It is adjusted after 25th April 1992, the day on which the Isle of Dogs Enterprise Zone terminates. It is adjusted in years beginning on and after 1st April 1994 by reference to the number of passengers carried on the railway in the preceding year.

Part III sets out formulae for determining the rateable values of railway hereditaments occupied (or, if unoccupied, owned) by the British Railways Board, London Underground Limited and the Tyne and Wear Passenger Transport Executive, by reference to the figure in columns 1 and 2 of the Schedule to the Order. The amount specified in column 1 (the target amount) provides the basis for calculating the rateable value, and column 2 specifies an amount (the base amount) which has been calculated by reference to the amount payable by each railway operator by way of contributions in lieu of rates in the financial year 1989/90.

For 1990/1 the rateable value of any class of hereditaments is the target amount, unless that amount exceeds by more than 20 per cent. (or is less than 89.5 per cent. of) the base amount divided by the national non-domestic rating multiplier applicable for that year under the 1988 Act, in which case it is the latter. Where the target amount does not apply in 1990/1, the transitional provisions of articles 11 to 14 apply for later years until the year in which they produce an amount which falls below (or exceeds) the amount produced by the standard formula (the target figure adjusted for that year in accordance with Part V). For that year and later years the standard formula applies.

Part V provides for annual adjustment by reference to variations in traffic.