

## CHAPTER 456

### THE RAILWAYS (DEVIATIONS) ACT

# ARRANGEMENT OF SECTIONS

#### Section

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2. Interpretation
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<b>CHAPTER 456</b>	<b><i>22 of</i></b>
<b>*RAILWAYS (DEVIATIONS)</b>	<b><i>1931</i></b>
<b>An Act to empower railway</b>	<b><i>24 of</i></b>
<b>companies to make deviations; to</b>	<b><i>1931</i></b>
<b>make provision for the acquisition of</b>	<b><i>5 of 1942</i></b>
<b>land therefor; and to provide for</b>	<b><i>20 of</i></b>
<b>matters incidental to or connected</b>	<b><i>1957</i></b>
<b>therewith.</b>	<b><i>Govern</i></b>
	<b><i>ment</i></b>
	<b><i>Notices</i></b>
	<b><i>318 of</i></b>

\*See section 89 of the Zambia Railways Act (Cap. 767 of the old edition) which empowers the Minister to amend, modify or repeal the provisions of this Act.

**1964  
497 of  
1964  
Statutory  
Instrument  
154 of  
1965**

1. This Act may be cited as the Railways (Deviations) Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation

"deviation" shall be deemed to include any junctions, sidings, stations and approaches, and any other works incident to a deviation;

"line of railway" means the course of the railway line one hundred yards in width between the terminal points as defined in or under the provisions of the law authorising the construction and completion of such railway;

"railway company" means any railway company empowered by law enacted prior or subsequent to the commencement of this Act to construct, equip, complete, maintain and work a line of railway.

3. (1) A railway company may from time to time, with the consent of Authority to the Minister, make deviations in the line of railway whether such deviations involve an alteration of either or both of the termini thereof. make deviations in the line of railway

(2) Upon application for such consent as aforesaid, the railway company shall supply such plans, general plans and diagrams of the proposed deviation together with such further information in regard thereto as the Minister may require.

(3) As soon as the consent of the Minister to the proposed deviation shall have been obtained, and subject to any conditions which such consent may contain, the railway company shall with respect to such deviation have the same rights and be subject to the same obligations (except as regards the payment of compensation for the taking of land) as are created and imposed in the law authorising the construction of the line of railway from which such deviation is to be made.

(4) In regard to any proposed deviation there shall be published such notices or advertisements in such manner and by such persons as may be prescribed.

*\*See section 89 of the Zambia Railways Act (Cap. 767 of the old edition) which empowers the Minister to amend, modify or repeal the provisions of this Act.*

(5) As soon as the Minister shall give his consent to any deviation, notification as to the land affected thereby shall be given to the Registrar of Lands and Deeds and shall be registered by him in such form and manner as may be prescribed.

(6) Upon the construction and completion of any deviation authorised as aforesaid, the line of railway so deviated shall for all statutory purposes other than compensation for the taking of land be deemed to be the line of railway originally authorised by law, and the ownership of, and all rights of the railway company to, in or over, the portion of the original line of railway acquired under this or any other Act authorising the taking possession of land by a railway company, and in substitution for which any such deviation shall have been made, shall thereupon vest in the President.

*(As amended by No. 5 of 1942, G.N. No. 318 of 1964 and S.I. 154 of 1965)*

4. Any deviation constructed prior to the commencement of this Act shall be deemed to have been constructed under this Act, and all the provisions of this Act, and any act or thing declared to be necessary to be done or performed thereunder, shall be deemed to have been fully done and performed, and the said deviation is hereby validated and confirmed in every respect in regard to all acts and things done or omitted up to the commencement of this Act, and thereafter the said deviation shall be subject to the provisions of this Act. Validation of deviation previously made

(No. 24 of 1931)

5. (1) As often as any deviation has been authorised in accordance with the foregoing provisions of this Act, and the railway company is unable to agree with any person who claims to be entitled to compensation in respect of the ownership or occupation of any land taken by the railway company for any such deviation, the railway company and the person making such claim shall, within such time and in such manner as may be prescribed, notify the Commissioner of Lands of the fact of such disagreement. On receipt of such notification the Commissioner of Lands shall call upon the parties, within such time as may be prescribed, to proceed to arbitration as provided in section *seven*. Provisions as to the payment of compensation

(2) In assessing compensation in respect of any land taken under this Act, the arbitrator shall, unless in any case the Minister shall otherwise direct, act in accordance with the following rules:

(a) No allowance shall be made on account of the acquisition being compulsory.

(b) The value of the land shall be that amount which the land if sold in the open market by a willing seller might be expected to realise.

(c) Allowance shall be made for any improvements not included in the value of the land.

(d) Allowance may be made for any disturbance of the enjoyment of the whole of the land from which any portion has been taken, having regard to the purpose for which the land was being used at the date of the taking thereof by the railway company.

(e) Allowance may be made for any enhanced value of the remainder of the land by reason of the new railway construction.

(3) Nothing in this Act shall be deemed to deprive any person of any right to compensation to which he may be entitled under section *nineteen* (12) or *one hundred and eighteen* of the \*Mining Act, Chapter 91 of the 1957 Edition of the Laws.

\*The Mining Act referred to was first published as Proclamation No. 5

of 1912.

*(As amended by No. 20 of 1957 and G.N. No. 318 of 1964)*

**6.** As soon as the consent of the Minister has been given to any proposed deviation, it shall not be necessary for the railway company to await the settlement of any dispute as to compensation before taking the land included in such deviation. Dispute not to delay taking of land

*(As amended by G.N. No. 318 of 1964)*

**7.** Arbitrations under this Act shall be conducted in accordance with and be governed by the provisions of the Arbitration Act: Arbitration and appointment of arbitrator.  
Cap. 740

Provided that if the parties do not concur in the appointment of a sole arbitrator, the Minister shall appoint an official or other person as sole arbitrator.

*(As amended by G.N. No. 318 of 1964)*

**8.** As often as any person interested or concerned in any arbitration under this Act shall be a person who is absent from Zambia or cannot after diligent inquiry be found in Zambia and who has no known agent or representative therein or shall be an infant, lunatic or person of unsound mind, the following provisions shall apply: Provision when the owner is a person under disability

(a) All notices required to be given to such infant or other person shall be given to the Registrar of the High Court (hereinafter referred to as the Registrar) on behalf of such person.

(b) The Registrar shall have and exercise all the powers and do and perform all acts, matters and things which such person would if capable of acting in his own behalf have and exercise or be liable to do or perform, and the Registrar may at any time apply to the High Court or to a Judge thereof for directions in this behalf.

(c) All moneys which shall in pursuance of any award be payable to any such person shall be paid to the Registrar to the account of such person and the Registrar shall receive and administer the same on behalf of such person.

\*The Mining Act referred to was first published as Proclamation No. 5 of 1912.

(d) If in any case any person of full age shall be entitled to a life or other limited interest in any land the subject of any such arbitration in which any person under disability or who is absent from Zambia or cannot after diligent inquiry be found in Zambia and who has no known agent or representative therein shall also be interested in remainder expectancy or otherwise, then the whole compensation as fixed by the award of an arbitrator shall be paid to the Registrar to the account of the person interested and the person who was entitled to the life or other limited interest shall be entitled for life or for the other limited interest to draw the interest payable upon the sum so paid in, subject however to any order in respect thereof which the High Court or a Judge thereof may upon the application of any person having an interest see fit to make.

**9.** As soon as the consent of the Minister shall have been given to any proposed deviation, and subject to any conditions which such consent may contain, the ownership and possession of the land taken for such deviation shall vest in the railway company, and shall be held by them in all respects (save as to the payment of compensation therefor) as if such land had formed part of the original line prior to such deviation: Title to land taken

Provided that the reversionary interest in such land shall vest in the President.

*(As amended by G.N. No. 318 of 1964 and S.I. No. 154 of 1965)*

**10.** The Minister may, by statutory instrument, make regulations- Regulations

- (a) for the publication of notices and advertisements of any proposed deviation;
- (b) for the filling and hearing of objections to any proposed deviation;
- (c) for the holding of an inquiry into any such objections;
- (d) prescribing the time within which any notice required by this Act shall be given or served or any claim to compensation may be made;
- (e) prescribing the fees and fixing the charges, costs and expenses for any act, matter or thing under this Act to be done or observed;
- (f) for the registration of deviations or any notification thereof; and
- (g) generally for the better carrying into effect of the purposes of this Act.

(As amended by G.N. No. 318 of 1964)

## **SUBSIDIARY LEGISLATION**

RAILWAYS (DEVIATIONS)

CAP. 456

### **SECTION 10-THE RAILWAYS (DEVIATIONS) REGULATIONS**

*Government  
Notices  
of 1935  
89 of 1957  
318 of 1964  
497 of 1964  
Statutory  
Instrument  
154 of 1965  
Act No.  
13 of 1994*

*Regulations by the Minister*

1. These Regulations may be cited as the Railways (Deviations) Regulations.

Title

2. Upon application to the Minister for consent to a proposed deviation, the railway company shall publish in the *Gazette* and in one newspaper circulating in Zambia particulars in Form 1 in the First Schedule.

Notice of  
proposed  
deviation

(As amended by No. 318 of 1964)

3. Any person who wishes to object to the proposed deviation shall, within three months of the date of publication of the later notice made under regulation 2, or within such lesser period as the Minister may agree in any particular case, send his objection in writing together with the reasons therefor to the Permanent Secretary, Ministry of Power, Transport and Works.

Lodging of  
objections

(As amended by No. 318 of 1964 and No. 154 of 1965)

4. For the purpose of considering objections made under regulation 3 to any proposed deviation, the Minister may constitute an *ad hoc* Board consisting of a chairman and such other persons as the Minister

Constitution of  
Board to consider  
objections

may appoint. The Minister may appoint such person as he may think fit to be the secretary of the Board.

*(As amended by No. 318 of 1964)*

**5.** It shall be the duty of the Board without undue delay to consider any objections which may be lodged within the prescribed time and in the prescribed manner, and to hear all parties whom the Board shall consider to be sufficiently concerned to entitle them to be heard. No objections shall be considered unless lodged within the prescribed period.

Hearing of  
objections

**6.** The Board shall, after considering the proposed deviation and any objections thereto, forward the same to the Minister together with its recommendations thereon.

Report to  
Minister

*(As amended by No. 318 of 1964)*

**7.** Notification under section *three* (5) of the Act by the railway company to the Registrar of Lands and Deeds shall be given in the following manner:

Notification to  
Registrar of  
Lands and Deeds  
as to land  
affected

(a) an initial notification in Form 2 in the First Schedule, or as near thereto as circumstances permit; and

(b) a memorandum in Form 3 in the First Schedule, or as near thereto as circumstances permit, together with a diagram of the deviation approved by the Surveyor-General.

*(As amended by No. 89 of 1957)*

**8.** (1) The initial notification referred to in regulation 7 (a) shall be registered by the railway company in the Lands and Deeds Registry in the same manner as a deed affecting land is registered as soon as the Minister shall give his consent to the deviation.

Registration of  
notification

(2) The memorandum referred to in regulation 7 (b) shall be registered in the Lands and Deeds Registry in the same manner as a deed affecting land is registered within six months from the date of completion of the deviation. A separate memorandum with diagram attached shall be registered in respect of each deviation.

*(As amended by No. 318 of 1964)*



**9.** The Registrar of Lands and Deeds may decline to register any initial notification which does not sufficiently describe the land to be affected by the deviation. For the purposes of this regulation, a reference to the number of a surveyed farm or subdivision thereof or surveyed plot or subdivision thereof or to the number or name of any other surveyed piece of land to be affected by a deviation shall be a sufficient description.

Description of  
land affected

**10.** The fees prescribed in the Second Schedule shall be paid on presentation of documents for registration.

Prescribed fees

## FIRST SCHEDULE

*(Regulations 2 and 7)*

## PRESCRIBED FORMS

FORM 1

THE RAILWAYS (DEVIATIONS) REGULATIONS  
NOTICE OF PROPOSED DEVIATION

Take notice that the  
Railway Company has made application to the Minister for consent to a deviation of the

Railway from a point  
to a point

The deviation will pass through the following lands:

Farm No.

Farm No.

etc.

An engineering plan of the deviation may be inspected at the following places:

Any person who wishes to object to the proposed deviation shall on or before  
the ..... day of ..... 19..... send his objection in  
writing together with the reasons therefor to the Permanent Secretary, Ministry of Power,  
Transport and Works.

Manager

Railway Company

Date

(As amended by No. 154 of 1965)

FORM 2

THE RAILWAYS (DEVIATIONS) REGULATIONS

To the Registrar of Lands and Deeds

INITIAL NOTIFICATION OF PROPOSED DEVIATION

Take notice that on the ..... day  
of ..... 19..... the Minister gave his consent to the  
deviation on the ..... section (here state the nearest  
station or siding at each end of the proposed deviation) of  
the ..... (here state name of Railway Company) system whereby  
the undermentioned pieces of land are affected.

*Particulars of Land Affected:*

Dated the ..... day of ..... 19.....

Signature of representative

Name of Railway Company

Office or position of representative

*(As amended by No. 154 of 1965)*

FORM 3

THE RAILWAYS (DEVIATIONS) REGULATIONS

To the Registrar of Lands and Deeds

MEMORANDUM AND DIAGRAM OF COMPLETED DEVIATION

The diagram annexed hereto is a diagram approved by the Surveyor-General of the  
deviation on the

section of the

system specified in the Initial Notification  
dated the ..... day of ..... 19.....

Dated the.....day of.....19.....

Signature of representative

Name of Railway Company

Office or position of representative

*(As amended by No. 154 of 1965)*

SECOND SCHEDULE

*(Regulation 10)*

PRESCRIBED FEES

Fee units

Upon registration of initial notification. . . . .  
15

Upon registration of subsequent memorandum and diagram . . . . .  
. . . . . 15

*(As Amended by Act No. 13 of 1994)*