STATUTORY INSTRUMENTS

2018 No. 631

CONSTITUTIONAL LAW
DEVOLUTION, WALES

The Welsh Ministers (Transfer of Functions) (Railways) Order 2018

Made - - - - 23rd May 2018

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 23rd day of May 2018

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before, and approved by a resolution of, each House of Parliament in accordance with section 58(4)(a) of the Government of Wales Act 2006(**1**) and has been approved by the Welsh Ministers in accordance with section 58(4)(b) of that Act.

Her Majesty, in exercise of the powers conferred by section 58(1)(a), (b)(i) and (c) and (3) and section 157(2) of, and paragraph 2(1) of Schedule 4 to, that Act(**2**), is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Welsh Ministers (Transfer of Functions) (Railways) Order 2018.

(2) The following provisions of this Order come into force 21 days after the day on which this Order is made—

(a) this article and articles 2 to 4;

(b) the following provisions of the Schedule—

(i) paragraphs 1 and 2;

(**1**) 2006 c.32.

(**2**) Section 58(1) was amended by the Marine and Coastal Access Act 2009 (c. 23), Schedule 4, paragraph 6(3) and by section 21(1) of the Wales Act 2017 (c. 4).

(ii) paragraph 5, except the amendment in sub-paragraph (3)(a) to the definition of "appropriate designating authority" in section 23(3) of the Railways Act 1993(**3**) as it applies for the purposes of section 24 of that Act(**4**);

(iii) paragraphs 8 and 9;

(iv) paragraph 10(1), (2)(c) and (d) and (4);

(v) paragraph 12;

(vi) paragraphs 24 to 26;

(vii) paragraph 27, except so far as it inserts the definition of "Welsh protected railway company";

(viii) paragraphs 29 and 30;

(ix) paragraph 32;

(x) paragraphs 34 to 41;

(xi) paragraph 44(1) and (2);

(xii) paragraph 49;

(xiii) paragraph 52(b)(ii);

(xiv) paragraphs 55(1), (3) and (4)(a) and 56;

(xv) paragraph 58(1) and (2)(a);

(xvi) paragraphs 61 to 66;

(xvii) paragraph 68.

(3) Except as provided by paragraph (2), this Order comes into force at 2.00 a.m. on 14th October 2018.

(4) The amendments made by the Schedule extend to England and Wales and Scotland only.

Amendments to the Railways Acts 1993 and 2005: transfer of functions etc

2.—(1) The Schedule amends—

(a) the Railways Act 1993 (see Part 1), and

(b) the Railways Act 2005 (see Part 2).

(2) Functions under those Acts, so far as exercisable by the Secretary of State in relation to Wales, are—

(a) transferred to the Welsh Ministers, or

(b) as the case may be, exercisable by the Welsh Ministers concurrently with the Secretary of State,

as provided for by amendments made by the Schedule to the provisions of those Acts relating to the functions in question and in accordance with articles 3 and 4.

Effect of amendment to section 76 of the Railways Act 1993

3. The amendment made by paragraph 25 of the Schedule to subsection (6)(a) of section 76 of the Railways Act 1993 has effect to provide for the Secretary of State's function under that subsection

(**3**) 1993 c. 43; the definition of "appropriate designating authority" was inserted by the Railways Act 2005 (c. 14), Schedule 1, paragraph 13(4).

(**4**) Section 24 was amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 14 and Schedule 13, Part 1; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(hh).

to be exercisable concurrently with the Welsh Ministers only so far as it is exercisable in relation to Wales.

Transfer of property: exception for records

4.—(1) Paragraph 1(1) of Schedule 4 to the Government of Wales Act 2006 (transfer of property, rights and liabilities connected with transferred functions) does not apply to any documentary or electronic records to which the Secretary of State is entitled at the relevant time in connection with any function exercisable by the Secretary of State and transferred to the Welsh Ministers by this Order.

(2) In paragraph (1) the "relevant time" means the time when the provision of this Order providing for the transfer of the function in question comes into force.

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE Article 2

AMENDMENTS TO THE RAILWAYS ACTS 1993 AND 2005

PART 1

AMENDMENTS TO THE RAILWAYS ACT 1993

1. The Railways Act 1993 is amended as follows.

2.—(1) Section 4 (general duties of the Secretary of State and the Office of Rail and Road)(**5**) is amended as follows.

(2) In subsection (3C)—

(a) for "the National Assembly for Wales" substitute "the Welsh Ministers";

(b) for "that Assembly" substitute "the Welsh Ministers";

(c) for "the Assembly" substitute "the Welsh Ministers".

(3) After subsection (3C) insert—

"(3D) The reference in subsection (3C) to functions transferred to the Welsh Ministers under or by virtue of Part 4 of the Railways Act 2005 includes a reference to functions which were transferred to the National Assembly for Wales under or by virtue of that Part and which became functions of the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006."

(4) In subsection (5)—

(a) in paragraph (ca), for "the National Assembly for Wales" substitute "the Welsh Ministers";

(b) in paragraph (cb)—

(i) for "the National Assembly for Wales" substitute "the Welsh Ministers";

(ii) for "it" substitute "them".

(5) In subsection (5A), for "the National Assembly for Wales" substitute "the Welsh Ministers".

(6) In subsection (5D) in paragraph (b) for "the National Assembly for Wales" substitute "the Welsh Ministers".

(7) In subsection (9) in the definition of "notified strategies and policies"—

(a) for "the National Assembly for Wales" substitute "the Welsh Ministers";

(b) for the first "that Assembly" substitute "the Welsh Ministers";

(c) for the second "that Assembly" substitute "them".

3. In section 17 (access agreements: directions requiring facility owners to enter into contracts for the use of their railway facilities)(**6**) in subsection (4) after the second "Secretary of State" insert ", the Welsh Ministers".

(**5**) Section 4 was amended by the Competition Act 1998 (c. 41), Schedule 10, paragraph 6(3); the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraph 12; section 200(4) of the Greater London Authority Act 1999 (c. 29); the Transport Act 2000 (c. 38), section 224 and Part 4 of Schedule 31; the Enterprise Act 2002 (c. 40), Schedule 26; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c.14), section 3 and Part 1 of Schedule 13; the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), Schedule 1, paragraph 100; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(a).

(**6**) Section 17 was amended by the Transport Act 2000 (c. 38), section 233(1), paragraph 21 of Schedule 27 and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 12 and Schedule 11, paragraph 3; regulation 21(5) of the Railways Regulations 1998 (S.I. 1998/1340);

4. In section 19 (access agreements: contracts for the use, on behalf of the Secretary of State, of installations comprised in a network)(**7**) in subsection (7) after the second "Secretary of State" insert ", the Welsh Ministers".

5.—(1) Section 23 (passenger services to be subject to franchise agreements)(**8**) is amended as follows.

(2) After subsection (2ZC) insert—

"(2ZD) Where the Welsh Ministers designate Wales-only services, they may also designate Welsh components of Welsh services which—

(a) they consider should be provided under the same franchise agreement as particular Wales-only services or a particular class of Wales-only services; and

(b) are not exempt from designation under subsection (1) by virtue of section 24.

(2ZE) Nothing in this section requires the Secretary of State to designate a Welsh service so far as already designated by the Welsh Ministers."

(3) In subsection (3)—

(a) in the definition of "the appropriate designating authority", after paragraph (a) omit "and" and insert—

"(aa) in relation to Wales-only services, means the Welsh Ministers; and";

(b) in the definition of "the appropriate franchising authority", after paragraph (a) omit "and" and insert—

"(aa) in relation to a Welsh franchise agreement to the extent that the franchised services under it are Wales-only services or Welsh components of Welsh services, means the Welsh Ministers;

(ab) in relation to a Welsh franchise agreement to the extent that the franchised services under it are services other than Wales-only services or Welsh components of Welsh services, means the Secretary of State;";

(c) in the definition of "franchise agreement" for the words "with the Secretary of State, with the Scottish Ministers or with the Secretary of State and the National Assembly for Wales jointly" substitute "to which the Secretary of State, the Scottish Ministers or the Welsh Ministers is or are party".

6.—(1) Section 24 (exemption of passenger services from section 23(1))(**9**) is amended as follows.

(2) After subsection (3A) insert—

"(3B) Before granting a franchise exemption in respect of a Welsh service, the Secretary of State must consult the Welsh Ministers."

(3) After subsection (12A) insert—

---

the Railways Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049), Schedule 1, paragraph 4; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(y).

(**7**) Section 19 was amended by the Transport Act 2000 (c. 38), sections 230(3) and 233(2) and Part 4 of Schedule 31; the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 12 and Schedule 11, paragraph 3; and the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), Schedule 1, paragraph 1(aa).

(**8**) Section 23 was amended by the Transport Act 2000 (c. 38), section 212 and Schedule 16, paragraph 14 and the Railways Act 2005 (c. 14), Schedule 1, paragraph 13.

(**9**) Section 24 was amended by the Railways and Transport Safety Act 2003 (c. 20), Schedule 2, paragraph 3; the Railways Act 2005 (c. 14), Schedule 1, paragraph 14 and Schedule 13, Part 1; and the Office of Rail Regulation (Change of Name) Regulations 2015 (SI 2015/1682), Schedule 1, paragraph 1(hh).