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Channel Tunnel Rail Link (Supplementary Provisions) Bill: Committee Stage Report

Bill 4 of 2007-08

This is a report on the Committee Stage of the *Channel Tunnel Rail Link (Supplementary Provisions) Bill*. The Bill received Second Reading on 20 November 2007 and its Committee stage on 4 December. Remaining stages will take place early in 2008.

The aim of this Bill is to 'clarify the legislative and regulatory position' of the Channel Tunnel Rail Link (CTRL) ahead of a restructuring of London & Continental Railways. The Bill confirms that the Secretary of State is empowered to fund the CTRL and the trains that run on it. The Bill would also: amend the original 1996 Act as regards access agreements; repeal certain duties of the Office of Rail Regulation; allow the ORR to charge a fee for the exercise of its regulatory functions in relation to CTRL; and amend the definition of development agreement in the 1996 Act to include the word 'operation'.

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Summary of main points

The *Channel Tunnel Rail Link (Supplementary Provisions) Bill 2007-08* (HC Bill 4 of 2007-08) makes relatively minor changes and clarifications to the regulatory and financial regimes as they relate to the operation of the Channel Tunnel Rail Link (CTRL). The Bill would:

- confirm that the Secretary of State is empowered to fund the CTRL and the trains that run on it;
- amend the *Channel Tunnel Rail Link Act 1996* as regards track access agreements;
- repeal certain duties of the Office of Rail Regulation (ORR);
- allow the ORR to charge a fee for the exercise of its regulatory functions in relation to CTRL; and
- amend the definition of development agreement in the 1996 Act to include the word 'operation'.

London & Continental Railways (LCR) built the CTRL and owns the UK share in Eurostar UK Ltd. as well as significant pieces of property around the Eurostar terminals at St Pancras and Stratford. It was selected as the winning consortium to construct the CTRL under a PFI agreement in February 1996; however, in 1998 the Government announced that LCR had failed to find the necessary money for the project and consequently the deal was restructured into a public private partnership under which LCR raised capital to construct the entire new railway and to restructure its debt. More than half of the capital is underwritten by a Government guarantee, which substantially reduces the cost of borrowing. In return for financial support for the project, the Government has a 'stakeholder share' in LCR and will receive a share of LCR's cash flow after 2020.

In 2006 LCR was reclassified as a public sector company and there was talk of the company being sold off, though nothing came of this. As this Bill removes the ambiguities in the regulatory and financial regime around the CTRL, there has been speculation, confirmed by the Minister at Second Reading, that this is in preparation for selling off the company's constituent parts in the future.

No amendments were made to the Bill in Committee.

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I Introduction: Public Bill Committee procedure

Public Bill Committees were given the power to take oral and written evidence as a result of recommendations from the Modernisation Committee in its report on *The Legislative Process*.¹ On 1 November 2006, the House debated the Committee's report and agreed to changes to standing orders to allow Public Bill Committees to receive oral and written evidence.

Public Bill Committees, subject to a timetable (under Standing Order No 83A), have the power to send for persons, papers or records (receive written evidence) under Standing Order No 84A(2). A motion can be moved to give Public Bill Committees, not subject to a timetable the same power, under Standing Order No 63. Standing Order No 84A(3) provides that all Public Bill Committees with the power to send for persons, papers or records "**may** hear oral evidence at such meetings as the committee may appoint" (emphasis added).

The decision of an individual Public Bill Committee to hear oral evidence is taken on the basis of a resolution proposed by the programming sub-committee of the Public Bill Committee. Both the Public Bill Committee considering a Government bill and its programming sub-committee will have a Government majority, so if the programming sub-committee does not propose to receive oral evidence, it is very unlikely that the Public Bill Committee will do so.

The *Channel Tunnel Rail Link (Supplementary Provisions) Bill* was introduced into the Commons on 8 November 2007 and was debated on Second Reading on 20 November 2007.² A House of Commons Library Research Paper – *Channel Tunnel Rail Link (Supplementary Provisions) Bill* (RP 07/75, 12 November 2007) – provides briefing on the main provisions of the Bill and gives background information to the changes proposed therein. A Bill Gateway is available on the intranet and the progress of the Bill, together with relevant documentation, can be tracked on the Parliamentary Internet.³

The Bill went into Committee on 4 December 2007 and was completed that day, taking only one of its five allocated sittings. The Committee took oral evidence from the Parliamentary Under Secretary of State and two officials from the Department for Transport.⁴

¹ Modernisation Committee, *The Legislative Process* (first report of session 2005-06), HC 1097, 7 September 2006, para 58

² HC Deb 20 November 2007, cc1120-1160

³ <http://services.parliament.uk/bills/2007-08/channeltunnelrailinksupplementaryprovisions.html>

⁴ <http://www.publications.parliament.uk/pa/cm200708/cmpublic/channel/071204/am/71204s01.htm>

II Background

A. The Bill

The Bill contains six clauses, of which five are substantive.⁵

Clause 1 would confirm the Secretary of State for Transport's power to fund the Channel Tunnel Rail Link (CTRL) and the trains that operate on it. It would appear there was "a sufficient level of uncertainty" as to whether the power to provide financial support⁶ applied to the CTRL.⁷ Currently, this support takes the form of:

- Capital funding, via loans, Government Guaranteed bonds, securitised bonds and other debt facilities; and
- Revenue funding for domestic services operating under a franchise.

Clause 2 aims to clarify the CTRL's exemption from the Office of Rail Regulation (ORR)'s regulatory framework by removing part of the relevant section in the 1996 Act that could indicate some ambiguity where, for example, domestic services are operating on the CTRL track.⁸

Clause 3 would amend the duties of the ORR in relation to the CTRL now that the construction phase of the CTRL is completed to remove those sections which are consequently irrelevant.

Clause 4 would allow the ORR to charge the operator of the CTRL for the performance of its duties on that route, mirroring to a large extent that power which it already possesses to charge Network Rail for the rest of the rail network. Such a fee would be levelled on an ad hoc basis, with the ORR allowed to decide how much is to be paid and on what timescale.

Clause 5 adds the term 'operation' into the development agreement that LCR entered into with the Government in 1996 to clarify the status of the agreement now that the construction phase of the link is complete.

Most of the comment on the Bill has focused not on its specific provisions but on the long term aim behind the Bill – to allow for the further restructuring of London & Continental Railways (LCR).^{9,10} For example, *The Times* reported that LCR may be headed for a "multi-billion-pound privatisation next year";¹¹ the *Financial Times* that the CTRL is "set to

⁵ for a full description of the Bill, see the Explanatory Notes, available at: <http://www.publications.parliament.uk/pa/pabills.htm>

⁶ granted the Secretary of State by virtue of section 6(1) of the *Railways Act 2005*

⁷ Explanatory Notes, para 11

⁸ for an explanation of the current regulatory regime, see section IIIC, below

⁹ further to the reclassification of the CTRL as a public sector company by the Office for National Statistics and statements by the then Secretary of State for Transport in early 2006: HC Deb 14 February 2006, c104WS and HC Deb 20 March 2006, c111WS

¹⁰ the history of LCR and its involvement in the CTRL is given in section IIIB, below

¹¹ "Rail link provider is on track for privatisation", *The Times*, 2 November 2007

be sold in Government-run auction”;¹² and *The Daily Telegraph* that LCR has received “a number of break-up enquiries”.¹³

For information on the *Channel Tunnel Rail Link Act 1996*, the position of London & Continental Railways (LCR) and the regulatory regime governing the CTRL, see HC Library Research Paper 07/75.¹⁴

B. Second Reading, 20 November 2007

The debate on Second Reading on 20 November 2007 was opened by the Railways Minister, Tom Harris. He praised the ‘dual architects’ of the CTRL – Lord Heseltine whose “focus on regeneration led to the rerouting of the original alignment under south London and enabled St. Pancras station to become the monument to British engineering that it now is,” and John Prescott who led the rescue bid for LCR in 1998, “without his efforts, it is clear that High Speed 1 could not have been built. It stands today as an outstanding legacy to his political career”.¹⁵

The Minister also confirmed the **Government’s intention to sell off LCR:**

A separation of LCR’s three different businesses is planned—the infrastructure, including the track and stations, the land interests and the UK stake in Eurostar. Ultimately, as the Secretary of State said last year, we anticipate that there will be an open, competitive process for any sale, to secure best value for the taxpayer. The Bill is the first step towards that. Outside the Bill, a number of regulatory approvals must be granted ... any restructuring process—indeed, any wider policy of the Department—will make the interests of the travelling public an absolute priority.¹⁶

In his opening comments the Conservative Transport Spokesman, Stephen Hammond, also praised Lord Heseltine and Mr Prescott as well as Rob Holden, Chief Executive of LCR.¹⁷ He went on to focus on clause 1 of the Bill. Mr Hammond asked about the future sell-off of LCR and in particular the value of the company(ies); why uncertainty exists as to the Government guarantee and whether the 1996 Act was unclear; and the overall cost to the taxpayer:

The Government assume that if the assets of LCR were sold, their value—without this legislation—might be sub-optimal due to the lack of clarity about the funding arrangements for capital construction and the future. One of the things that we will be keen to learn from the Minister is what guarantees the Secretary of State has given with regard to the construction phase. Will the Bill allow the assets to be sold with those guarantees? Does it imply that if London and

¹² “High-speed rail line set to be sold in auction”, *Financial Times*, 3 November 2007

¹³ “Infrastructure funds signal interest in builder of Channel Tunnel rail link”, *The Daily Telegraph*, 6 November 2007

¹⁴ <http://www.parliament.uk/commons/lib/research/rp2007/rp07-075.pdf>

¹⁵ HC Deb 20 November 2007, c1120

¹⁶ *ibid.*, c1121

¹⁷ *ibid.*, c1126

Continental Railways assets were sold, the debt would remain guaranteed by the Government and the original funders?

The Minister was right to say that clause 1 implied the existence of a sufficient level of uncertainty over whether the powers that the Secretary of State had to fund the project during the construction phase would continue into the operational phase. We shall want the Minister to clarify at some point whether he means that those powers apply to the whole channel tunnel rail link, or just to the channel tunnel rail link and LCR after the construction phase. Does the uncertainty stem from some ambiguity in the original Act, and why did that Act not cover the post-construction phase? That is an important point because, as the Minister well knows, later this week a Bill that is very analogous to the Bill will be considered in Committee, and we need to be sure that the provisions in this Bill cannot be applied to the construction phase of another major project.

I assume that the import and intent of the Bill will not affect a net change in the overall cost to the public exchequer, but merely confirm what is already the case. However, questions arise from Secretary of State's power to continue to fund the channel tunnel rail link and the trains that run on its infrastructure. Does that imply that the subsidy applies to both infrastructure managers and train operating companies? Will the Minister confirm that there will be no overall change in public cost, but merely a restatement of the guarantee? Why is it envisaged that the Government will subsidise the operating cost, and for how long is that envisaged to last? If Eurostar train operations succeed or at least break even, why should the public purse continue to operate a public subsidy?¹⁸

The Liberal Democrat Spokesman on Transport, Susan Kramer, also raised the issue of LCR's **financing and the taxpayer liability**:

The Government now stand credit behind £3.7 billion in bonds issued by London and Continental Railways. There is still a potential for the Government to loan directly up to £400 million, and up-to-date figures on the likely figures would be welcome; although that seems to be a constant moving target. The Government, for their pains, have in effect obtained the equivalent of an equity stake of approximately 35 per cent. in the company and, in 2006, LCR was reclassified as a public sector company (...)

I am rather unclear about the impact of the sale. Will the Government receive an equity return that involves getting their 35 per cent. stake back? What will happen to the debt? Will that be repaid through the financing? Given that the construction risk was one of the primary arguments for the Government agreeing to stand behind £3.7 billion of debt, and that construction risk is now over, will we have some assurance that guarantees on that figure will be removed?¹⁹

In response to these concerns the Minister said:

Let me clarify that the clause does not change in any respect the existing arrangements for subsidies; it clarifies that the Secretary of State has that power. It is the Government's intention that that clarification should be seen as applying

¹⁸ *ibid.*, c1128

¹⁹ *ibid.*, c1134 and c1138

to domestic services operating on HS1. It does not mean that the Government have any long-term intention to offer public subsidy to Eurostar.²⁰

Other issues raised during the debate included the **interchange at Stratford**, important for the 2012 Olympics, which will mean walking 200-600 metres, depending on the estimate, with passengers carrying luggage between two stations. Charles Clarke spoke about the need for a travolator to bridge the distance.²¹ Mr Clarke and Dr Stephen Ladyman were also concerned about the **frequency to Stratford services** given the recent downgrading of Ashford Station in Kent; Damian Green raised the same issue later in the debate, stating: “The right hon. Member for Norwich, South was worried that the guarantees given to Stratford might not be watertight. From my experience in Ashford, I can say that if those guarantees are not nailed down, he is right to be sceptical about what might happen in the future. I share those worries”.²² The Minister stated in his winding-up speech that Eurostar has no plans, as far as he is aware, to provide any international services from Stratford International.²³

Ms Kramer spoke about the **potential for loss of patronage with the moving of the London terminus** from Waterloo to St Pancras and stated that “The original plan—in many ways framed as a promise—was that services would continue to leave from Waterloo as well as from St. Pancras. I had hoped that we could keep to that commitment, even though I accept that it would have been difficult to achieve in financial terms”.²⁴

The issue of guaranteeing **freight transport** on the CTRL and through the Channel Tunnel was also discussed by Ms Kramer and Kelvin Hopkins:

Kelvin Hopkins: I strongly agree with the hon. Lady about freight. Does she accept that the channel tunnel is one of the costs that must be borne by Eurostar services, and that the tunnel will be uneconomic unless and until we put much more traffic through it? As there are not enough passengers, that traffic will have to be freight, so does she agree that we need a delivery system for freight on our side of the channel to make full use of the tunnel to make it an economic proposition, which will benefit Eurostar indirectly, too?

Susan Kramer: I very much agree. There is huge demand for continental freight transport and I am concerned about the quantities of freight that are likely to arrive in the UK—the industry suggests another 2 million trucks-worth within 10 years. The only way it can be moved successfully through the country is to have more freight capacity on our rail lines overall. I am a fan of dedicated freight lines, which are not a subject of the Bill, but the idea feeds into its general structure, as the framework could be affected by the terms of the Bill.²⁵

Adam Holloway raised concerns about **Ebbsfleet International’s** security measures:

²⁰ *ibid.*, c1156

²¹ *ibid.*, cc1130-1131

²² *ibid.*, c1131 and c1142

²³ *ibid.*, 1156

²⁴ *ibid.*, c1136

²⁵ *ibid.*, c1137

...the Border and Immigration Agency has informed me that there are no plans to have a permanently manned immigration control at Ebbsfleet International railway station. I am concerned, therefore, that immigration officers will not be monitoring departures from Ebbsfleet International. I am also concerned that no one will be on hand to check arrivals should immigration checks not be satisfactorily completed on board the train or on the continent.²⁶

III Committee Stage, 11 December 2007

The Public Bill Committee took place on 4 December 2007. It used only one of the five sittings allotted to it and was reported without amendment. The Committee had 17 Members: two Liberal Democrat, five Conservative and ten Labour, including the Parliamentary Under Secretary of State for Transport. The full membership was as follows:

Chairmen: Peter Atkinson and David Marshall

Members:

Clark, Paul (Gillingham) (Labour)
Gardiner, Barry (Brent North) (Labour)
Gwynne, Andrew (Denton and Reddish) (Labour)
Hammond, Stephen (Wimbledon) (Conservative)
Harris, Mr Tom (Glasgow South) (Labour)
Holloway, Mr Adam (Gravesham) (Conservative)
Horam, Mr John (Orpington) (Conservative)
Knight, Mr Greg (East Yorkshire) (Conservative)
Kramer, Susan (Richmond Park) (Liberal Democrat)
Leech, Mr John (Manchester, Withington) (Liberal Democrat)
Lucas, Ian (Wrexham) (Labour)
Mole, Chris (Ipswich) (Labour)
Ruane, Chris (Vale of Clwyd) (Labour)
Snelgrove, Anne (South Swindon) (Labour)
Soulsby, Sir Peter (Leicester South) (Labour)
Tami, Mark (Alyn and Deeside) (Labour)
Wright, Jeremy (Rugby and Kenilworth) (Conservative)

Clerk: Chris Shaw

The Committee took evidence from the Minister, Tom Harris, and two officials from the Department for Transport, Graham Dalton, Director of Rail Projects, and David Lunn, Divisional Manager of Major Projects, on 4 December. While Members asked questions on all clauses, the debate focused primarily on clauses 1 and 2. The Committee then proceeded directly to debate on clauses.

²⁶ *ibid.*, c1149

On **clause 1**, the powers of the Secretary of State to provide financial support, Mr Lunn from the Department for Transport, described why the clause was needed:

In the Channel Tunnel Rail Link Act 1996, the power to fund mentions construction, and not operation. The 2005 Act states that the Secretary of State can fund railways for whatever reason they might want to do so. We took legal advice, which said that in most circumstances, a reasonable view of a court would be, "Fine, you can fund," but there might be doubt at the back of a potential purchaser's mind, and that would hit value. All we seek to do here is put the measure beyond any doubt at all.²⁷

He later stated that the existing guarantees are in place for the period of the debt and will not change. What might change is if there is a new purchaser of the railway:

In that case, it would be for the purchaser of HS1 to raise its finance on its own account. We would not be looking to guarantee that, and that is the policy intention.²⁸

Opposition amendment 1, would have amended the wording in the clause to ensure the Government could only subsidise domestic services. Mr Harris rejected the amendment, stating that, in any case the *Railways Act 2005*, under which this power would be exercised, only applies to services in Great Britain, de facto excluding international services. Further, the amendment would prohibit the provision of subsidy in key areas such as access charge loans and rolling stock guarantees. Mr Hammond queried the intention of the Government as to the international services provided on this side of the Channel Tunnel. Mr Harris did not give a clear undertaking that subsidy would not apply in this case and, in fact, spoke about short term funding to Eurostar though with the expectation in the longer term that Eurostar would not be publicly funded.²⁹

On **clause 2**, amending the legislation as regards access contracts, the Minister, Mr Harris, explained that the change is necessary to set up a separate regulatory regime under the Secretary of State (as opposed to the Office of Rail Regulation) to disapply the requirement for, for example, five yearly reviews of access contracts. This would be inappropriate for a new asset.³⁰ Mr Harris also explained that there is no duty on international services, such as Eurostar, to stop at certain stations such as Stratford, Ebbsfleet and Ashford. Further, on open access (those operating on the network without a franchise agreement), the Minister made clear that this is governed by EU rules accompanied by an assessment from the ORR as to whether there is enough capacity on a particular route. Forty per cent of the high speed line capacity is reserved for domestic services.³¹

Mr Hammond's amendment 2, returning to a theme raised during oral evidence, was designed to put the regulatory regime for CTRL on the same footing as the rest of the

²⁷ PBC 4 December 2007, c3

²⁸ *ibid.*, c3

²⁹ *ibid.*, cc12-15; amendment withdrawn

³⁰ *ibid.*, c4

³¹ *ibid.*, cc5-6

network, under the auspices of the ORR.³² Amendment 3, to **clause 3** (duties of the ORR), was taken together with amendment 2. Amendment 3 would remove the ORR's overriding duty to exercise his regulatory functions "in such a manner as not to impede the performance of any development agreement". The Minister resisted this amendment on two grounds: such a duty is necessary to ensure that the line is a success and services are protected and guaranteed; and without such a guarantee the taxpayer might not get the best deal on the sale of London & Continental:

Amendment No. 3 would remove the ORR's duty from the 1996 Act not to impede the development agreement when carrying out its functions under the 1993 Act. That duty has been in place since 1996 and it remains as relevant today, during the operational phase of HS1, as it did during the construction phase. If it were removed, it could have an adverse effect on the value to be secured for the taxpayer on a sale of HS1. Potential investors might well be concerned that the ORR's regulation of the national network could have unintended consequences for HS1's revenues if the duty were removed.³³

Opposition amendment 4 to **clause 4** would regulate the conditions which any licence fee, payable by the operator of CTRL to ORR, such that they would be equitable compared to those paid by other operators, as set out in the *Railways Act 1993*. Greg Knight argued that the clause was too loosely drafted:

The Minister is right to say that the word "reasonably" is in the clause, but it is a subjective test, as I mentioned in a question earlier. It is not what a reasonable man would consider to be reasonable. It is what the Office of Rail Regulation considers to be reasonable. I can foresee circumstances in which someone who is managing a sloppy administration and running up unnecessary expense incurs charges which are, in their view, not unreasonable. The test should be objective.³⁴

The Minister responded that he could not accept the amendment as drafted, but that if the Opposition redrafted the amendment for Report stage he would consider it while making "no promises" on whether it would be acceptable to the Government. Nevertheless the Opposition pressed the amendment to division where it was defeated 10 votes to 5.³⁵

IV Appendix: sections of relevant Acts

Below are listed the parts of the *Channel Tunnel Rail Link Act 1996* and the *Railways Act 2005* affected by the clauses in this Bill. These are:

- Clause 1 – sections 31-33 of the 1996 Act and section 6 of the 2005 Act
- Clause 2 – section 17 of the 1996 Act
- Clause 3 – section 21 of the 1996 Act

³² *ibid.*, cc15-16

³³ *ibid.*, c17; amendments withdrawn

³⁴ *ibid.*, c21

³⁵ *ibid.*, c21

- Clause 5 – section 56 of the 1996 Act

Channel Tunnel Rail Link Act 1996

17 Access agreements

(1) No directions under section 17(1) of the Railways Act 1993 (which enables [the Office of Rail Regulation] to direct facility owners to enter into contracts for the use of their railway facilities) may be given to a rail link undertaker in relation to a rail link facility.

(2) Subject to subsection (3) below, section 18(1) of that Act (which restricts the freedom of a facility owner to enter into an access contract) shall not apply to the entry by a rail link undertaker into an access contract relating to a rail link facility.

(3) Where only part of a rail link facility is used for the purposes of or in connection with the provision of services on the rail link, subsection (2) above shall only apply if the access contract is restricted to that part of the facility.

(4) No directions under section 19(1) of that Act (which enables [the Office of Rail Regulation] to direct installation owners to enter into contracts for the use of their installations) may be given to a rail link undertaker in relation to a network installation comprised in the rail link.

(5) In this section—
 “access contract”, “network installation” and “railway facility” have the same meanings as in Part I of the Railways Act 1993; and
 “rail link facility” means a railway facility which is used wholly or partly for the purposes of or in connection with the provision of services for the carriage of passengers or goods on the rail link.

21 Duties as to exercise of regulatory functions

(1) [The Office of Rail Regulation] shall have an overriding duty to exercise [its] regulatory functions in such a manner as not to impede the performance of any development agreement.

(2) In exercising [its] regulatory functions in relation to the use by a rail link undertaker of any existing network—
 (a) for trains used in connection with the construction of the rail link, or
 (b) for trains used to provide international services,

[the Office of Rail Regulation] shall also be under a duty to have regard to the financial position of the rail link undertaker.

(3) [The Office of Rail Regulation] may by notice require a person to whose financial position [it] is required by subsection (2) above to have regard to furnish to [it], in such form and manner as may be specified in the notice, such information relating to that person's financial position as may be so specified, being information which [the Office of Rail Regulation] considers necessary for the purpose of facilitating the performance of [its] duty under that subsection.

(4) If any person makes default in complying with a notice under subsection (3) above, the High Court may, on the application of [the Office of Rail Regulation], make such order as it thinks fit for requiring the default to be made good.

(5) An order under subsection (4) above may provide that all the costs or expenses of and incidental to the application under that subsection shall be borne by the person in default or, in the case of a company or other association, by any of its officers who are responsible for its default.

(6) In this section—

“existing”, in relation to a network, means not comprised in the rail link;

“international services” means services involving travel through the Channel Tunnel;

“network” has the same meaning as in Part I of the Railways Act 1993; and

references to [the Office of Rail Regulation's] regulatory functions are to the functions assigned or transferred to [it] under or by virtue of Part I of the Railways Act 1993 [other than any functions assigned to [it] by virtue of section 67(3) of that Act (“Competition Act functions”).]

[(7) [The Office of Rail Regulation] may, when exercising any Competition Act function, have regard to any matter to which [it] would have regard if—

(a) [it] were under the duty imposed by subsection (1) or (2) above in relation to that function; and

(b) the matter is one to which [the Office of Fair Trading] could have regard if [it] were exercising that function.]

31 Expenditure in connection with securing construction of works

(1) The Secretary of State may make payments under any agreement entered into by him for the purpose of securing the construction of—

(a) any of the works authorised by this Part of this Act, or

(b) any related works.

(2) For the purposes of this section, the following are related works—

(a) a station at Stratford, in the London Borough of Newham, for use in connection with the rail link, and

(b) a railway providing access between the rail link and the West Coast Main Line by means of a connection to the North London Line.

32 Reserved capacity on the rail link: expenditure

(1) The Secretary of State may make payments to the nominated undertaker, or its nominee, in pursuance of an agreement for the payment, for such period as may be specified in the agreement, of such sum as may be so specified for the reservation of rights of use in relation to the rail link.

(2) The Secretary of State may make, to any person charged with responsibility in relation to the selection of persons to exercise rights of use in relation to the rail link which are reserved to the Secretary of State under an agreement with the nominated undertaker (“reserved rights of use”), such payments in respect of the discharge of that responsibility as the Secretary of State thinks fit.

(3) The Secretary of State may give to any person exercising reserved rights of use such financial assistance in relation to the exercise of those rights as he thinks fit.

(4) Financial assistance under subsection (3) above shall be on such terms and subject to such conditions as the Secretary of State thinks fit.

33 Undertakings with respect to financial assistance etc

- (1) Any undertaking of the Secretary of State which—
- (a) is given with respect to applications for assistance of a kind to which subsection (2) below applies, and
 - (b) is contained in a development agreement,

shall be effective notwithstanding that it fetters his discretion.

- (2) This subsection applies to—
- (a) any kind of financial or other assistance in relation to an existing railway line which might allow it to be used to provide a line speed in excess of 200 kilometres per hour before 31st December 2030, and
 - (b) any kind of financial or other assistance which before that date would enable or assist a person to provide services or facilities for international rail passenger services.

56 Interpretation

- (1) In this Act, except where the context otherwise requires—

“A2 and M2 improvement works” has the meaning given by section 44(1) above;

“bridleway”, “carriageway”, “cycle track”, “footpath”, “footway”, “highway”, “highway authority” and “local highway authority” have the same meanings as in the Highways Act 1980;

“burial ground” means a churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment;

“deposited plans” and “deposited sections” mean respectively the following plans and sections deposited in connection with the Channel Tunnel Rail Link Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, namely—

- (a) the plans and sections shown on Sheets Nos 1 to 6 and 9 to 24 of the plans and sections deposited in November 1995 in connection with the Barking Extended Tunnel,
- (b) the plans and sections deposited in November 1995 otherwise than in connection with the Barking Extended Tunnel,
- (c) the plans and sections deposited in December 1995, and
- (d) the plans and sections deposited in November 1994, so far as not superseded by the plans and sections mentioned in paragraphs (a) to (c) above;

“development agreement” means an agreement (including one entered into before the passing of this Act) to which the Secretary of State is a party and

under which another party has responsibilities in relation to the design, construction, financing or maintenance of the rail link;

“limits of deviation” means the limits of deviation which are shown on the deposited plans;

“limits of land to be acquired or used” means the limits of land to be acquired or used which are shown on the deposited plans;

“owner” has the same meaning as in the Acquisition of Land Act 1981;

“rail link” means—

- (a) the railway between St Pancras, in London, and the Channel Tunnel portal at Castle Hill, Folkestone, in Kent, authorised to be constructed by section 1(1) above, together with its associated works, facilities and installations, and
- (a) the railway comprised in Works Nos 11, 11A and 11B (which connects the railway mentioned in paragraph (a) above with the Chatham to Victoria Line), together with its associated works, facilities and installations;

“rail link undertaker” means a person who, under section 34 above, is the nominated undertaker for any purpose of section 1(1) or 14(1) above, so far as relating to the rail link;

“scheduled works” has the meaning given by section 1(1) above; and

“scheduled works agreement” means an agreement relating to the design, construction, financing, maintenance or operation of any of the scheduled works.

(2) References in this Act to the nominated undertaker shall be read in accordance with section 34 above.

(3) In this Act—

- (a) a reference to a highway or any other place identified by letters and numbers is a reference to the highway or place shown as such on the deposited plans,
- (b) a reference to a work identified by a number (or a number and a letter) is a reference to the scheduled work or, as the case may be, the A2 and M2 improvement work of that number (or number and letter),
- (c) references to specified distances shall be construed as if the words “or thereabouts” were inserted after each such distance, distances between points on a road or railway being measured along the centre line of the road or railway.

Railways Act 2005

6 Financial assistance etc from the Secretary of State

(1) The Secretary of State may provide, or agree to provide, financial assistance to any person—

- (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or

(b) for any other purpose relating to a railway or to railway services.

(2) For the purposes of this section the provision of financial assistance includes each of the following—

- (a) the making of grants or loans;
- (b) the giving of guarantees; and
- (c) investments in bodies corporate.

(3) Agreements or other arrangements entered into by the Secretary of State under this section may be entered into on whatever terms, and subject to whatever conditions, he considers appropriate.

(4) In exercising his powers under this section—

- (a) for any purpose mentioned in section 9(1) in relation to which powers are exercisable by the Scottish Ministers under section 8, or
- (b) for any purpose mentioned in section 11(1) in relation to which powers are exercisable by the National Assembly for Wales under section 10,

the Secretary of State must have regard to the desirability of acting consistently with anything notified to him under section 9 or 11.

(5) A power of the Secretary of State under this section or otherwise to enter into agreements or other arrangements (other than franchise agreements) for a purpose set out in subsection (1) may be exercised by his entering into an agreement or other arrangement with a relevant person in respect of services provided under a franchise agreement only where the agreement or arrangement is entered into in accordance with that franchise agreement.

(6) For the purposes of subsection (5) a person is a relevant person in relation to a franchise agreement if he is—

- (a) the franchise operator;
- (b) the franchisee; or
- (c) an employee, agent or independent contractor of the franchise operator or of the franchisee.

(7) In this section “railway” has its wider meaning.

(8) Paragraph (a) of subsection (1) of section 17 of the Ministry of Transport Act 1919 (c 50) (grants or loans for the construction, improvement or maintenance of railways, light railways or tramways) shall cease to have effect.