



RESEARCH PAPER 04/86  
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# Railways Bill

Bill 6 of 2004-05

The *Railways Bill* was presented on 25 November 2004 and is due to have its second reading on Monday 6 December.

The Bill implements the proposals set out in the white paper *The Future of Rail* that require primary legislation. It transfers the functions of the Strategic Rail Authority to the Department for Transport and the safety functions of the Health and Safety Executive to the Office for Rail Regulation. Powers are transferred to Scotland, Wales, London and the Passenger Transport Executives. In addition the Bill establishes the Rail Passengers Council as a single national body and simplifies the procedures for closing railway services.

The Bill extends to England, Scotland and Wales. A Sewel motion is expected in the Scottish Parliament to consent to the Bill, since it affects the executive competence of the Scottish ministers.

Fiona Poole

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## Summary of main points

The government published its white paper *The future of rail* on 15 July 2004. It announced that in future it would be for ministers, accountable to Parliament and the electorate, to set the national strategy for the railways. The government would decide how much money it was able to spend and would be held to account for those decisions. As a result there would be no role for the Strategic Rail Authority, which would be wound up and the majority of its functions, including all its financial obligations, transferred to the secretary of state. The Department for Transport would also take on the responsibility for awarding train operating company franchises. The SRA's role in monitoring the performance of the train companies and drawing up timetables was to be taken over by Network Rail.

A number of the changes require primary legislation, notably the closure of the SRA, the transfer of safety regulation from the Health and Safety Executive to the Office for Rail Regulation, and proposals relating to devolved decision-making. These are included in this Bill. In addition it abolishes the regional passenger committees and simplifies the procedure for closing lines.

Part 1 covers the transfer of functions of the SRA to the Department for Transport and the transfer of the safety functions of the HSE to the ORR. It gives Scottish ministers the power to formulate strategies and sets out how the secretary of state and Scottish ministers may influence the access charges reviews carried out by the ORR.

Part 2 sets out the powers of the secretary of state to give financial assistance to the railways. The powers are largely the same as those available now to the SRA and cover funds to both the operators and Network Rail. In addition Scotland and Wales will have increased powers over franchises and the infrastructure in their areas. It transfers the funding powers of the SRA over freight to the DfT and gives Scottish ministers and the National Assembly for Wales new powers over freight in their areas.

Part 2 also provides for possible future powers and responsibilities for Transport for London and alters those of the Passenger Transport Executives.

Part 3 establishes the Rail Passengers Council as a single national body reporting to the secretary of state and dissolves the existing regional committees.

Part 4 replaces the closure procedures to be followed when passenger services are discontinued. It extends the conditions for introducing bus quality contracts by allowing an English PTE to introduce one when a rail service is reduced or discontinued.

Part 5 enables railway operators to make bye-laws to control behaviour on the railways. It also allows Scottish ministers to make penalty fare regulations and to prepare a code of practice for disabled users in Scotland. Scottish ministers may also exercise the functions of the secretary of state as regards administration orders involving a Scottish company.

## Acronyms

BR	British Railways
D&G	Directions & Guidance
DA	Devolved Administrations
DfT	Department for Transport
EN	Explanatory Notes
FFG	Freight Facilities Grant
GLA	Greater London Authority
HSE/C	Health & Safety Executive/Commission
LMD	Light Maintenance Depots
LRRA	London Regional Rail Authority
LTUC	London Transport Users Committee
NA	National Authority
NAW	National Assembly for Wales
NDPB	Non-Departmental Public Body
OPRAF	Office of Passenger Rail Franchising
ORR	Office of Rail Regulation
PTE/A	Passenger Transport Executive/Authority
PTEG	Passenger Transport Executive Group
QC	Quality Contract
RFA	Railway Funding Authority
RIA	Regulatory Impact Assessment
RPC	Rail Passengers Council
RRPC	Regional Rail Passengers Committee
SE	Scottish Executive
SRA	Strategic Rail Authority
TAG	Track Access Grant
TfL	Transport for London
TOC	Train Operating Company
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981

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# I Background

## A. Legislation

The *Railways Act 1993* provided the legal framework for the privatisation of British Railways and the introduction of a new structure for the rail industry. The principal changes were brought into effect on 1 April 1994 and the process of selling BR subsidiaries and awarding the first round of franchises to run the rail passenger companies was completed by April 1997.

The legislation separated responsibility for infrastructure and operations. The core of the Conservative government's proposals was the greater involvement of the private sector in the running of the railways. The responsibility for a large amount of decision taking in the industry was transferred from the secretary of state to the two statutory officers, the rail regulator and the franchising director. BR was split into about 100 companies, most of which were sold to the private sector. Railtrack became a separate government owned company and was sold to the private sector in May 1996. The passenger services were divided into separate units and franchised to the private sector for periods of between seven and fifteen years.

Government subsidy was payable via the franchising director to franchisees in respect of socially necessary services that might not otherwise be provided. The aim was to enable the huge investment needs of the railway industry to be met, as far as possible, by the private sector and to encourage the transformation of the rail system from an operations-led business to a customer-led one.

Following privatisation there was considerable criticism of the performance and reliability of the train companies, of Railtrack and the amount it was investing in the infrastructure and in safety. When the Labour government took over in 1997, it was particularly concerned about whether the regulators had sufficient powers to deal with the private sector companies which ran the railways and about the supervision of public funds. To meet the flaws it had found in the system, the government passed the *Transport Act 2000* to set up a Strategic Rail Authority to provide the rail industry with the strategic leadership lacking since privatisation and to deal with the fragmentation of the sector. It would ensure the railways were run in the public interest, would promote their use and would ensure they were properly integrated with other forms of transport. The Act transferred the functions, rights and liabilities of the rail franchising director and any residual functions of the British Railways Board to the SRA. This Act also set up the present structure of the passenger committees.

Railtrack was responsible for funding the maintenance of and the investment in the rail infrastructure including track and stations, and other operating costs, for example signalling and the supply of electricity. The Office of the Rail Regulator was responsible for ensuring that Railtrack maintained and renewed the network properly and for ensuring the regulatory regime provided appropriate incentives for it to do so. Ministers became increasingly concerned at the inability of the company to properly maintain the railway

and the amount it was costing. On Sunday 7 October 2001, the secretary of state petitioned a high court judge to put Railtrack plc into "railway administration" under section 60 of the *Railways Act 1993*.<sup>1</sup>

Network Rail took over the assets and liabilities of Railtrack plc and its role of network operator. It has the same sources of funding as Railtrack: property income, track access charges and grant. It is a company limited by guarantee (CLG), a private sector company run on commercial lines but without shareholders. It is governed by a panel of about 100 "members" picked from groups with "broad interests" in the railways, including the SRA, the train operating companies and others representing the "public interest" such as trade unions, passenger groups and representatives of the disabled. The company is "not for profit" which does not mean it will not make a profit but profit will not be its primary aim. Any operating surplus will be reinvested in the rail network.

Despite the establishment of Network Rail and other changes to the industry since Railtrack went into administration, the secretary of state for transport, Alistair Darling, was not satisfied with the performance of the rail industry. In January 2004 he announced a review, to be concluded by summer 2004, of the structure and organisational changes needed to improve performance for customers.

## **B. Performance**

### **1. Investment**

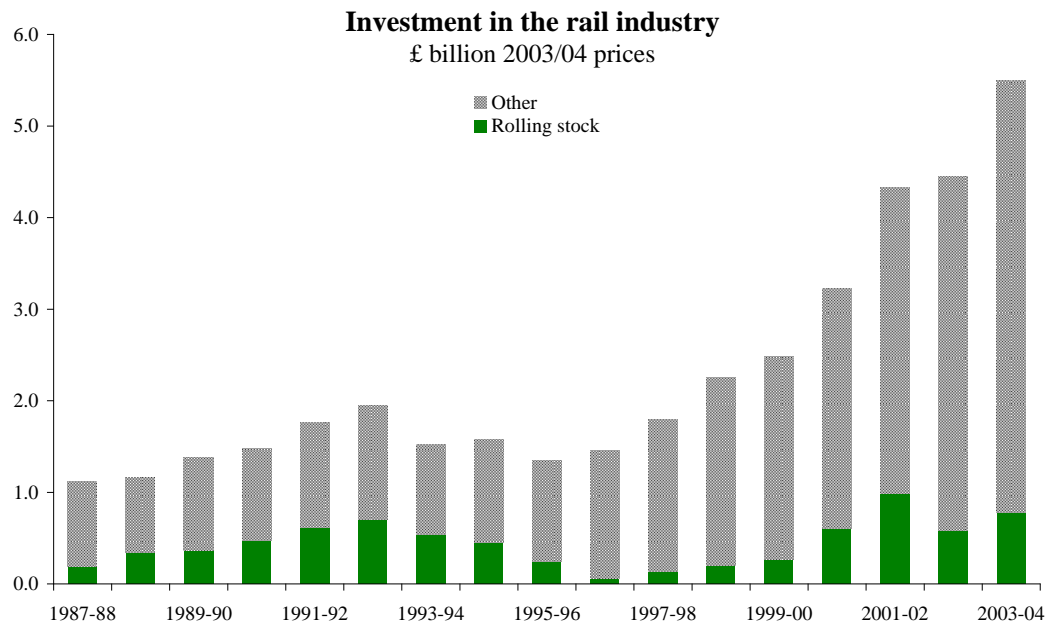
The chart below and Table 1 of the Appendix show total investment in the rail network in real terms, representing expenditure on fixed assets and excluding depreciation.<sup>2</sup> Investment initially rose in the late 1980s and early 1990s but fell back in the period immediately prior to privatisation. Since then it has increased rapidly, from £1.5 billion in 1996-97 to £5.5 billion in 2003-04. Only a small amount of the increase was in rolling stock. A significant proportion of this investment has been directly supported by government grants in the three most recent years.

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<sup>1</sup> DTLR 7 October 2001 ["Railtrack placed in administration"](#)

<sup>2</sup> The tables in this section, the Appendix and sections II E and II H have been provided by Paul Bolton, Social and General Statistics Section.



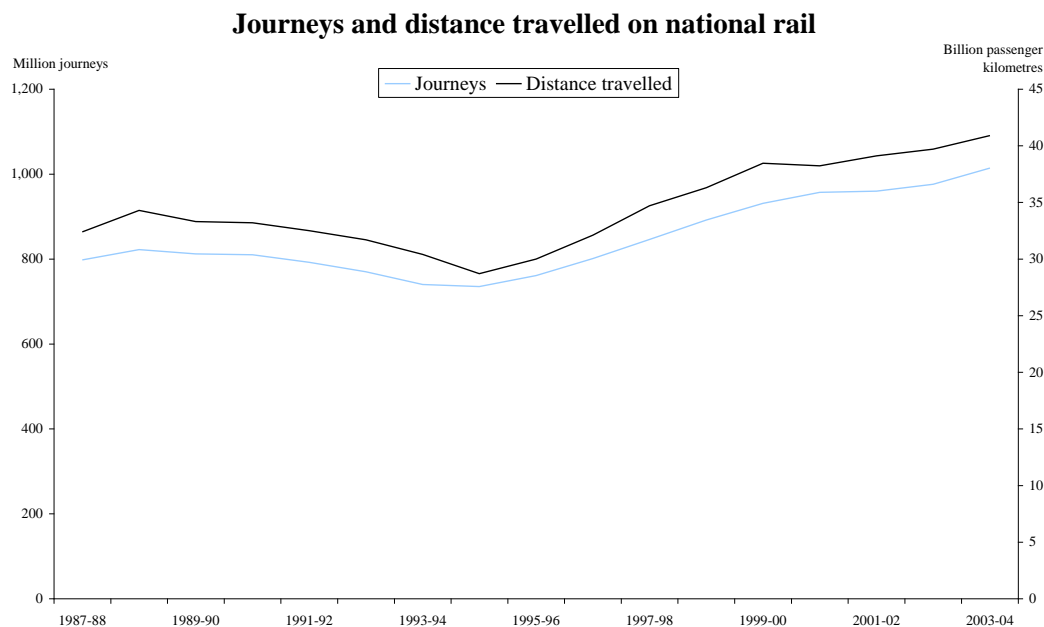


The figures for 1994/95 and 1995/96 are rather misleading. When the companies were still largely in the public sector, they generated cash surpluses which were offset against government grant (paid through OPRAF), reducing the overall industry financing requirement. As businesses were sold, the proceeds (other than those from the sale of Railtrack) were used to reduce the overall funding requirement for the industry as a whole. Proceeds received from the sale of businesses previously owned by BR amounted to £2.54 billion; the sale of Railtrack generated proceeds of £1.93 billion. Also, just prior to their sale, dividends of some £800 million and £50 million were paid to government respectively by the rolling stock leasing companies and the BR infrastructure service companies. As businesses were sold it ceased to be possible to offset OPRAF's grant requirement by their profits. This explains the significant variation in the overall national railway expenditure over the period from 1995/96 to 1997/98.

## 2. Rail passengers

The next chart and Table 2 show trends in passenger journeys and distance travelled over the same period. Both indicators show a clear trend – a decline from the late 1980s to 1994-95, followed by a more rapid increase. There was a fall in the total distance travelled in 2000-01 following the disruption to the rail network after the Hatfield derailment. The latest journey numbers were the highest since the early 1960s and the distance travelled was the greatest since 1946.<sup>3</sup>

<sup>3</sup> DfT *Transport statistics Great Britain 2004*, table 6.1



## II White paper

The secretary of state for transport, Alistair Darling announced a review of the rail industry on 19 January 2004:<sup>4</sup>

(...) The recent regulatory review published last December confirms that the cost of upkeep of Britain's railways is £1.5 billion a year more than was thought necessary just three years ago. The review implied that Network Rail inherited a business from Railtrack with unit costs substantially higher than they ought to be. Network Rail is tackling these inefficiencies and is working to bring costs down. Taxpayers and fare-paying passengers alike need to know that their money is being well spent and that increased spending will improve performance. Cost control is absolutely essential. (...)

There remains a further and very serious difficulty facing the industry—that is, its structure and organisation. The way in which it was privatised has led to fragmentation, excessive complication and dysfunctionality that have compounded the problems caused by decades of under-investment. Quite simply, there are too many organisations, some with overlapping responsibilities, and it has become increasingly clear that that gets in the way of effective decision making and frequently leads to unnecessary wrangling and disputes. That is no way to run the railways.

Mr Darling made clear that he was not considering renationalisation:

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<sup>4</sup> HC Deb 19 July 2004 c1076

The government are committed to a partnership between public and private sectors. It happens on railways throughout the world. However, the long-term inefficiencies and costs of privatisation have, as time has passed, become an even bigger barrier to the success of the railways, so in the spirit of partnership between private and public sectors, we need to put right the problems that the authors of privatisation left behind. (...)

However, structural change is not just needed in order to make better spending decisions. It is also needed if rail is to operate effectively and to meet the needs of passengers and other customers. Privatisation had some disastrous and far-reaching consequences for the railways—Railtrack's performance, for example—but the private sector has brought considerable increased investment, and in many cases train companies have provided innovation that was conspicuously lacking in the past. We want to build on that.

That is why the government believe that renationalisation would not solve the problems that the railways face. What is essential is to put in place a structure that works and can deliver not just cost control but safe, reliable railways that work efficiently. (...)

He set out the two key principles that would underpin his reforms:

First, the railways must operate in the public interest, while protecting the legitimate interests of investors. It must be for the Government to decide how much public money is spent on the railways and to determine priorities. Of course, no government department can or should attempt to operate the railways, but the government can put in place a structure and organisation that can do that effectively and efficiently, with a single point of decision making. Rail privatisation failed to recognise that there are some things that only the government can determine in the public interest and that cannot be left purely to commercial interests.

Secondly, the principle of public and private partnership is right for the railways and it will continue. It brings in money from two sources, and that is important. We are spending £73 million every week on the railways and that is leveraging in a similar amount from the private sector. That is why the principle of independent economic regulation for the railways is essential and will be central to our proposals.

In many cases, the train operating companies have brought innovation to services that was lacking in the past, but we need to put in place the right organisation and structure so that both public and private sectors can focus on meeting passengers' needs and delivering value for money. As rail also makes a valuable contribution to keeping lorries off the roads, we want to ensure freight operators have access to the rail network on fair terms. We need the right framework to ensure that the railways can operate effectively and so that key decisions can be taken in the best interest of passengers to provide a more reliable service.

Our objective is a streamlined structure and organisation with clear lines of responsibility and accountability. Network Rail is already operating in the public

interest, and with the right franchising arrangements so should the train operators, but we have a clear responsibility to examine the roles and relationships of all the other organisations with a view to streamlining the present structure. (...)

The government consulted in the following six months and the conclusions were announced in a white paper *The Future of Rail* on 15 July 2004.<sup>5</sup> The white paper was also an initial response to the Transport Committee's report *The future of the railway* published in March 2004.<sup>6</sup> The main problem with the present system from the government's point of view is that it provides the money to run the railway but does not control the amount that is needed. Furthermore the rail industry is weak on controlling costs and needs to provide better value for money. In chapter 1, the white paper discussed five structural weaknesses of the present system:

### **Public sector complexity**

A serious issue for the rail industry, and one that was noted by the Transport Select Committee has been the fragmentation of responsibilities in the public sector. Both the Department for Transport and the Strategic Rail Authority have responsibilities with regard to the overall strategy. Both the SRA and the ORR play a role in deciding Network Rail's outputs and performance targets. European Community law also has an increasing influence on rail matters. In safety, the Department for Transport, SRA, EC, ORR and HSE all have a role to play, plus the industry's own Rail Safety and Standards Board, and the Rail Accident Investigation Branch, the British Transport Police and the prosecuting authorities in the event of an accident.

There is a direct price to pay for this panoply of public sector bodies in their high staffing and administration costs. But the indirect costs are far more significant. As the Transport Select Committee noted, the lack of accountability and of a clear strategic direction has contributed to costs creeping up and projects getting out of control throughout the industry.

Government must tell the industry clearly and unambiguously what outputs are required, so that the private sector industry can then take responsibility for delivering them, with its front-line staff focused on their customers rather than on dealing with bureaucracy. And the government needs to have binding arrangements with the industry, which will enable it to act as a strong client on behalf of fare payers and taxpayers alike.

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<sup>5</sup> DfT *The future of rail*, white paper, July 2004, Cm 6233  
[http://web.archive.org/web/20050301193839/http://www.dft.gov.uk/stellent/groups/dft\\_railways/documents/divisionhomepage/031104.hcsp](http://web.archive.org/web/20050301193839/http://www.dft.gov.uk/stellent/groups/dft_railways/documents/divisionhomepage/031104.hcsp)

<sup>6</sup> Transport Committee *The future of the railway*, 7<sup>th</sup> report 2003-04, HC 145  
<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmtran/145/14502.htm>  
The Transport Committee published the government's formal response to the report in October 2004 – *Responses to the 7<sup>th</sup> report from the committee on the future of the railway*, 4<sup>th</sup> special report 2003-04, HC 1209.

### **Relationship between track and train**

The structure of the privatised railway at the time of privatisation was based on the concept of a commercial relationship between the infrastructure provider and the train companies. In theory, the train companies paid access charges set by the Regulator to run services on the infrastructure, and then each party would pay penalty payments to the other for the delays that they cause. The access charge should have meant that the train companies were Network Rail's customers, with every incentive to drive Network Rail to provide better value from the money they pay.

But this has not proved to be the case. The nature of the industry has meant that the access charges paid by train companies now bear little relation to the specific costs that they impose upon Network Rail. There is no real commercial market between the train companies and Network Rail, and no real customer-client relationship as both are largely funded by the government. Moreover, the train companies' franchise contracts with government insulate them against any rise or fall in the access charge. This means that the access charge regime has not effectively encouraged either Network Rail or the train companies to control costs. (...)

This distorted market is typified by the current penalty payment regime. This allocates responsibility for actual delay minutes on the network to either a train company or to Network Rail, and then requires penalty payments to be made for each minute allocated. This creates a constant flow of money within the industry. (...)

Another manifestation of this false commercial relationship is the system by which ticket revenues are allocated to train companies. Because revenues are allocated by numbers of services run, rather than by numbers of passengers, some train companies have been incentivised to run additional services even when they do not contribute to increasing passenger usage overall.

### **Regulatory regime**

Under the current regulatory system, the Rail Regulator has had to determine both Network Rail's outputs for the operation of the rail network, and for its maintenance and renewal, and the price that should be paid for them, given its commitments to the passenger and freight companies. This, combined with the fact that train companies are insulated from the effects of increasing access charges, has led to government having no option but to foot the bill – regardless of its consequences on other parts of the transport budget, or even for other spending programmes. (...)

The government must also have binding relationships with both the train companies and Network Rail, which set out the outputs they are to provide and the price the government is paying for them. This will allow the government to ensure consistency between the outputs that it specifies for track and train, which is missing from the current system. And it will ensure that the government has proper control of its total expenditure on rail. With such arrangements in place,

the government will be in a strong position as the industry's primary client to secure improved performance and cost control from both train companies and Network Rail. However, although this is in place with the train companies through the franchise contracts, there is currently no such arrangement between the government and Network Rail.

### **Structure of the private sector**

The split of responsibilities between Network Rail and the train companies has brought both benefits and problems. Train companies and Network Rail have been able to develop management expertise and focus on their own areas. The franchising system has improved knowledge of train company costs. And the delay attribution system has led to a better understanding of the causes of major incidents, which has helped both sides of the industry to reduce delays.

But costs have increased because of the complex commercial and bureaucratic relationships, the lack of clarity over responsibilities, and the misaligned incentives between each part of the industry. And performance has also suffered because the industry is unable to react quickly to incidents. (...)

Relationships at the front-line have too often been adversarial, with problems being passed up the chain rather than tackled through collaborative working. When performance has deteriorated, there has been scope for the two sides of the industry to blame one another and pass the buck, rather than working in partnership to deliver improvements for their customers.

### **Lack of operational leadership**

The lack of any single body with operational responsibility for the whole railway at a national level lies at the root of many problems. Under the current arrangements, there has been no one body that automatically takes leadership of major projects, and is able to spot the implications of decisions (for instance, the need to upgrade the power supply following the replacement of the Mark 1 slam-door rolling stock). And, in some cases, there has been no-one to take a balanced view of the costs and benefits (in either financial, performance or safety terms) of new initiatives.

In the view of both the Transport Select Committee and many in the industry, this has been a contributory factor to both increasing costs – which can only be met by the taxpayer through increased funding, or by the passenger through increased fares – and to poor performance, as this lack of clarity has often led to poor decisions and perverse incentives.

The government established the Strategic Rail Authority as a non-departmental public body, independent from ministerial involvement, to tackle many of these problems. (...) But the SRA is in a difficult position. As a public sector body, it cannot lead the industry from within, and there are limits to its ability to set the strategic agenda for the railways – which in practice must be the responsibility of elected ministers. And as it is directly responsible only for a single transport mode, it has no flexibility to make changes within the wider transport budget to reflect changing priorities.

The secretary of state had ruled out renationalizing the railways before the review took place and, after consideration, he decided against radically changing the structure to a system of common ownership of track and train. However, he announced some major changes to the organization and structure of the industry:

- The government will take charge of setting the overall strategy for the railways. It will be for ministers, accountable to Parliament and the electorate, to set the national strategy for the railways. It will set high level objectives, including the levels of performance. It is also for the government to decide how much money it is able to spend and to be held to account for those decisions. As a result there will be no role for the Strategic Rail Authority, which will be wound up and the majority of its functions, including all its financial obligations, transferred to the secretary of state. The DfT will take on the responsibility for awarding train operating company franchises.
- Independent economic regulation for rail will remain with the Office of Rail Regulation, which will protect the rights of investors and railway customers and will decide how much income Network Rail needs to deliver the government's strategy. It will ensure the government pays the proper price for what it buys.
- Overall responsibility for the network will pass to Network Rail. At the moment no one organisation is in charge of running the railway on a day to day basis. In future, Network Rail will be responsible for ensuring that the network delivers a reliable service through an agreement with government. And it will be accountable to passengers and freight users for performance of the network. The government will set out what services Network Rail is to deliver, and Network Rail will take on new responsibilities, including leading industry planning, setting timetables and directing service recovery. In consultation with its members, Network Rail intends to change its management and governance to reflect its new responsibilities. The new structure should bring operation of track and train closer together, allowing far closer working between Network Rail and the train companies replacing the current, sometimes confrontational, relationship.
- The number of franchises will be reduced. When train operators' contracts are awarded, past performance will be taken into account as well as key issues such as their proposals on costs and service improvements. The contracts will ensure that government can take operators off the railway if they repeatedly fail to deliver.
- Increased powers will be given to the Scottish Executive, the Welsh Assembly and the London Mayor as well as encouraging more local decision making in England, particularly the Passenger Transport Executives. Many decisions affecting the amount of money spent on the railway should be taken at a local level. But the current arrangements often do not allow local and regional bodies to play a full part in decisions affecting their area.

- The ORR will cover safety, performance and cost. Safety regulation will transfer from the HSE to the ORR, but will remain completely independent of government and the industry.

### **III The Bill**

A number of these changes require primary legislation, notably the closure of the SRA, the transfer of safety regulation from the HSE, and proposals relating to devolved decision-making. In addition the Bill abolishes the regional passenger committees and simplifies the process for closing lines. This paper provides background to the changes but does not deal in detail with individual clauses.

The Bill and its accompanying explanatory notes (EN) can be found at:

<http://www.publications.parliament.uk/pa/cm200405/cmbills/006/2005006.htm>

The Regulatory Impact Assessment (RIA) can be found at:

[http://collections.europarchive.org/tna/20050302015713/http://www.dft.gov.uk/stellent/groups/dft\\_railways/documents/page/dft\\_railways\\_033000.hcsp](http://collections.europarchive.org/tna/20050302015713/http://www.dft.gov.uk/stellent/groups/dft_railways/documents/page/dft_railways_033000.hcsp)

Part 1 covers the transfer of functions of the SRA to the Department for Transport (clause 1 and schedules 1, 2) and the safety functions of the HSE to the ORR (clause 2 and schedule 3). In consequence some of the duties of the ORR as set out in legislation have to be altered (clause 3). It gives Scottish ministers the power to formulate strategies (clause 5) and sets out how the secretary of state and Scottish ministers may influence the access charges reviews carried out by the ORR (clause 4 and schedule 4).

Part 2 sets out the powers of the secretary of state to give financial assistance to the railways. The powers are largely the same as those available to the SRA and include funds to both the operators and Network Rail. In addition Scotland and Wales will have increased powers over franchises and, in the case of Scotland, of the infrastructure in their areas. It transfers the powers of the SRA over freight to the DfT and gives Scottish ministers and the National Assembly for Wales (NAW) new powers over freight in their areas. It also provides for the transfer of assets when a franchise is ended.

Part 2 further increases the powers and responsibilities of Transport for London (TfL) and the Passenger Transport Executives (PTEs) so they may enter into franchise agreements.

Part 3 and schedules 5 and 6 establish the Rail Passengers Council (RPC) as a single national body reporting to the secretary of state and the formal federal structure of the regional committees is dissolved.

Part 4 and schedules 7 and 8 replace the procedures set out in the *Railways Act 1993* to be followed when all passenger services are discontinued on a line. It extends the conditions for introducing bus quality contracts (QCs) by allowing an English PTE to introduce one when a rail service is reduced or discontinued.



Part 5 and schedule 9 enable railway operators to make bye-laws to control behaviour on the railways. It also allows Scottish ministers to make penalty fare regulations and to prepare a code of practice for disabled users in Scotland. Scottish ministers will exercise the functions of the secretary of state as regards administration orders involving a Scottish company.

The Bill is likely to receive general support from the Liberal Democrats and be opposed by the Conservatives.<sup>7</sup>

## **A. SRA: transfer of strategic responsibilities**

### **1. The new structure**

In the review, the role of the SRA and the lack of strategic direction were seen as critical. The Transport Committee in its report, *The Future of the Railway*, found that a constant theme was “the current structure of the industry is too fragmented to provide clear lines of responsibility and leadership and a satisfactory basis for improved rail performance.” The committee considered that the structure blurred responsibility for policy and railway services and was not “fit for purpose.”<sup>8</sup>

The current railway structure blurs responsibility for policy and railway services and is not fit for purpose. Rail policy can never be divorced from decisions about overall public expenditure which are the responsibility of government. The government's function of adjudicating on the public interest has been passed to the regulator who acts as a 'proxy for the public interest'. The government is presently compelled to carry out his funding decisions; Network Rail is required to carry forward and manage the operational consequences of his financial planning; the SRA has struggled to determine railway outputs because the regulator has effective control over the infrastructure. In addition, however well advised, the regulator is ultimately not professionally equipped to take detailed operational and managerial decisions about the railway. Our evidence has shown in detail how this present rail structure, far from focussing the various parts of the railway as a whole on improving services to the passenger, has meant that valuable energy has been diverted to intra-industry squabbling and "buck-passing", while co-operative moves by the various rail bodies governing the industry have had little or no demonstrable effect upon improving performance.

These problems lead to increasingly high industry costs, a lack of improvement in performance, and an industry that frustrates rather than satisfies customers. The lack of strategic direction and overlapping responsibilities mean that government and the rail industry spend time and energy debating structural issues rather than running a rail service which benefits the traveling public and the country. The committee concluded

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<sup>7</sup> Debate on the Address (third day), HC Deb 25 November 2004, Tim Yeo c261, Norman Baker c279

<sup>8</sup> [Transport committee, 7<sup>th</sup> report](#), para 211

that there was a “serious mismatch between the SRA’s objectives, powers and responsibilities.”

The government has announced that the SRA’s strategic and financial responsibilities will pass to the Department for Transport, as will its responsibility for awarding the passenger franchises. The secretary of state will take responsibility for setting the national-level strategic outputs for the railway industry, in terms of capacity and performance. Operational matters will remain the responsibility of the industry. The SRA’s role in monitoring the performance of the train companies and drawing up timetables is to be taken over by Network Rail.

The government will specify the outputs, Network Rail is to deliver them and they will be priced by the ORR.

This means the government will be responsible for deciding:<sup>9</sup>

- the overall size and shape of the network;
- the key timetable outputs;
- policy on regulated fares;
- minimum performance targets;
- enhancement priorities; and
- policy on information provision and accessibility.

The abolition of the SRA has been cautiously welcomed by most commentators. For example, Stewart Francis, chairman of the Rail Passengers Council (RPC), said: “This Bill paves the way for the kind of change on the railways that passengers have been telling us they want to see. They will be pleased that the complex, fragmented structure of the industry is being streamlined. However, passengers will reserve their final judgement until it becomes clear if the new structure can deliver their main priorities - trains that run on time and provide value for money.” He continued, “What passengers will want to see from the new structure is that ‘someone’ is taking charge and controlling costs so that passengers are getting a better service that doesn’t cost more.”<sup>10</sup> However, its replacement by the DfT has not always been welcomed. The Conservative shadow transport minister, Tim Yeo, said: “Now that the SRA has been condemned to death, power is shifting decisively back to civil servants in the Department for Transport and Network Rail. None of that bodes well for passengers...”<sup>11</sup>

## **2. Network Rail**

The private sector will be responsible for delivery of the strategy, with Network Rail taking the lead role through a “binding arrangement” with government. The government

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<sup>9</sup> Rail white paper, para 4.3.6

<sup>10</sup> RPC press notice, 25 November 2004 *Joining up the railway*

<sup>11</sup> Debate on the Address (3<sup>rd</sup> day), HC Deb 25 November 2004, c261

considers the network operator is the only organization able to understand and deal with every aspect of the problems and incidents that arise upon it. Train companies will be held accountable through the provisions in their franchise contracts, and Network Rail will be held accountable through enforcement by ORR in the event of poor performance or a failure to keep to budget. Network Rail is to be given new responsibilities for timetabling and industry co-ordination. It will be the body held accountable for the sector's punctuality and cost control.

In its submission to the review, Network Rail had asked for greater control over timetabling and has been given much of what it wanted. Legislation will not be needed for many of its increased responsibilities, but it is a prime player in the new structure envisaged by ministers. It will be held accountable under the new regulatory and contractual arrangements for the operational management of the network, and for co-ordinating the industry's planning. It will retain its core responsibilities for operating, maintaining and renewing a safe national rail network, but will also take on responsibility for:<sup>12</sup>

- drawing up route utilization strategies for agreement by Government that make best use of the network's capacity;
- devising efficient and clear timetables based on those route strategies, and input from train companies;
- directing network operations, and getting services back on track following incidents and delays;
- driving up the operational performance of the network;
- devising and delivering infrastructure maintenance and renewals, as well as delivering enhancements to the network as appropriate; and
- accounting publicly for performance.

The government has said it will not be involved in Network Rail's management strategy for delivering the outputs that have been specified, or in its day-to-day operations.<sup>13</sup> Network Rail must decide how best to deliver the outputs that the government has set. Where changes are proposed which fall outside the government's output specifications, or where a case has to be made for additional enhancement funding, then the government's approval will be required.

The binding arrangement between the government and Network Rail will also cover investment although no details have been agreed as to its content. The white paper explains:<sup>14</sup>

At present, there is an artificial distinction between investment in renewing an existing asset (e.g. resurfacing a station platform) and investment in new assets

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<sup>12</sup> Rail white paper, para 4.3.11

<sup>13</sup> Rail white paper, para 4.3.19

<sup>14</sup> Rail white paper, para 4.3.22

(e.g. extending a station platform). The former is funded through the ORR's reviews of Network Rail's income, whilst the latter is funded by the SRA and is subject to different value for money criteria. This adds complexity and delay to the approval of projects, and gives rise to disputes about where funding responsibility should lie. In the new regime, this distinction will cease, and a simpler approach will be put in place for investment projects which are taken forward. This approach will be as follows:

- the government will specify the very largest projects, such as the construction or upgrade of major lines, and will determine the overall approach and by whom they are to be delivered;
- medium-sized schemes (for instance, projects to increase capacity on existing lines) will be undertaken by Network Rail and costed by the ORR as part of the package of measures needed to deliver the Government's outputs; and
- Network Rail will also be given funding to take forward small schemes, such as station improvements, in consultation or partnership with local authorities and train companies. It will not need to seek approval or funding from Government for individual schemes of this type.

Network Rail will be free to deploy any profits that it earns as it sees fit in improving the network, which may include sponsorship of enhancement schemes.

Critics of the plan point out that Network Rail is not accountable to shareholders or passengers although it has said it will appoint two new directors (one to represent passengers and one to represent train companies) and give its members more information about performance. It would appear that its first responsibility is to the track rather than to passengers and there is no apparent incentive to attract extra passengers. Indeed it will be able to cut services if it considers they interfere with its duty to maintain the track. Its pivotal role could be seen as a return to an engineering and production-led railway, where the outputs of the passenger and freight companies are determined primarily by the capacity of the infrastructure rather than by demand. Nor is it clear what sanctions the government will have if Network Rail fails.

Stewart Francis, chair of the RPC, said:<sup>15</sup>

Passengers will want to see how Network Rail will become a more passenger-focused business. Given the potential for its responsibilities to increase, it will need to develop from a company that not only concentrates on track and signals to one with a real passenger focus - we'll wait and see how that transition occurs.

The DfT has said that the new rail group within the department will employ about 250-280 staff whereas the SRA employs about 400 with another 100 in the DfT.<sup>16</sup> The unions,

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<sup>15</sup> RPC press notice, *Joining up the railway*, 25 November 2004

the PCSU and the TSSA welcome the move to political integration but are worried about the numbers to be laid-off.<sup>17</sup>

### 3. Miscellaneous

Some points from clause 1:

**Abolition.** The SRA is abolished and its strategic functions and funding obligations transferred to the secretary of state. Some of its responsibilities will be reallocated to third parties, which may not require legislation, for example those going to Network Rail and the responsibility for the East London line that is being transferred to TfL. Once all the responsibilities have been transferred and the liabilities provided for, the secretary of state will make an order for the abolition of the SRA (clause 1(10)).

**Consumer protection.** The ORR takes back responsibility for consumer protection (schedule 1 para 1). This was removed from the Regulator to the SRA by the *Transport Act 2000* but is now returned. The role of sponsoring body of the Rail Passengers Council moves from the SRA to the secretary of state.

**Infrastructure.** The Scottish Executive will take over responsibility for infrastructure responsibilities (referred to as “facilities authority”) (schedule 1 para 11).

**Transfer of franchise responsibility.** The Scottish Executive and the NAW (referred to as “designating authorities”) will take increased responsibility for passenger services, including as “operator of last resort” (schedule 1 paras 12-21). The secretary of state will transfer the SRA’s interest in the Scotrail franchise to Scottish ministers. The SRA interest in the franchise agreement with Arriva Trains Wales will be transferred to the secretary of state and the NAW jointly. The SRA interest in all other franchise agreements will be transferred to the secretary of state.

**Pensions.** The main pension scheme in the old British Rail was the British Rail Pension Scheme. As a consequence of the *Railways Act 1993* and the break-up of BR's constituent parts, a new scheme, the Railways Pension Scheme (RPS) was set up to replace it. The RPS is an industry-wide umbrella scheme and has a number of different ‘sections’ which broadly correspond to the companies which have taken over BR's operations and staff. The RPS is set up under irrevocable trust with the essential details of the scheme set out in the trust deed and rules. This is the legal document which constitutes the scheme. In the case of the RPS these rules were set out by statutory instrument under schedule 11 to the *Railway Act 1993*.<sup>18</sup> The financial liabilities for the scheme (and for the older BR and pre-BR pension schemes) lie with the SRA.

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<sup>16</sup> DfT press notice, [Streamlined rail structure moves a step closer](#), 25 November 2004

<sup>17</sup> *Guardian* 26 November 2004, “Hundreds of jobs go in rail shake-up”

<sup>18</sup> *The Railway Pension Scheme Order 1994*, [SI 1994/1433](#)

Clause 1 gives the secretary of state the power to make modifications of legislative provisions in relation to rail pensions that “may be necessary or expedient”. The Explanatory Notes to the Bill state that the role of the SRA, as sponsoring employer to a number of the older, partially funded rail pension schemes, “is likely to be transferred” to the DfT under a transfer scheme to be made under clause 1(2). *Subsection (8)* further enables consequent provision to be made in the light of this transfer of liabilities. It is also “likely” that the SRA’s obligation to provide indexation for cost of living increases for these older pension schemes will be transferred.

There appears to be an assurance that the transfer provisions made in the Bill will be designed to ensure that “the existing position of beneficiaries of the relevant pension schemes and the funding of those schemes is *unaffected*” (emphasis added).<sup>19</sup>

**Other responsibilities.** Responsibilities of the SRA for railway administration orders, the code of practice for the disabled, penalty fares, concessionary travel and maintaining the register of franchise agreements are transferred to the secretary of state and Scottish ministers (schedule 1 paras 27, 28, 30,31, 34, 35, clauses 47 and 48).

**Cost.** The RIA estimates the cost of the transfer:<sup>20</sup>

It is estimated that the SRA will have incurred about £237 million of running costs between its establishment on 1 February 2001 and its winding up when legislation comes into force. (This is made up of £37m in 2001/02, £45m in 2002/3, £49m in 2003/4, £55m for the 2004/5 budget, £40m estimate for 2005/6 and £10m for Feb/Mar 2001.) Most of the SRA’s functions were undertaken by others (e.g. the Office of Passenger Rail Franchising) before it was established and will be undertaken by others after it is wound up. The proportion of costs will not be clear until the division of functions has been decided.

The way responsibilities are currently divided and the additional layers of consultation that would be incurred, means there will be an extra cost for industry and Government. If the complexity of Government oversight can be reduced, this will help to reduce the overall cost of the railway. There will be an impact on the Department for Transport through the creation of a new structure. This will require a change in skills and expertise, and it is too early to assess costs and savings. In the context of the Gershon targets, it is expected that there will be efficiency savings and a reduction in running costs, after the costs of reorganisation are taken into account.

The Government will take over SRA’s financial liabilities, and transfer provisions are made in the Bill which provide for such transfers to be tax neutral. The transfer of pension liabilities for PCSPS and RPS is cost neutral.

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<sup>19</sup> Para 33, EN-Bill 6

<sup>20</sup> [RIA](#), p10

## B. ORR and regulation

The Office for Rail Regulation (ORR) will become the economic and safety regulator for the rail industry. It will continue to price the work performed by Network Rail but the government will be able to “revise the outputs” if the bill is too high. Thus if the Treasury decides to reduce the subsidy – or not increase it – services or lines will have to be closed. At present the government has to pay what the ORR decides is necessary to maintain the network.

Clause 2, parts of clause 3 and schedule 3 transfer to the ORR the safety regulation responsibilities of the Health and Safety Executive (HSE). Clause 3 excludes the ORR’s new safety functions from its general duties as set out in section 4 of the *Railways Act 1993*, but introduces a new duty “to promote improvements in railway service performance” (clause 3 (3)).

Clause 4, parts of clause 3 and schedule 4 change the procedure for the access charge review to ensure the input of the secretary of state.

The ORR’s specific responsibilities will be:<sup>21</sup>

- to assess the cost of the outputs specified by the secretary of state and to determine the size of Network Rail’s income, as set out in para 3.1.7;
- to regulate access contracts and arbitrate between conflicting industry interests;
- to help ensure that the railway provides value-for-money for both the fare-payer and the taxpayer, taking into account safety, performance and cost;
- to enforce health and safety legislation in respect of the operational railway;
- to investigate and make recommendations on performance problems and cost overruns;
- to license railway operators;
- to exercise competition law functions concurrently with the Office of Fair Trading, where these relate to the railways; and
- to act as a single repository for rail industry data.

The new board of the ORR has recently been appointed on the basis that the body is an economic regulator. The safety expertise of the board will need to be strengthened and ORR will need to plan carefully the assimilation and recruitment of staff with railway safety expertise from HSE and elsewhere.

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<sup>21</sup> Rail white paper, para 3.4.2

## 1. Safety regulation

When Alistair Darling announced the rail review, specific mention was made of safety.<sup>22</sup> The review looked at the regulation of safety, which at the moment is the responsibility of the Health and Safety Executive, the Health and Safety Commission and the Rail Safety and Standards Board. There is now a plethora of industry standards, some of which are thought to be over-cautious or are being applied in an overly cautious way. The government considered that “safety regulation needs to be focused on the real risks to passengers and employees and should not be an obstacle to providing reliable services.”

The future of the HSE was questioned in press articles looking to the possible outcomes of the rail review.<sup>23</sup> Some of this criticism was triggered by remarks from the HSE’s former director of rail safety, Alan Osborne, to the Transport Committee.<sup>24</sup> In his oral evidence to the committee on 7 January 2004, Mr Osborne stated:

I believe that only real and lasting performance improvement will come about in the railways if there is absolute clarity around who is accountable to whom, who is responsible for what and who really has the authority to decide on what has to be done ... I do think those are essential issues that need to be addressed by the industry at this time, the underlying concern being that there are too many players, essentially. My second point is that I do believe over time the railways need a dedicated safety regulatory framework and a dedicated regulator chiefly to address the specific risks of the industry and the specific needs of the railway industry. My third point is that I think it would be a very useful first step if the HSE rail safety functions were transferred to the newly constituted office of rail regulation.

The Transport Committee found the rail industry critical of the HSE, believing that it had failed to take fully into account the industry’s recent record when assessing risk and that this had led to higher safety costs than necessary. In its report, the committee had the following to say about safety:

The evidence we have taken in the course of this inquiry indicates that the relationship between the HSE and the industry has broken down. We cannot see how fully effective railway safety regulation can be carried out in these circumstances. It should be a priority for the government’s review of the railways to consider whether Her Majesty’s Railway Inspectorate should be removed from the HSE and made, either an independent Agency of the Department for Transport, as is the case with the newly established - but regrettably delayed -

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<sup>22</sup> HC Deb, 19 January 2004, cc1075-78

<sup>23</sup> See, for example, “Railways win fight over safety,” *Financial Times*, 27 April 2004

<sup>24</sup> Transport committee, 7<sup>th</sup> report, evidence, 7 January 2004, Q1843  
<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmtran/145/4010701.htm>



Rail Accident Investigation Branch, or merged with the new Rail Agency body we have proposed.<sup>25</sup>

The *Railways Bill* transfers all aspects of health and safety regulation from the Health and Safety Commission to the independent Office of Rail Regulation (clauses 2 and 3, schedule 3). This will cover all rail-based systems, including London Underground, other metro systems, heritage and light rail. The duties of the ORR with respect to railway safety for the most part replicate those of the HSC as set out in sections 11(1) and (2) and sections 50(1), (2) and (3) of the *Health and Safety at Work Act 1974* (schedule 3 para 2).

The ORR will have the power to authorize a person to investigate and make a special report (para 4)<sup>26</sup> but the ORR's powers will not extend to the directing of an inquiry, as the Rail Accident Investigation Branch has been established for this purpose.<sup>27</sup> Furthermore, the secretary of state will retain his prerogative powers to call an inquiry should he see fit to do so.

The government argued in the white paper that the transfer to the ORR would simplify the regulatory structure of the rail industry.<sup>28</sup> It would enable the development of an independent regulator with specialist economic and safety rail expertise and allow decisions which touch on both economic and safety regulation to be brought together.

The ORR will continue the work begun by the HSE to change the industry's culture to ensure that it takes responsibility for undertaking risk assessments. The evidence collected during the DfT's review showed that unquestioning compliance with railway group (industry-wide) standards and company standards, in cases where derogation procedures existed but were not used, could sometimes add to costs or harm performance, without significantly improving safety. RSSB has begun the process of simplifying and clarifying group standards which impact mainly on issues affecting the wheel/rail interface, where both Network Rail and train operators have an interest. Train operators and Network Rail have also begun reviewing their own company operating standards. The government considers they need to move away from a culture where standards are followed unquestioningly, whatever their impact, and move to a risk-based safety system where decisions are taken based on proper analysis.

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<sup>25</sup> [Transport Committee, 7<sup>th</sup> report](#), para 222

<sup>26</sup> This is similar to the present power of the HSC to direct the HSE to investigate and make a special report on a major incident under section 14(2) (a) HSWA. An investigation and special report might look at the immediate route cause of an incident and the safety lessons that could be learnt. Such an investigation was ordered by HSC, and overseen by an Investigation Board, following the Potters Bar accident.

<sup>27</sup> This would be set up under section 14(2) (b) and refers to a public inquiry, which may be initiated by the secretary of state on the recommendation of the HSC. Inquiries tend to be convened to look more at general principles and major structural issues for the railway as a whole. The section was used to set up the Cullen public inquiry into the Ladbroke Grove collision.

<sup>28</sup> Rail white paper, para 3.3

The transfer of safety responsibility to the ORR was welcomed by some commentators as spending decisions on safety have to be made within the context of what is affordable<sup>29</sup> but condemned by Brendan Barber, the TUC general secretary, who had “grave reservations” about the transfer of responsibility for safety from the HSE to the ORR:<sup>30</sup>

(...) But the government’s decision to snatch safety responsibilities from the Health and Safety Executive is not a sensible one.

We have grave reservations about giving rail safety to the Office for the Rail Regulator. This goes against the clear recommendation of the Cullen report and can only put safety at risk. Financial and safety regulation do not mix.

Until now passengers and rail employees have felt reassured that safety has been in the hands of an independent body. Train companies moan that rail safety standards are too high and too restrictive, but I’m not sure that the families of the victims of Potters Bar or Ladbroke Grove would agree. I urge ministers to think again, give the HSE more money to do its job properly, and help make our railway safety record the envy of Europe.

The HSC and HSE were disappointed at the decision. Quoting from earlier correspondence with the secretary of state, the HSE chairman said:<sup>31</sup>

I assume the reasons for the change are specific to the mainline railway industry which, although improving since the days of Railtrack, still needs to improve its safety culture along with other aspects of performance. The problems were highlighted by the Cullen report. It is vital that HSE’s work in the rest of industry is not affected adversely by this decision. We need your help to ensure that HSE’s reputation is not damaged by its dealings with an industry that has often preferred recalcitrance to implementation of what is no more than good practice in other industries. The industry also needs to do much better to demonstrate safety leadership. Despite the efforts of Denis Tunnicliffe and Len Porter, RSSB has not achieved that. Indeed the industry responses to your review demonstrated that there is still no unity of purpose here. Although your decision overturns one of Cullen’s recommendations it is essential that the wider Cullen agenda is maintained.

Some of the details as to how the move will take place are not yet clear:<sup>32</sup>

The co-location of economic and safety regulation within a single body should yield economic benefits arising through economies of scale, as both workforces come under a unified administration. While the majority of administrative

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<sup>29</sup> See for example Christian Wolmer in the *Independent* 16 July 2004 “Compromise that fails to confront desperate need for radical reform”.

<sup>30</sup> [TUC press notice](#), 15 July 2004

<sup>31</sup> [HSE press notice](#) 15 July 2004

<sup>32</sup> [RIA](#), pp14-15

decisions have yet to be taken, there would also be the opportunity for some decentralisation of the workforce should this be considered desirable.

The RIA estimates the costs of the move:<sup>33</sup>

Within ORR, the regulation of health and safety on the railway will continue under the *Health and Safety at Work Act* broadly as within HSE, though with staff transferred from HSE Rail according to Cabinet Office best practice. It is intended that use of specialist resources (such as the Health and Safety Laboratories) would also continue as before via a Memorandum of Understanding with HSE. This means that there should be no additional costs arising from the transfer.

Some costs will arise through the increased administration involved in organising the transfer (in HSE, ORR and DfT) and in terms of lost income incurred by HSE as a result of any disruption caused by the transfer. These costs are likely to continue to arise until after the transfer has been completed. We are exploring with HSE and ORR the exact nature of these costs. As the same staff will be transferring to ORR from HSE, the industry will not be required to spend time developing new relationships with the regulator on a day to day, though there will be new non-executive directors at Board level.

In addition, the department will be considering with ORR how best to fund its rail safety activities in the future. We consider it likely that ORR will adopt a levy on the industry - akin to the majority of other regulators. Provision for such a levy has already been made for HSE in the *Railways and Transport Safety Act* and our policy proposals will not affect the nature of this levy.

## 2. Economic regulation

The ORR determines, independently from government, the income that Network Rail requires to operate, maintain and renew the main rail network. This is done in reviews of access charges that are undertaken periodically, generally every five years. In reaching decisions ORR needs to take into account the government's strategy and the public subsidy for the industry as a whole, but the relationship has not worked in practice.

The Transport Committee described the relationship:<sup>34</sup>

However, the success of the present regulatory regime in fundamental aspects of controlling costs, laying down strong incentives, providing for secure knowledge of the industry's assets, quantifying investment arising from it, and working well with other railway bodies under Government guidance, has been abysmally poor. It did nothing to prevent the appalling débâcle of Railtrack when the railway

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<sup>33</sup> This part of the [Railway and Transport Safety Act 2003](#) has not yet been introduced.

<sup>34</sup> [Transport committee, 7<sup>th</sup> report](#), para 214

came close to collapse. The costs of the industry have still to be brought under control. In addition, as we have demonstrated, it is the government and not the Rail Regulator which guarantees the railway and the private investment. Finally, the Regulator appears to have extended his role in setting track access charges into the forward management of Network Rail's business - something that was surely never envisaged to be a part of his function - thus subverting the proper function of that management and risking a further confusion of roles.

And concluded:<sup>35</sup>

Economic regulation of the railway, as presently organised, has largely failed. However, if the private sector continues to be involved, there will be a role in future for a measure of independent economic regulation to 'hold the ring' between the infrastructure provider and the private sector companies. But the government must take back into its own hands decisions about the sums which will be spent on the railway. This will correct the present absurd position in which the government simply underwrites the Regulator's funding decisions. Economic regulation should be removed from functions which are properly those of government.

The white paper describes how the government sees the present system and what it proposes:<sup>36</sup>

One of the fundamental responsibilities of every level of government is to decide its public expenditure programme. Only elected and accountable bodies can allocate public funds between different programmes, such as education, health and transport. And only central government can determine how much of the national transport budget to devote to strategic rail and highways, to local transport and to other programmes.

What has happened to date is that the ORR in carrying out reviews of access charges has had to determine both Network Rail's outputs for the operation of the rail network, and for its maintenance and renewal, and the price that should be paid for them, in the light of its statutory duties. The government has then had to deal with the consequences for the other parts of the rail budget and wider transport expenditure programmes, as well as, if necessary, for other government spending plans.

This has risked distorting the government's decision-making, because decisions on some parts of the railway budget have been divorced from decisions on other parts. A system is needed in which decisions on the totality of the rail budget are properly integrated, so that the government can ensure that it obtains the best value for money overall and the rail industry lives within its budget.

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<sup>35</sup> [Transport committee, 7<sup>th</sup> report](#), p4

<sup>36</sup> Rail white paper, para 3.1.2-9

But governments must not decide a rail budget and then pretend that it can deliver more than is actually feasible. One of the benefits of independent economic regulation of the railway industry is that it protects the rights of investors by ensuring that the railway receives an appropriate level of funding for the outputs it is required to deliver. This benefit must be retained.

In future, therefore, the government will decide the level of public funding for the railways, and will consider in consultation with the ORR the levels of capacity and reliability that it wants the railway to provide from that budget, whilst meeting its commitments on safety. The ORR will then determine the precise amount of income which Network Rail needs in order to deliver, or help to deliver, these. If this level of income proves higher than the available funding for rail, then the Government will be able to reconsider the levels of performance and capacity that it has set.

The government intends retaining independent economic regulation for the rail industry because it is essential to the continuation of private sector participation and investment, and it provides efficiency pressures on the monopoly network infrastructure provider, but as the major funder of the rail industry, the government wants the process of economic regulation, led by the ORR, to be improved and to be more transparent.

In future there will be an iterative process. The government will start by setting out the level of public funding for rail and the outputs it would like the industry to deliver. The ORR will then assess whether the government's outputs are deliverable with the available funding. If the ORR concludes that the funding is insufficient to deliver the government's objectives then ministers will have the opportunity to reduce the scope of what they want delivered (schedule 4 para 2). The final statement of required outputs would become a "statement of reasonable requirements" for the purposes of Network Rail's licence. It would therefore be binding upon Network Rail, and the ORR would be obliged to enforce it.

### **C. Funding**

Part 2 of the Bill covers public sector funding. The DfT will take over funding from the SRA and clause 6 is similar to section 211 of the *Transport Act 2000*: the secretary of state may enter into agreements for the purpose of securing the provision, improvement, or development of any railway services or railway assets. He has the power to give grants, loans, or guarantees and investments in "bodies corporate" (thus including Network Rail) for any purpose relating to any railway or railway services. The clause refers to the "wider meaning" of railway. This means a railway, tramway or transport system that uses another mode of guided transport but which is not a trolley vehicle system. This could cover anything connected with the types of railway services provided (such as networks, carriages and stations), the types of railway assets involved (such as the network and trains) and facilities connected with railway travel (such as parking outside stations).

## 1. Franchises

Clause 6 also provides for financial support for train operators under franchise agreements.<sup>37</sup> It specifically states this may be given only in accordance with the terms of the franchise agreement and that a franchise agreement may not be amended by private agreement.<sup>38</sup>

Clause 12 provides for the making of a transfer scheme when a franchise agreement terminates for whatever reason. Under the *Railways Act 1993* section 27, the SRA has power to designate property, rights and liabilities as "franchise assets", to include for example rolling stock leases. 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. In future these functions will be exercised by the Scottish ministers in relation to Scottish franchise agreements, and by the secretary of state in relation to other franchise agreements.

Clause 12 is primarily intended for use where a franchise agreement is terminating, and a new franchisee is taking over from the existing franchisee. A Transfer Scheme may be made 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. However, there may be circumstances in which a franchise agreement terminates but is not replaced with a new franchisee, for example, where services have to be provided by the secretary of state or the Scottish ministers as "operator of last resort" (*Railways Act 1993* section 30). At present the franchise assets can be transferred to another franchise company or to the SRA or an SRA subsidiary.<sup>39</sup> This provision allows them to be transferred to the secretary of state or to Scottish ministers. It is necessary as in future they, not the SRA, will be the operator of last resort.

Clause 18 further limits the circumstances in which, if a franchise ends, the franchising authority is required to provide services as "operator of last resort." Services need not be provided if it is believed there will be no funding forthcoming. This is necessary as the franchising authority would be the secretary of state or the Scottish ministers but under provisions in the Bill the funding authority could be the NAW, a PTE or TfL.

This part of the Bill also gives powers to Scotland and Wales. (See section D below)

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<sup>37</sup> Any changes to the franchises and the performance and penalty regimes do not require primary legislation.

<sup>38</sup> This is a theoretical worry rather than something that has been a problem in the past. It replicates what is currently in the SRA provisions ([Transport Act 2000](#) section 211(3)).

<sup>39</sup> [Transport Act 2000](#) schedule 21 para 2

## 2. Freight

Legislation is not needed to change access agreements or routes but it is needed to transfer responsibility for freight grants from the SRA to the DfT, Scottish ministers or the NAW (clauses 6 and 7).

The freight facilities grant (FFG) scheme was introduced by the *Railways Act 1974* and extended to inland waterways by the *Transport Act 1981*. These are grants towards capital investment in private rail or inland waterway freight facilities and are available towards the cost of new or refurbished freight facilities, including depots wherever they might be located. Track access grants (TAG) are made under section 137 of the *Railways Act 1993* and are available to help to meet the cost of Network Rail access charges for freight flows which could not be attracted to rail or would otherwise transfer to road.

In both cases the amount of grant actually offered depends on the value of the environmental benefits and the need for grant as demonstrated by the financial case. In January 2003 the SRA suspended new grant applications for both grants for at least 15 months because of budget constraints. Payments already committed were honoured. The only grants to survive were the FFGs made by the Scottish Executive and the Welsh Assembly. The SRA reopened the TAG scheme in April 2004 but the FFG remains suspended. The government has suggested that it may replace these with multimodal freight grants in the future.<sup>40</sup>

Rail freight operators do not need a franchise, but instead run services on the network through access agreements with Network Rail. It is a competitive, private sector activity. Freight companies currently pay access charges on an incremental basis: they do not contribute to the substantial core costs of the network. They have reserved slots in the timetable, which they use only when they need to do so. According to the white paper this results in an inefficient use of the network, particularly on busy sections where the need for capacity and flexibility is greatest – for example, routes from ports which currently have to transit around London. The ORR has recently introduced revised contractual terms for freight operators, which require them to relinquish access rights which are no longer required and to move slots where this will improve the efficiency of the network.

To compete effectively with road haulage, freight operators need certainty about their long-term access rights and what they will cost. The government says it will ensure that long-term access agreements are put in place to provide the stability but it has also said that a group of key routes would be identified on which freight operators would have more assured rights of access, for which an appropriate price would be set by the ORR. Where lines carry only freight, and no passenger services, the freight operators will pay their full costs. At present freight companies have wide ranging rights to run trains

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<sup>40</sup> [DfT \*Future of Transport\*, 20 July 2004, Cm 6254](#) paras 8.10-11



nearly everywhere on the network at various times and they are concerned this right might be curtailed.

The Freight Transport Association broadly welcomed the white paper proposals but said:<sup>41</sup>

However, the Government's new rail policy will mean that industry will have to take careful cost and strategy decisions before making a long term commitment to rail freight. Where lines only carry freight and freight operators will in future have to pay the full costs, industry will need to make some tough calls as to what services they can and cannot afford to run. But in return, they will be given the benefit of long term access rights on key trade routes which they share with passenger train services - something that they have never had before. However, the cost of access must be set at a commercially realistic level. Industry does not want to replicate the problems of punitive charges for freight using the M6 Toll on the rail network.

The fragmentation of responsibility for infrastructure to devolved administrations is also of concern. After the Hatfield derailment in October 2000, the impact of urgently needed track maintenance and renewals on rail freight operators and customers was exacerbated by a lack of coordination of work for long distance movements.

## **D. Devolved powers**

The government believes that more decisions on the provision and funding of rail services should be devolved to those best placed to represent the interests of local rail users and judge local priorities. This will permit decisions to be made that take on board other forms of transport and wider social and economic considerations so as to deliver value for money transport solutions.

### **1. Scotland**

The *Scotland Act 1998* divided legislative responsibility for transport between the UK and Scottish parliaments. Those powers that were transferred to the Scottish Parliament are referred to as devolved. Those that rest with Westminster are reserved powers. However, in some areas which are reserved in legislative terms, Scottish ministers have executive powers to implement UK legislation.

The provision and regulation of railway services, including rail safety, is a reserved matter except for those services that both begin and end in Scotland which are devolved.

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<sup>41</sup> FTA [The rail review](#), July 2004



‘Railway services’ are those defined in section 82 of the *Railways Act 1993* but excluding the wider meaning of ‘railway’ given by section 81(2) of that Act. This means that railway services for the purposes of the reservation include services in relation to the carriage of passengers (including luggage, parcels and mail) and of goods and services in relation to stations, maintenance facilities and the provision and operation of the rail network itself. As the wider meaning of ‘railway’ does not apply, tramways and guided transport systems are **not** included, so the Scottish Parliament has legislative competence in regard to those matters.

Although parts of the *Railways Act 1993* concerning the provision and regulation of railway services are reserved, grants to railway services are an executive responsibility. The Scottish Executive makes grants for railway passenger services except that:

- If a franchisee goes bankrupt, no financial responsibility falls on the Scottish Executive;
- It has no powers to provide grants for railway freight transport; and
- It has no competence in the area of the overall financial regime of subsidies to franchise holders set up by the *Railways Act 1993*.

The present situation is described in the RIA:<sup>42</sup>

At present the Scottish Executive has a significant level of control over the Scottish franchise, since it can specify the services it wants to secure under the franchise and it has executive responsibility for providing the funding. Its role in specifying the services is achieved via its power to give the SRA directions and guidance (section 208 of the *Transport Act 2000*). However, these directions and guidance are in addition to those given to the SRA by the secretary of state, and thus carry the risk that what SE wishes to achieve will not be deliverable because the SRA must first and foremost deliver the secretary of state's national (GB) policies and priorities for the network. Moreover, the power to give directions and guidance, while it has served SRA and SE for the purposes of the present franchise, is not in itself as clearly defined a power as it could be to empower SE's specification of the franchise. Importantly, the SE, while responsible for funding the franchise, is not a signatory to it. This brings the risk that SE might at some point in the future have limited leverage over proposals to change the terms of the agreement, although it remains responsible for providing the funding. In addition, as it has no statutory role in the tender process, while SE is responsible for funding the franchisee, it has no power to select who that person will be.

The SE currently has no role in respect of infrastructure, although it has general powers which have enabled it to provide additional discretionary funding for improvements that facilitate the delivery of services in Scotland. It does not have the power to engage directly with the Office of Rail Regulation so as to influence Network Rail's outputs in Scotland, or the level of access charges which the

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<sup>42</sup> [RIA](#), pp20-1

Executive bears via the subsidy payments it provides to the Scotrail franchisee so as to support Network Rail's operations, maintenance and renewals activity. This has led to a lack of transparency in the costs borne by SE under the Scotrail franchise and the perception that SE indirectly supports investment in the network outside Scotland. Continued lack of direct control over the infrastructure would perpetuate a situation in which SE has no control over the level of support it provides via the access charges paid by Scottish franchisees. In addition, since it has funding responsibility for only one franchise, SE is not able to off-set increases in access charges against cost savings in franchises elsewhere on the network.

Failure to allow SE to specify the outputs it wishes to purchase from Network Rail in Scotland would potentially limit its ability to deliver improvements in the provision and quality of services in Scotland. The inability to engage directly with ORR to influence Network Rail's business planning in Scotland will risk Scottish needs continuing to being considered against GB priorities. In the past this has led to the perception that Scotland is a lesser priority than the needs of London and the South East, and committed major upgrades, such as the West Coast Main Line modernisation.

Similar considerations apply in respect of new investment in infrastructure. Failure to give SE the opportunity to address new infrastructure needs in Scotland directly would risk potential failure to deliver those needs within a timescale - or perhaps to a specification - that was acceptable to the Scottish ministers.

Not taking substantive action would therefore continue to expose the Scottish Executive to risk over the delivery of rail priorities in Scotland. As the Scottish Executive is already responsible for funding the Scotrail franchise, failure to provide additional control over the delivery of the network in Scotland would continue its exposure to aspects which had a substantial impact on the Scottish franchise but over which the Executive had no direct control.

This *Railways Bill* provides the Scottish Executive with responsibility for the Scottish franchise and responsibility for specifying network outputs for the relevant infrastructure. The Executive will take on responsibility for new investment in infrastructure subject to the agreement of an "appropriate resource transfer from the UK government."<sup>43</sup> In summary the Scottish Executive will:

- Plan, specify, let, manage and finance the contract for Scottish passenger services
- Be able to specify and fund the rail infrastructure in Scotland for Network Rail to deliver.
- Continue to offer advice to the government on cross border passenger services along the East and West Coast Main Lines.

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<sup>43</sup> [RIA](#), p22

- Decide how best to implement these new powers in due course. It is likely the task will pass to the proposed new Scottish Transport Agency.

The changes are introduced by various clauses throughout the Bill. For example clauses 3 and 4 ensures the ORR takes into account the views of Scottish ministers, clause 5 allows Scottish ministers to prepare a rail strategy, clause 8 to provide financial assistance in connection with “Scottish services” and clause 9 to assist freight services. Part 4 gives the Scottish Executive a role in closures and part 5 to make penalty fare regulations, to prepare a code of practice for disabled users and to allow Scottish ministers to exercise the functions of the secretary of state as regards administration orders involving a Scottish company.

On 16 June 2004, the Scottish Executive published a white paper entitled *Scotland's Transport Future*. This set out the Scottish ministers' vision for a new strategic approach to transport in Scotland with the creation of a new transport executive agency and a network of new regional transport partnerships. The white paper envisaged that the Scottish transport agency would take on responsibility for overseeing the Scottish passenger rail franchise and the management of rail infrastructure projects in Scotland sponsored by the Scottish Executive. The Executive is considering what functions should be transferred to the agency, including the additional functions that the Executive will gain as a consequence of the present Bill.

## 2. Wales

The National Assembly for Wales (NAW) has similar responsibilities for transport as did the secretary of state for Wales in the past: primary legislation is passed at Westminster but the implementation and the orders are done at the regional level. The present Bill will give the NAW a direct role in making decisions about the provision of local and regional passenger rail services in Wales.

The 1998 devolution settlement did not provide for any substantive devolution of passenger rail responsibilities to the NAW. The NAW has since sought a more direct role and has wanted powers similar to those enjoyed by the Scottish ministers under the terms of the *Transport Act 2000*. In February 2004 the secretary of state agreed - subject to the outcome of the rail review - to devolving to the NAW a package of powers that were broadly equivalent to those given to the Scottish ministers in the *Transport Act 2000*. In May 2004 the draft *Transport (Wales) Bill* was published containing powers for the NAW to give directions and guidance to the SRA and enter into agreements with the SRA.<sup>44</sup>

The transfer of funding responsibility for the Wales & Borders franchise that would have occurred as a consequence of the *Transport (Wales) Bill* was problematical as three of Wales & Borders' services operate wholly within England. This meant that it was

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<sup>44</sup> [Draft Transport \(Wales\) Bill](#), Cm 6195,

constitutionally unacceptable for the NAW to have jurisdiction over the Wales & Borders services that operate wholly within England, so it was necessary for the secretary of state to maintain a stake in the franchise. The conclusion was to make the NAW a co-signatory to the franchise in order to ensure that it had a broader range of powers and influence over the provision of services under the franchise. It was considered inadequate to ask the NAW to specify and fund the majority of a franchise to which it was not a co-signatory.

The government's white paper of July 2004 said about Wales:<sup>45</sup>

In Wales, the government will devolve additional rail responsibilities to the National Assembly, whilst recognising that the rail network and services in Wales are less discrete than in Scotland. The Assembly will specify the services and fares for local services within and bordering Wales, which are currently grouped together in the Wales and Borders franchise (operated by Arriva Trains Wales), and it will be responsible for funding those services. The SRA, and subsequently the Department for Transport, will let and manage the franchise, and will specify and fund the few services that operate wholly within England. The Department will also need to work with the ORR to ensure that Assembly specifications do not unreasonably constrain network capacity. There will also be scope for the Welsh Assembly Government to specify and fund work on new and existing infrastructure over and above that specified nationally.

To deliver these arrangements, the Assembly will be made a signatory to the Wales franchise. It will work closely with the Department for Transport in their specification and procurement, and in the continued development of services under the present 15-year franchise, which started in December 2003. The Assembly will continue to invest in the development of the passenger and freight railway serving Wales.

The rail provisions in the *Transport (Wales) Bill*, published in draft in May 2004, have been replaced by these proposals so will not need to be included in that Bill.

Clause 10 of the *Railways Bill* provides for the role of the NAW in any franchise that is a Wales-only service or includes "Welsh services". Clause 56 defines the latter as any rail passenger service that starts in Wales, ends in Wales or makes at least one scheduled call in Wales. As a co-signatory to the franchise, the NAW will be responsible for determining the priorities for local and regional services and setting fares for them. It will also have a greater role in developing facilities such as stations and local lines. Transfer of a budget for Wales & Borders to the NAW will provide a degree of additional flexibility in future to choose between rail spending and use of the resources elsewhere in Wales.<sup>46</sup>

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<sup>45</sup> Rail white paper, p83

<sup>46</sup> The present franchise was awarded for 15 years in December 2003.

The RIA set out some of the benefits that might arise:<sup>47</sup>

A role for the NAW, which has access to its own funds, as a co-signatory could make the Welsh franchise more attractive to future bidders. It would also permit greater certainty for bidders that they are able to deliver both the Welsh and UK administrations' objectives, since both would be involved in specifying the franchise. This could have a beneficial impact on competition. The NAW will have more flexibility to invest its own resources in developing the Welsh network, and greater certainty about reaping the future benefits. This may generate more investment, with a beneficial impact on industry inside and outside the rail sector who may be involved in the construction work, as well as bringing benefits to the public and local businesses through improved journey opportunities.

It also set out the likely costs:<sup>48</sup>

The government will agree with the NAW how much of the existing contractually committed franchise costs should fall to the Assembly so that it is able to provide franchise payments in respect of the majority of the services provided by the franchise operator. In 2006/7, when the full transfer of responsibility is expected to take effect, the subsidy cost of the Wales & Borders franchise will be some £122 million, gradually reducing to £102 million in the last full year of the franchise, 2017/18. The vast majority of the annual subsidy requirement will transfer to the NAW.

It will be necessary to separate the costs of the Wales-only, cross-border and England-only services for the purposes of transferring resources to the NAW. The NAW will become responsible for the first two service groups, while the secretary of state will remain responsible for the last group, which account for three of the services currently operated by Wales & Borders. The amount of funding agreed with the NAW as accruing to the Wales-only and cross-border services will set the baseline for future years. It will be for the NAW to decide whether it wishes to add further funding to this baseline level from its own resources.

In terms of administrative costs on the NAW as a consequence of the additional devolved responsibility, the NAW had envisaged that implementation of the devolution package provided for in the *Transport (Wales) Bill* would involve the creation of four additional posts within a new administrative branch of the Assembly at a cost of around £100,000 per annum. It will be necessary to determine whether, and if so, to what extent the role of the NAW as a co-signatory to the franchise requires additional staff resources. It is possible that the transfer of some responsibility for the franchise to the NAW may result in staff savings within the SRA/Department for Transport.

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<sup>47</sup> [RIA](#), p28

<sup>48</sup> [RIA](#) p29

## E. Passenger Transport Executives

The Passenger Transport Authorities (PTAs) were established in 1986 under the *Local Government Act 1985*. They have a general duty to co-ordinate and develop public passenger transport in their areas. The PTA is composed of local councillors from the constituent districts. The Passenger Transport Executives (PTEs) are controlled by their respective PTA and are responsible for drawing up local public transport policies for the seven metropolitan areas outside London (six in England and Strathclyde in Scotland).<sup>49</sup> It is the duty of a PTE for any passenger transport area to secure the provision of such public passenger transport services as they consider appropriate in accordance with policies formulated by their PTA. This duty applies to all modes of public transport.

PTEs in England mainly exercise their duty for rail through their power to co-sign and co-fund rail franchise agreements for local services in their areas. The *Railways Act 1993* section 34 sets out PTE involvement in the specification processes leading up to a franchise agreement.

The changes set out in clauses 13 and 14 will make the PTEs take more responsibility for the financing of their policies and will mean that many of the tough political decisions about competing modes will be made by them. Thus where a rail service is heavily subsidised, it may be cheaper to substitute a bus service. The decision will in future rest with the PTE. The government is also removing their contractual powers over local rail franchises. PTEs are currently co-signatories of local rail franchises in their areas. This gives them the authority to invest in improving local rail networks, and to work with operators to resolve problems as they arise. The Bill will remove those powers. Instead PTEs will only be given franchise powers at the secretary of state's discretion

PTEs in England will receive about £270m of net SRA funding for rail in 2004/05, almost all of which is passed on to pay for Central and Northern franchises, and the Merseyrail Electrics concession.<sup>50</sup> Capacity for additional trains in some PTE areas is limited due to heavy route use. Some services are very lightly used.

The following table reproduces data that was included in the white paper on spending and funding for PTEs. This shows large variations in all indicators between PTEs. Differences in spending per capita may, in part be explained by the number of lines and frequency of services in each area. The RIA says the level of public funding for rail services in some of these areas is high and points out the large variations in funding per journey. It compares these figures with an average subsidy per journey in London of less

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<sup>49</sup> The six PTEs in England cover the metropolitan areas of Greater Manchester, Merseyside, Tyne & Wear, West Midlands, West Yorkshire and South Yorkshire.

<sup>50</sup> [RIA](#), p31

than £0.50, and the average cost per journey on socially necessary bus services in PTE areas of £0.60 to £1.60. It also notes that the average bus operating costs in PTE areas were well below the cost of operating rail services.

#### Passenger Transport Executives: Rail spending and funding, 2002-03

	Spending per capita	Funding per journey	Funding per passenger kilometre
Greater Manchester	£31.10	£4.60	£0.27
Merseyside	£49.34	£2.15	£0.21
South Yorkshire	£16.00	£4.71	£0.60
West Yorkshire	£26.15	£3.12	£0.16
Tyne & Wear	£5.46	£8.40	£0.47
West Midlands	£5.78	£0.56	..
Strathclyde	£35.23	£2.11	£0.12
<b>All PTEs</b>	<b>£24.41</b>	<b>£2.38</b>	<b>£0.20</b>

Note: Subsidies represent PTE costs and train operating costs less passenger revenues

Source: Rail Industry Monitor 2004 Volume 2, TAB Publications & Events Ltd 2004, reproduced in The Future of Rail - White Paper, DfT

The aim of the rail review was to streamline and simplify the decision-making process, and to devolve local and regional decision-making. The review raised significant questions about (a) the bureaucratic burden placed on TOCs and (b) the lack of financial incentive to reduce scarcely used services. The funding arrangements mean that cost rises tend to be borne by national rather than local taxpayers.

The white paper describes the proposals:

5.6.2 The government will reform the funding arrangements for PTEs so that they bear directly the financial implications of their decisions on services and fares, and have more flexibility to make trade-offs between rail and other modes. There are clear choices to be made in major cities about the role of rail, and whether buses or light rail can provide a better and more flexible alternative. The new funding arrangements which the government will put in place will enable PTEs to make clear choices of this kind, based on better information about costs.

5.6.3 To do this, the government will remove the present demand-led arrangements for SRA payments to PTEs. The PTEs will have the right to cut fares or to increase services (as long as train paths are available) if they can pay the additional costs. And they will also be able to cut services or increase fares and transfer the savings released for spending on other transport modes.

5.6.4 To gain an additional service, the PTE would first need to seek Network Rail's confirmation that relevant train paths are available. Any disputes over train path availability would be referred to the ORR. The additional cost of that service, including any additional infrastructure costs and compensation to other operators, will be calculated by Network Rail and reviewed by the ORR. Once path availability and willingness to pay are confirmed, the PTE can then purchase the extra service.

5.6.5 A similar process would apply with any PTE proposed reductions to services, to ensure that all network and cost effects had been properly taken into account. The PTE will only be able to propose service reductions within the boundary of its area.

5.6.6 The government will legislate to streamline and clarify the specification process for PTE areas. The Department for Transport will procure the service directly from the train company, who will hold the revenue risk within the fare structure specified by the PTE. The PTE will not be a direct party to the franchise agreement, but will be able to make and fund top-up agreements with the train company - for instance, to deliver a higher quality of trains or stations.

5.6.7 The government expects to delegate fuller financial responsibility to PTEs, to represent the infrastructure and train service cost of the rail package in their areas, once the ORR has established a method of allocating infrastructure costs. Until then, PTEs will have full financial responsibility for marginal decisions, i.e. they will have the option to increase services funded through local contributions, to release savings by proposing reductions in their rail package, or to identify cost neutral packages that do some of both. Similarly, they will bear the financial consequences of their decisions in setting fares. The amount of flexibility will, of course, be greatest when future franchises are being designed. PTEs will need to recognise the constraints necessitated by working within existing franchise agreements. PTEs will also continue to receive a small amount of funding from central Government to ensure that they can effectively work with the Department for Transport to decide the best rail package for their cities.

5.6.8 This will enable PTEs to make real choices between revenue support for rail and other transport solutions - for example, bus or light rail. Where rail services are heavily subsidised, bus may be a less expensive option for both the PTE and the passenger; and in some cases a more flexible one in terms of routes and frequencies.

The PTEs have launched a campaign to retain their rail powers. The Passenger Transport Executives group (PTEG) argues that it is difficult to reconcile the delegation of fuller financial responsibility if the PTEs are not themselves parties to rail franchise agreements.<sup>51</sup> Kieran Preston, director general of Metro, and chair of PTEG said:

The government has said that it wants to devolve more responsibilities for local rail networks to regional bodies like the PTEs. We welcome that - which is why we are baffled by a Railways Bill which will take away the powers we already have over local rail networks, and puts them at the Secretary of State's discretion. PTEs are locally accountable transport bodies with thirty years of experience of delivering public transport solutions for the city regions. It makes no sense to throw that away and hand over the planning and management of regional rail

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<sup>51</sup> PTEG press notice, 25 November 2004



networks to unaccountable civil servants in Whitehall who lack the local knowledge and expertise.

A number of MPs have raised this point. For example, Gwyneth Dunwoody, chair of the Transport Committee, said:<sup>52</sup>

We should also look carefully at some of the suggestions in the Queen's Speech about the passenger transport executives. The past few years have shown very clearly not only that PTEs are one of the few bits of the transport industry in which people are thinking ahead and putting in place efficient passenger transport, but that they are using their own money in a more much more exciting and imaginative way to develop rail services and to co-ordinate the various different kinds of rail system—light rail, trams and other facilities.

Of course, the PTEs will sometimes run ahead of themselves and find that they demand many millions of pounds of the Government's money without being able to justify the costs that they suddenly face, but they are one of the few groups of people in the country who are thinking ahead. Before we take away from them the right to decide what happens to the rail franchises in their own industry, we should examine carefully whether that will improve the system or make it worse. We cannot talk about devolving power to the regions, while saying that we will take away a very basic planning power from the PTEs. That is not sensible, and we will definitely be sorry for it in the future.

To encourage local authorities to substitute bus for rail the government has introduced arrangements to make it easier for PTEs to introduce Quality Contracts (QCs), something they have been campaigning for (clause 39 - see page 48 of this paper).

## **F. London**

The mayor has a duty to produce an integrated transport strategy for London and is able to fund new services, make investments and introduce new ticket systems under the *Greater London Authority Act 1999*. Transport for London (TfL) is the executive arm and directly accountable to him: it implements the mayor's transport strategy and oversees transport services on a day-to-day basis. The London Assembly approves the integrated transport strategy and the transport budget, scrutinises the performance of TfL and the mayor, and may conduct wider investigations of transport issues.

The mayor's transport strategy covers all modes including "heavy rail" services provided by franchise operators. However, he has no direct powers over rail services. He can issue guidance to the SRA and the SRA has to consult him over rail fares, but the SRA does not have to do as he requests.

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<sup>52</sup> Debate on the Address, HC Deb 25 November 2004, c272

In its response to the DfT's review, TfL proposed creating a London Regional Rail Authority (LRRA) which would specify and fund all services within a "London commuter area."<sup>53</sup> TfL would be the executive body carrying out the functions of the LRRA in addition to their current responsibilities to the mayor. All services within the LRRA area would be specified and paid for by the LRRA, who would set fares (and integrate them with current bus/tube fare zones) and take the revenue risk. Services would be operated by TOCs on management contracts like those for London buses.

The government recognise the importance of London to the national rail network. Two-thirds of all British rail journeys start or end in London and usage of the London network by freight operators is extensive, but the government considered that full devolution would result in unacceptable fragmentation. In the white paper it proposed to extend the mayor's responsibilities for rail services within the GLA boundary. In the short term, it will work with the mayor on proposals to rationalise fare structures and ticketing technology across different types of public transport in London. This will include the setting of travelcard fares. It also proposes to explore options for giving an increased role to the mayor on discrete services that lie entirely, or almost entirely, within the GLA boundary.<sup>54</sup>

In the longer term:<sup>55</sup>

5.7.4 Going forward, the government proposes that the mayor should be able to buy additional services or propose savings. This would be on the same basis as the approach described above for Passenger Transport Executives - in particular, there would need to be capacity on the network for any additional services, and Transport for London would need to pay any additional costs (or would recoup any savings, if that were the case).

5.7.5 We will also consider whether the mayor should be able to specify service levels directly, and whether there should be any scope for Transport for London to take revenue risk from train companies for services within the GLA boundary or to have a greater role in relation to new or self-contained infrastructure. If this option were to be pursued, then in order to ensure that the overall costs of the railway were controlled, the mayor would need a budget to cover the cost of rail services. This would also allow Transport for London to prioritise spending on rail, and between rail and other public transport modes, to ensure best overall value for money.

5.7.6 Because the London commuter rail network does not stop at the GLA boundary, we will look at whether it is feasible to give Transport for London the

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<sup>53</sup> TfL *London's railways: response to the government's rail review*, May 2004  
<http://web.archive.org/web/20050410182343/http://www.londontransport.co.uk/tfl/downloads/pdf/press-releases/rail-authority-proposal.pdf>

<sup>54</sup> Rail white paper, para 5.7.7

<sup>55</sup> Rail white paper, para 5.7.4-6

right to specify and pay for services in an area slightly bigger than Greater London that makes more sense in rail transport terms. However, we will need to ensure that the rights and interests of rail passengers outside of London are protected, and will want to consult fully with the Greater London Authority and neighbouring regional and local bodies before reaching a conclusion on this proposal.

A working group has been set up to look at the options for devolving responsibilities to the London mayor in line with the proposals set out in the rail white paper. According to the RIA, “the DfT is consulting with relevant industry partners and commissioning appropriate analysis on what the ultimate role of the mayor should be so as to minimise the risk of a solution that does not meet the white paper aims.”<sup>56</sup> As the RIA points out:

The proposed legal structure, option 3, allows flexibility as to the ultimate role of the mayor on rail in London. Potential costs include the risk of greater interference in the rail industry imposing delay and higher costs on train companies. There is also a risk the projected passenger benefits do not materialise. This is why work is currently ongoing to identify the most cost-effective solution. There may also be marginal costs associated with analysis required and, as previously noted, the incremental costs associated with policy implementation are not yet known.

Clauses 15 to 17 of the Bill make changes to powers of TfL. The abolition of the SRA would reduce the mayor’s current influence over rail (the mayor would not be able to issue guidance to the secretary of state) so legislation is needed to maintain the present level of influence. In addition it is proposed to take enabling powers that will allow it to introduce greater changes at a later date. The Bill therefore sets out:

- The secretary of state must consult TfL on proposals to let franchises that directly impact Greater London (clause 15).
- The government will allow the mayor, via TfL, to enter into direct agreements with franchised train operators, subject to the secretary of state's approval (clause 16). The extent of these agreements will be set out in non-legislative arrangements to allow them to evolve over time. The wording of this clause is designed to ensure there is “flexibility built into the legislation that allows the secretary of state to potentially extend the mayor's responsibilities for London rail services, in line with policy development.”<sup>57</sup>
- Clause 17 amends the GLA Act 1999 to require the mayor to appoint two members to represent those living outside Greater London but served by the rail passenger services covered by TfL.

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<sup>56</sup> [RIA](#), p25

<sup>57</sup> [RIA](#) p40

## G. Rail Passengers Council

The functions of the Rail Passengers Council (RPC) and its regional committees are basically to protect the interests of the users of the services and facilities provided on the rail network. Its duties include keeping under review matters affecting the interests of the public in relation to the passenger railway; making representations to and consulting such persons as they think appropriate; and co-operating with other bodies representing public transport users. The committees take up rail users' complaints when further help is needed to obtain a satisfactory response from operators. Locally they keep watch on punctuality and reliability of train services, timetable changes, overcrowding, cleanliness, fares, quality and design of trains, tickets (both purchase facilities and ticket inspection), station facilities, and provision of information at stations, on trains and by telephone. They have a special responsibility for assessing the effect on users if stations or lines are proposed for closure.

The Transport Committee argued that the industry needed a strong and constructive consumer voice, particularly when the industry's performance was poor and thought the performance of the present RPC very "weak".<sup>58</sup> It also wondered whether a passenger body should be sponsored directly by the body responsible for the railways as the RPC is presently by the SRA.

The government announced that it would replace the Rail Passengers Council with a new body of the same name and abolish the regional committees, including those for Scotland and Wales. London is the only one that will not be abolished:<sup>59</sup>

3.5.6 The Government is supportive of the RPC's aim to become a more efficient and effective organisation, providing value for money and ensuring that the passenger voice is heard. In the future, the Rail Passengers Council will operate as a single national body reporting to the Secretary of State. A regional presence will be maintained, but the formal federal structure of the regional committees will be dissolved. The devolved administrations will discuss with the RPC what arrangements should be put in place in Scotland and Wales.

3.5.7 The RPC's independence to operate and its general duty to keep railway matters under review will be preserved, and it will continue to co-operate with other passenger representative bodies. But the organisation will need to adapt. Ministers have asked the Chairman to manage the transition from the current organisation to the new, stronger, more independent body. (...)

3.5.9 Through greater devolution rail will become a more integral part of regional cross-modal transport strategies. The RPC will need to develop its contacts with relevant regional bodies. But it is important that the RPC maintains its national voice. To sustain these links the Scottish Executive, the Welsh Assembly

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<sup>58</sup> [Transport committee, 7<sup>th</sup> report](#), para 90

<sup>59</sup> Rail white paper, para 3.5.6-9

Government and the Greater London Authority will each be able to appoint a member to the Council, which will continue with up to 16 members. The London Transport Users' Committee will remain in place.

Clause 19 and schedule 5 replace the existing RPC with a non-departmental public body of the same name. The intention is to try to distance the new organisation from the DfT but it will ultimately be sponsored by the secretary of state. The status of a body corporate adds an additional level of autonomy in that it will have greater independence in terms of organising its financing and operation. The financial and management framework set out in schedule 5 is new and a direct consequence of the body corporate status.

Clause 20 allows the RPC to delegate some of its duties to other public bodies:

- (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.

The exact way in which the RPC will operate in the regions is not clear:<sup>60</sup>

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 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.

Clause 21 and schedule 6 abolish the Rail Passenger Committees except for the London Transport Users Committee. This was set up under the GLA Act 1999 section 247 and it retains the responsibilities it had as a Regional Passenger Committee.

## **H. Network modifications**

The RIA states that “the government has no plans for a programme of discontinuing passenger services or closing parts of networks, stations or light maintenance depots.”<sup>61</sup>

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<sup>60</sup> EN, para 103

<sup>61</sup> [RIA](#), p49

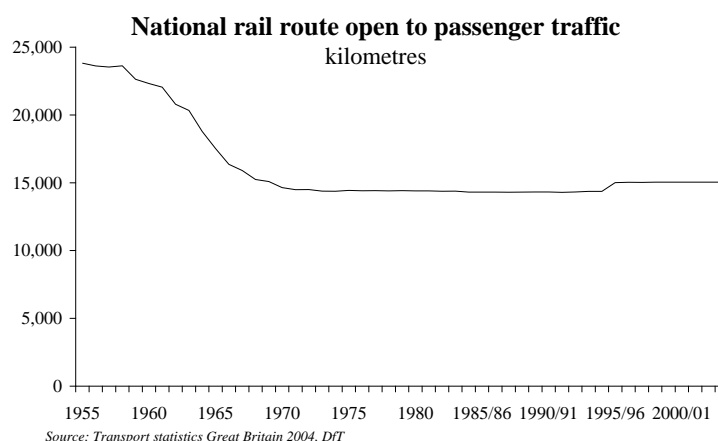
However, the transfer of responsibilities to the PTEs may persuade them to close some services. Furthermore, the SRA recently issued the *Community Rail Development Strategy*.<sup>62</sup> This strategy document outlines the SRA/government approach to the rural rail network through separate designation of community railways as a third group of lines alongside the high-speed and conventional networks. It states:

The community rail development strategy is based on the premise that neither closure nor further conventional cost-cutting can improve the current situation of local and rural railways. Closure of rail infrastructure is not part of government policy nor the secretary of state's directions and guidance to the SRA. Railways represent a long-life fixed investment, and closures leave huge residual liabilities, which have to be managed. Closures are hotly contested and the closure process takes significant senior management time to handle, with limited cost savings achievable.

However, in an interview on Radio 4's *Today* programme the secretary of state said: "We can't be in the business of carting fresh air around the country"<sup>63</sup> and repeated that view in the debate on the Address.<sup>64</sup>

In recent years there have been relatively few station closures or openings. In total there have been just over 100 station closures on the national rail network since 1972, around half of which occurred in the 1980s. Over the same period almost 300 stations opened, again with the majority in the 1980s.<sup>65</sup>

Information on line closures is not collected in the same way. The chart opposite shows the total route length for passenger traffic over the last fifty years. This illustrates that after a dramatic drop during the 1960s, when the route length fell by more than one-third, there has been very little change.



Sections 37-50 of the *Railways*

*Act 1993*, as amended by the *Transport Act 2000*, set out the present procedure for closures of railway services, network, stations etc. Operators generally initiate closures

<sup>62</sup> SRA *Community Rail Development Strategy*, November 2004

<http://collections.europarchive.org/tna/20050301194713/http://www.sra.gov.uk/pubs2/stratpolplan/publication.2004-11-22.5301054796/crds.pdf>

<sup>63</sup> 22 November 2004

<sup>64</sup> HC Deb 25 November 2004 c254

<sup>65</sup> HC Deb 20 November 2002 c183w

or discontinuance of a service, the SRA considers the proposals and the secretary of state is the final decision maker. If the SRA does not reject a proposal, an eight week consultation period is held. All proposals are examined by the relevant rail passengers committee, who have to prepare a report on passenger hardship arising from closure within 12 weeks of the end of the consultation period. The secretary of state can attach conditions to his decision, including requiring a bus substitution service.

Various clauses in the Bill require technical changes to be made to the closure procedure. The PTEs will be able to reduce rail services in their area, but currently they cannot initiate closures. The role of the public sector mean that public sector funders (secretary of state, Scottish Executive, Welsh Assembly government, PTEs/PTAs and TfL) all need to be able to initiate closure proposals in the future.

However, the government has taken the opportunity to revise the closure procedure. Clauses 22 to 38, 41 to 44 and schedules 7 and 8 set out new procedures that must be followed to close certain railway services, networks, or stations.

Clause 22 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. It sets out the information an operator proposing a closure must provide to the appropriate National Authority (the secretary of state or the Scottish ministers). This must include a summary of the assessment of the proposal, prepared by the operator. 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 Bill. This includes a number of statutory consultees, with a minimum 12 week consultation period. Following the consultation, the NA must then decide whether to refer the proposal to the ORR, who will determine if the closure may proceed or not.

Clause 23 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. RFAs include the secretary of state, the Scottish ministers, the NAW, Passenger Transport Executives, TfL and the mayor. Generally, RFAs can initiate proposals for closures only 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 TfL 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. Again, the RFA must consult on the proposal and then decide whether to refer the proposal to the ORR, which will determine if the closure may proceed or not.

The assessments must be done in accordance with the guidance to be provided by the secretary of state and the Scottish ministers under clause 42. This is likely to cover economic, financial, environmental and social factors, not just passenger hardship as it does now, and the assessment will be done by those making the closure proposal not the regional rail passenger committee as is the case in the current arrangements.

Other circumstances are covered by subsequent clauses:

- Clause 24 covers 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 Bill or where the NA acts as 'operator of last resort' under section 30 of the 1993 Act.
- Clause 25 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 have been "excluded" under clause 38. Clause 38 gives the secretary of state and the Scottish ministers' powers to exclude services, networks and stations from the main closure provisions. Such services are predominantly light rail or metro systems outside London, including Manchester Metrolink and Tyne & Wear Metro. This clause also excludes from the main closure provisions in clauses 22 to 24 certain London services that have been designated by an order from the secretary of state. These are services that are provided by TfL or are wholly within Greater London.
- Clauses 26 and 27 cover a proposal by an operator and by a funding authority respectively to close passenger networks.
- Clauses 29 and 30 cover a proposal by an operator or a funding authority to close a station.

Clause 32 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. 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. Otherwise it must issue a "closure ratification notice". The ORR may impose specific requirements in connection with a closure (clause 33).

## **I. Bus services**

The government recognises that PTEs may be reluctant to substitute bus for rail unless they can be certain that the routes, timings and fares will meet passenger needs and that the services will be stable and reliable. The Bill therefore includes arrangements to make it easier for PTEs to introduce Quality Contracts (QCs) for buses as part of a strategy which includes reductions in rail services.

Road service licensing was abolished from October 1986 by the *Transport Acts 1985*. Any operator holding an operator's licence is free to operate services where and when they wish provided that the traffic commissioners are assured that the route is suitable for use by buses.



The main changes introduced by the *Transport Act 2000* gave powers, from February 2001, to local authorities to enter into quality partnerships and QCs for bus services. QCs marked a real change as they replace open competition with a licensed regime. Operators bid for exclusive rights to run bus services on a route or group of routes, on the basis of a local authority service specification and performance targets. Local authorities are able to introduce quality contracts for all or part of their services subject to prior ministerial approval. The onus will be on the local authority to demonstrate that the benefits could not be met by other means and that any extra costs involved would be offset by other benefits. They have to be approved by the secretary of state and 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.

The chairmen of the PTAs have been lobbying for a radical change in the organisation of bus services in Britain. They advocate the introduction of a form of regulation similar to that operating in London, where operators deliver set service frequencies, fares and delivery standards in line with requirements set by directly accountable public bodies. They argue that commercial operators tend to concentrate resources on the most heavily used, profitable routes to the detriment of the less well used routes that might be socially necessary. The PTA can fill the gaps but does not have the opportunity to develop a network of attractive, even-interval services.

The government announced in its white paper *The future of transport: a network for 2030* that it would only make limited changes to QCs.<sup>66</sup> It had agreed to reduce the minimum period between making and implementing a scheme from the current 21 months to six months and would provide an easier route for those PTAs prepared to consider using buses instead of under-used rail services.

Clause 39 adapts the powers to make QC schemes in cases where a rail service, or part of a rail service is to be discontinued under part 4 of the Bill or otherwise reduced (e.g. with fewer stops or lower frequency). However this is the only new situation in which a QC will be allowed.

Clause 40 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. This is similar to the power now held by the SRA.

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<sup>66</sup> [DfT \*The future of transport: a network for 2030\*, July 2004, Cm 6234](#), para 5.13

## Appendix: Statistics

**Table 1**

### Investment in the rail industry: 1987-88 to 2003-04

£ million 2003-04 prices

	Rolling stock	Other	Total investment
1987-88	183	938	1,124
1988-89	346	811	1,157
1989-90	364	1,018	1,382
1990-91	474	999	1,473
1991-92	616	1,142	1,758
1992-93	707	1,236	1,943
1993-94	541	977	1,518
1994-95	455	1,125	1,580
1995-96	246	1,105	1,351
1996-97	56	1,400	1,456
1997-98	132	1,657	1,789
1998-99	198	2,053	2,251
1999-00	260	2,218	2,478
2000-01	604	2,619	3,223
2001-02 <sup>(a)</sup>	980	3,345	4,324
2002-03 <sup>(a)</sup>	582	3,861	4,442
2003-04 <sup>(a)</sup>	774	4,722	5,496

Notes: The figures are based on the British Rail Board accounts until 1993-94. The results for 1993-94, 1994-95 and 1995-96 include private sector investment on the Heathrow Express, Ashford International Station and new Networker trains. Since 1996-97 the Office for National Statistics has collected the data on investment by the private sector companies. Investment funded by PTE. Changes in accountancy procedures mean that figures pre and post 1994-95 are not directly comparable.

(a) Includes government direct grants for investment of £684 million, £1,166 million and £1,670 million in 2001-02, 2002-03 and 2003-04 respectively.

Source: *National Rail Trends 2004-05 quarter one, SRA*

**Table 2****Passenger travel on national railways**

Great Britain

	Journeys (millions)	Passenger kilometres (billions)
1987-88	798	32.4
1988-89	822	34.3
1989-90	812	33.3
1990-91	810	33.2
1991-92	792	32.5
1992-93	770	31.7
1993-94	740	30.4
1994-95	735	28.7
1995-96	761	30.0
1996-97	801	32.1
1997-98	846	34.7
1998-99	892	36.3
1999-00	931	38.5
2000-01	957	38.2
2001-02	960	39.1
2002-03	976	39.7
2003-04	1,014	40.9

Notes: Passenger journeys figures include an element of double counting, as a journey involving more than one operator is scored against each operator.

Data from 1999-00 have been revised to better include certain tickets which previously were not correctly recorded. Therefore results from before this period are not directly comparable

Sources: *Transport statistics Great Britain 2004, DfT*