

**Dated 15 August 2005**

**Railways Act 2005 (Licensing Modification) Scheme No. 1**

**Made pursuant to section 59(2) of the Railways Act 2005**

## **Railways Act 2005 (Licensing Modification) Scheme No.1**

### **Recitals**

Pursuant to section 59(2) of the Railways Act 2005 the Secretary of State for Transport ('the Secretary of State') may make a scheme making such modifications to provisions of any licence or licence exemption granted under section 7(3) of the Railways Act 1993 as appear to him to be necessary or expedient in consequence of certain provisions in that Act (listed in section 59(3)) by virtue of which functions are transferred from one person to another or functions corresponding to functions previously conferred on one person become functions of another (in each case, with or without modifications).

The Secretary of State, in exercise of the power conferred by section 59(2) of the Railways Act 2005, makes the following Scheme:

### **1 Commencement and Interpretation**

1.1 This scheme may be cited as the Railways Act 2005 (Licensing Modification) Scheme No.1 and shall come into force on 16 August 2005.

1.2 In this Scheme:

"licence exemption" means an exemption granted under section 7(3) of the Railways Act 1993 from the requirement to be authorised by licence to be the operator of a railway asset or railway assets;

"licence" means a licence granted under section 8 of the Railways Act 1993, including the Network Rail licence;

"the Network Rail licence" means a network licence granted under section 8 of the Railways Act 1993 to Railtrack PLC, now renamed Network Rail Infrastructure Limited ("Network Rail") company number 2904587.

"Office of Rail Regulation" (also referred to as "the Regulator", "the Rail Regulator" or "the Office") means the body corporate established by section 15 of the Railways and Transport Safety Act 2003;

"Secretary of State" means the Secretary of State for Transport;

"Strategic Rail Authority" (also referred to as the "SRA" or "the Authority") means the body corporate established by section 201 of the Transport Act 2000; and

"Transfer Date" means Tuesday 16 August 2005, which is the date on which this Modification Scheme shall come into force.

1.3 References to a licence in this Scheme shall include references to a licence as amended or modified from time to time.

1.4 References to decisions, approvals or other things done by the Strategic Rail Authority that become references to decisions, approvals or other things

done by the Office of Rail Regulation or the Secretary of State by virtue of the Scheme, shall be treated, so far as is necessary to give them validity, as if decided, approved or done by the Office of Rail Regulation or the Secretary of State.

## **2 Licences**

The modifications to licences granted under section 8 of the Railways Act 1993 prior to the Transfer Date made by this Scheme are specified or described in Schedule 1.

## **3 Network Rail Licence**

The further modifications to the Network Rail licence made by this Scheme are specified or described in Schedule 2.

## **4 Licence Exemptions**

The modifications to licence exemptions granted prior to the Transfer Date made by this Scheme are specified or described in Schedule 3.

Signed by authority of the Secretary of State for Transport this 15<sup>th</sup> day of August 2005



Ian McBrayne

Senior Civil Servant

Department for Transport

## Schedule 1

1. A licence granted to a licence holder prior to the Transfer Date is modified as set out in paragraphs (a) to (r) below and the modifications will have effect from the Transfer Date.

a. In the scope of the licence –

- (i) in any provision concerning revocation that requires consultation with the Strategic Rail Authority, other than in a licence granted to First ScotRail Limited, any reference to the “Strategic Rail Authority” shall be removed and the “Secretary of State” shall be substituted;
- (ii) in any provision detailing the stations of which the licence holder is authorised to be the operator, any references to a notice or notices given to the Strategic Rail Authority shall be removed;
- (iii) in any provision detailing the light maintenance depots of which the licence holder is authorised to be the operator, any references to a notice or notices given to the Strategic Rail Authority shall be removed;
- (iv) in any provision referring to the subject matter of the licence as set out in a schedule, reference to a notice or notices given by the licence holder to the Authority shall be removed.

b. In the interpretation provisions of any passenger, station or network licences which contain any condition relating to complaints handling procedure or any condition relating to the Rail Passengers’ Committees and the Rail Passengers’ Council or both, the following definitions shall be inserted in appropriate alphabetical sequence:

- (i) “LTUC” means the London Transport Users’ Committee and any successor to LTUC which performs the same functions”;
- (ii) “RPC” means the Rail Passengers’ Council and any successor or delegated body which performs the functions of the RPC”.

c. In the Table of Contents and the Part of the Licence containing the licence conditions in any licence, the headings “A: Consumer Protection Conditions” and “B: Other Conditions” shall be removed.

d. In any condition requiring the licence holder to maintain insurance against third party liability –

- (i) references to the “Authority” in the condition shall be removed and “Office of Rail Regulation” shall be substituted;
- (ii) any footnote which provides, pursuant to a Transport Act 2000 (Railway Licence Modification) Scheme, that any

approval given before 1 February 2001 in respect of a consumer protection condition on this licence, has effect as if such approval were given by the Authority, shall be removed.

- e. In any condition regarding claims allocation and handling –
  - (i) references to the “Authority” in the condition shall be removed and “Office of Rail Regulation” shall be substituted;
  - (ii) where the modified condition requires approval by the Office of Rail Regulation for the same matter more than once, the subsequent references shall be removed.
- f. In any condition regarding through tickets and network benefits, references to the “Authority” shall be removed and “Secretary of State” shall be substituted.
- g. In any condition regarding the provision of services for disabled people –
  - (i) in relation to giving due regard to a published code of practice in establishing and altering the Disabled People’s Protection Policy, references to the “Authority” shall be removed and “Secretary of State” shall be substituted;
  - (ii) in relation to consultation and approval with regard to establishing and altering the Disabled People’s Protection Policy where the condition refers to proposed alterations submitted before 1 February 2001 and after 1 February 2001, following these provisions the words “in the case of a proposed alteration submitted on or after 24 July 2005, the licence holder has submitted the proposed alteration to the Secretary of State” shall be inserted;
  - (iii) in relation to consultation and approval with regard to establishing and altering the Disabled People’s Protection Policy reference in the condition that refers to approval of the proposed alteration by the Regulator before 1 February 2001 and approval thereafter by the Authority, shall be removed and “and before 1 February 2001 the Regulator has approved the proposed alteration, on or after 1 February 2001 and prior to 24 July 2005 the Strategic Rail Authority has approved the proposed alteration and thereafter the Secretary of State has approved the proposed alteration.” shall be inserted;
  - (iv) in relation to consultation and approval with regard to establishing and altering the Disabled People’s Protection Policy where the condition does not refer to proposed alterations submitted or approval of proposed alterations before 1 February 2001 and after 1 February 2001, reference

to the "Authority" shall be removed and "Secretary of State" shall be substituted;

(v) in relation to a requirement on the licence holder to carry out a review of the Disabled People's Protection Policy, with a view to determining whether any alteration should be made, reference to the "Authority" shall be removed and "Secretary of State" shall be substituted;

(vi) in relation to a requirement on the licence holder to send a copy of the Disabled People's Protection Policy following approval, reference to the "Authority" shall be removed and the "Secretary of State" shall be substituted.

h. In any condition regarding complaints handling procedure, including approval, alteration and review of the procedure, –

(i) in relation to a requirement on the licence holder to comply with a complaints procedure relating to licensed activities, references to the "Authority" and the "Regulator" shall be removed and "Secretary of State" shall be substituted;

(ii) in relation to making material alterations to the Complaints Procedure where the condition refers to proposed alterations submitted before 1 February 2001, following this provision the words "the Authority in respect of a proposed alteration proposed after 1 February 2001 and prior to 24 July 2005; and the Secretary of State in respect of a proposed alteration submitted on or after 24 July 2005," shall be inserted;

(iii) in relation to approval with regard to altering the Complaints Procedure reference in the condition that refers to approval of the proposed alteration by the Regulator before 1 February 2001 and approval thereafter by the Authority, shall be removed and "and before 1 February 2001 the Regulator has approved the proposed alteration, on or after 1 February and prior to 24 July 2005 the Strategic Rail Authority has approved the proposed alteration and thereafter the Secretary of State has approved the proposed alteration." shall be inserted;

(iv) in relation to submission and approval of alterations to the Complaints Procedure where the condition does not refer to proposed alterations submitted or approved before 1 February 2001, reference to the "Authority" shall be removed and "Secretary of State" shall be substituted;

(v) in relation to sending a copy of the Complaints Procedure and any material alteration to it following approval, reference to the "Authority" shall be removed and the "Secretary of State" shall be substituted.

- (vi) in relation to a requirement on the licence holder to carry out a review of the Complaints Procedure, with a view to determining whether any alteration should be made, reference to the "Authority" shall be removed and "Secretary of State" shall be substituted;
  - (vii) in relation to a requirement on the licence holder to make any alteration to the Complaints Procedure as may be required following a review of the Complaints Procedure, reference to the "Authority" shall be removed and "Secretary of State" shall be substituted;
  - (viii) references to the "Rail Passengers' Committee for each area in which it the licence holder is the operator of trains pursuant to this licence" shall be removed and "RPC and, where appropriate, LTUC" shall be substituted;
  - (ix) references to "each Rail Passengers' Committee" shall be removed and "the RPC and, where appropriate, LTUC" shall be substituted.
- i. In any condition regarding the Rail Passengers' Committees and the Rail Passengers' Council, including requirements to attend and be represented at meetings, provide requested information and disputes as to these matters, –
- (i) in the condition title "Rail Passengers' Committees and Rail Passengers' Council" shall be removed and "Rail Passengers' Council and London Transport Users' Committee" shall be substituted;
  - (ii) references to "Rail Passengers' Committee", "any Rail Passengers' Committee" or "any such Rail Passengers' Committee" shall be removed and "LTUC" shall be substituted;
  - (iii) references to "for any area in which the licence holder is the operator of trains pursuant to this licence" and "any area for which the licence holder is the operator of stations pursuant to this licence" shall be removed;
  - (iv) references to "committee in question or the council", or "committee or the council" shall be removed and "RPC and, where appropriate, LTUC" shall be substituted;
  - (v) references to "any one committee or the Council", "that committee or the council" or "any committee or the council" shall be removed and "the RPC and LTUC" shall be substituted;

- (vi) in relation to a disagreement as to the reasonableness of a request made to the licence holder by the RPC or LTUC, except in the Network Rail licence, where the condition refers to disputes referred prior to 1 February 2001 and on or after 1 February 2001, following these provisions the words "to the Secretary of State in the case of a reference on or after 24 July 2005;" shall be inserted;
  - (vii) in relation to the determination of the reasonableness of the request, references to determinations prior to 1 February 2001 by the Regulator and thereafter by the Authority, except in the Network Rail licence, shall be removed and "prior to 1 February 2001 the Regulator determines that the request is reasonable, on or after 1 February 2001 and prior to 24 July 2005 the Authority determines that the request is reasonable and thereafter the Secretary of State determines that the request is reasonable," shall be substituted;
  - (viii) In relation to a disagreement as to the reasonableness of a request made to the licence holder by the RPC or LTUC, where the condition does not refer to a dispute reference or determination prior to 1 February 2001, reference to the "Authority", except those in the Network Rail licence, shall be removed and the "Secretary of State" shall be substituted.
- j. In any condition regarding predatory fares and exclusionary behaviour, other than in a licence granted to First ScotRail Limited or Arriva Trains Wales/Trenau Arriva Cymru Limited –
- (i) in relation to the giving of an investigation notice or the giving of a determination notice any requirement to give notice to the Authority shall be removed;
  - (ii) in relation to representations made to the Office and payments made in relation to the services in question, "Authority" shall be removed and "Secretary of State" shall be substituted.
- k. In any condition regarding predatory fares and exclusionary behaviour, in a licence granted to Arriva Trains Wales/Trenau Arriva Cymru Limited –
- (i) in relation to the giving of an investigation notice or the giving of a determination notice any requirement to give notice to the Authority shall be removed;
  - (ii) in relation to representations made to the Office and payments made in relation to the services in question, "Authority" shall be removed and "Secretary of State and the National Assembly for Wales" shall be substituted.



I. In any condition relating to the provision of information to the Office and the Authority –

- (i) any reference, including in the condition title, to “and the Authority” or “or the Authority” shall be removed;
- (ii) any reference in relation to the licence holder’s obligation to furnish information for the purpose of carrying out specified functions relating to consumer protection conditions defined in section 7A of the Act shall be removed;
- (iii) any provision which provides that the licence holder shall not be required to furnish information in relation to any function of the Authority under section 71A of the Act shall be removed.

m. In any condition relating to information regarding stations and light maintenance depots of which the licence holder is the operator any requirement on the licence holder to –

- (i) notify the Authority if the licence holder ceases to be the operator; or
- (ii) furnish the Authority with a list of stations or light maintenance depots of which it is the operator;

shall be removed.

n. In any condition regarding change of control any requirement on the licence holder to notify the Authority if any person obtains control of the licence holder shall be removed.

o. In any condition regarding assignment any requirement on the licence holder –

- (i) to obtain the prior consent of the Authority;
- (ii) comply with conditions imposed by the Authority; or
- (iii) give notice to the Authority;

shall be removed. A requirement for the Office of Rail Regulation to consult with the Secretary of State prior to consenting to an assignment shall be inserted.

p. In any condition regarding the display of information and signing –

- (i) references to “the Authority” shall be replaced by “the Secretary of State”;
- (ii) references to “Rail Passengers’ Committee for each area in which the licence holder is the operator of stations pursuant

to this licence” shall be removed and “RPC or, where appropriate, LTUC” shall be substituted.

- q. In any provisions or schedules relating to terms as to revocation in licences granted by the Office of Rail Regulation, any requirement to consult with the Authority in relation to revocation of the licence shall be removed and a requirement to consult with the Secretary of State, where the licence holder is a franchise operator, shall be substituted.
- r. In any provisions or schedules related to terms as to revocation in licences granted by the Secretary of State, any requirement to consult with the Authority in relation to revocation of the licence, or reference to such consultation having taken place, shall be removed.

## Schedule 2

1. In addition to the modifications in Schedule 1, the Network Rail licence is modified as set out in paragraphs (a) to (e) below and the modifications will have effect from the Transfer Date.

- a. In Condition 2 (Claims Allocation and Handling) –
  - (i) in paragraph 1(b) "either" shall be removed and "the Office of Rail Regulation" shall be substituted; and
  - (ii) paragraphs 1(b)(i) and 1(b)(ii) shall be removed.
- b. In Condition 3 (Provision of Timetable Information) references to the "Authority" shall be removed and "Secretary of State" shall be substituted.
- c. In Condition 5 (Rail Passengers' Committee and Rail Passengers' Council) –
  - (i) in paragraph 3(b)(i) "or" shall be removed;
  - (ii) in paragraph 3(b)(ii) "; and" shall be removed and "and prior to 24 July 2005; or" shall be substituted;
  - (iii) in paragraph 3(b)(ii), "Strategic Rail" shall be inserted before "Authority";
  - (iv) after paragraph 3(b)(ii) insert  
"(iii) to the Office of Rail Regulation in case of a reference on or after 24 July 2005; and" ;
  - (v) in paragraph 3(c) after "prior to 1 February 2001 the Regulator determines that the request is reasonable" the remainder of the paragraph shall be removed and ",on or after 1 February 2001 and prior to 24 July 2005 the Strategic Rail Authority determines that the request is reasonable, and thereafter the Office of Rail Regulation determines that the request is reasonable," shall be substituted.
- d. In Condition 18 (Restriction on Use of Certain Information) paragraph 1(b) remove "the Authority".
- e. In Condition 28 (Management Incentive Plan) paragraph 3(e) remove "and the Authority".

### **Schedule 3**

1. Licence exemptions granted under section 7(3) of the Railways Act 1993 prior to the Transfer Date are modified as set out in paragraphs (a) to (d) below and the modifications will have effect from the Transfer Date.
  - a. In any condition of the licence exemption requiring insurance against third party liability, references to the "Strategic Rail Authority" shall be removed and "Office of Rail Regulation" shall be substituted.
  - b. In any condition of the licence exemption requiring notification where the holder of the exemption intends to enter into a contract with Railtrack PLC, and Railtrack PLC will only be liable for third party liability insurance in excess of a specified amount, references to the "Strategic Rail Authority" shall be removed.
  - c. In any condition or provision under which the Rail Regulator may revoke the whole or any part of the exemption reference to revocation if required by the Strategic Rail Authority because the company has failed to comply with a condition concerning insurance against third party liability shall be removed; and
  - d. In any condition or provision under which the Rail Regulator may revoke the whole or any part of the exemption in relation to the company's intention to enter into a contract with Railtrack PLC where Railtrack PLC will only be liable for third party liability insurance in excess of a specified amount, any reference to notification by the Strategic Rail Authority of it having been notified by the licence holder of such an intention shall be removed.

## **EXPLANATORY NOTE**

These notes have been prepared to assist the reader. They do not form part of the Scheme.

The main purpose of the Scheme is to give effect to changes made by the Railways Act 2005. It relates, in particular, to provisions commenced by The Railways Act 2005 (Commencement No. 2) Order 2005. The Scheme relates to licences and licence exemptions granted under the Railways Act 1993.

The Scheme contains a number of provisions and three Schedules containing the amendments to the licences and exemptions.

Schedule 1 makes modifications to licences granted under section 8 of the Railways Act 2003 prior to 16 August 2005. It removes references to the Strategic Rail Authority and, where appropriate, inserts references to the Office of Rail Regulation or the Secretary of State. It also modifies the provisions relating to the Rail Passengers' Committees as a result of Part 3 of the Railways Act 2005.

Schedule 2 makes further modifications to Network Rail's network licence to accommodate the changes required by the Railways Act 2005 in relation to the Strategic Rail Authority and the Rail Passengers' Committees.

Schedule 3 makes modifications to licence exemptions granted under section 7(3) of the Railways Act 1993 prior to 16 August 2005 in relation to the Strategic Rail Authority.

The Scheme does not cover any modifications necessary pursuant to provisions of the Railways Act 2005 which give Scottish Ministers powers and functions. It is intended that such modifications will be made by another Scheme when the relevant provisions are commenced.