

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

# **RAILWAYS ACT 2005**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Railways Act 2005 which received Royal Assent on 7<sup>th</sup> April 2005. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. The main purpose of this Act is to tackle the long-standing structural problems of the railways.
4. The Act gives effect to the proposals that require primary legislation in the White Paper “The Future of Rail”, published on 15th July, 2004.
5. The White Paper set out the conclusion of the rail review which the Secretary of State for Transport announced on 19th January 2004. The aim of the review was to develop proposals for a simplified structure and organisation for Britain's railways.
6. A list of Acronyms used in these explanatory notes is attached at Annex B.

### **OVERVIEW OF THE STRUCTURE**

7. The Act is in six parts with thirteen Schedules. The main provisions of the Act are as follows.

#### **Part 1: Transfer of Functions and Railway Strategy**

8. Part 1 provides for the Strategic Rail Authority (SRA) to be wound up, for the SRA's strategic and financial functions to pass to the Department for Transport and in some cases, to the devolved administrations, and for its consumer protection functions to pass to the Office of Rail Regulation (ORR). The Act also enables the SRA's

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assets, rights and liabilities to be transferred to third parties.

9. The Act also transfers safety functions under the Health and Safety at Work etc. Act 1974 in respect of the railways industry from the Health and Safety Commission/Executive (HSC/E) to the ORR.

10. The Act provides for changes to the access charges review process, with a duty on the Secretary of State to specify the outputs to be delivered by the rail industry.

11. The Act also gives the Scottish Ministers the power to prepare and publish a strategy for carrying out their functions in relation to railways in Scotland.

## **Part 2: Public Sector Funding Authorities for Railways**

12. The Act provides a power for the Secretary of State to give financial assistance for any railway purpose.

13. The Act also makes provision for the provision of financial assistance from the Secretary of State, the Scottish Ministers and the National Assembly for Wales (NAW) for freight services.

14. The Act enables the Scottish Ministers to take increased responsibility for passenger services and infrastructure relating to Scotland. The NAW will also take on increased responsibilities for passenger services in Wales, and be made a signatory to the Wales and Borders franchise agreement.

15. This Part also modifies the powers of Passenger Transport Executives (PTEs) so that they may, subject to the Secretary of State's approval, enter into franchise agreements and agreements relating to the quality of franchised rail services. The Secretary of State will have a duty to consult a PTE when preparing to let a franchise which involves services to, from or within the area covered by the PTE. It also provides for Transport for London to be given equivalent powers to PTEs.

## **Part 3: Rail Passengers' Council and Rail Passengers' Committees**

16. The Act establishes the Rail Passengers' Council as a single national body reporting to the Secretary of State and dissolves the formal federal structure of regional Rail Passengers' Committees.

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#### **Part 4: Network Modifications etc.**

17. Part 4 sets out procedures for operators and public sector funders to follow when they wish to discontinue all passenger services on a line or from a station or close all or part of a network or station. It replaces the current procedures in sections 37 to 49 of and Schedule 5 to the 1993 Act as amended by the Transport Act 2000.

18. Where a rail service in an English PTE area is to be discontinued or otherwise reduced, this Part provides for bus franchising for substitution of rail services. The Act will amend the procedure for entering into a bus quality contract scheme where the scheme is specifically for a bus service, or network, which meets transport needs equivalent to rail services being reduced or closed, and is consistent with the local transport plan. This part also enables the Secretary of State, the Scottish Ministers and the NAW to secure the provision of substitute bus services where a railway passenger service has been temporarily interrupted or discontinued.

#### **Part 5: Further Miscellaneous Provisions**

19. The Act enables railway operators to make bye-laws, subject to confirmation by the Secretary of State and, where appropriate, the Scottish Ministers, to enable them and the police to control the conduct and behaviour of people using the railways.

20. The Act also makes provision for the Scottish Ministers to be empowered to make penalty fare regulations for Scotland.

21. This Part also provides the Scottish Ministers with the power to prepare (and from time to time revise) a code of practice for protecting the interests of disabled rail users in Scotland.

22. This Part also provides for the Scottish Ministers to be able to exercise the functions of the Secretary of State in relation to a railway administration order involving a Scottish railway company.

23. The Act provides for a duty on the ORR to provide the Secretary of State, the Scottish Ministers and the NAW with advice and information.

24. This Part also provides a duty for PTEs to give advice to the Secretary of State when requested, in relation to railway matters.

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## **Part 6: General and Supplemental**

25. Part 6 contains general and supplementary provisions, including making provision for the consequences for taxation of the various transfers under the transfer schemes provided for in the Act. This Part amends the Secretary of State's powers under sections 118 and 119 of the 1993 Act, so that they can apply to trams and other guided transport systems. This Part also makes provisions relating to expenses and powers exercisable by statutory instrument.

## **COMMENTARY ON SECTIONS AND SCHEDULES**

### **Part 1: Transfer of Functions and Railway Strategy**

#### *Transfer of Functions*

##### *Overview*

26. The Government's review of the railways concluded that it would be necessary to wind up the Strategic Rail Authority. The reasons given were that it would improve efficiency, reduce bureaucracy and provide a clearer focus on leadership within the rail industry.

#### **Section 1: Transfer etc. of SRA functions and abolition**

27. *Section 1* provides for the abolition of the Strategic Rail Authority and for the reallocation of its functions, where they are not discontinued. The Strategic Rail Authority's strategic functions and its financial obligations (see also *Section 6*) will become the responsibility of the Secretary of State for Transport, together with many of its operational functions, such as the letting and management of railway franchises. Other Strategic Rail Authority functions will be reallocated to third parties. In some cases this will not require legislative provision. The Secretary of State may make an order for the abolition of the SRA when he is satisfied (having consulted the SRA) that the liabilities of the SRA have been adequately provided for and that it is no longer necessary for the SRA to exist.

28. The intention is for the Scottish Executive and the NAW to take on increased responsibilities for passenger services and, in Scotland, infrastructure responsibilities. This section requires the Secretary of State to transfer the Strategic Rail Authority's interest in the Scotrail franchise to the Scottish Ministers. The SRA interest in the franchise agreement with Arriva Trains Wales is intended to be transferred under this section to the Secretary of State and the NAW jointly. The SRA interest in all other franchise agreements is intended to be transferred to the Secretary of State.

29. The Rail Passengers' Council, currently funded through the Strategic Rail

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Authority, will become a body corporate and will be funded by grant from the Department for Transport. Rail Passengers' Committees will be disbanded and the newly constituted Rail Passengers' Council will be the sole national consumer body for rail.

30. The section also provides for the transfer to the Secretary of State, and as appropriate the Scottish Ministers, the NAW and the Office of Rail Regulation of the Strategic Rail Authority's property, rights and liabilities, including shares in its subsidiary companies, such as BRB (Residuary) Limited. Provision is also made for the transfer of property, rights and liabilities to the Rail Passengers' Council.

31. This section also gives the Secretary of State powers to make modifications of legislative provisions in relation to rail pensions that may be necessary or expedient as a consequence of the transfer of the SRA's functions or its abolition or as a consequence of a transfer scheme transferring its property rights or liabilities.

32. The provisions of Part III of the Transport Act 1980 and schedule 11 to 1993 Act, among other things, set out mechanisms under which the Department for Transport provides funding to the trustees of a number of older, partially unfunded pension schemes some of which were set up by the pre-nationalisation rail companies. The role of the SRA as sponsoring employer is likely to be transferred, on its abolition, to the Department for Transport under a transfer scheme to be made under section 1(2). The purpose of the order making power under subsection (8) is to enable consequential provision to be made in the light of that transfer of liabilities.

33. Further consideration needs to be given to the detail of the provision required. Currently, it is anticipated however that the Department for Transport will retain its existing statutory funding liabilities alongside liabilities, as sponsoring employer, which will be transferred to it from the SRA. Whatever provision is made will be designed to ensure that the existing position of beneficiaries of the relevant pension schemes and the funding of those schemes is unaffected.

34. Section 244 of the Transport Act 2000 had the effect of converting the British Railways Board's (BRB's) customary practice of providing indexation for cost of living increases for these older pension schemes into a binding obligation of the SRA. Consequential provision will be required to reflect the abolition of the SRA. It is likely this will be to transfer this obligation to the Department for Transport to reflect the expected transfer of employer obligations for these schemes to the Department. The intention again will be to ensure that the existing position of beneficiaries of the relevant schemes is unaffected by amendments made.

35. The affirmative resolution procedure will apply to any order made under subsection (8). The details of the affirmative procedure are described in section 55(4).

36. It is anticipated that the SRA will be wound up gradually, and the transfer of its functions is to be completed before it is abolished. The section includes provision

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to allow the Secretary of State to reduce the membership of the Strategic Rail Authority as part of the transitional period leading to abolition.

## **Section 2: Transfer of safety functions to the ORR**

37. *Section 2* brings into effect schedule 3, which concerns the transfer of safety functions under the Health and Safety at Work etc Act 1974 ("the 1974 Act") to the ORR.

## ***Railway Strategy***

## **Section 3: General Duties under s.4 of the 1993 Act**

38. This section amends the general duties of the ORR and the Secretary of State provided in s4 of the 1993 Act that apply to the exercise of their functions under that Act.

39. *Sections 3(2), 3(8) (a) and 3(9)* provide that the general duties do not apply to the safety functions being transferred to the ORR under Schedule 3, to which quite separate considerations apply. Thus the transferred safety functions are not subject to the balancing of the general duties applicable to other functions. This reflects the need to ensure that the transferred safety functions are not compromised in the pursuit of the ORR's other functions.

40. *Section 3(3)* provides an additional general duty to promote improvements in railway service performance in terms of reliability, punctuality and minimising overcrowding and journey times. It also removes the general duty to have regard to the SRA's strategies given the abolition of that body.

41. *Section 3(4)* retains a duty for the ORR to take into account safety matters in the exercise of its general duties. This is distinct from the safety functions being transferred to the ORR under schedule 3.

42. *Sections 3(5) and (6)* modify s.4(3A) of the 1993 Act which applies the general duties (specified in s4(1) to (3) of the 1993 Act) to certain functions undertaken by the Secretary of State. Section 3(5) provides that these duties apply to network modification functions undertaken by the Secretary of State. Section 3(6) applies these duties to functions undertaken by the Scottish Ministers in relation to improving, providing or developing railway facilities, or network modification. It also applies the duties to functions undertaken by the NAW in relation to network modification.

43. *Sections 3(8) and (9)* modify s.4(5) of the 1993 Act which specifies further general duties applicable only to the Office of Rail Regulation. On non-safety function railway matters the ORR must have regard to general guidance from the

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Secretary of State and the funds he has available for the purposes of his railways functions. The ORR must also have regard to general guidance from the Scottish Ministers on Scottish railway matters with potentially different weighting where expenditure falls to the Scottish Ministers. It also must have regard to strategies and policies of the NAW on Welsh railway matters that the NAW notifies to it. Also the Secretary of State must consult NAW before giving general guidance to the ORR under section 4(5) of the 1993 Act. On matters relating to its safety functions (except enforcement functions), the ORR must have regard to general guidance from the Secretary of State only, under new section 4(5B) of the 1993 Act. Section 3(9) inserts an additional general duty, under new section 4(5C) of the 1993 Act, requiring the ORR, in considering anything affecting the interests of railway service users and providers, to have regard to the interests in securing value for money of those providing public money and of the general public.

44. *Section 3(10)* inserts new Section (7ZA) of section 4 of the 1993 Act. This Section concerns general guidance given to the ORR by the Secretary of State, including in relation to the ORR's new safety functions and by the Scottish Ministers in respect of railway matters relating to Scotland at Section 3(8)(b). It permits the Secretary of State and the Scottish Ministers to vary or revoke any advice given in respect of the purposes set out above, and places a requirement on the Secretary of State and the Scottish Ministers to publish any guidance which they may issue for those purposes in such a manner as they may consider appropriate.

#### **Section 4: Use of access charges reviews for application of strategy**

45. *Section 4*, which introduces *Schedule 4*, amends Schedule 4A of the 1993 Act which provides a process by which the conclusions of an access charges review by the ORR are taken forward. Schedule 4 of the Act also establishes the process for the prior stage of conducting the review. This includes in particular how the Secretary of State and the Scottish Ministers make inputs at various stages of the review.

#### **Section 5: Railway strategy for Scotland**

46. *Section 5* gives the Scottish Ministers the power to formulate and publish strategies in respect of railways in Scotland and to revise them from time to time as they feel appropriate. They are not obliged to formulate or revise a strategy. However, where they do formulate or revise a strategy they must publish the strategy or revised strategy in a way which will bring it to the attention of those bodies likely to be affected by it.

### **Part 2: Public Sector Funding Authorities for Railways**

#### ***Assisting and securing the provision of services***

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## **Section 6: Financial assistance etc. from the Secretary of State**

47. *Section 6* provides a power for the Secretary of State to give financial assistance for any railway purpose. The assistance may take the form of grants, loans, guarantees or investments, and may be subject to such terms and conditions as the Secretary of State thinks fit. For the purposes of section 6 the term railway is deemed to have its "wider meaning". This term is defined by section 81(2) of the 1993 Act and covers a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.

48. This section is similar to section 211 of the Transport Act 2000 (which is repealed by section 58 of and Schedule 13 to the Act) which enables the Strategic Rail Authority to provide financial assistance for railway purposes. It is intended that the Secretary of State's power will be used in particular:

- to provide financial support to train operators under franchise agreements; and
- to provide financial support to Network Rail for the provision of rail infrastructure.

Where the support is in respect of services operated under a franchise agreement, it may only be given in accordance with the terms of that franchise agreement. The purpose of this provision is to ensure transparency, so that the provisions of a franchise agreement, which have to be published on a public register, under section 73 of the 1993 Act, cannot be amended by a private side agreement.

49. The section also replaces a power in section 17 of the Ministry of Transport Act 1919 which covers some of the same subject matter as this section and is superseded by it.

## **Section 7: Notification of assistance from Secretary of State for freight services, Section 9: Notification of assistance from the Scottish Ministers for freight services and Section 11: Notification of assistance from Welsh Assembly for freight services**

50. Under the Transport Act 2000, the SRA has sole power (under section 211) to make or modify financial assistance schemes aimed at securing the provision, improvement or development of rail freight. The SRA must inform both the Scottish Ministers and National Assembly of Wales of these schemes (under section 249). The Scottish Ministers have the sole power to apply these schemes in Scotland and the National Assembly of Wales and SRA have joint powers to do so in Wales.



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These provisions of the Transport Act 2000 are repealed by this Act.

51. Under *sections 8 and 10* of this Act, the Scottish Ministers and National Assembly of Wales will have new powers to make and modify schemes of this kind themselves. The sections to which this note relates seek to encourage the co-ordination of such schemes, given that rail freight activities may cross the borders between England, Wales and Scotland.

52. *Section 7* requires the Secretary of State to notify the Scottish Ministers and National Assembly of Wales of any new or modified schemes. Sections 9 and 11 impose reciprocal duties on the Scottish Ministers and NAW to notify the Secretary of State of their own new or modified schemes.

53. Section 6(4) requires the Secretary of State to have regard to the desirability of acting consistently with anything notified to him by either the Scottish Ministers under section 9 or the NAW under section 11. *Sections 8(6) and 10(9)* require the Scottish Ministers and National Assembly of Wales respectively to have the same regard to anything notified to them by the Secretary of State under section 7.

### **Section 8: Franchising and financial assistance in relation to Scotland**

54. *Section 8(1)-(9)* provides a power, based on section 211 of the Transport Act 2000, for the Scottish Ministers to provide financial assistance in connection with "Scottish services". Similar provisions apply to the Secretary of State under section 6 and to the NAW under section 10. This power applies to both freight and passenger services.

55. *Section 8 (1)* enables the Scottish Ministers to provide financial assistance to any franchisee where the Ministers are party to a franchise agreement. They can provide financial assistance to buy services from the franchisee, including both Scotland-only services and cross border services. They can also provide financial assistance to the franchisee for any other purpose in relation to such services. This might include the provision of new passenger facilities, such as a station or the re-opening of a disused line, or improvements to existing facilities.

56. *Section 8(2)* enables the Scottish Ministers to provide financial assistance otherwise than under a franchise agreement for "Scottish purposes". It will enable them to provide funding to a wide range of parties, so as to develop the railway services within Scotland and cross-border services.

57. *Section 8 (3)* defines the meaning of "Scottish purposes" for the purposes of section 8 (2).

58. *Section 8 (4)* clarifies what may constitute the provision of financial assistance by the Scottish Ministers for the purposes of section 8.

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59. *Section 8 (5)* gives the Scottish Ministers the discretion to enter into agreements and other arrangements to provide financial assistance to any party under Section (1) or (2) on whatever such terms and conditions they think appropriate.

60. *Section 8 (6)* relates to section 7 (notification of assistance from the Secretary of State for freight services). It obliges the Scottish Ministers to consider whether or not, in providing financial assistance in relation to freight services, the effect is consistent with any scheme relating to the provision of grants for freight facilities that the Secretary of State has notified to them. The section does not require the Ministers to act in accordance with the Secretary of State's scheme.

61. *Section 8 (7)* clarifies the way in which the Scottish Ministers may enter into agreements or other arrangements under Section 8(2) to provide financial assistance in respect of franchised services. This clarification is needed because Section 8(2) gives the Scottish Ministers a wide power, which enables them to provide assistance outside the terms of a franchise agreement. The clarification is that where the Scottish Ministers enter into an agreement or arrangement with a "relevant person" they may only do so under the terms of a franchise agreement. This is intended to ensure transparency in relation to franchise agreements, which are public documents, kept on the public register. Section 8(7) ensures that the Scottish Ministers only enter into agreements with franchisees etc. which relate to franchised services where those agreements are entered into in accordance with the franchise agreement.

62. *Section 8 (8)* defines the meaning of a "relevant person" for the purposes of section 8 (7) as a franchisee, franchise operator, or employee, agent or independent contractor of the franchisee or franchise operator.

63. *Section 8 (9)* defines the meaning of "Scottish service", "facilities" and "railway" for the purposes of section 8. For the purposes of section 8 the term "railway" is deemed to have its "wider meaning". This term is itself defined by section 81(2) of the 1993 Act and means a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.

## **Section 10: Franchising and financial assistance in relation to Wales**

64. *Section 10(1)* provides that the Secretary of State must consult the NAW before issuing an invitation to tender for or, where he does not invite tenders, entering into a franchise agreement under which the services to be provided are or include "Welsh services". "Welsh services" is defined in section 56 and means railway passenger services which start in Wales, end in Wales or otherwise make at least one scheduled call in Wales. The franchise agreements in question would include, but would not be limited to, those which are the subject of section 10(2).

65. *Section 10(2)* provides for the Secretary of State and the NAW to be

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joint parties to a passenger rail franchise that provides services that are or include “Wales-only services”. “Wales-only services” is defined in section 56 and means services that both start and end in Wales and do not make any other scheduled calls outside Wales, and have not been excluded from the definition by an order made by the Secretary of State. In practice this means the current Wales and Borders franchise which is operated by Arriva Trains Wales, since this is the only franchise which at present provides or includes Wales-only services. The Secretary of State will not be able to enter into a franchise agreement that falls within the scope of this section on his own with a franchisee; he may only do so if the NAW joins with him as a co-signatory to the agreement. In future the franchise agreements referred to in section 10(2) could include a different franchise to the current Wales and Borders franchise, or more than one franchise, if they provided Wales-only services. As mentioned in the notes to section 1, it is intended that the SRA interest in the franchise agreement with Arriva Trains Wales will be transferred to the Secretary of State and the NAW jointly.

66. *Section 10(3)-(12)* provides a power for the NAW to provide financial assistance connected with Welsh services. This power is based on section 211 of the Transport Act 2000. Similar provisions apply to the Secretary of State under section 6 and the Scottish Ministers under section 8.

67. *Section 10(3)* enables the NAW to provide financial assistance to any franchisee where the NAW is a party to the franchise agreement. The NAW can provide financial assistance to buy services from the franchisee which operate to, from or within Wales. It can also provide financial assistance to the franchisee for any other purpose in relation to such services. This might include the provision of new passenger facilities, such as a station or the re-opening of a disused line, or improvements to existing facilities. The NAW's power under this section is not limited to franchises it is a party to for the purposes of section 10(2). It will be possible for the Secretary of State to invite the NAW to be party to other franchise agreements that provide services that make scheduled calls in Wales. In addition, it will be possible for the Assembly to be a party to a franchise agreement with the Scottish Ministers if the Scottish Ministers and NAW agreed that the Assembly should provide financial assistance to secure a service between Wales and Scotland under a Scottish franchise.

68. *Section 10(4)* enables the NAW to provide financial assistance otherwise than under a franchise agreement for "Welsh purposes". It will enable the NAW to provide funding, so as to develop the railway serving Wales, to a wide range of parties, such as Network Rail, freight operators and other third parties. In addition, subject to section 10(10), it will enable NAW to provide financial assistance to franchisees where the NAW is not a party to the relevant franchise agreement.

69. *Section 10(5)* defines the meaning of "Welsh purposes" for the purposes of section 10(4).

70. *Section 10(6)* enables the NAW to make payments to the Secretary of State or

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the Scottish Ministers in relation to their respective roles as "operator of last resort". This role arises under amended section 30 of the 1993 Act when a franchise that either of them has let ends and is not replaced with another franchise agreement. Where the NAW secured services as a party to the franchise agreement in question it will be able to provide the necessary financial assistance for those services to continue to be provided.

71. *Section 10(7)* clarifies what may constitute the provision of financial assistance by the NAW for the purposes of section 10.

72. *Section 10(8)* gives the NAW the discretion to enter into agreements and other arrangements to provide financial assistance to any party under section 10(3) or (4) on whatever such terms and conditions it thinks appropriate.

73. *Section 10(9)* relates to section 7 (notification of assistance from the Secretary of State for freight services). It obliges the NAW to consider whether or not, in providing financial assistance in relation to freight services the effect is consistent with any scheme relating to the provision of grants for freight facilities that the Secretary of State has notified to it. The section does not require the NAW to act in accordance with the Secretary of State's scheme.

74. *Section 10(10)* clarifies the way in which the NAW may enter into agreements or other arrangements under Section 10(4) to provide financial assistance in respect of franchised services. This clarification is needed because Section 10(4) gives NAW a wide power, which enables it to provide assistance outside the terms of a franchise agreement. The clarification is that where the NAW enters into an agreement or arrangement with a franchisee, franchise operator, or employee, agent or independent contractor of the franchisee or franchise operator (a "relevant person") it may only do so under the terms of a franchise agreement. This is intended to ensure transparency in relation to franchise agreements, which are public documents, kept on the public register. Section 10(10) ensures that NAW only enters into agreements with franchisees etc. which relate to franchised services where those agreements are entered into in accordance with the franchise agreement.

75. *Section 10(12)* defines the meaning of "facilities" and "railway" for the purposes of section 10. For the purposes of section 10 the term "railway" is deemed to have its "wider meaning". This term is itself defined by section 81(2) of the 1993 Act and means a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.

## **Section 12: Transfer schemes at end of franchising agreements**

76. *Section 12* provides for the making of a Transfer Scheme when a franchise agreement terminates (for whatever reason) to transfer the relevant franchise

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assets (as defined in section 12(8)). Under section 27 of the 1993 Act, the SRA has power to designate property, rights and liabilities as "franchise assets" under a franchise agreement. These "franchise assets" are important to the operation of the franchised services, and accordingly section 27 provides that franchise assets may not be disposed of by the franchise operator without the consent of the SRA. Schedule 1 of this Act amends section 27 so that these functions will be exercised in future by the Scottish Ministers in relation to Scottish franchise agreements, and by the Secretary of State in relation to other franchise agreements.

77. *Section 12* is primarily intended for use where a franchise agreement is terminating, and a new franchisee is taking over from the existing franchisee. The Secretary of State or the Scottish Ministers, as appropriate, may make a Transfer Scheme for the transfer of the franchise assets from the old franchise company to the new franchise company. The old franchise company will be paid for the franchise assets in accordance with the terms of its franchise agreement.

78. However, there may be circumstances in which a franchise agreement terminates but is not replaced with a new franchisee. This may happen, for example, where the franchise agreement terminates and the services have to be provided under amended section 30 of the 1993 Act by the Secretary of State or the Scottish Ministers as "operator of last resort". In order to enable the Secretary of State or the Scottish Ministers (or a company owned by one or both of them) to discharge the duty to act as operator of last resort, it is necessary for the franchise assets to be transferred to them. Section 12(2) makes provision for this.

79. *Section 57(3) and (4)* explains the meaning of companies which are "wholly owned" and "jointly owned" for the purposes of this Act. Section 12(2) uses these terms.

### ***Passenger Transport Executives***

#### **Section 13: Railway functions of Passenger Transport Executives**

80. *Subsection (1)* provides that the Secretary of State must consult a Passenger Transport Executive in England before issuing an invitation to tender for or, where he does not invite tenders, entering into a franchise agreement which includes services where that Passenger Transport Executive have an interest.

81. *Subsection (2)* defines the services in which a Passenger Transport Executive has an interest. These are railway passenger services within a PTE's area or railway passenger services to or from a PTE area.

82. *Subsection (3)* enables a Passenger Transport Executive in England to enter into arrangements with the Secretary of State whereby the PTE can make payments to the Secretary of State that relate to railway passenger services, station services or bus

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substitution services provided within the PTE's area and/or the Secretary of State can use his powers in relation to those services within the PTE's area in a particular way. This would for example enable the parties to agree for the Secretary of State to secure additional railway passenger services under the franchise agreement which the PTE would fund. "Bus substitution service" is defined in Schedule 11 Paragraph 11(b) of the Act.

83. *Subsection (4)* enables Passenger Transport Executives in England to enter into agreements directly with Train Operating Companies who are rail franchisees and franchise operators in connection with railway passenger services and related station services within the PTE's area.

84. *Subsection (5)* specifies that Passenger Transport Executives in England need to obtain the approval of the Secretary of State before entering into agreements with franchisees or franchise operators (or anyone who proposes to be one). This requirement applies whether the PTE is relying on its powers under subsection (4) or any of its other powers (such as its general powers under section 10 of the Transport Act 1968 (c.73)).

85. *Subsection (6)* enables the Secretary of State to give approval to agreements for the purposes of subsection (5) under either a general approval (approving a class of agreements such as agreements relating to a specified issue) or a specific approval (for a particular individual agreement). It also enables the Secretary of State to withdraw any approval which he may give in relation to an agreement at any stage up to the point that the agreement is entered into.

86. *Subsection (7)* confirms that the agreements that a Passenger Transport Executive in England may, with the approval of the Secretary of State, enter into include rail franchise agreements which comprise or which include services within their passenger transport area.

87. *Subsection (8)* specifies that the Secretary of State and a Passenger Transport Executive in England must provide information to each other which has been reasonably requested by the other for the purposes of undertaking their functions with respect to railways or railway services. Subsection 8(b) provides that this duty is limited to a duty to share information which the disclosing body may lawfully disclose (i.e., the information is not covered by a contractual or statutory prohibition on disclosure).

#### **Section 14: Repeals and savings relating to Passenger Transport Executives**

88. *Subsection (1)* specifies the sections of the Transport Act 1968 and the 1993 Act that are to be repealed in relation to PTEs.

89. *Subsection (2)* provides that Passenger Transport Executives which are party to franchise agreements at the time when this section is brought into force may

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

continue to be a party to those franchise agreements.

90. *Subsection (3)* provides that subsection (2) and sections 13(4) and 13(7) of this Act must be disregarded if there are provisions within the relevant franchise agreement that enable any person to amend that agreement in such a way as to cause a Passenger Transport Executive to cease to be a party to that agreement. It also provides that a Passenger Transport Executive must comply with all directions that the Secretary of State gives to them pursuant to which they will cease to be a party to a franchise agreement.

91. *Subsection (4)* contains a transitional provision that notwithstanding the repeals in this Act and the provisions of section 14, section 34(17) of the 1993 Act (c.43) shall continue to have effect in relation to any franchise agreement to which a PTE is party before the commencement of this section. In addition any other provision that affects the meaning of section 34(17) will continue in force for the purposes of this section. Section 34(17) is a dispute resolution provision for franchise agreements to which the SRA and PTEs are party, and provides that disputes may be referred by either body to the Secretary of State, who may give such directions to the SRA and the PTE with respect to the franchise agreement as he may think fit.

92. *Subsection (5)* provides that, if the provisions of subsection (4) are used, any references to the Strategic Rail Authority are to have effect as references to the Secretary of State where the interest in the franchise agreement has been transferred to the Secretary of State.

## ***London***

### **Section 15: Duty of Secretary of State and Transport for London to co-operate**

93. *Section 15* replaces various references in section 175 of the Greater London Authority Act 1999 (the GLA Act) to the SRA with references to the Secretary of State. The revised section 175 provides a duty on the Secretary of State and Transport for London (TfL) to co-operate. In addition it amends section 175 so that the Secretary of State must consult TfL before issuing an invitation to tender (or when entering a franchise agreement for which an ITT has not been issued) for railway passenger services to, from or within London. TfL and the Secretary of State also have a reciprocal duty to share with the other information relating to certain transport functions. Section 175 as amended also allows TfL to enter into arrangements with the Secretary of State in relation to railway services to, from or within London and for payments to be made by TfL to the Secretary of State in respect of them.

### **Section 16: Relaxation of contractual restrictions on Transport for London**

94. *Section 16* repeals section 201 of the GLA Act, which places restrictions on the type of agreements that TfL can enter into which involve the provision of railway services by licensed operators on the national network. This section provides

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instead for a prohibition on TfL entering into agreements with rail franchisees without the consent of the Secretary of State. Certain agreements (those in respect of the grant of a use of a railway facility) are excluded from this prohibition.

### **Section 17: Membership of Transport for London**

95. *Section 17* amends the GLA Act to change the membership of the TfL board. It increases the maximum membership of TfL from fifteen to seventeen (or, where the Mayor is a member, from fourteen to sixteen). It also requires the Mayor to ensure that two additional TfL board members represent the interests of people living, working and studying in areas outside Greater London that are served by railway passenger services in respect of which TfL exercises functions, and to consult the relevant regional planning bodies before making relevant these board appointments.

#### ***Provision of service by provider of last resort***

### **Section 18: Qualification of duty in respect of services funded by others**

96. *Section 18* limits the circumstances in which, if a franchise ends and is not replaced with another franchise, the relevant franchising authority is required to continue to provide the services as the "operator of last resort". The "operator of last resort" function is in section 30 of the 1993 Act (which is amended by this Act). The limitation is that the operator of last resort need not provide services that were funded under the franchise agreement in question by the NAW, a PTE or TfL if it believes that that party will not supply it with the necessary funds. The section gives the operator of last resort the discretion to decide not to provide the services if he believes the funding will not be forthcoming - i.e. before he falls short of the necessary funding. The relevant franchising authority, and therefore operator of last resort, for the purposes of this section is the Secretary of State for franchises in England and Wales, or the Scottish Ministers for Scottish franchises.

## **Part 3: Rail Passengers' Council and Rail Passengers' Committees**

### **Section 19: The Rail Passengers' Council**

97. *Section 19* provides for the existing Rail Passengers' Council (RPC) to be replaced by a new, recast body of the same name. The existing RPC, which exists by virtue of section 3 of the 1993 Act, is abolished by subsection (6). As with the existing RPC the new body will be an executive Non-Departmental Public Body (NDPB). But it will take on the additional responsibilities and requirements of a body corporate (see Schedule 5). The current RPC is sponsored by the Strategic Rail Authority.

98. *Section 19(2)* sets out the make-up of the new Council. The Scottish Ministers,



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the NAW and the London Assembly are each to appoint a member of the Council. The Council Chairman and not more than 12 other members are to be appointed by the Secretary of State.

99. *Section 19(4)* - The RPC will continue as a national GB-wide body sponsored by the Secretary of State. Payment of all Council members other than the LTUC member will come from the central RPC budget. Section 19(4) ensures that the Secretary of State is content with the terms and conditions of those Council members appointed by the Scottish Ministers and the NAW. The London Assembly will be responsible for the terms, conditions and remuneration of their Council appointee (section 19(5)) but must consult the Secretary of State.

100. *Section 19(7)* - The new Council created by subsection (1) is legally a different body to the current Council created under section 3 of the 1993 Act, even though the name of the two bodies is the same. To assist with the smooth transition to the new body, subsection (7) provides that any reference to the current body in enactments, instruments and other documents will continue to have effect but will apply to the new body. This would cover, for example, the reference to the Council in Schedule 1 of the Public Records Act 1958, and the references to the Council and its functions in section 76 of the 1993 Act.

## **Section 20: Delegation of functions by Council**

101. This section inserts a new section 76A into the 1993 Act which enables the RPC to delegate certain of its duties to other public bodies which may agree to discharge those duties. It is anticipated that a regional transport users body may be a suitable body to enter into such an agreement with the RPC. New section 76A(4) provides that the agreement of the Secretary of State is required before any such agreement can be entered into.

102. The duties which can be delegated by an agreement under subsection (1) are those set out in section 76(7A) of the 1993 Act. These are the duties of the RPC, so far as it appears expedient from time to time to do so, (a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services; (b) to make representations to, and consult, such persons as they think appropriate about those matters; and (c) to co-operate with other bodies representing the interests of users of public passenger transport services.

103. The new RPC will operate as a national body without the existing structure of regional committees. Alternative management approaches are being developed which will enable the RPC to build and maintain contacts with the wide variety of rail interests and passenger representative bodies that already exist or will be developed across the country. This is expected to occur largely through informal co-operation. This power to delegate provides the RPC with the flexibility to formalise such working relationships for specific matters should it agree to do so with the relevant

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public body (and with the consent of the Secretary of State). For example a local public transport group may be better placed to pursue a rail issue of particular local concern.

104. In delegating any such duties the RPC would not be prevented from working alongside the delegatee. Section 76A(2)(b) of the 1993 Act, as inserted by section 20, expressly provides that the RPC will retain powers to do all of those things which it would have been able to do by virtue of section 76(7A) had it not delegated any of its duties under this provision.

### **Section 21: Rail Passengers' Committee**

105. This section abolishes regional Rail Passengers' Committees. There is currently a federal relationship between the Council and the Committees, under which every chairman of a regional Committee is automatically a member of the Council. The RPC will continue to operate as a national body, but there will no longer be a federation of statutory regional committees (although it will be possible for the Secretary of State to direct that the Council should establish committees in relation to particular localities under Schedule 5 Paragraph 18, and the Council will be able to delegate certain of its functions under section 20). Section 21(3) introduces Schedule 6, which provides that the London Transport Users' Committee (which was treated as the Rail Passengers' Committee for the Greater London area by virtue of section 2 of the 1993 Act) will continue to have the functions that it has had as a Rail Passengers' Committee. The LTUC is established under section 247 of the Greater London Authority Act 1999. Responsibility for this body lies with the London Assembly.

### **Part 4: Network Modifications etc.**

106. The main content of this Part sets out the procedures which must be followed for proposals to close certain railway services, networks or stations of specified descriptions. Generally such proposals require a public consultation and an assessment by the person carrying out the consultation whether the proposal meets criteria set out in government guidance. Such a proposal must be referred to the ORR who must issue a notice, a "closure ratification notice" before the closure is allowed to proceed. If certain conditions are not met the ORR must issue a "closure non-ratification notice" and the closure will not be allowed to proceed. The Secretary of State or Scottish Ministers are generally under duties to ensure the continued operation of services, networks or stations if the operator ceases provision before the ORR has issued a notice or if the ORR issues a notice that does not allow a closure to proceed.

107. Proposals to which the consultation procedures do not apply include minor closures of specified descriptions, closures relating to experimental passenger services and services through the Channel Tunnel. Closure procedures for Light Maintenance Depots (LMDs) that were subject to the closure procedures under the equivalent

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sections of the 1993 Act are no longer subject to the statutory closure procedures.

### ***Discontinuance of railway passenger services***

#### **Section 22: Proposal by operator to discontinue non-franchised services**

108. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a service operator proposes to close all non-franchised services on a line or from a station.

109. It sets out the information an operator proposing a closure must provide to the appropriate National Authority (NA - the Secretary of State or the Scottish Ministers). This must include a summary of the assessment of the proposal carried out by the operator, following guidance provided by the Secretary of State or the Scottish Ministers or joint guidance provided by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The content of the guidance is not on the face of the Act, but is likely to include criteria that cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.

110. The NA must carry out a public consultation on any proposal that it thinks should proceed, following the approach set out in Schedule 7 to the Act. This includes a number of statutory consultees, with a minimum 12 week consultation period.

111. Following the consultation, the NA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

#### **Section 23: Proposals by funding authority to discontinue non-franchised services**

112. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all non-franchised services on a line or from a station.

113. It sets out the steps a railway funding authority (RFA) making a proposal needs to take. RFAs include the Secretary of State, the Scottish Ministers, the NAW, Passenger Transport Executives and Transport for London and the Mayor. Generally, RFAs can only initiate proposals for closures if they are parties to an agreement that provides financial assistance in support of the rail service (or network or facility) in question. The exceptions are PTEs, the Mayor and Transport for London who can initiate proposals for closures for services, networks or stations wholly within their areas, or for other services, networks or stations for which they are the only public funding body.

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114. The RFA must carry out an assessment of the proposal in accordance with the guidance provided by the Secretary of State or the Scottish Ministers or joint guidance produced by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The RFA must also consult on the proposal, again as described in the Explanatory Note for section 22.

115. Following the consultation, the RFA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

#### **Section 24: Proposals to discontinue franchised or secured services**

116. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all franchised or secured services on a particular line or from a particular station. 'Secured services' are those which an NA has a duty to provide. These are duties that arise under Part 4 of the Act or where the NA acts as 'operator of last resort' under section 30 of the 1993 Act.

117. The procedure is similar to that for section 23, as described above.

#### **Section 25: Proposal to discontinue excluded services**

118. This section sets out the circumstances and procedures under which operators can initiate proposals to discontinue all services on a particular line or from a particular station that are not 'relevant railway passenger services' for the purposes of sections 22 to 24 or experimental passenger services, and have been designated as services by Order to which this section applies.

119. Services may not be "relevant railway passenger services" because they have been excluded from the main closure provisions in sections 22 to 24 by an Order under section 38. Another reason may be that such services (for example tram services) fall within the wider meaning of "railway" in section 81(2) of the 1993 Act, but not within the limited meaning set out in section 81(1) of that Act.

120. Services that have been designated as services to which this section applies cover two categories. The first category is referred to as "special procedure excluded services" that are not "excluded London services". The second category is referred to as special procedure excluded services that are "excluded London services".

121. "Special procedure excluded services" are designated by order under section 25(7) by the national authority. The national authority will be the Scottish Ministers in the case of services wholly within Scotland or certain cross border services and otherwise the Secretary of State. Services that have been so designated are subject to the closure procedures set out in this section provided they are not excluded London

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services. The procedures are similar to the main closure provisions in section 22 that apply to closure of non- passenger franchised services. As in section 22, under section 25 the operator must not discontinue the services before the ORR has issued a "closure ratification notice" as set out in section 32. However unlike section 22, there is no duty on the national authority to secure the continued provision of the services in the event that the ORR does not ratify the closure under section 32.

122. "Excluded London services" are defined in section 25(7) mean any excluded service provided by TfL or that has been designated as a "London service" by the Secretary of State by order. Under section 25(8), the Secretary of State can designate a service as a "London service" if it is a service that is wholly within Greater London. Special procedure services that are excluded London services are subject to closure procedures that are set out in Schedule 8. These procedures are different to the main closure procedures set out in sections 22 to 24 passenger services. This is because they largely replicate the procedures that are currently set out in paragraph 5A of Schedule 5 to the Railways Act 1993.

123. Under subsections (10) and (11), services to which Schedule 5 to the Railways Act 1993 applies immediately before commencement of section 25, either by virtue of an order under section 49(3) of the 1993 Act, or under paragraph 5A(1)(b)(ii) of Schedule 5 to that Act, or because they are otherwise so treated, are deemed to be services to which section 25 applies.

124. Services to which this section will apply because they have been designated as services to which Schedule 5 to the 1993 Act applies are predominantly light rail or metro systems, including Manchester Metrolink, the Tyne & Wear Metro and the Croydon Tramlink.

### ***Discontinuance of operation of passenger network***

#### **Section 26: Proposal by operator to close passenger networks**

125. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an operator proposes to discontinue all or part of their passenger network. The procedures are similar to those for operators wishing to discontinue non- franchised services set out in section 22. This section applies to Network Rail's network.

#### **Section 27: Proposal by funding authority to close passenger network**

126. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes to close all or part of a passenger network. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

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### **Section 28: Proposal to discontinue operation of secured network**

127. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes closure of all or part of a passenger network that it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

### ***Discontinuance of use or operation of stations***

### **Section 29: Proposal by operator to close station**

128. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when operators of stations propose to close all or part of those stations. The procedures are similar to those for operators wishing to discontinue non-franchised services set out in section 22.

### **Section 30: Proposal by funding authority to close station**

129. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can initiate proposals to close all or part of a station. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

### **Section 31: Proposal to discontinue operation of secured station**

130. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can propose closure of all or part of a station it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

### ***References to the ORR***

### **Section 32: References to the ORR**

131. This section sets out the information a NA or RFA must provide to the ORR as part of a reference on a closure proposal following a consultation. It also sets out the duties of the ORR in considering a reference.

132. A reference to the ORR can only be made if the body intending to make it is satisfied that the proposal meets the criteria in the guidance provided by the Secretary

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of State, the Scottish Ministers or NAW or any combination of them, as set out in section 42.

133. If the ORR is satisfied that the consultation process was flawed or that the proposal does not meet the criteria, it must issue a “closure non-ratification notice” and the closure must not go ahead. If it is not satisfied of either of those things, it must issue a "closure ratification notice". The effect of this is that the ORR must issue a closure ratification notice on the reference made to it, but only where it has fulfilled the duties set out in this section.

134. Should the NA or RFA decide to implement the closure that the outcome of the reference allowed, then it would need to negotiate separately changes to appropriate franchise or other agreements with the relevant other parties. The outcome of the ORR reference itself does not authorise anything that would contravene such agreements.

### **Section 33: Closure requirements**

135. This section sets out the powers of the ORR to impose specific requirements in connection with a closure. If an operator fails to comply with requirements that have been imposed on it, the Secretary of State or the Scottish Ministers may take enforcement action under the 1993 Act. This can be in the form of an order setting out steps that the operator must take or financial penalties. Requirements can also be imposed on any of the railway funding authorities and the Passenger Transport Authority but these requirements are not subject to enforcement action.

### ***Excluded Proposals***

### **Section 34: Minor modifications**

136. This section sets out the powers of the Secretary of State and the Scottish Ministers to determine that closures of services, network and stations are 'minor modifications' and so not subject to main closure procedures. Section 35 describes the closures eligible to be treated as minor modifications. The concept of 'minor modifications' is very similar to that of 'minor closures' in the 1993 Act.

137. Under this section a closure is a minor modification if it has been determined as such or falls within a description that has been so determined. Such a determination can be made only in respect of eligible closures as described in section 35.

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### **Section 35: Closures eligible to be treated as minor modifications**

138. This section describes the type of closure proposals that are eligible to be treated as minor modifications and therefore not subject to the closure procedures in sections 22 to 31. Much of it is based on the descriptions of minor closures in the 1993 Act.

139. It also gives a power to the Secretary of State and the Scottish Ministers to make an order that any other description of closures which are temporary or have only a limited effect on the provision of passenger services should be treated as minor modifications, subject to the negative resolution procedure.

### **Section 36: Designation of experimental passenger services**

140. This section sets out the powers of the Secretary of State, the Scottish Ministers as well as the NAW to designate passenger services as 'experimental'. The maximum period for which a service may be designated as "experimental" is five years. A service that is already so designated under the 1993 Act will continue to be so designated until the 5 years expires in their case (or the designation is revoked). Designated experimental services are not covered by the provisions in sections 22 to 24 but have a separate and simplified closure procedure as set out in section 37.

### **Section 37: Discontinuance of experimental passenger services**

141. This section sets out the procedures for discontinuing services designated as experimental for franchised and non-franchised services. These procedures involve notice being given that the service is to be discontinued at least six weeks before the service is discontinued.

### **Section 38: Services, networks and stations excluded by order**

142. This section gives the Secretary of State and the Scottish Ministers powers to exclude services, networks and stations from the provisions of sections 22 to 24 and 26 to 31. A similar power for the Secretary of State exists in the 1993 Act. It has been used to exempt light rail, metro and discrete parts of the heavy rail network from the closure provisions. Services that have been excluded by order under this section may be subject to the closure procedures described in section 25 if designated by order under section 25 following the negative resolution procedure.

### ***Substitution services***

### **Section 39: Quality contracts schemes in connection with service modifications**

143. *Section 39* adapts the powers to make quality contracts schemes for local bus



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services in sections 124 to 134 of the Transport Act 2000. The changes apply in cases where a rail service, or part of a rail service, which is either wholly or primarily in the area of a Passenger Transport Executive (in England) is or is to be discontinued under Part 4, or otherwise reduced (e.g. with fewer stops or lower frequency).

144. Quality contracts schemes under the existing provisions of the 2000 Act are made by local transport authorities, including the Passenger Transport Authorities which control the Passenger Transport Executives, and must be approved by the Secretary of State. They may only be made if they satisfy the conditions in section 124(1) of that Act, one of which is that they must be the only practicable way of implementing policies in the authority's bus strategy.

145. Quality contracts schemes apply to an area. Within that area, they give the authority powers to determine the network, frequency and fares of bus services within the scheme. Any bus services within the area must be provided in accordance with a contract with the local authority, unless the service is excluded from the scheme. The local authority must let contracts by competitive tender to operators, who are granted the exclusive right to operate the service.

146. *Subsection (1)* provides an alternative set of tests to be met in the context of a scheme made by a Passenger Transport Authority (alone or with another local transport authority) in response to the discontinuance or reduction of a rail service in their area. The remainder of the section adds definitions or makes consequential amendments to the Transport Act 2000.

#### **Section 40: Substitute road services**

147. This section gives the Secretary of State, the Scottish Ministers and the NAW the power to secure the provision of substitute bus services if a passenger rail service is temporarily interrupted or has been discontinued.

#### ***Supplemental provisions of Part***

#### **Section 41: Proposals by funding authorities**

148. This section sets out the circumstances under which RFAs can initiate closure proposals under sections 22 to 31. RFAs, except for PTEs, the Mayor and Transport for London, can initiate closure proposals if, and only if:

- (a) the closure proposal is made alongside another proposal by the authority;
- (b) this other proposal concerns an agreement to which the authority is a party that relates to the provision of financial assistance for the passenger service,

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network or station that it proposes should be closed;

(c) in the authority's view, the proposal to change the funding agreement referred to in (b) above is likely to result in the actual closure of the passenger service, network or station concerned.

149. The effect of this is that RFAs can only initiate closures for which they provide the funding for, either directly or indirectly. PTEs, the Mayor and Transport for London can only propose closures for services, networks or stations wholly within their areas, or for services, networks or stations for which they are the only public funding body.

#### **Section 42: Closures guidance**

150. This section sets out the duties of the Secretary of State, the Scottish Ministers and the NAW in publishing guidance on assessing closure proposals referred to in sections 22 to 31. Neither this nor any other section of the Act sets out what will be in the guidance, but it is likely to include criteria that are likely to cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.

151. The section allows for the guidance to include different provisions for different purposes and for different types of closure proposal. This means that the guidance and criteria could be different for, say, operator initiated proposals and RFA initiated ones, as well as smaller and larger proposals.

#### **Section 43: Procedure relating to publication and modification of closures guidance**

152. Section 43 provides for parliamentary scrutiny of Closures Guidance, and modifications to such Guidance, that the Secretary of State, Scottish Ministers and the National Assembly for Wales have a duty to publish under Section 42. Subsections (1) and (2) of the Section requires that new Closures Guidance and all modifications to it must be laid in both Houses of the Westminster Parliament and/or the Scottish Parliament as appropriate, depending on whether the Secretary of State, Scottish Ministers or both have a duty to publish the Guidance under Section 42. The Guidance, or modifications to it, is then brought into force by an order made by the Secretary of State and/or Scottish Ministers as appropriate under subsection (3). The order is subject to the negative resolution procedure. These orders are subject to the consent of the National Assembly of Wales, where they bring into force joint Guidance published by the NAW with Scottish Ministers and/or the Secretary of State.

153. Subsection (6) provides that if the order made under subsection (3) introducing the Guidance or amendments to it is annulled by the UK or Scottish Parliament, the Guidance or modifications are effectively withdrawn and that in these circumstances,

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existing Guidance would continue to be in force. Subsection (7) makes clear that the withdrawal of any guidance following annulment of an order to which it relates does not affect anything done in consequence of the Guidance before its withdrawal and doesn't preclude publication of further guidance.

#### **Section 44: Exclusion of liability for breach of statutory duty**

154. This section exempts specified persons from liability for breach of statutory duty in certain circumstances. Paragraphs (a), (b), (c) and (d) (to the extent they relate to closure requirements imposed on relevant operators), (e) and (f) of subsection (2) of this section are based on section 50(2) of the 1993 Act and cover obligations whose breach could lead to a final or interim order under section 55 of the 1993 Act; a breach of such an order would carry liability for breach of statutory duty (see section 57 of that Act). Paragraph (d) (to the extent that it relates to closure requirements imposed on the Secretary of State or the Scottish Ministers) and (g) of subsection (2) of section 44 are based on section 50(1) of the 1993 Act.

#### **Section 45: Interpretation of Part 4**

155. This contains definitions of terms used in sections 22 to 45 of the Act. It also gives a power to the Secretary of State or the Scottish Ministers to designate additional bodies as RFAs subject to negative resolution procedure.

#### **Part 5: Further Miscellaneous Provisions**

##### *Conduct and accessibility on railways*

#### **Section 46: Bye-laws**

156. *Section 46* enables railway operators to make bye-laws, subject to confirmation by the Secretary of State and, where appropriate, the Scottish Ministers, to enable them and the police to control the conduct and behaviour of people using the railways. It also provides a mechanism governing the making of such bye-laws.

157. *Subsection (1)* defines the specific circumstances which the bye-laws can be made to regulate.

158. *Subsection (2)* lists some of the specific activities which the bye-laws may regulate including the issue of tickets, fare evasion, obstructing or interfering with the working of the railway, smoking, causing a nuisance, receipt and delivery of goods, and control of bicycles and other vehicles on footways.

159. *Subsection (3)* gives effect to Schedule 9, which provides the procedure for the

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making of bye-laws.

160. *Subsection* (4) ensures that existing bye-laws made by the Strategic Rail Authority continue to have effect until they are revoked.

161. *Subsections* (5) and (6) provide the Secretary of State with an order making power to revoke or amend bye-laws made by the Strategic Rail Authority and other bye-laws currently in force.

162. *Subsection* (7) defines the meaning of "railway operator" in the context of the power to make bye-laws under subsection (1).

163. *Subsection* (8) enables bye-laws to be applied to railway assets operated by a railway operator or rolling stock which a railway operator manages.

#### **Section 47: Power of Scottish Ministers to make penalty fare regulations**

164. Under the terms of Section 130 of the 1993 Act, as amended by the Transport Act 2000, provision is made for the making of regulations connected with the charging of penalty fares on the national rail network. The power to make regulations relating to the amount of a penalty fare is currently a power for the Secretary of State to exercise. Section 47 makes provision for the Scottish Ministers to also be empowered to make penalty fare regulations in relation to trains and stations used in connection with railway passenger services provided under Scottish franchise agreements, other Scotland-only services or services which have been secured by the Scottish Ministers. Regulations made by the Scottish Ministers will be subject to the negative resolution procedure in the Scottish Parliament (the equivalent procedure in Scotland to that which applies to regulations made by the Secretary of State under section 130 of the 1993 Act).

#### **Section 48: Code of practice for disabled rail users in Scotland**

165. *Section* 48 provides the Scottish Ministers with the power to prepare (and from time to time revise) a code of practice for protecting the interests of disabled persons in Scotland who are users of railway passenger services or station services. In preparing or revising the code, the Scottish Ministers are to consult the Disabled Persons Transport Advisory Committee. Where the Scottish Ministers use this power to prepare a code of practice, they must publish the code (as revised from time to time) in such manner as they consider appropriate.

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

***Railway administration orders for companies providing Scottish services***

**Section 49: Functions of Scottish Ministers in relation to railway administration**

**Section 50: Assistance by Scottish Ministers for companies in railway administration**

166. The provision of Sections 59 to 65 of the 1993 Act deal with Railways Administration - a particular system of insolvency for the rail industry based upon the Insolvency Act 1986 but with different purposes, in that it is primarily focused on ensuring that railway services are maintained.

167. *Sections 49 and 50* provide for the Scottish Ministers to be able to exercise functions in relation to the railways administration of a franchise operator in relation to a Scottish franchise agreement. They provide the Ministers with power to apply for a railways administration order in respect of such an operator. The Scottish Ministers must also be notified in advance of any proposals to obtain a winding up order, a voluntary winding up resolution or an administration order in respect of a Scottish protected railway company. This advance notification allows time for the Scottish Ministers to apply, if they consider it appropriate to do so, for a railways administration order in respect of that company. If a railways administration order is made, this effectively blocks the proposal for the other procedure from progressing. In addition, the Scottish Ministers must be notified in advance of any proposals by any person to enforce their security over the property of a Scottish protected railway company. This advance notice again allows time for the Scottish Ministers to apply, if they consider it appropriate to do so, for a railways administration order in respect of the company.

168. They also give the Ministers power to provide funding or guarantees in order to achieve the purposes of the railways administration order, and to indemnify the railways administrator appointed under the railways administration order (and persons connected with him). They may set such conditions on the financial assistance they provide as they see fit.

***Duties of co-operation etc.***

**Section 51: ORR to advise national authorities**

169. *Section 51* places a new duty on the ORR to provide information and advice to the Secretary of State, to the Scottish Ministers and to the NAW in connection with their respective railways functions. Subsection (1) requires the ORR to meet the Secretary of State's reasonable requirements for information and advice and other assistance, including in connection with his railway safety functions. Subsection (2) imposes a similar requirement in relation to the Scottish Ministers in connection with their railway functions (which do not include railway safety functions). Subsection

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(3) imposes a requirement for the ORR to meet the reasonable requirements of the NAW for information and advice on its railway functions (which do not include railway safety functions).

## **Section 52: Duty of Passenger Transport Executives to advise Secretary of State**

170. *Subsection (1)* specifies that the Passenger Transport Executives must provide advice to the Secretary of State when he requests it on matters connected to his functions in relation to railways or railway services. It is envisaged that advice could be sought as a useful factor to be considered as part of the Secretary of State's rail planning activities. This provision could be used to request advice on how changes in the local rail network can be made to best reflect local priorities within the resources available. This might include value for money assessments of how resources spent on rail in the PTE's area could be best allocated across all transport modes to support local transport priorities.

171. *Subsection (2)* provides that Passenger Transport Executives do not have to comply with a request outlined in subsection (1) if it would impose an unreasonable administrative burden.

172. *Subsection (3)* allows that in determining what is an unreasonable administrative burden other requests for advice made under the provisions of this section should be taken into account. This means that, although an individual request for advice might not constitute an unreasonable burden, if that request is made alongside a large number of other requests, they could in totality be seen to represent an unreasonable burden.

173. *Subsection (4)* defines the Secretary of State's functions in relation to railways or railway services and provides that in relation to this section these functions do not include those relating to rail safety.

## **Part 6: General and Supplemental**

### ***General***

## **Section 53: Taxation**

174. *Section 53*, together with *Schedule 10*, makes provision for the consequences for taxation of the various transfers under the transfer schemes for which the Act provides.

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#### **Section 54: Further amendments of the 1993 Act**

175. *Section 54(1)* extends the scope of the Secretary of State's powers under sections 118 and 119 of the 1993 Act. It amends the 1993 Act so that for the purposes of those sections, the term railway is deemed to have its "wider meaning". This term is defined by section 81(2) of the 1993 Act and covers a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992. Section 118 provides a power for the Secretary of State to give directions in relation to the control of railways in times of hostilities, severe international tension or great national emergency. Section 119 provides a power to the Secretary of State to give instructions to owners and operators of railway assets and providers of railway services for the purposes of ensuring that relevant assets, or persons or property on or in such assets, are protected against acts of violence.

176. *Section 54(2) and (3)* limit this power in relation to Scotland. In respect of an asset wholly in Scotland, the "wider meaning" of railways does not apply except where the Secretary of State's instruction is given in the interests of national security (including protection against terrorism).

#### ***Supplemental***

#### **Section 55: Expenses etc.**

177. *Section 55* makes provision for money to be provided by Parliament to meet costs attributable to the Act. It also provides that sums received by the Secretary of State in relation to:

- section 6, which provides for financial assistance from the Secretary of State in relation to securing railway services or assets,
- section 10(5), which allows the NAW to make payments to the Secretary of State in relation to the provision of services by operator of last resort;
- section 13(2), which allows Passenger Transport Executives and the Secretary of State to enter into arrangements, including arrangements under which payments will be made by the Executive to the Secretary of State, and
- paragraph 7 of Schedule 5, which allows the Secretary of State to give a direction to the RPC requiring it to pay him a specified sum, will be paid into the Consolidated Fund.

#### **Section 56: Powers exercisable by statutory instrument**

178. *Section 56* governs the manner in which the Secretary of State and the Scottish Ministers must exercise their powers under the Act to make orders and regulations.

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Where a section in the Act creates a power to make orders and regulations, the section may also provide that the statutory instrument containing the order or regulation in question is subject to the negative resolution procedure or to the affirmative resolution procedure. Section 56(2) and (3) explain what these procedures involve. The different procedures involve different levels of Parliamentary scrutiny for the statutory instrument.

179. Subsection (5) provides that most of the powers to make statutory instruments can be exercised flexibly, so that (for example) powers can make provision for different approaches to be taken in relation to different cases or different areas. This flexibility does not apply to the power to make commencement orders under section 60(2).

### **Section 57: Meaning of "Wales-only service" and "Welsh service"**

180. *Section 57* defines the meaning of "Wales-only service" and "Welsh service" for the purposes of the Act.

181. *Section 57(1)(a)* provides the geographical description of what constitutes a "Wales-only service".

182. *Section 57(1)(b)* enables the Secretary of State to make an order to exclude any services that would otherwise fall within the definition of "Wales-only service". This will enable the Secretary of State to decide whether or not any franchises that begin to provide Wales-only services should be let jointly with the NAW in accordance with Section 10(2). For example, First Great Western currently provides services between England and Wales, but does not provide any services that are Wales-only. If the franchisee began to provide Wales-only services the Secretary of State would decide whether or not it was appropriate for the NAW to be a party to the franchise and, if not, make an order to exclude the Great Western services from the definition of Wales-only.

183. *Section 57(2)* requires the Secretary of State to consult the NAW before making an order under section 56(1) (b).

184. *Section 57(3)* specifies the Parliamentary procedure that the Secretary of State must use to make an order under section 57(1) (b) - namely the negative resolution procedure.

### **Section 58: General Interpretation**

185. This section defines certain terms which are used in the Act. Section 58(2) provides that terms which are defined in the 1993 Act (either for the purposes of Part 1 of that Act or for the whole of the Act) have the same meaning in this Act as in that



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Act.

### **Section 60: Short title, commencement and extent**

186. *Section 60(2)* provides for the Secretary of State to make commencement orders which will bring the provisions in the Act into force. The Secretary of State may make more than one such order, and may bring into force different provisions on different dates.

187. *Section 60(3)* enables the Secretary of State to make such an order as he thinks fit which would make additional legislation to deal with the way in which in the parts of the Act dealing with Network Modifications, or the repeal of sections of the 1993 Act relating to closures, are brought into force. It also enables the Secretary of State to make transitional provisions via an order in connection with the bringing into force of Section 21 which relates to the abolition of the Rail Passengers' Committees.

188. *Section 60(5)* provides that section 13 on the Railway functions of Passenger Transport Executives, and section 39 on Quality contracts schemes in connections with closures, extend only to England and Wales.

189. *Section 60(6)* provides that the Act will not apply in Northern Ireland.

190. *Section 60 Subsections (2) to (5)* enable the Secretary of State to make a scheme to modify existing railway licences and licence exemptions, granted under sections 8 and 7(3) of the Railways Act 1993, where necessary in consequence of certain provisions in the Act. The relevant provisions are set out in subsection (3) and include, for example, provisions that transfer consumer protection licensing functions from the SRA to the ORR.

### **COMMENTARY ON SCHEDULES**

#### ***Schedules 1 and 2 Background***

191. *Schedules 1 and 2* allow for the transfer, abolition or reallocation of the Strategic Rail Authority's functions and also of its property, rights and liabilities.

#### **Schedule 1 - Transfer etc. of functions of the Strategic Rail Authority**

192. This schedule deals with the transfer or abolition of the Strategic Rail Authority's functions.

193. *Paragraphs 1 to 10* transfer from the SRA to the ORR all functions relating to consumer protection conditions attached to licences and licence exemptions. As a result there is no longer a need for the distinction drawn by the 1993 Act between

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consumer protection and other conditions.

194. *Paragraphs* 11 to 26, 29 – 33, and 35 transfer to the Secretary of State and, where appropriate, the Scottish Ministers, functions which are currently with the Strategic Rail Authority. The functions relate to railway facilities, access and franchise agreements, the operator of last resort duty, enforcement conditions, the code of practice for the protection of disabled rail users, the registers kept for the purposes of functions under the 1993 Act, the Rail Passengers' Council, the power to require information from licence holders and concessionary travel.

195. *Paragraphs* 27, 28, 34 and 36 abolish functions of the SRA by removing legislative references to it. The SRA functions abolished in paragraphs 27, 28 and 34 relate to railways administration orders, the enforcement of consumer protection provisions in operating licences, and the penalty fares regime. In addition paragraph 36 removes SRA powers to provide rail services, secure the provision of substitute bus and taxi services and make railway byelaws.

196. In relation to Paragraph 32 the Rail Passengers' Council is currently the responsibility of the Strategic Rail Authority. It has powers to sponsor and to direct the body and is in receipt of its annual reports. Following the dissolution of the Strategic Rail Authority sponsorship of the Rail Passengers' Council will pass to the Secretary of State.

## **Schedule 2: Transfer schemes**

197. This Schedule contains further provisions governing Transfer Schemes made under Sections 1 and 12. Provision is for powers to be given to the Secretary of State and the Scottish Ministers to transfer property, rights and liabilities for two different purposes:

- (i) the power to move the SRA's property, rights and liabilities in connection with its abolition; and
- (ii) the power to move franchise assets at the end of the franchise term.

Only the Secretary of State has power to make Transfer Schemes for the first of these purposes.

198. Paragraphs 1 and 2 set out how a Transfer Scheme may specify or identify property, rights and liabilities to be transferred. They also provide when the Scheme may come into force and define what may be transferred under a Scheme. A Transfer Scheme may include the transfer of property, rights and liabilities which could not be transferred by other arrangements (such as by contract). It may also provide that rights and interests which might otherwise be created, terminated or changed as a consequence of Transfer Scheme or anything relating to it shall only be enforceable to the extent that the Scheme provides that it is enforceable. Because this latter type of

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provision may affect the rights of third parties, there is provision in Paragraph 10 which sets out circumstances in which third parties may be paid compensation in relation to this.

199. Paragraphs 3 and 4 allow the maker of the Transfer Scheme to modify the property, rights and liabilities to which it relates and to place obligations on transferees and transferors in connection with the Transfer Scheme.

200. Paragraph 5 provides that Transfer Schemes made under this Act shall have the effect of vesting property, rights and liabilities in the transferee without the need for any further formalities. This would mean, for example, that legal title in any registered freehold land which is transferred by a Scheme is vested in the transferee without the need for there to be a transfer document executed by the transferor, as would ordinarily be required in relation to a sale of land.

201. Paragraph 6 contains provisions which enable persons making Transfer Schemes to transfer the ability to progress and operate a railway project from one person to another. The provision permits both the transfer of the relevant property rights and the transfer of any statutory powers or duties the transferor may have in relation to that property. Railway projects routinely require statutory rights and powers, and these are usually provided in Orders made under the Transport and Works Act 1992.

202. Paragraph 8 allows the transferor and transferee to modify a transfer scheme by agreement after it has come into force. Where the agreement would relate to a contract of employment or adversely affect the interests of a third party, the agreement will only be valid if the relevant employee or third party is party to it.

203. Paragraph 9 contains provision for continuity of employment rights for employees of the transferor who become, by virtue of a Transfer Scheme, employees of the transferee. Paragraph 9 also provides safeguards in relation to the pensions' entitlements of employees transferred under a transfer scheme. Its effect is to provide that any of those employees who are currently entitled (by virtue of paragraph 8 of Schedule 11 to the 1993 Act) to continue to participate in the Railways Pension Scheme will not lose that entitlement by virtue of the transferee employer not being engaged in the "railway industry" (as defined in Schedule 11 of that Act) for those purposes. Transferred employees will also be deemed to have continuity of employment for those purposes, as well as more generally, and, where applicable, for the purposes of continuing to be a "protected person" under that Schedule and of continuing in consequence to benefit from the safeguards applying to the pension provision required for such persons.

204. Paragraph 9 also provides that where a person's employment is transferred by a transfer scheme to a transferee employer, the transfer itself will not be regarded as giving rise to a dismissal for the purposes of Part 11 of the Employment Rights Act 1996. Part 11 of the Employment Rights Act 1996 makes provision in relation to

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redundancy payments.

205. Paragraph 10 provides the circumstances in which compensation may be payable to third parties as a result of provisions in the Transfer Scheme. This Paragraph only applies to Transfer Schemes made under section 1, not to Schemes made under section 12.

206. Paragraph 11 provides a power for the person making a Transfer Scheme to require the transferor and transferee to provide him with the information which he needs in order to be able to make the Scheme. The transferor and transferee may be subject to fines if they do not comply with a request for information.

### **Schedule 3: Transfer of safety functions**

207. Paragraph 1 sets out those purposes of Part 1 of the 1974 Act for which the ORR will be responsible. These are termed the "railway safety purposes" and are defined in sub-paragraphs (1)-(3) and (7). Sub-paragraph (4) provides a power for the Secretary of State, through regulations, to modify the definition of the railway safety purposes. This power is subject to the negative resolution procedure (sub-paragraph (6)) and would allow for the inclusion or exclusion of certain transport systems from the definition of railway safety purposes in line with the development of those systems or the regulatory regime.

208. Paragraph 2 makes provision in relation to the duties of the ORR with respect to railway safety purposes, which in the most part replicate those of the HSC as set out at sections 11(1) and (2) and sections 50(1), (2) and (3) of the 1974 Act.

209. Paragraph 3 amends the 1974 Act such that HSC no longer has responsibility for those railway safety functions conferred on the ORR by virtue of paragraph 2.

210. Paragraph 4 confers on the ORR the power to authorise a person to investigate and make a special report in respect of the railway safety purposes. Paragraph 5 concerns transitional provisions in this regard and allows the ORR to assume responsibility for the furtherance of any special report or investigation previously directed or authorised by HSC (under s.14(2)(a) of the 1974 Act) which is ongoing at the time of transfer. The ORR's powers do not extend to the directing of an inquiry in respect of the railway safety purposes, as the Rail Accident Investigation Branch has been established for these purposes. Furthermore, the Secretary of State will retain his prerogative powers to call an inquiry should he see fit to do so. However, paragraph 6 necessarily provides for the ORR to assume responsibility for any inquiry which has been formally commenced by HSC at the time of transfer.

211. Paragraph 7 provides that agency agreements may be made between the ORR and the Secretary of State enabling the ORR to perform in connection with the carrying out of its safety functions those functions of the Secretary of State. It also provides for similar agreements to be made between the ORR and a government

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department or other public authority that the Secretary of State may deem appropriate. These powers correspond to that at s.13(1)(b) of the 1974 Act.

212. Paragraph 8 provides that agency agreements may be made between the ORR and a government department or other public authority for the department or authority to perform, as the ORR may consider appropriate, certain safety functions of the ORR on its behalf. This power corresponds to that at s.13(1)(a) of the 1974 Act.

213. Paragraph 9 restricts HSC from issuing codes of practice (under s.16 of the 1974 Act) in so far as they relate exclusively to the safety of the railways and other guided transport systems.

214. Paragraph 10 places a duty on the ORR and the HSC to enter into an agreement with each other for the purposes of co-operation and the exchange of information in relation to the carrying out of safety functions. It provides that the ORR will not be bound by guidance issued by the HSC.

215. Paragraph 11 provides the ORR with the power to serve a notice, with the Secretary of State's consent, requiring a person to furnish it with any information it needs for the discharge of its safety functions. Paragraph 11(8) makes it an offence for a person to contravene a requirement imposed by a notice under the paragraph or to use disclosed information otherwise than for the purposes of the ORR's safety functions. These powers correspond to those of HSC at s.27 of the 1974 Act.

216. Paragraph 12 provides for the Secretary of State to make regulations to provide for a levy to be paid to the ORR in respect of railways safety activities undertaken by it.

217. Paragraph 13 removes the statutory requirement for consultation with HSC in the making of regulations by the Secretary of State, so far as they are made for or in connection with the railway safety purposes.

#### **Schedule 4: Reviews by ORR of access charges and licence conditions**

218. Paragraph 2. This paragraph broadens the scope of an access charges review so that this must include licence conditions for example in relation to the desired outputs (such as safety, capacity and reliability) of the railway, and the timing of the next review and the circumstances in which this could be brought forward.

219. It also requires the ORR to give notice of its proposal to undertake an access charges review giving at least four weeks in urgent cases (and subject to consultation), and otherwise three months.

220. The Secretary of State and the Scottish Ministers are required as appropriate to

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provide within the notice period information about what they want to be achieved (i.e. their desired output specification) for railway activities and the public finance available. They may at the same time suggest when the next access charges review should be undertaken and the circumstances in which it would be appropriate to bring this forward. The notice can be extended or withdrawn by the ORR and Ministers may also notify the ORR that previously supplied information remains valid.

221. Ministers may revise the information they had provided if the ORR finds as a review of access charges progresses that the desired output specification cannot be achieved within the public financial resources. If such a revision still does not match desired outputs with resources there is a requirement to repeat the process once. It also gives an explicit obligation for the ORR to consider whether an access charges review would result in any adverse consequences for operators, and to have regard to any resulting need for mitigation or compensation.

222. The ORR must conduct a review of access charges (which engages its general duties under s4 of the 1993 Act) in a manner that it considers is most likely to secure what Ministers seek (as revised) within the public financial resources notified.

223. Where the ORR considers that the public financial resources are not sufficient to meet Ministers' desired output specifications despite revisions made by them, the ORR will determine how much of what is wanted by Ministers should be achieved using the available resources.

224. Paragraph 4. This provision requires the ORR, before consulting more widely on its review conclusions, to consult Ministers on the linked proposed modifications to licences dealing with output requirements for which Ministers had provided information.

225. Paragraphs 5 to 10. These provisions relate to what happens if the ORR's access review conclusions give rise to objections. In considering any revised review notice the ORR must also endeavour to achieve what Ministers want (as revised) within the public financial resources notified. The information that Ministers supplied must be provided by the ORR to the Competition Commission to accompany any reference or to assist the Commission in considering vetoing or making changes. Where the ORR proposes to make changes following a Competition Commission report, or subsequently modifies its proposals Ministers may, within a specified period of time, revise the information they supplied. The ORR must then consider the revised information before making the changes and include it with any notice to the Competition Commission.

226. Paragraph 11. This is a transitional provision that covers the situation where the ORR has given a review notice of its conclusions before the revised access charges review procedures set out in Schedule 4 come into force. Where there are objections to that notice, any new review notice or reference to the Competition Commission may or may not follow the new procedures set out in this Schedule at the

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ORR's discretion.

#### **Schedule 5: Rail Passengers' Council established by s.19(1)**

227. Schedule 5 sets out various constitutional provisions, including accounting, remuneration, finance, status and procedure, that will apply to the RPC in its new form as a statutory corporation.

228. Paragraph 2 sets the requirements for the remuneration of members. These apply in all cases except for the London Transport Users' Committee and the London member of the RPC. This committee and Council member are the responsibility of the London Assembly. The terms and conditions of their appointments are for the London Assembly to determine and to provide after consultation with the Secretary of State.

229. Paragraphs 3-5. Provide for the remuneration of staff. Previously RPC staff were classified as Strategic Rail Authority staff. As an independent body corporate the RPC will be responsible for its own staff, including their terms and conditions.

230. Parts 3 and 4. Under existing arrangements the RPC's sponsor, the Strategic Rail Authority, holds the status of body corporate. The RPC's budgeting arrangements have been a matter for the Authority. The RPC will now take on the body corporate status. The provisions set out in Parts 3 and 4 provide the process by which the RPC will be funded by Government grants and operate to a financial framework.

#### **Schedule 6: Functions retained by London Transport Users' Committee**

231. The duties, powers and role of the London Transport Users' Committee (LTUC) go beyond mainline passenger rail services. But their role in respect of rail is drawn from their position as the Rail Passengers' Committee for the Greater London area, under section 2 of the 1993 Act. With the dissolution of the regional committee network the Rail Passengers' Committees are being abolished. LTUC is sponsored by the London Assembly and not the Secretary of State. The Assembly were not seeking to remove rail from LTUC's remit, and it is therefore appropriate that LTUC should have new powers in respect of railways to replace the powers which it will be losing by virtue of the repeal of Rail Passengers' Committee functions under this Act. Schedule 6 provides for the continuation of LTUC's existing duties, powers and responsibilities to represent users of services in the London railway area.

#### **Schedule 7: Consultations under Part 4**

232. This schedule sets out how the consultation on a closure proposal required under sections 22 to 31 should be carried out. This schedule will apply to the beginning of the consultation, but thereafter the consultation will be governed by the

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relevant part of the closures guidance.

233. It requires the body carrying out the consultation, either a NA or RFA, to publish a notice in two successive weeks in local newspapers available in the area affected by the proposals as well as in national newspapers. The minimum consultation period is 12 weeks, in line with the Cabinet Office Code of Practice on consultations.

234. The Schedule lists bodies that are statutory consultees that include bodies representing the interests of railway passengers. The Secretary of State also has a power to designate bodies as representing the interests of railway passengers subject to the negative resolution procedure.

### **Schedule 8: Proposals to discontinue excluded London services**

235. This Schedule sets out closure procedures which apply to excluded London services as defined in section 25 which are designated under that section as services to which Schedule 8 applies. At present, these are principally services operated by Transport for London, that is London Underground, Docklands Light Railway and Croydon Tramlink. The procedures in this schedule are similar to those for qualifying London services in Schedule 5 to the 1993 Act.

236. This Schedule only applies where the operator initiates the proposal. There is a 6 week consultation. The London Transport User Committee has a duty to consider objections to the proposals and make a report to the Mayor on hardship that might arise. The Mayor takes the final decision on whether the closure should be allowed. For those involving services wholly or partly outside Greater London, for example the western end of the London Underground Metropolitan line, he has a duty to consult local authorities in the areas affected.

### **Schedule 9: Bye-laws by railway operators**

237. *Paragraph 1* of this Schedule defines the circumstances where, in relation to any bye-laws, the appropriate national authority means the Secretary of State or the Scottish Ministers.

238. *Paragraph 2* sets out the penalties for contravening the bye-laws and provides for maximum fines not exceeding level 3 on the standard scale (currently £1000).

239. *Paragraph 3* provides that, before bye-laws come into force, they must have been confirmed by the appropriate national authority.

240. *Paragraph 4* requires the operator to give notice of his intention to make bye-laws. The manner in which the notice is published must be approved by the



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appropriate national authority. The operator must allow a specified time for representations to be made about the bye-laws to the appropriate national authority, and must consider such representations before seeking confirmation of the proposed bye-laws.

241. *Paragraph 5* enables the appropriate national authority to confirm the bye-laws (with or without modification) and fix the date for their coming into force, or refuse to confirm them.

242. *Paragraph 6* sets out how the bye-laws are to be made publicly available.

243. *Paragraph 7* ensures that production of a certified, printed copy of the bye-laws is sufficient evidence in any legal proceedings of the existence and validity of those bye-laws.

244. *Paragraph 8* provides that railway operators have the power to amend or revoke any bye-laws which they make, and that the Secretary of State and the Scottish Ministers are, separately, able to revoke bye-laws for which they are the appropriate national authority by order.

#### **Schedule 10: Taxation provisions relating to transfer schemes**

245. This Schedule makes provision for the consequences for taxation of the various transfer schemes and transfers for which the Act provides. The effect is, very broadly, to remove tax consequences which flow from the way the transfers are effected by schemes made under the Act. Similar provisions were made for previous reorganisations – for example, in Schedule 26 to the Transport Act 2000 (c.38).

246. The provisions reflect the different nature of different transfers:

- *Part 1* deals with transfers under section 1 from the SRA and other publicly owned bodies to a national authority which is not liable to tax;
- *Part 2* deals with transfers under section 1 from the SRA and other publicly owned bodies to a publicly owned body which is (in principle at least) liable to tax;
- *Part 3* deals with transfers under section 12 which may be between two privately owned companies each of which is liable to tax;
- *Part 4* deals with points which apply to transfer schemes generally.

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### **Schedule 11: Miscellaneous amendments of 1993 Act**

247. *Paragraph 2.* Section 9(3) of the 1993 Act currently permits the Secretary of State and the ORR to include a condition when granting a operating licence which requires the licence holder to provide information or documents which the Secretary of State or the ORR need to carry out their functions under Part 1 of the 1993 Act. This amendment provides that such a condition may in future also cover information or documents which are required in relation to the exercise of functions under Part 4 of this Act (network modifications). This reflects the fact that the closure provisions in Part 1 of the 1993 Act are repealed by the Act, and replaced with the network modification provisions in Part 4 of the Act.

248. *Paragraph 3.* References in section 17 and 19 to a person operating a railway facility "on behalf of the Secretary of State" are, following the amendments to these sections in Schedule 1 Paragraph 12, to be construed as references to a person operating a railway facility under an agreement or arrangement with either the Secretary of State or the Scottish Ministers where the Secretary of State or the Scottish Ministers have a duty or power to secure the operation of that facility. This amendment provides that the relevant duty or power may exist in either Part 1 of the 1993 Act or in Part 4 of the Act. This reflects the fact that the closure provisions in Part 1 of the 1993 Act are repealed by the Act, and replaced with the network modification provisions in Part 4 of the Act.

249. *Paragraph 4.* This paragraph revises section 30 of the 1993 Act to take account of the Network Modification sections in Part 4 of the Act that replace the closure provisions in section 37 to 49 of the 1993 Act.

250. *Paragraph 5.* This paragraph amends section 50 of the 1993 Act so that the Secretary of State and the Scottish Ministers are excluded from liability for breach of statutory duty arising from Part 1 of the 1993 Act in place of the SRA. This reflects the revised procedures for Network Modifications in the Act.

251. *Paragraph 6.* This provision enables the Secretary of State and the Scottish Ministers to enter into agreements and arrangements under which they give undertakings as to the exercise of their functions relating to rail franchising, where they do so for the purpose of encouraging investment in railways.

252. *Paragraph 7.* This paragraph revises section 55 of the 1993 Act to take account of the Network Modification sections in Part 4 of the Act that replace the closure provisions in sections 37 to 49 of the 1993 Act. It also contains minor corrections to the definition of "final order" in section 55(10) and a reference to a penalty notice in section 57F(1).

253. *Paragraph 9.* This paragraph amends the provisions in the 1993 Act governing the ability of the Secretary of State to provide financial assistance in relation to companies in railways administration. In particular, it provides

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

that the Secretary of State may give an indemnity to a railways administrator (and certain persons connected with him) in respect of liabilities, loss and damage incurred in the exercise of his functions. It also provides that the Secretary of State may direct the relevant company in railways administration to repay sums which are paid under the terms of such an indemnity, except where the payment was made under the indemnity to cover a liability of the railways administrator to that company. Section 49, which inserts a new section 64A into the 1993 Act to give the Scottish Ministers similar financial assistance powers, also permits such indemnities to be given.

254. *Paragraph 10.* This paragraph amends the duty of the ORR to maintain a public register under section 72 of the 1993 Act. The purpose of these amendments is to ensure that the ORR duties are appropriate in view of the repeal of the closure provisions in the 1993 Act and their replacement with the network modification provisions in Part 4 of the Act.

255. *Paragraph 11.* This paragraph amends the duty to maintain a public register which, by virtue of Schedule 1 Paragraph 30 of the Act, shall transfer from the SRA to the Secretary of State. The purpose of these amendments is to ensure that the duties are appropriate in view of the repeal of the closure provisions in the 1993 Act and their replacement with the network modification provisions in Part 4 of the Act.

256. *Paragraph 12(a)* refers to definitions in the 1993 Act inserted by section 48(1) and schedule 13(4) of this Act.

257. *Paragraph 12(b)* replaces the existing definition of bus substitution service in section 45(2) of the 1993 Act.

258. *Paragraph 13.* These amendments to section 136 of the 1993 Act provide that the Secretary of State and the Scottish Ministers are the competent authority for the purposes of the railways financial status regulations (Council Regulation (EEC) No 1192/69 on common rules with respect to the financial status of railway undertakings). They also provide that the Secretary of State, the Scottish Ministers, the NAW and Passenger Transport Executives are, where appropriate, the competent authority for the purposes of the public service obligations regulations (Council Regulation (EEC) No 1191/69 on public service obligations in transport, as amended by Council Regulation (EEC) No 1893/91).

259. *Paragraph 14* ensures that whenever the Scottish Ministers exercise the powers that the Act gives them to make secondary legislation by means of regulations or an order under the 1993 Act the secondary legislation is made by means of a Statutory Instrument. It also gives the Scottish Ministers the ability to make incidental, supplemental, consequential or transitional provisions in the relevant Statutory Instrument in relation to the subject matter of the order or regulations. This is so as to ensure that the Scottish Ministers have sufficient flexibility to implement their regulations or orders in the most practicable way. This amendment to section 143 of the 1993 Act also gives the Scottish Ministers the discretion to use their

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powers to apply orders and regulations only in certain cases or to apply them differently depending on the case in question. These provisions are intended to give the Scottish Ministers a reasonable degree of flexibility to exercise their relevant powers in a way that reflects the reality of the situation rather than being unduly constrained by the narrow interpretation of the power they are exercising. These provisions already apply to the Secretary of State under section 143 of the 1993 Act. The paragraph also provides that enforcement orders made under section 55 by the Secretary of State and the Scottish Ministers are not subject to the requirements of section 143, and do not have to be made by statutory instrument.

260. *Paragraph 15* amends section 145 of the 1993 Act, which provides for a general prohibition on the disclosure of information which relates to the affairs of any individual or business and which has been obtained under that Act. The amendments relate to the exceptions to the general prohibition.

261. The amendments in sub-paragraph (1) are intended to ensure that the exceptions are extended so as to cover the disclosure of information which is made for the purpose of assisting the Secretary of State or the Scottish Ministers in the exercise of their railways functions (including, but not limited to, their statutory functions under the 1993 Act, the Transport Act 2000, and this Act). The intention behind extending the exception in this way is to ensure that the Secretary of State and the Scottish Ministers can receive information which will help them to exercise their railway functions, notwithstanding the general prohibition on disclosing sensitive information obtained under the 1993 Act.

262. The amendment in sub-paragraph (2) is a consequential amendment resulting from the abolition of Rail Passengers' Committees in section 19.

#### **TERRITORIAL APPLICATION: WALES (SEE ALSO ANNEX A)**

263. The general effect of the Act on the NAW is to extend its rail powers. The Act gives the Assembly a new role in making decisions about franchises that serve Wales.

264. In certain cases this takes the form of a joint role with the Secretary of State, where the franchises provide services that operate wholly within Wales or include such services ("Wales-only services"). At present this involves one franchise, Wales and Borders, operated by Arriva Trains Wales. The NAW will be a joint party to the franchise agreement and will be given the power to provide financial assistance to the franchisee. In other cases it gives the NAW the right to be consulted about proposals for franchises that provide services that call in Wales, but to which the NAW will not be a joint party (for example, the replacement Greater Western franchise may fall within this category).

265. The NAW's powers to give financial assistance extend to the ability to provide

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funding to any railway operator (including operators of passenger services, freight services and Network Rail) for the purposes of improving the provision of services and facilities for Wales.

266. The Act extends the powers of the NAW to provide assistance to freight operators under schemes to support the development of freight services and facilities in Wales. Previously, the NAW could provide such support in accordance with a scheme specified by the Strategic Rail Authority. Under the Act, the NAW is able to make its own schemes, or provide support in accordance with a scheme specified by the Secretary of State (or both).

267. As it is now a statutory funder of railway services, the Act gives NAW a new power to propose that services be closed in accordance with the closure procedures set out in the Act.

268. To support its new responsibilities, the NAW has the right to be consulted by the Secretary of State about the guidance he gives to the Office of Rail Regulation about the exercise of its role as the independent economic regulator for the GB railway network. It also has a new power to appoint a member of the rail passenger consumer body, the Rail Passengers' Council.

## **TERRITORIAL EXTENT**

269. The Act extends to England, Scotland and Wales only.

## **COMMENCEMENT**

270. Section 60 and Section 56(1) came into force on Royal Assent. All the remaining provisions will be commenced by Statutory Instrument on such dates as the Secretary of State may decide. Different dates may be appointed for different purposes.

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

## **HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<i>House of Commons</i>		
Introduction	25 November 2004	Vol. 428 Col. 245
Second Reading	6 December 2004	Vol. 428 Col. 919-1013
Committee	14 December 2004 (1st & 2nd) 16 December 2004 (3rd) 11 January 2005 (4th & 5th) 13 January 2005 (6th & 7th) 18 January 2005 (8th)	Hansard Standing Committee A
Report and Third Reading	27 January 2005	Vol. 430 Cols. 473-542
Commons Consideration	6 April 2005	Vol. 432 Col. 1525-1537
<i>House of Lords</i>		
Introduction	27 January 2005	Vol. 668 Col. 1512
Second Reading	10 February 2005	Vol. 669 Cols. 927-78
Grand Committee	28 February 2005 3 March 2005 9 March 2005	Vol. 670 Cols. 1-56GC Vol. 670 Cols. 127-82GC Vol. 670 Cols. 305-64GC
Report	4 April 2005	Vol. 671 Cols. 1559-1567
Third reading	6 April 2005	Vol. 671 Col 785-752
Lords Consideration	7 April 2005	Vol. 671 Col. 918-928
<b>Royal Assent</b>	<b>7 April 2005</b>	<b>Vol. 432 Col. 1641 (Commons)</b> <b>Vol. 671 Col. 950 (Lords)</b>

*These notes refer to the Railways Act 2005 (c.14) which received Royal Assent on 7<sup>th</sup> April 2005*

Annex A

**Provisions affecting the Powers of NAW**

<i>Section/Schedule</i>	<i>Description</i>
Section 1 and Schedule 2	Secretary of State may transfer any of the SRA's property, rights and liabilities to NAW under a transfer scheme. A transfer may be to NAW alone, or to NAW jointly with one or more other body mentioned in section 1(3). NAW must be consulted in advance of any transfer to it.
Section 3(6)	Specifies a number of considerations, listed in section 4(1) - (3) of the 1993 Act, that the NAW must have regard to when exercising the functions conferred on it by that Act and Part 4 of the "Railways Act 2005".
Section 3(8)	The ORR to have regard to NAW railway strategies and policies notified to it by the Assembly; and to have regard to the NAW's ability to carry out its own functions conferred or imposed on it under any Act.
Section 3(9)	Secretary of State to consult NAW about guidance to the Office of Rail Regulation.
Section 7(3)	The Secretary of State must notify the NAW about any freight scheme he makes, or any modifications to a scheme.
Section 10	Secretary of State to consult NAW about proposals for franchises that serve Wales. Right of the NAW to be a party to franchise agreements that provide services wholly within Wales. Powers for the NAW to provide financial assistance to franchisees where it is party to a franchise agreement; and for other railways purposes in relation to Wales.
Section 11	NAW must notify the Secretary of State about freight schemes it makes or modifies in respect of Wales.

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<b><i>Section/Schedule</i></b>	<b><i>Description</i></b>
Section 18	The Secretary of State's and/or the Scottish Ministers' duty to secure the continuation of a service that the NAW secured under a franchise that has ended and not been renewed does not apply if they believe the NAW will not provide the necessary funds.
Section 19	NAW may appoint a member of the Rail Passengers' Council.
Schedule 5, part 4, paragraph 11	RPC must send a copy of its annual reports to the NAW.
Section 23	Power to propose that non-franchised passenger services that the Assembly funds be closed.
Section 24	Power to propose that franchised passenger services that the Assembly funds be closed.
Sections 27-28	Power to propose that a passenger network that the Assembly funds be closed.
Sections 30-31	Power to propose that a station that the Assembly funds be closed.
Schedule 7	Sets out the consultation procedure that the NAW must follow when proposing a railway closure. It also gives the NAW the right to be consulted by others proposing closures that may affect them.
Section 33	Duty to comply with any condition relating to a closure imposed on the Assembly by the ORR.
Section 36	Power to designate new Welsh services funded by the NAW as experimental services.
Section 37	Duty to give notice about the withdrawal of an experimental service that the Assembly funds under the terms a franchise agreement.
Section 40	Power to secure the provision of substitute road services where passenger services wholly within Wales or that the Assembly funds are temporarily interrupted or discontinued.
Section 41	Supplementary provisions relating to closure proposals made by the Assembly.



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<b><i>Section/Schedule</i></b>	<b><i>Description</i></b>
Section 42	The Secretary of State must include NAW as a joint party in any guidance in relation to proposals to discontinue any Welsh service or services, any network or part of a network wholly in Wales, or any station of part of a station wholly in Wales. The Scottish Ministers must include NAW as a joint party in any guidance in relation to proposals to discontinue any cross-border services that NAW funds or part funds.
Section 51	The ORR to comply with every reasonable requirement of the NAW for information or advice about a matter connected with NAW's railway functions and activities.
Section 57	Definition of "Wales-only service" and "Welsh service" for the purposes of the Act. Requires the Secretary of State to consult the NAW before exercising his order making power to make exclusions from the definition of "Wales-only service".
Schedule 1, paragraph 15(5)	Secretary of State to consult NAW before preparing, altering or replacing a statement of policy on franchising.
Schedule 10, Part 1	Deals with taxation provisions in relation to any transfer of property, rights or liabilities to the NAW in accordance with a scheme made under section 1(2).
Schedule 11, paragraph 13(2)-(5)	Makes the NAW a "competent authority" for the purposes of the public service obligations regulations.
Schedule 12, paragraph 17(4)	Duty on the NAW to ensure that where it secures the provision of substitute road services the services are suitable for disabled passengers.

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Annex B

List of Acronyms

BRB(R)	British Railways Board (Residuary)
DfT	Department for Transport
GLA	Greater London Authority
HSE/C	Health & Safety Executive/Commission
LMD	Light Maintenance Depots
LTUC	London Transport Users Committee
NA	National Authority
NAW	National Assembly for Wales
NDPB	Non-Departmental Public Body
ORR	Office of Rail Regulation
PTE/A	Passenger Transport Executive/Authority
RFA	Railway Funding Authority
RPC	Rail Passengers Council
SE	Scottish Executive
SRA	Strategic Rail Authority
TfL	Transport for London

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