

Malawi

Railways Act

Chapter 69:03

Legislation as at 31 December 2014

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Railways Act (Chapter 69:03)

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Malawi

Railways Act

Chapter 69:03

Commenced on 1 October 1907

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to regulate the construction, control, management and operation of railways in Malawi and for matters incidental thereto.

1. Short title and application

This Act may be cited as the Railways Act. It shall apply to all railways in Malawi whether already completed or in the course of construction or hereafter to be constructed.

2. Interpretation

- (1) In this Act and in any Rules made hereunder unless the context otherwise requires—

"Manager" means the person appointed by the Minister or by a Railway Company as the case may be to act as Manager of a railway;

"assistant manager" means an assistant manager of a Railway Company;

"railway" means a railway or any portion of a railway for the public carriage of passengers, animals or goods and includes—

- (a) all land within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- (b) all lines of rails, sidings, or branches worked over for the purposes of or in connexion with a railway;
- (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of or in connexion with a railway; and
- (d) all ferries, ships, boats and crafts which are used for the traffic of a railway and belong to or are hired or worked by the authority administering the railway;

"the railway administration" in the case of a railway administered by the Government means the Manager and includes the Government and also, so long as the railway is in course of construction, the Resident Engineer and in the case of a railway administered by a Railway Company means the Railway Company;

"Railway Company" includes any person or persons whether incorporated or not who are owners or lessees of a railway or parties to an agreement for working a railway but shall not include the Government;

"railway official" or "railway servant" includes the Manager, the assistant managers and all such officers, servants, agents and other persons as shall be from time to time employed to do any act upon a railway.

- (2) Powers of assistant managers

All duties and powers hereinafter required to be performed and exercised by the Manager shall and may be performed and exercised by an assistant manager.

3. Sanction by Minister of railway construction

If any Company is desirous of constructing a railway within Malawi, it shall deposit in the Ministry of Transport and Communications a scheme for such railway stating the general direction and terminal points of the proposed railway accompanied by a map and thereupon the Minister, with and subject to the approval of the Minister responsible for Land after making such inquiries as he thinks fit may reject or provisionally approve the scheme.

[21 of 1970]

4. Deposit and approval of plans, sections, etc.

- (1) After any railway has been provisionally approved under [section 3](#) or after Government has decided to construct any railway the Government or the Railway Company as the case may be shall deposit for public inspection in Malawi in such public offices or elsewhere as the Minister may order—
 - (a) plans and sections on such a scale and showing such particulars as the Minister may direct or as may be required by any Rules made hereunder; and
 - (b) a Book of Reference containing the names of the owners and lessees or reputed owners and lessees of the lands required or which may be taken for the purposes of this Act in respect of such plan.
- (2) Notice shall be given of the deposit of such plans and Books of Reference by advertisement in the *Gazette* calling on all persons having any objection to the said plans and Books of Reference to send in a statement of their objections in writing to the Ministry of Transport and Communications within three months from the date of such notice.
- (3) At the expiration of the said period of three months the said plans and sections together with the objections thereto shall be considered and approved or amended by the Minister.
- (4) The said plans and sections if approved or amended by the Minister shall be deemed to be the deposited plans referred to in this Act.

5. Railway to be made according to plans

- (1) Any railway constructed under this Act shall be made and maintained in the lines and according to the levels shown on the deposited plans and sections with all proper bridges, viaducts, stations, sidings, approaches, junctions, roads, buildings, yards, works and conveniences connected therewith and incidental thereto.
- (2) Deviation

It shall be lawful for the railway administration to deviate from the line of railway shown on the deposited plans, provided that no such deviation shall extend beyond the limits of deviation shown on the said plans.

6. ***

[repealed by 21 of 1970]

Part I – Construction and works

7. Authority of railway administration to execute all necessary work

- (1) Subject to this Act and subject also as regards the parties thereto to any contract entered into between a railway administration and the owners or occupiers of or any other parties interested in any lands taken or used for the purposes of a railway and subject also in the case of a company to any contract between the Government and the company the railway administration may for the purpose of constructing the railway or the accommodation or other works connected therewith and notwithstanding anything in any other Act for the time being in force—
- (a) make or construct in, upon, across, under or over any lands or any streets, hills, valleys, roads, railways or tramways on any rivers, canals, brooks, streams or other waters or any drains, waterpipes, gas-pipes, electric wires or posts such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of railway, ways, passages, conduits, drains, piers, abutments, cuttings and fences as the railway administration thinks proper;
 - (b) alter the course of any rivers, brooks, streams or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them; and divert or alter as well temporarily as permanently the course of any rivers, brooks, streams or watercourses or any roads, streets, or ways; or raise or sink the level thereof in order the more conveniently to carry them over or under or by the side of the railway as the railway administration thinks proper;
 - (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;
 - (d) erect and construct such houses, warehouses, offices and other buildings and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;
 - (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead; and
 - (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

The exercise of the powers conferred on the railway administration by this section shall be subject to the control of the Minister.

(2) Alteration of pipes, wires, and drain

A railway administration may for the purpose of exercising the powers conferred upon it by this Act alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain:

Provided that—

- (a) when the railway administration desires to alter the position of any such pipe, wire or drain it shall give reasonable notice of its intention to do so and of the time at which it will begin to do so to the local authority or company having control over the pipe, wire or drain, or when the pipe, wire or drain is not under the control of a local authority or company to the person under whose control the pipe, wire or drain is; and
- (b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage as the case may be.

8. Temporary entry upon land for repairing or preventing accident

- (1) The Minister may authorize a railway administration in the case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident and to do all such works as may be necessary for the purpose.
- (2) In the case of necessity a railway administration may enter upon the lands and do the works aforesaid without the previous sanction of the Minister but in such a case shall within seventy-two hours after such entry make a report to the Minister specifying the nature of the accident or apprehended accident and of the works necessary to be done and the power conferred on the railway administration by this subsection shall cease and determine if the Minister after considering the report considers that the exercise of the power is not necessary for the public safety.

9. Compensation to be made for lands taken or injuriously affected

- (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by sections 7 and 8 and compensation shall be paid for any damage caused by the exercise thereof as soon as may be after such exercise.
- (2) An action shall not lie to recover such compensation but in case of dispute the amount thereof shall be determined by the High Court and paid in accordance, as far as may be, with the procedure prescribed by sections 9 and 10 of the Lands Acquisition Act, and section 11 of that Act shall apply to the award of compensation.

[Cap. 58:04]

[21 of 1970]

10. Purchase of land and compensation by agreement

Nothing in this Act shall prevent the acquisition of lands for the purpose of a railway by agreement between the Government or the company as the case may be and the owners of such land or the settling by agreement of the amount of compensation to be paid in respect of lands injuriously affected by the exercise of the powers conferred by this Act.

11. Accommodation works

- (1) Every railway administration shall make and maintain such works for the accommodation of the owners and occupiers of lands adjoining the railway as the Minister may deem necessary.
- (2) Subject to the other provisions of this Act the works deemed necessary under the preceding subsection shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.
- (3) The foregoing provisions of this section are subject to the following provisos—
 - (a) A railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway or to make any accommodation works with respect to which the owners and occupiers of the land have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made.
 - (b) Save as hereinafter in this Act provided a railway administration shall not be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic.

- (c) Where a railway administration has provided suitable accommodation for the crossing of a road or stream and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof the railway administration shall not be compelled to provide other accommodation for the crossing of the road or stream.
- (4) The Minister may appoint a time for the commencement of any work to be executed under subsection (1) and if for fourteen days next after that time the railway administration fails to commence the work or having commenced it fails to proceed diligently to execute it in a sufficient manner the Minister may cause it to be executed and recover from the railway administration the cost incurred by him in the execution thereof.

12. Power for owner, occupier or local authority to cause additional accommodation works to be made

If any owner or occupier of any land affected by any railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land or if a local authority desires to construct a public road or other work across, under or over the railway he or it as the case may be may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as in case of difference of opinion may be authorized by the Minister.

13. Fences, screens, gates and bars

The Minister may require that within a time to be specified in the requisition or within such further time as he may appoint in this behalf—

- (a) boundary marks or fences be provided or renewed by the railway administration for the railway or any part thereof and for roads constructed in connexion therewith;
- (b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of the railway be provided or renewed by the railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling stock moving on the railway;
- (c) suitable gates, chains, bars, stiles or handrails be erected or renewed by the railway administration at places where the railway crosses a public road on the level;
- (d) persons be employed by the railway administration to open and shut such gates, chains or bars; and
- (e) such other works be constructed or renewed by the railway administration as the Minister may from time to time deem necessary for the public safety and convenience.

If a Railway Company fails to comply with any requisition made under this section it shall forfeit K20 for every day after the first during which such default continues.

14. Removal of trees dangerous to or obstructing the working of a railway

- (1) In either of the following cases—
 - (a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic; or
 - (b) when a tree obstructs the view of any fixed signal,the railway administration may with the permission of any magistrate for the District fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction as the case may be.
- (2) In case of emergency the power mentioned in subsection (1) may be exercised by the railway administration without the permission of a magistrate.

- (3) Compensation may be awarded by a magistrate on the application of the persons interested for loss of or damage to such tree.
- (4) Such an award, subject to revision by the High Court, shall be final.
- (5) A civil court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

Part II – Opening of the railway

15. Right to use locomotives

- (1) A railway administration may with the previous sanction of the Minister use upon a railway locomotive engines or other motive power and rolling stock to be drawn or propelled thereby.
- (2) But rolling stock shall not be moved upon a railway by steam or other motive power until such General Rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

16. Notice of intended opening of a railway

- (1) Subject to subsection (2) a railway administration shall one month at least before it intends to open any railway for the public carriage of passengers give to the Minister notice in writing of its intention.
- (2) The Minister may in any case if he thinks fit reduce the period or dispense with notice mentioned in subsection (1).

17. Sanction of Minister to opening of railway

- (1) No railway shall be opened for the public carriage of passengers until the Minister has by order sanctioned the opening thereof for that purpose.
- (2) The sanction of the Minister shall not be given until an engineer to be appointed by the Government has after inspection of the railway reported in writing to the Minister—
 - (a) that he has made a careful inspection of the railway and rolling stock;
 - (b) that the weight of rails, strength of bridges, general structural character of the works and the size of and maximum gross load upon the axles of any rolling stock are such as have been prescribed by the Minister;
 - (c) that the railway is sufficiently supplied with rolling stock; and
 - (d) that in his opinion the railway can be opened for the public carriage of passengers without danger to the public using it.
- (3) The Minister shall nevertheless have power to sanction the temporary opening of the line for the carriage of passengers upon such terms and conditions as he shall deem fit:

Provided always that such temporary opening shall not be sanctioned save upon the certificate of an engineer appointed by Government to the effect that the reasonable safety of passengers is secured under the terms and conditions aforementioned.

- (4) This section shall extend to the opening of any additional works forming part of or directly connected with the railway which have been constructed after the inspection which preceded the first opening of the railway and also to any alteration or reconstruction materially affecting the structural character of any work to which this section applies.

- (5) The Minister may make Rules defining the cases in which and in those cases the extent to which the procedure prescribed in this section may be dispensed with in regard to the classes of work specified in subsection (4).

18. Reopening line after temporary suspension of traffic

When an accident has occurred resulting in a temporary suspension of traffic and either the original line and works have been rapidly restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication the original line and works so restored or the temporary diversion as the case may be opened for the public carriage of passengers subject to the following conditions—

- (a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works or of the temporary diversion will not in his opinion be attended with danger to the public using the line and works or the diversion; and
- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent as soon as may be to the Minister.

19. Inspection

After any railway has been opened the railway and the rolling stock used thereon shall be inspected by an engineer to be appointed by the Minister at such intervals as the Minister shall from time to time direct.

20. Power to close railway when opened

- (1) If at any time after inspecting a railway or any rolling stock used thereon the engineer is of opinion that the use of the railway or of any specified stock will be attended with danger to the public using it he shall state that opinion together with the grounds thereof to the Minister; and the Minister may thereupon order that the railway be closed for the public carriage of passengers or that the use of the rolling stock so specified be discontinued or that the railway or the rolling stock so specified be used for the public carriage of passengers on such conditions only as the Minister may consider necessary for the public safety.
- (2) An order under subsection (1) must set forth the grounds on which it is founded.

21. Reopening railway when closed

- (1) When at any time a railway has been closed under the last foregoing section it shall not be reopened for the public carriage of passengers until it has been inspected and its reopening sanctioned under this Act.
- (2) When the Minister has ordered under the last foregoing section that the use of any specified rolling stock be discontinued that rolling stock shall not be used until the engineer has reported that it is fit for use and the Minister has sanctioned its use.

22. Penalty for contravention of Part II

If a Railway Company acts in contravention of any of the provisions of this Part it shall forfeit to Government the sum of £10 for every day during which such contravention continues.

Part III – Traffic

23. Duty of railway, administration as to traffic facilities

A railway administration shall according to its powers afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it.

24. Facilities to be given for forwarding traffic by connected railways

A railway administration having or working railways which form a continuous line of railway communication or having its terminus or stations within one mile of the terminus or stations of another railway administration shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the others at such terminus or stations without any unreasonable delay and without any preference or advantage or prejudice or disadvantage and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication and so that all reasonable accommodation may by means of such railway be at all times afforded to the public in that behalf.

25. No undue preference to be given

- (1) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or any particular description of traffic in any respect whatsoever or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

- (2) Terminals

A railway administration may charge reasonable terminals.

- (3) The expression "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters and of any services rendered thereat.

26. Proceedings when complaint is made of breach of last two sections

- (1) Where complaint is made to the Minister of anything done by a railway administration in contravention of either of the two last preceding sections the Minister may if he thinks fit refer the case to the High Court for decision.
- (2) The case shall be heard by a Judge of the High Court.
- (3) In hearing any such case such judge shall have all the powers which may be exercised by a judge in the hearing of an ordinary civil suit and may permit any party to appear before him either personally or by a legal practitioner.
- (4) Any decree or order made on such hearing may be enforced in the same way as a decree or order granted by the High Court in its ordinary jurisdiction.
- (5) Any person aggrieved by such decree or order may appeal therefrom to the Supreme Court of Appeal.

27. Proof of undue preference

- (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders of any local area lower rates for the same or similar animals or goods or lower rates for the same or similar service than it charges to other traders or classes of traders or to the traders of another local area the burden of proving that such lower charge does not amount to undue preference shall lie on the railway administration.
- (2) In deciding whether a lower charge does or does not amount to an undue preference the Court may so far as it thinks reasonable in addition to any other conditions affecting the case take into consideration whether such lower charge is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made.

28. ***

[repealed by 6 of 1970]

29. Returns

Every Railway Company shall in forms to be approved by the Minister prepare half-yearly or at such intervals as the Minister may prescribe such returns of its capital and revenue transactions and its traffic as the Minister may require and shall forward a copy of such returns to the Minister at such times as he may direct.

If a Railway Company fails to comply with the provisions of this section it shall forfeit the sum of £5 for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

30. Provision for letters

It shall be lawful for a railway administration to carry letters on railway service or letters containing invoices or railway receipts for traders.

Part VI – Rates

31. Taxation of railway by local authorities

The following rules shall regulate the levy of rates in respect of the railway and from the railway administration in aid of the funds of local authorities—

- (a) The rates payable by the railway administration to any local authority shall not exceed such amount (if any) as may from time to time be fixed by the order of the Minister on the application of any local authority or of the railway administration.
- (b) Nothing in this section is to be construed as debarring the railway administration from entering into a contract with any local authority for the supply of water or light or for the scavenging of railway premises or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

Part V – Legal proceedings

32. Actions by and against railway administration

All actions and suits by and against a railway administration may be brought by and against the Manager and for the purpose of all such actions and suits the lands, buildings, rolling stock and other property appertaining to the said railway shall be deemed to be the property of the Manager.

33. Restriction on execution against railway property

- (1) None of the rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway or of its stations or workshops shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution.
- (2) Nothing in subsection (1) is to be construed as affecting the authority of any court to attach the earnings of a railway in execution of a judgment or order.

34. Service of summonses, notices, etc.

Any summons, notice, order or other document required to be served upon the Manager or upon the Company as the case may be may be served by leaving the same or sending it through the post by a

registered letter addressed to the said Manager or to the Company at the principal office in Malawi of the railway administration.

Part VI – Responsibility of a railway administration as carriers

35. Liability for loss or injury in respect of goods

The railway administration shall in no case be liable for loss or injury to any articles or goods to be carried by the railway unless such loss or injury shall have been caused by negligence or misconduct on the part of its agents or servants and unless the articles or goods in respect of which compensation is claimed shall have been booked and paid for or delivery thereof accepted in conformity with this Act or the Rules and Regulations made hereunder.

36. Provisions as to liability in respect of carriage of certain animals

- (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals delivered to the administration to be carried on the railway shall not in any case exceed in the case of horses £35 a head or in the case of mules, donkeys or homed cattle £20 or in the case of sheep, goats, dogs or other animals £2 a head unless the person sending or delivering them to the administration caused them to be declared or declared them at the time of their delivery for carriage by railway to be respectively of higher value.
- (2) When such higher value has been declared the railway administration may charge in respect of the increased risk a percentage upon the excess of the value so declared over the respective sums aforesaid.

37. Liability as to passengers' luggage

A railway administration shall not be responsible for the loss, destruction or deterioration of any passenger's luggage unless it has been delivered into the custody of a railway official.

38. Liability as to articles of special value

- (1) When any articles mentioned in the Schedule to this Act are contained in any parcel or package delivered to a railway administration for carriage by railway and the value of such articles in the parcel or package exceeds £10 the railway administration shall not be responsible beyond that sum unless the person sending or delivering the parcel or package to the railway administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage on the railway and if so required by the railway administration paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.
- (2) When any parcel or package of which the value has been declared under subsection (1) has been lost or destroyed or has deteriorated the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall notwithstanding anything in the declaration, lie on the person claiming compensation.
- (3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the Schedule that the railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.
- (4) The foregoing provisions of this section shall not apply to any parcel carried by the railway for any postal authority.

39. Burden of proof in respect of loss of animals or goods

In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to the railway administration for carriage by railway it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused. In every such proceeding the burden of proving the value of the animals or goods and, where the same have been injured, the extent of the injury shall lie upon the person claiming the compensation.

40. Notification of claims for compensation for loss, etc., and for refund of overcharges

- (1) A person shall not be entitled to compensation for the loss, destruction or deterioration of, or damage to, animals or goods carried by a railway unless his claim to compensation has been preferred in writing by him or on his behalf to the railway administration—
 - (a) in the case of a claim to compensation for deterioration or damage, within one month from the date of the delivery of the animals or goods to the consignee;
 - (b) in the case of a claim to compensation for loss or destruction, within six months from the date of the delivery of the animals or goods for carriage by the railway.
- (2) A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by a railway unless his claim to the refund has been preferred in writing by him or on his behalf to the railway administration within one month of the date of the delivery of the animals or goods to the consignee or, within one month of the date upon which the claimant is notified of the amount of the charge in respect of which the claim to a refund is made, whichever event shall last occur.

41. Exoneration from responsibility in case of goods falsely described

Notwithstanding anything in the foregoing provisions of this Part a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been given to the railway administration by the owner or person having charge thereof if the loss, destruction or deterioration is in any way brought about by the false account and the railway administration shall not be responsible in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

Part VII – Accidents

42. Report of accidents

When any of the following accidents occur in the working or construction of a railway—

- (a) any accident attended with loss of human life or with grievous bodily harm or with serious injury to property;
- (b) any collision between trains, one of which is a train carrying passengers;
- (c) the derailment of any train carrying passengers or any part of such train; or
- (d) any accident of any other description which the Minister may notify in this behalf in the *Gazette*:

the railway administration working or constructing the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall without unnecessary delay send notice of the accident to the Minister and the station master nearest to the place where the accident occurred or, where there is no station master, the railway servant in charge of that part of the railway on which the accident occurred shall give notice of the accident to the nearest magistrate.

43. Power to make Rules regarding notices

The Minister may make Rules consistent with this Act for all or any of the following purposes—

- (a) prescribing the forms of the notices mentioned in the last foregoing section and the particulars of the accident which those notices are to contain;
- (b) prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;
- (c) prescribing the duties of railway servants or magistrates on the occurrence of the accident;
- (d) holding inquiries into accidents.

44. Submission of return of accidents

Every railway administration shall send to the Minister a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Minister may direct.

45. Penalties for failure to comply with sections 42 and 43

If any Railway Company fails to give such notice of an accident as is required by [section 42](#) and the Rules for the time being in force under [section 43](#) it shall forfeit £10 for every day during which the omission continues and if any station master or railway servant omits to give such notice of an accident as is required by the aforesaid section and Rules he shall be punished with a fine not exceeding £5.

46. Penalty for failure to comply with section 44

If any Railway Company fails to comply with the provisions of [section 44](#) with respect to the submission of any return it shall forfeit the sum of £5 for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the returns.

47. Provision for compulsory medical examination of person injured in railway accident

Whenever any person injured by an accident on a railway claims compensation on account of the injury any court or person having by law or consent of the parties authority to determine the claim may order that the person injured be examined by some medical practitioner or practitioners named in the order and not being a witness on either side and may make such order with respect to the costs of the examination as it or he thinks fit.

Part VIII – Management

48. General Rules

- (1) The railway administration subject to the approval of the Minister shall make General Rules consistent with this Act for the following purposes—
 - (a) for regulating the mode in which and the speed at which the rolling stock used on any railway is to be moved or propelled;
 - (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;
 - (c) for declaring what shall be deemed to be for the purposes of this Act dangerous or offensive goods and for regulating the carriage of such goods;

- (d) for regulating the classification of goods and specifying the goods that are to be charged for at special rates;
 - (e) for regulating the conduct of railway servants;
 - (f) for fixing the charges to be made for the conveyance of passengers and goods by the railway;
 - (g) for regulating the conditions on which the railway administration will carry persons suffering from infectious or contagious diseases and providing for the disinfection of carriages which have been used by such passengers;
 - (h) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner.
 - (i) generally, for regulating the travelling upon and the use, working and management of the railway.
- (2) The Rules may provide that any person committing a breach of any of them shall be liable to a fine of £5.
 - (3) The railway administration shall keep at each station on its railway a copy of the General Rules for the time being in force under this section and shall allow any person to inspect it at all reasonable times.
 - (4) If a railway company omits to make General Rules in accordance with this section it shall forfeit the sum of £2 for every day during which such omission continues.

49. Disposal of differences between railways regarding conduct of joint traffic

Where two or more railway administrations whose railways have a common terminus or a portion of the same line of railway communication are not able to agree upon arrangements for conducting at such common terminus or at the point of junction between them their joint traffic with safety to the public the Minister upon the application of either or of any of such administrations may decide the matter in dispute between them so far as those matters relate to the safety of the public and may determine whether the whole or what portion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

50. Maximum load for wagons

- (1) The railway administration shall determine the maximum load for every wagon or truck in its possession and shall exhibit the load so determined in a conspicuous manner on the outside of every such wagon or truck.
- (2) Every person owning a wagon or truck which passes over the railway shall similarly determine and exhibit the maximum load for the wagon or truck.
- (3) The gross weight for any such wagon or truck bearing upon the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be approved by an engineer appointed by the Minister for the class of axle under the wagon or truck.
- (4) If a railway company or person fails to comply with this section it or he shall forfeit the sum of £2 for every day during which this section is contravened.

51. Maximum number of passengers

Every railway administration shall fix, subject to the approval of the Minister, the maximum number of passengers which may be carried in each compartment of every description of carriage and shall exhibit the number so fixed in a conspicuous manner, inside or outside each compartment.

If a railway company contravenes the provisions of this section it shall forfeit the sum of £2 for every day during which this section is contravened.

52. Powers of Manager over railway officials

In the case of a railway administered by Government the Manager may, subject to the approval of the Minister and to such Rules as the Minister may from time to time make and publish in this behalf, suspend, dismiss or fine any railway official and may publish Rules regulating the conduct of railway officials and impose penalties for breach of such Rules:

Provided always that this section shall not apply to any railway official in receipt of a salary of £100 a year or upwards.

53. Fares to be prepaid

No person shall enter any carriage used on a railway or any steamer belonging to a railway administration for the purpose of travelling therein without having first paid his fare and obtained a ticket. Every person desirous of travelling on the railway shall upon payment of his fare be furnished with a ticket specifying the class of carriage for and the station from and the station to which the fare has been paid and shall when required show his ticket to any railway officials duly authorized to examine the same and shall deliver up such ticket upon demand to any of the railway officials duly authorized to collect tickets. Any person not producing or delivering up his ticket as aforesaid shall be liable to pay the fare from the place whence the train or steamer originally started unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare only from the place whence he started.

Passenger tickets to be given up on demand

54. Fare and freight to be accepted conditionally

The fare or freight paid for the conveyance of passengers or goods respectively shall be deemed to be accepted only upon condition that there is room in the train. In case there shall not be room for all the passengers or goods those passengers who shall have obtained tickets for the longest distance shall have the preference and those who shall have obtained tickets for the same distance shall have the preference according to the order in which they shall have received their tickets; and the like order shall be observed as to goods:

Provided that all officers and troops on duty and all other persons travelling on the business of the Government shall be entitled to be conveyed on the railway in preference to or in priority over the public without reference to the distance for which or the order in which they shall have received their tickets.

55. Penalty for fraud

Any person who shall defraud or attempt to defraud a railway administration by travelling or attempting to travel upon the railway without having previously paid his fare or by riding in or upon a carriage of a higher class than that for which he shall have paid his fare or by continuing his journey in or upon any of the carriages beyond the station for which he shall have paid his fare without having previously either paid his fare for the additional distance or obtained the sanction of the station master or guard of the train or who shall knowingly and wilfully refuse or neglect on arriving at the station to which he shall have paid his fare to quit such carriage and railway premises or who shall transfer or profit by the transfer of the return half of any ticket obtained by him, or who shall in any other manner whatever attempt to evade the payment of his fare shall be liable to a fine of £2 for each offence.

56. Fine for entering or leaving carriage in motion or riding on steps

Any passenger who shall get into or upon or attempt to get into or upon or shall quit or attempt to quit any carriage upon a railway while such carriage is in motion or who shall ride or attempt to ride upon the railway on the steps or any other part of a carriage except on those parts which are intended for the accommodation of passengers shall be liable to a fine of £1 for each offence.

57. Fine for riding on engine, tender or luggage van

Any person other than the engineman and fireman who without the special licence of the Manager or executive officer in charge of the line shall ride or attempt to ride upon any locomotive engine or tender upon a railway and any person other than the guard or brakesman who without special permission of the Manager or traffic superintendent shall ride or attempt to ride upon the railway in or upon any luggage van or goods wagon or other vehicle not appropriated to the carriage of passengers shall be liable to a fine of £2 for each offence.

58. Where smoking and chewing of betel, etc., prohibited

If any person shall smoke or shall chew betel, bhang, tobacco, opium or other like substance either inside a waiting room or in or upon any of the carriages belonging to a railway which may be specially provided for females or non-smokers or shall expectorate in any waiting room or in or upon any railway carriage he shall be liable to a fine of £1 for each offence and if any person persists in infringing this section after being warned to desist by any railway official or passenger such person in addition to incurring the liability above-mentioned may be removed by any such official from any such carriage and from the premises appertaining to the railway and shall forfeit his fare.

59. Penalty for intoxication or nuisance

Any person who shall be in a state of intoxication or be insufficiently or indecently clad or who shall commit any nuisance or act of indecency in any railway carriage or upon any part of the premises appertaining to a railway or who shall wilfully and without lawful excuse interfere with the comfort of any passenger on the railway shall be liable to a fine of £2 and to imprisonment for three months; and in addition to such liability the offender may be removed by any railway official from any such carriage and also from the premises appertaining to the railway and shall forfeit his fare.

60. Passengers may be directed as to the carriage or compartment in which they shall travel

Any passenger may be directed by a station master, guard or other railway official to enter and travel in any carriage or compartment which such railway official may indicate not being of a lower class than that for which he has paid his fare and any passenger refusing or neglecting to conform to such direction may be removed by any railway official from the premises appertaining to the railway and shall forfeit his fare.

61. Penalty for entering private room or carriage

If any special carriage or any portion of a carriage or any private room or apartment shall be provided for the exclusive use of females any male person who without lawful excuse shall enter such carriage or portion of a carriage or any such room or apartment knowing the same to be appropriated as aforesaid or shall remain therein after being informed of its exclusive appropriation or if any special carriage or compartment has been reserved for the private use of any person or persons and anyone without lawful excuse shall enter such carriage or compartment knowing the same to be so reserved or remain therein after being requested to leave or if any person who has obtained a ticket of one class shall knowingly and wilfully refuse or neglect to leave any room or place set apart for passengers of a higher class such person may be forthwith removed therefrom and also from the premises appertaining to the railway by any railway official and shall be liable to a fine of £5 and shall forfeit his fare.

62. Remedy for non-payment of the carriage of goods

If any person shall fail to pay on demand any sum due for the conveyance of any goods on a railway it shall be lawful for the Manager to detain all or any part of such goods or if the same shall have been removed from the premises appertaining to the railway any other goods of such person which shall then be on the railway or shall thereafter come into the possession of the railway administration and also after reasonable notice to such person to sell by public auction a sufficient quantity of such goods to

realize the sum payable as aforesaid and all charges and expenses of such detention and sale; and out of the proceeds of the sale to retain the sum so payable together with the charges and expenses aforesaid rendering the surplus (if any) of the money arising from such sale and such of the goods as shall remain unsold to the person entitled thereto or the Manager may recover any such sum by action at law. The goods of passengers may also be detained and sold and the proceeds disposed of as above provided for non-payment of the fare due by them.

Remedy for non-payment of fare

63. Written account of goods to be given on demand

The owner or persons having care of any goods which shall have been carried upon a railway or shall be brought to the premises appertaining to a railway for the purpose of being carried on the railway shall on demand by any railway official deliver to such official an exact account in writing signed by him of the number or quantity and description of such goods. This provision shall not apply to passenger's luggage.

64. Penalty for giving no account or false account

If any such owner or person as aforesaid shall on demand by any railway official fail to give such account to such railway official or if he shall wilfully give a false account he shall for every such offence be liable to a fine of £2 for every ton of goods and to a fine of £1 for any quantity of goods less than a ton.

65. Carriage of goods of a dangerous nature

No person shall carry upon a railway any dangerous article or be entitled to require any railway official to carry upon the railway any article which in the judgment of any railway official shall be of a dangerous nature or so bulky that it would be unsafe for the railway to convey the same; and if any person shall carry upon the railway any dangerous article or shall deliver for carriage any such article without distinctly declaring the nature of the same he shall be liable to a fine of £10 for each such offence; and it shall be lawful for any railway official to refuse to carry any luggage or parcel that may be suspected to contain articles of a dangerous nature and to require the same to be opened and in case any such luggage or parcel shall have been received by any railway official for the purpose of being carried on the railway it shall be lawful for any railway official to stop the transit thereof until he shall be satisfied as to the nature of the contents of the luggage or parcel.

66. Persons suffering from leprosy, etc., not allowed to travel

If any person knowingly suffering from leprosy, smallpox or other contagious or infectious disease shall travel by a railway except in accordance with any Rules made in that behalf under this Act he shall be liable to a fine of £25 and if any person whilst travelling be discovered to be so suffering it shall be lawful for every railway official to remove him from the carriage and from the railway premises at the first opportunity and such person may in addition to any fine be ordered to pay the amount of any expenses incurred in the disinfection of any carriage or portion of a carriage occupied by him while so travelling. Any such carriage or portion of a carriage shall be properly disinfected as soon as practicable and shall not be used for the conveyance of passengers until it has been so disinfected.

If a railway company fails to cause any such carriage to be disinfected in accordance with the provisions of this section it shall forfeit the sum of £2 for every day during which such default continues.

67. Penalty for trespass

Any person who shall trespass upon a railway or upon any of the lands, stations or other premises appertaining thereto shall be liable to a fine of £1 and if any such person shall refuse to leave the railway or premises on being requested to do so by any railway official he shall be liable to a fine of £2 and may be immediately removed therefrom.

68. Penalty for driving an animal upon or across a railway

Any person who shall wilfully ride, lead or drive upon or across a railway any animal except in directly crossing the railway at any road or place appointed for that purpose at a time at which he may lawfully do so shall be liable to a fine of £2 for each offence.

69. Penalty for defacing pass or ticket

If any person wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible he shall be liable to a fine of £5.

70. Penalty for obstructing railway servant

If any person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be liable to a fine of £10.

71. Occupation crossings

It shall be lawful for the Minister from time to time to declare by publication in the *Gazette* any road or path which a railway may cross to be an "occupation crossing". All occupation crossings shall be used subject to such Rules as the Minister may make and publish in that behalf.

72. Liability of owner of animal trespassing

The owner of any animal which shall trespass or stray upon a railway or upon any lands appertaining to a railway (such railway or lands being provided with suitable fences for excluding cattle) shall be liable to a fine of 10s. for each animal and it shall be lawful for any railway official to take or drive every animal which shall be found so trespassing to the nearest Government station there to be detained until the amount of fine incurred by such trespass and the expense of feeding and keeping the animal be paid or until a magistrate shall otherwise order. Should the animal prove unmanageable it shall be lawful for any railway official to kill it and the owner will be liable to prosecution and fine if the trespass be proved. A magistrate may upon proof of the trespass cause such animal to be sold by public auction and the proceeds of the sale after deducting therefrom such fine and costs as the magistrate shall impose and such further sum as the magistrate shall order to be paid for the expenses of detaining, feeding and selling such animal shall be returned to the owner of the animal on demand.

73. Penalty for injury to carriage, etc.

Any person who shall unlawfully and wilfully remove or deface any number-plate or remove or extinguish any lamp on any carriage or signal-post belonging to a railway or shall wilfully imitate any railway signal or shall wilfully or negligently damage or injure any carriage, engine, wagon, truck, station, warehouse, bridge, building, machine, rail-points, fence or any other matter or thing belonging to the railway shall be liable to a fine of £10 and to imprisonment for two months.

74. Penalty for opening or not properly shutting gates or chains

If any person for whose use or accommodation any gate or chain shall have been set up by any railway official on either side of a railway or any other person shall open such gate or chain or pass or attempt to pass or drive or attempt to drive any carriage, cattle or other animal or thing across the railway at a time when any engine or train approaching along the same shall be in sight or shall at any time omit to shut and fasten such gate or chain as soon as he and any carriage, cattle or other animal or thing under his charge shall have passed through the same, he shall be liable to a fine of £5.

75. Obstructing engine or carriages or endangering safety of passengers

If any person shall wilfully and maliciously put, place, cast or throw upon or across a railway any wood, stone, matter or thing or take up, remove or displace any rail, sleeper, matter or thing belonging to a railway, or turn, move or divert any points or other machinery belonging to a railway, or make, show, hide or remove any signal or light upon or near a railway or do or cause to be done any act with intent in any of the cases aforesaid to upset, obstruct, overthrow, injure or destroy any engine, tender, carriage or truck used upon a railway or to endanger the safety of any person travelling or being upon a railway or cast, throw or cause to fall or strike against, into or upon any engine, tender, carriage or truck used upon a railway any wood, stone or other matter or thing with intent to endanger the safety of any person being in or upon such engine, tender, carriage or truck every such offender shall be liable to imprisonment for twenty years.

76. Penalty for willful act or omission endangering passengers

Whoever shall wilfully do any act or shall wilfully omit to do what he is legally bound to do intending by such act or omission to cause or knowing that he is thereby likely to cause the safety of any person travelling or being upon a railway to be endangered shall be liable to imprisonment for two years.

77. Penalty for drunkenness or breach of duty by railway official

Any railway official who shall be in a state of intoxication whilst actually employed upon a railway or any of the works connected therewith in the discharge of any duty and any railway official who negligently shall omit to perform his duty or shall perform the same in an improper manner shall be liable on summary conviction to a fine of £10 and to imprisonment for two months and if the duty be such that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon the railway such official shall be liable to imprisonment for two years.

78. Penalty for an act not willful

If any person shall rashly or negligently and without lawful excuse do any act which shall be likely to endanger his own safety or that of any person travelling or being upon a railway he shall be liable to a fine of £50 and to imprisonment for six months.

79. Unauthorized stopping of trains

Any person who without authority stops or attempts to stop any engine, tender, carriage or truck in motion by means of a flag or signal or any other means shall be liable to a fine of £5.

80. Breach of Rules

Any person who wilfully does any act which is forbidden or neglects to do any act which is required by any Rules framed under this Act and for which no penalty is specially provided by such Rules shall be liable to a fine of £1.

81. Apprehension of offenders

Every person who shall be guilty of any offence under this Act may be lawfully apprehended without any warrant or written authority by any railway official or by any other person whom such railway official shall call to his aid or by any police officer and every person so apprehended shall with all convenient despatch be carried and conveyed before a magistrate to be dealt with according to law.

82. Provisions where it is necessary to arrest railway official

- (1) Where it is the duty of a police officer either with or without warrant to arrest a railway servant, and where in the opinion of such police officer the immediate arrest of such railway servant would be

likely to endanger the safety of any person travelling or being upon a railway or to cause serious inconvenience to a railway administration, he shall at once apply to the Head of the Department to which such railway servant belongs or to the railway official in charge at the place where such railway servant is to relieve such railway servant and on such railway servant being relieved he shall be handed over to such police officer who shall arrest him and proceed according to law.

- (2) The relief and handing over of such railway servant shall be effected with the least possible delay.
- (3) If such railway servant be not relieved and handed over in accordance with the provisions of this section the railway administration shall be liable to a fine of £100.

83. Construction of the Act

In the construction of this Act every railway official shall be legally bound to do everything necessary for or conducive to the safety of the public and every such official shall be legally prohibited from doing every act which shall be likely to cause danger.

84. Liability of offenders to pay costs of conviction

In case of any conviction under this Act the magistrate may order the offender to pay the costs of such conviction in addition to any penalty or expenses to which he may be liable. Such costs may be assessed by the magistrate and may be levied and recovered in the same manner as any penalty under this Act.

85. Recovery of money due; damages and expenses

In every case in which any person shall be liable under this Act to pay any sum of money, damages or expenses the same may be levied and recovered in the same manner as any penalties under this Act and if necessary the amount thereof may be fixed and assessed by the magistrate before whom the case shall be tried.

86. Limitation of time for commencement of actions and prosecutions

All actions and prosecutions which may be lawfully brought against any person for anything done or intended to be done or omitted to be done under this Act shall be commenced within three months after the occurrence of the matter complained of and not otherwise.

87. Enforcing payment of fare by passenger not producing ticket

The payment of any fare for which any passenger not producing or delivering up his ticket is liable may be enforced in the same manner as any fine imposed by this Act.

88. A copy of this Act to be shown at railway stations

A copy of this Act and of the Rules, time tables and tariff of charges in respect of any railway which shall from time to time be duly made and published shall be exhibited in some conspicuous place at each station of the railway so that they may be easily seen and read and all such documents shall be so exhibited in English and in such other languages as the Minister may direct. There shall also be exhibited in like manner within and also without each station of the railway a schedule of all offences punishable under this Act or any Rules made hereunder and of the penalties attaching to each offence respectively.

If any Railway Company fails to comply with any of the provisions of this section it shall forfeit a sum of £2 for every day during which such default continues.

89. Penalty for removing documents or notices

Any person who shall wilfully or maliciously remove, deface or in any way injure any document exhibited by the railway authorities as required by the last preceding section or any notice or document posted by

them at the station or anywhere upon the railway shall be liable to a fine of £2 and to imprisonment for one month.

Schedule

Articles to be declared and insured (Section 38)

- (a) Gold and silver, coined or uncoined, manufactured or unmanufactured.
- (b) Coin made of any one metal or mixed metal.
- (c) Plated articles.
- (d) Cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, or of any public officer entitled to wear uniform.
- (e) Pearls, precious stones, jewellery and trinkets.
- (f) Watches, clocks and timepieces of any description.
- (g) Government securities.
- (h) Government stamps.
- (i) Bills of exchange, promissory notes, bank notes and orders or other securities for payment of money.
- (j) Maps, writings and title-deeds.
- (k) Paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art.
- (l) Art pottery and all articles made of glass, china or marble.
- (m) Silks in manufactured or unmanufactured state and whether wrought up or not wrought up with other materials.
- (n) Shawls; but not shawls for African trade.
- (o) Lace and furs.
- (p) Opium.
- (q) Ivory.
- (r) Musical and scientific instruments.
- (s) Any article of special value which the Minister may by notice published in the *Gazette* add to this Schedule.