



RESEARCH PAPER 99/72  
15 JULY 1999

# *Railways Bill*

**Bill 133 of 1998-99**

The *Railways Bill* establishes a Strategic Rail Authority to promote rail use and plan the strategic development of the rail network and to strengthen the powers of the regulators. The Bill was introduced on 7 July 1999 and will have its second reading debate on 19 July. The Research Paper looks at the background to the Bill, the problems concerning the performance of the train operating companies and the lack of investment in the infrastructure, and summarises the Bill's provisions.

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## Summary of main points

The *Railways Bill* establishes the Strategic Rail Authority and abolishes the Office of the Director of Passenger Rail Franchising and the British Railways Board. It gives statutory backing to the "shadow" SRA set up by the deputy Prime Minister in April 1999.

In May 1997 the government began a review of railway regulation. On 20 July 1998 the deputy Prime Minister published his conclusions in the white paper, *A new deal for transport: better for everyone*. More detail was given in the government's response to the transport committee's report on a proposed strategic rail authority, published at the same time. His main criticisms were of the performance and reliability of the train companies, of Railtrack and the amount it is investing in the infrastructure, and of the ability of the regulators to oversee the industry.

Since privatisation, passenger numbers on the railways have risen more than 20% and the decline in freight volumes has been reversed. The industry argues that this is one of the reasons for its problems as it believes that a 1% increase in passenger growth leads to a 2.5% increase in train delays. Government support for the passenger services is progressively reducing. In 1997-98 support paid through the Franchising Director and the PTEs amounted to £1,790 million. By the year 2003-04 it is expected to be £650 million.

25 franchises to run the rail passenger companies were awarded for periods between 5 and 15 years, the majority of which will expire in 2003-4. In many cases the punctuality and reliability of the services appears to be worsening and the number of complaints is increasing. Privatisation encouraged competition and this initially worked against network benefits. This has improved as the government has tried to foster a mood of co-operation and co-ordination.

Railtrack does not receive direct revenue subsidy from the government although it is indirectly dependent on the public sector support received by the train operating companies who in turn pay access charges to Railtrack. In the year 1998/99 these accounted for £2,338 million of its total turnover of £2,573 million. Railtrack funds a large part of the maintenance of and the investment in the rail infrastructure. It has earmarked £16.4 billion for maintenance and renewal expenditure over the next ten years and about £10 billion for new capacity. This is generally considered insufficient to modernise the network.

The Bill is examined in detail in section IV of the paper. It creates a Strategic Rail Authority with duties to promote rail use, plan the strategic development of the network and promote integration between different modes of transport. It establishes the structure and procedures of the Authority and the terms and conditions for its members. The Bill restores the secretary of state's power to issue guidelines to the Rail Regulator and the SRA will be able to ask him to require specific investment from the rail industry. It will allow both the Regulators and the SRA to act quickly in cases of poor performance. The SRA will be able to pay money direct to Railtrack. It transfers the Rail Regulator's responsibilities for consumer protection to the Authority, and his responsibility for railway closures to the secretary of state.

## CONTENTS

<b>I</b>	<b>Introduction</b>	<b>6</b>
<b>II</b>	<b>Background</b>	<b>7</b>
	<b>A. Privatisation</b>	<b>7</b>
	<b>B. Trends</b>	<b>8</b>
	1. Growth	8
	2. Subsidies	9
	<b>C. The Government's View</b>	<b>11</b>
	1. Flaws in the Present System	13
	2. Government Action since May 1997	14
<b>III</b>	<b>Areas of Concern</b>	<b>16</b>
	<b>A. Franchises</b>	<b>16</b>
	1. The train operating companies	16
	2. The role of the Franchising Director	20
	3. Performance Measures	21
	4. Network Benefits	24
	5. The Rail Summit	25
	6. Powers of the Regulators	26
	<b>B. Investment</b>	<b>28</b>
	1. Franchising Director	28
	2. Railtrack	30
	3. The Role of the Regulator	33
	4. Track Access Charges	34
<b>IV</b>	<b>The <i>Railways Bill</i></b>	<b>37</b>
	1. Constitution	38
	2. Purposes, Strategies and Duties	39
	3. Functions	41

<b>4. Rail Regulator</b>	<b>47</b>
<b>5. Enforcement</b>	<b>48</b>
<b>6. Other Provisions</b>	<b>49</b>
<b>V Further Reading</b>	<b>50</b>
<b>Appendix</b>	<b>53</b>

The statistical tables are provided by Paul Bolton, Social & General Statistics section.

## I Introduction

The *Railways Bill* establishes the Strategic Rail Authority (SRA) and abolishes the Office of the Director of Passenger Rail Franchising (OPRAF) and the British Railways Board.<sup>1</sup> It was introduced on 7 July 1999 and will have its second reading on 19 July. The Bill will be referred to the House of Commons committee for the Environment, Transport and the Regions for consideration who have been asked to report by 12 November.

The select committee for modernisation of the House of Commons recommended that certain weeks, possibly in September, were designated as "committee weeks" when both standing and select committees could sit when the Chamber was not sitting.<sup>2</sup> It is unlikely that the Bill will have passed all its stages this session. It could therefore be dropped and reintroduced next session either as it is or as part of a broader Transport Bill or it could, with agreement of all parties, be carried over to the next session under proposals put forward by the modernisation committee and accepted by the House on 13 November 1997.<sup>3</sup> The committee recommended that in certain defined circumstances it should be possible to carry a bill over to complete its remaining stages in the next session:

7. We have examined the Clerks' proposals and we believe that, initially at least, bills should be carried over by means of ad hoc motions; that in the interests of simplicity the procedure should be used in respect of bills which have not yet left the House in which they originated; and that the eligibility of bills for carry-over must be settled by agreement through the usual channels. (...)

9. We emphasise that bills should only be carried over to meet the general convenience of the House and with the general agreement of the House. Carry-over should not be a device by which the Government imposes its will on the minority. We would expect that, if the carry-over of bills were accepted with the limits we envisage, the Government would need to make less use of the guillotine. We would also expect it to be able to make greater use of special standing committees, which allow backbenchers and interested parties to become involved in legislation in a way that may improve its quality.<sup>4</sup>

The *Railways Bill* gives statutory backing to the "shadow" SRA set up by the deputy Prime Minister in April 1999. It transfers the functions, rights and liabilities of the Franchising Director and the residual functions, rights and liabilities of the British Railways Board (including responsibility for the British Transport Police) to the Strategic Rail Authority. The Bill sets out the objectives and functions of the Authority. It establishes the structure and procedures of the Authority and the terms and conditions for its members. It also transfers the Rail Regulator's responsibilities for consumer protection

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<sup>1</sup> Bill 133 of 1998-99; Explanatory Notes Bill 133-EN, 7 July 1999

<sup>2</sup> 1<sup>st</sup> report 1998-99, 7 December 1998 HC 60

<sup>3</sup> 1<sup>st</sup> report 1997-98, 29 July 1997 HC 90

<sup>4</sup> 3<sup>rd</sup> report 1997-98, 9 March 1998 HC 543

to the Authority, and his responsibility for railway closures to the Secretary of State. It is considered in detail in section IV.

Many of the SRA's proposed responsibilities already exist under the existing regime, but the emphasis is likely to change. The last government emphasised the importance of market forces, whereas the stress now is on strategic guidance and co-operation.

## II Background

### A. Privatisation

The *Railways Act 1993* provided the legal framework for the privatisation of British Rail (BR) 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 British Rail subsidiaries and awarding the first round of franchises to run the rail passenger companies was completed by April 1997.

The legislation radically changed the structure of the railway industry by separating the responsibility for infrastructure and passenger service operations. British Rail was divided into Railtrack on the one hand, and a residual British Rail operating company to run all the other services until they were sold or franchised. The core of the Conservative government's proposals was the greater involvement of the private sector in the running of the railways through the sale of British Rail's freight and parcels businesses and the progressive contracting out of the management of passenger services by a new Franchising Authority. Private sector operators would provide all passenger services either acting as franchisees or as independent train operators. Government subsidy would be 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.

The structure of the whole industry has changed radically since April 1994 as the legislation has been implemented. 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. British Rail was split into about 100 companies, almost all of which have been sold to the private sector or closed down. The passenger services were divided into 25 separate units and sold to the private sector for periods of between seven and fifteen years. Other parts of the business including the freight operations and the rolling stock companies, are also in private hands. Railtrack became a separate government owned company and was sold to the private sector in May 1996. More detail is given in a Library Research Paper, *The Privatised Railway*.<sup>5</sup>

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<sup>5</sup> *The Privatised Railway* House of Commons Library Research Paper 97/71, 30 May 1997

Following privatisation there has been considerable criticisms of the performance and reliability of the train companies, of Railtrack and the amount it is investing in the infrastructure, and of the ability of the regulators to oversee the industry. However, there have also been some successes: passenger numbers and freight volumes have risen and the government subsidy to the train operating companies (TOCs) is declining.

## B. Trends

### 1. Growth

Since privatisation passenger numbers have risen more than 20% and freight volumes have also risen. Indeed the industry argues that this is one of the reasons for its problems. It maintains that 1% increase in passenger growth leads to a 2.5% increase in train delays.<sup>6</sup>

#### Passenger travel on national railways

Great Britain, 1986-87 to 1998-99

	<u>Journeys</u>	<u>Distance Travelled</u>	
	(million)	(billion km)	% of all passenger travel
1986-87	738	31	5.7%
1987-88	798	32	5.7%
1988-89	822	34	5.2%
1989-90	812	33	4.9%
1990-91	810	33	4.7%
1991-92	792	33	4.7%
1992-93	770	32	4.5%
1993-94	740	30	4.2%
1994-95	735	29	4.4%
1995-96	761	30	4.7%
1996-97	801	32	4.8%
1997-98	846	34	4.9%
1998-99	890	35	..
Percentage change			
1994-95 to 1998-99	21%	22%	

Note: There is some underestimation of passenger kilometres in 1997/98 and 1998/99 as information about certain ticket types is not being captured

Source: DETR *Bulletin of rail statistics quarter 4: 1998/99*

<sup>6</sup> Quoted at Chartered Institute of Transport conference on *Priorities for the strategic rail authority*, 30 June 1999

## Freight transported by rail: 1986 to 1998 Great Britain

	Freight lifted			Freight moved	
	(million tonnes)		% of all freight lifted	(billion tonne kilometres)	% of all freight moved
1986	140	1,836	8%	17	9%
1987	141	1,908	7%	17	9%
1988	150	2,163	7%	18	8%
1989	146	2,206	7%	17	8%
1990	140	2,162	6%	16	7%
1991	136	1,985	7%	15	7%
1992	122	1,923	6%	15	7%
1993	109	1,977	5%	14	7%
1994	97	2,087	5%	13	6%
1995	103	2,115	5%	13	6%
1996	100	2,128	5%	15	6%
1997	105	2,136	5%	17	7%
1998	104	..	..	17	7% <sup>(a)</sup>

(a) Estimated

Note: Following privatisation there have been some changes in the way estimates of freight traffic have been compiled. Therefore pre and post privatisation figures are not directly comparable.

Sources: DETR *Transport trends 1999*  
DETR *Bulletin of rail statistics quarter 4: 1998/99*

## 2. Subsidies

Since privatisation the government has funded the railway industry via grants paid by OPRAF to the train operating companies who in turn purchase services from other industry parties, including Railtrack and the rolling stock leasing companies. Until 1997 some of these were in the private sector and some owned by BR: they are now all in the private sector. There is also the metropolitan railway grant paid to Passenger Transport Executives (PTEs). These grants count as public expenditure within the total finance available to the railways. Level crossing grant continues, but is now paid to Railtrack. In 1998/99 the Department of the Environment, Transport and the Regions (DETR) paid about £1.6 billion to support passenger railway operations and £30 million in freight grants to encourage freight to move by rail rather than by road.<sup>7</sup>

<sup>7</sup> DETR *Annual Report 1999* pp 158-162

**Government support to the rail industry**

Great Britain, 1993-94 to 2001-02

	Revenue support to <u>domestic passenger services</u>			Total government support	<u>Freight grants</u>
	Central government grants	PTE grants	Other elements of external finance requirement		
<i>£ million cash</i>					
1993-94 outturn	926	166	535	1,627	4
1994-95 outturn	1,815	346	-464	1,697	3
1995-96 outturn	1,712	362	-1,643	431	4
1996-97 outturn	1,809	291	-1,044	1,056	15
1997-98 outturn	1,429	375	25	1,829	29
1998-99 estimated	1,207	337	53	1,597	29
1999-00 plans	1,073	306	93	1,472	50
2000-01 plans	978	282	89	1,349	52
2001-02 plans	900	264	91	1,255	54
<i>£ million 1997-98 prices</i>					
1993-94 outturn	1,021	183	590	1,794	4
1994-95 outturn	1,973	376	-504	1,845	3
1995-96 outturn	1,808	382	-1,735	455	4
1996-97 outturn	1,854	298	-1,070	1,082	15
1997-98 outturn	1,429	375	25	1,829	29
1998-99 estimated	1,172	327	51	1,550	28
1999-00 plans	1,042	297	90	1,429	49
2000-01 plans	950	274	86	1,310	50
2001-02 plans	874	256	88	1,218	52

Sources: DETR Bulletin of Rail Statistics  
 DETR Departmental annual report 1999 (Cm 4204)  
 OPRAF Annual report 1997/98

All of the new companies in the railway industry now earn commercial rates of return. As a consequence, in 1994/95 and 1995/96, when the companies were still largely in the public sector, they generated cash surpluses which were offset against OPRAF grant, 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.

Support for the passenger services is progressively reducing and is intended to continue to do so.

### **C. The Government's View**

Present concern is less about the organisational structure of the industry than about whether the Regulators have sufficient powers to deal with the private sector companies who now run the railways and about the supervision of public funds. If the government's integrated transport strategy is to work, more passengers and freight need to be attracted on to the railways in order to reduce road traffic growth.

In its 1997 election manifesto, the Labour Party stated:

The process of rail privatisation is now largely complete. It has made fortunes for a few, but has been a poor deal for the taxpayer. It has fragmented the network and now threatens services. Our task will be to improve the situation as we find it, not as we wish it to be. Our overriding goal must be to win more passengers and freight on to rail. The system must be run in the public interest with higher levels of investment and effective enforcement of train operators' service commitments. There must be convenient connections, through-ticketing and accurate travel information for the benefit of all passengers.

To achieve these aims, we will establish more effective and accountable regulation by the Rail Regulator; we will ensure that the public subsidy serves the public interest; and we will establish a new rail authority, combining functions currently carried out by the Rail Franchiser and the Department of Transport, to provide a clear, coherent and strategic programme for the development of the railways so that passenger expectations are met.<sup>8</sup>

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<sup>8</sup> Labour Party *New Labour because Britain deserves better*, Labour Party election manifesto 1997 p 29

In May 1997 the government began a review of railway regulation. In August 1997 John Prescott published the green paper, *Developing an integrated transport policy*<sup>9</sup> and on 20 July 1998 he published his conclusions in the white paper, *A new deal for transport: better for everyone*.<sup>10</sup> At the same time, the Transport sub committee of the House of Commons committee covering the DETR considered the creation of a Strategic Rail Authority and published its report on 18 March 1998.<sup>11</sup> The idea of a strategic body was welcomed by the committee and by witnesses who gave evidence. More details of the government's proposal for a Strategic Rail Authority were given in its response to the committee's report.<sup>12</sup>

The government proposed setting up a Strategic Rail Authority to ensure the railways were run in the public interest and were properly integrated with other forms of transport. Parliamentary time was not available to introduce the necessary primary legislation so John Prescott announced in September 1998 that he would set up a "shadow" SRA:

The SRA will put railways at the heart of our integrated transport policy; and it will put passengers' and freight customers' interests before private profit. But however soon we legislate, it will take at least 18 months to get the SRA up and running. Passengers will not wait that long for an improvement in train services - and nor will I.

I will therefore set up a shadow SRA, using existing organisations - the Office of Passenger Rail Franchising and the British Railways Board.<sup>13</sup>

Sir Alastair Morton was appointed the new chairman of the British Railways Board on 1 April 1999. He is now responsible for advising ministers on the strategic development of the railway as a whole, including rail freight. BR still has powers to provide services and facilities and to use its resources in connection with the provision of railway services. This allows it to advise the secretary of state on railway matters. Following the implementation of the legislation, the BR chairman and board will become the part-time chairman and board members of the SRA. OPRAF lets and manages passenger rail franchises and has statutory powers in relation to respect of the passenger railway (BR has power over freight too). Michael Grant was appointed Franchising Director on 7 April 1999. Following legislation, he will become the full-time chief executive of the SRA.

A new Rail Regulator, Tom Winsor, took over on 5 July 1999.

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<sup>9</sup> DETR *Developing an integrated transport policy*, August 1997

<sup>10</sup> DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950

<sup>11</sup> Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3<sup>rd</sup> report 1997-98, 18 March 1998 HC 286

<sup>12</sup> *The government's response to the Environment, Transport and Regional Affairs committee's report on the proposed strategic rail authority and rail regulation*, July 1998 Cm 4024

<sup>13</sup> DETR press notice, 30 September 1998 "Prescott announces sweeping measures on the railways"

## 1. Flaws in the Present System

The government recognised that the rail industry needed an element of stability and certainty if it was to plan its activities effectively. Its review of railway regulation pinpointed various structural flaws:<sup>14</sup>

- There is no focus within the privatised industry for long term strategic planning. Before privatisation, the British Railways Board was charged with monitoring passenger and freight demand and developing a strategy to provide the capacity to cater for it. Now, there is no equivalent planning body at work in the industry.
- The Franchising Director's remit is too narrowly focused on the passenger railway. As things stand, he has no powers in respect of freight on the railway and is heavily constrained in what he can do to support integrated transport initiatives.
- A number of key policy decisions on the future of the rail industry, such as the introduction of open access competition, lie in the hands of a statutorily independent regulator. The Rail Regulator is under no direct statutory obligation to take account of the government's objectives for the railways.
- There is confusion about the respective roles of the Office of the Rail Regulator and the Office of Passenger Rail Franchising as regulators of passengers' rights. Each has a patchwork of responsibilities, and in many cases there are confusing overlaps. In their evidence to the select committee, both the Franchising Director and the Rail Regulator acknowledged the scope for confusion.
- The sanctions available to the regulatory authorities are unwieldy. For example, a train operator cannot be fined for a breach of the franchise agreement, however serious, if it is unlikely to recur. Sharper, more efficient sanctions are required.
- The views of rail users need to be given more prominence. Passengers should have a greater say in the train services that are paid for with their fares and their taxes.
- The public is not convinced that safety comes first. There is a widespread perception that safety standards might be compromised by commercial considerations.
- The rolling stock leasing companies are inadequately regulated. The sale of the three ROSCOs was sharply criticised by the National Audit Office as being a poor deal for

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<sup>14</sup> *The government's response to the Environment, Transport and Regional Affairs Committee's report on the proposed strategic rail authority and rail regulation, July 1998 Cm 4024 para 6-11*

the taxpayer. In contrast to the train operating companies, the ROSCOs are not regulated at all.<sup>15</sup>

- Investment must be a priority. During its review the government found great concern that Railtrack was not responsive in dealing with proposals for increasing capacity, particularly for rail freight, and that Railtrack was not properly accountable to its major funder – the taxpayer.

In addition to these structural flaws, the government considered:

- The performance of some of the 25 passenger train operating companies was unacceptable. Too many trains were being cancelled or running late.
- There had been frequent and well-publicised shortcomings in a range of network benefits, such as impartial retailing of tickets, the National Rail Enquiry Service, and passenger compensation. These network benefits were supposed to be protected under privatisation, so that passengers could make seamless journeys and receive consistent information to help them plan those journeys. The government's review of regulation concluded that the arrangements for network benefits needed to be changed, so that rail users' interests were protected and integrated transport was promoted.
- The last major area of concern was that too little was being done to promote rail freight.

## **2. Government Action since May 1997**

The SRA will provide a necessary focus for strategic planning, a means of supporting integrated transport initiatives and of supervising the disbursement of public funds, but the necessary primary legislation was not possible immediately after the general election. The government therefore made some changes to the activities of the Rail Regulator and the Franchising Director by amending the Objectives, Instructions and Guidance given to the Franchising Director, by coming to a voluntary agreement with the Regulator, and by exhorting both to use to the full their existing powers.<sup>16</sup>

In its response to the Environment, Transport and Regional Affairs committee's report, the government described the changes it had made since the general election within the existing structure:

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<sup>15</sup> NAO *Privatisation of the rolling stock leasing companies*, 5 March 1998 HC 576; Committee of public Accounts 65<sup>th</sup> report 1997-98, 27 July 1998 HC 782

<sup>16</sup> The present roles of the Rail Regulator and the Franchising Director are set out in the *Railways Act 1993* and described in *Rail Privatisation: a Progress Report* House of Commons Library Research Paper 95/96, 6 September 1995

During the period of the review we have been able to make some improvements within the constraints imposed by the current structure and legislation.

- On 6 November 1997, the Minister for Transport issued the Franchising Director with new Objectives, Instructions and Guidance (OIG) which deal with the real issues that matter most to passengers, including high standards of punctuality and reliability and the protection of passenger rights.
- As part of his new OIG, the Franchising Director is to produce an assessment of the type and level of services the network should provide, including an overview of Railtrack's investment plans, as set out in Railtrack's Network Management Statement.
- The Government has approved the Franchising Director's interim planning criteria, in order to provide an effective framework for developing and implementing worthwhile rail investment. These will be revised in light of *A New Deal for Transport*, to take account of the development of appraisal techniques that establish a level playing field between the modes.
- Ministers have agreed a voluntary concordat with the Rail Regulator which gives the Regulator a clear indication of what the Government wants for the railways.

The new Objectives, Instructions and Guidance made it clear that the Franchising Director's top priority is now to protect passengers' interests. This allowed him to negotiate a "passenger dividend" package of benefits worth around £75m for Great Western Trains, North West Trains and Great Eastern, as part of First Group's take-over of Great Western Holdings. In addition, as part of Go-Ahead Group's take-over of Victory Railway Holdings, the Franchising Director secured passenger benefits in respect of the Thames Trains franchise including £500,000 to be spent on station improvements, a new through service between Bristol via Bath, Swindon and Didcot, and investment in bus, cycle and airport integration.

The Government has also taken action on rail freight. The freight grants scheme has been revitalised, and its budget increased, so that more freight can be encouraged to go by rail. In 1997/8 grants worth some £30m were awarded, nearly twice as much as the year before. The budget for 1998/9 has been increased to £40m. We renegotiated the terms of sale of Railfreight Distribution to allow for the Government to get a financial return from a big increase in Channel Tunnel rail freight. And, as part of the price for extending Eurotunnel's concession, the Government has secured commitments from the French Government and Eurotunnel designed to get a better deal for rail freight through the Channel Tunnel and beyond, not only by English Welsh and Scottish Railway but also by potential new entrants to the market.

On infrastructure investment, the Rail Regulator reached voluntary agreement with Railtrack last year, amending the company's licence so that the Regulator can better ensure that Railtrack invest in the network at the right levels and for

the best results. It is still too early to say whether those new arrangements will work.

Railtrack published their 1998 Network Management Statement on 25 March 1998. The Government welcomed the greater level of detail about Railtrack's spending plans and management of the network. However, the Government noted the Rail Regulator's concern that the plan "contains very few firm commitments". On 16 July 1998 the Rail Regulator and Railtrack, in a joint statement, announced that Railtrack had given further commitments to improve network performance and track quality; to address network capacity problems; and to strengthen its processes for meeting the needs of train operators and funders.

The previous Government envisaged the introduction of open access to the rail network. There was a real risk that this would have meant competition at the expense of the network benefits which matter to passengers. Following representations from Ministers, the Rail Regulator has put in place arrangements to prevent a destructive free-for-all.<sup>17</sup>

### **III Areas of Concern**

This section considers the main issues that have led the government to set up the SRA.

#### **A. Franchises**

##### **1. The train operating companies**

There are 25 franchises awarded for periods between 5 and 15 years. The majority were for 7 years and will expire in 2003-4.

Privatisation was done hastily and the network was broken up into 25 train operating units largely along lines set out by British Rail's final reorganisation. These were taken over by 13 companies. In the last year two have changed hands and more changes are likely as the venture capitalists, who invested in privatisation, want to realise their capital and the improvements demanded by the franchise agreements prove tough to meet. Some imaginative deals have been struck, most notably the two Virgin franchises which combine a commitment to innovate and renew with the essential ingredient of a long tenure to ensure adequate return on a substantial investment. OPRAF has also begun to insist on new deals where franchise conditions are varied. The seven year length of the typical franchise appears rather arbitrary and some companies have started to say they cannot be expected to invest in new rolling stock for such short periods. Great North Eastern, for example, has argued that the short length of its franchise is a main barrier to

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<sup>17</sup> Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3<sup>rd</sup> report 1997-98, 18 March 1998 HC 286 paras 12-18

investment in a new fleet and an enhanced timetable over some sections of its route. It is noticeable that the freight sector, where the companies were sold outright, is investing heavily in new equipment.

### The Train Operating Companies and their Franchisees

Franchise	Franchisee	Franchisee Length	Franchise Commenced
Anglia Railways	GB Railways Limited (subsidiary of GB Railways Group Plc).	7 yrs 3 mth	05/01/97
Cardiff Railway Company	Prism Rail PLC.	7 yrs 6 mth	13/10/96
Central Trains	National Express Group PLC.	7 yrs 1 mth	02/03/97
Chiltern Railway	M40 Trains Limited (John Laing plc).	7 yrs	21/07/96
Connex South Central	Connex Rail Limited (subsidiary of Vivendi SA).	7 yrs	26/05/96
Connex South Eastern	Connex Rail Limited (subsidiary of Vivendi SA).	15 yrs	13/10/96
CrossCountry	Virgin Rail Group Limited.	15 yrs	05/01/97
Gatwick Express	National Express Group PLC.	15 yrs	28/04/96
Great Eastern Railway	FirstGroup plc.	7 yrs 3 mth	05/01/97
Great North Eastern Railway	GNER Holdings Limited (subsidiary of Sea Containers Ltd.)	7 yrs	28/04/96
Great Western Trains	Great Western Holdings Limited (subsidiary of FirstGroup plc).	10 yrs	04/02/96
Island Line	Stagecoach Holdings plc.	5 yrs	13/10/96
LTS Rail	Prism Rail PLC.	15 yrs	26/05/96
Merseyrail Electrics	MTL Rail Limited (subsidiary of MTL Services PLC).	7 yrs 2 mth	19/01/97
Midland Mainline	National Express Group PLC.	10 yrs	28/04/96
North Western Trains	Great Western Holdings Limited (subsidiary of FirstGroup plc).	7 yrs 1 mth	02/03/97
Northern Spirit	MTL Rail Limited (subsidiary of MTL Services PLC).	7 yrs 1 mth	02/03/97
ScotRail	National Express Group PLC.	7 yrs	31/03/97
Silverlink	National Express Group PLC.	7 yrs 6 mth	02/03/97
South West Trains	Stagecoach Holdings plc.	7 yrs	04/02/96
Thames Trains	Victory Railways Holdings Limited (subsidiary of The Go-Ahead Group Plc).	7 yrs 6mth	13/10/96
Thameslink Rail	GOVIA Limited (Go-Ahead Group and Via G.T.I. SA).	7 yrs 1 mth	02/03/99
Wales & West	Prism Rail PLC.	7 yrs 6mth	13/10/96
West Anglia Great Northern	Prism Rail PLC.	7 yrs 3 mth	05/01/97
West Coast Trains	Virgin Rail Group Limited.	15 yrs	09/03/97

Source: OPRAF Bulletin on performance of passenger rail network, December 1998-March 1999

Support for the passenger railway is paid to the train operating companies through the Franchising Director and the PTEs. In 1997-98 it amounted to £1790 million and by the year 2003-04 it is expected to be £650 million.

### Net contractual payments to franchise operators, 1997-98 to 2003-04

£ million, 1997-98 prices

		1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Anglia Railways	OPRAF	36	26	22	16	13	9	6
Cardiff Railways	OPRAF	20	18	17	16	15	14	14
Central Trains	OPRAF	133	123	109	103	100	97	96
	PTE	40	35	30	27	26	25	23
Chiltern Railway	OPRAF	14	13	10	7	5	3	0
Connex South Central	OPRAF	75	55	47	43	38	36	5
Connex South Eastern	OPRAF	116	85	61	49	40	33	28
Gatwick Express	OPRAF	-6	-8	-10	-11	-12	-12	-13
Great Eastern	OPRAF	29	14	8	3	0	-5	-10
Great North Eastern Railway	OPRAF	55	36	17	6	2	0	--
Great Western Trains	OPRAF	59	54	48	41	34	27	18
Island Line	OPRAF	2	2	2	2	1	--	--
LTS Rail	OPRAF	26	25	23	22	21	19	18
Merseyrail Electrics	OPRAF	7	7	6	6	5	6	5
	PTE	60	53	48	45	43	42	42
Midland Mainline	OPRAF	8	2	1	-1	-3	-4	-6
North Western Trains	OPRAF	98	90	82	75	72	69	68
	PTE	86	78	71	65	62	59	57
Regional Railways North East	OPRAF	140	123	110	102	97	94	93
	PTE	79	69	61	57	54	51	50
Scotrail Railways	OPRAF	129	121	114	107	100	95	94
	PTE	113	105	97	88	80	74	70
Silverlink	OPRAF	49	36	30	26	23	20	17
South West Trains	OPRAF	64	61	56	51	45	36	--
Thames Trains	OPRAF	34	25	17	14	8	4	0
Thameslink Rail	OPRAF	3	-7	-16	-23	-23	-27	-28
Virgin Cross Country	OPRAF	116	98	82	74	68	51	41
Virgin West Coast	OPRAF	77	68	56	54	52	-4	-53
Wales & West Railway	OPRAF	73	62	57	51	48	44	39
West Anglia Great Northern	OPRAF	55	35	25	13	4	-15	-26
<b>OPRAF Total</b>		<b>1,412</b>	<b>1,163</b>	<b>973</b>	<b>847</b>	<b>754</b>	<b>589</b>	<b>408</b>
<b>PTE Total</b>		<b>378</b>	<b>340</b>	<b>306</b>	<b>282</b>	<b>264</b>	<b>251</b>	<b>242</b>
<b>Total</b>		<b>1,790</b>	<b>1,503</b>	<b>1,279</b>	<b>1,129</b>	<b>1,017</b>	<b>840</b>	<b>650</b>

Notes: Payments to the Franchising Director appear as negative amounts.

Excludes incentive regime payments

Source: OPRAF Annual Report 1997-98

By the year 2003-04 Gatwick Express, Great Eastern, Midland Main Line, Thameslink, Virgin West Coast and WAGN will be paying money to the Treasury; and by the end of their 15 year franchise, so will Connex South Eastern and Virgin Cross Country.

In the transport white paper the government said it would be prepared to extend franchises if it was in the public interest.<sup>18</sup> In his speech at the 1988 Labour Party Conference John Prescott said:

The biggest single problem with the privatised railway lies in the franchise agreements. We cannot wait for the next round of franchising to secure commitments from the private sector to provide better performance, more investment and greater responsiveness to passengers' needs.

That is why I am opening the books for renegotiations of the Franchise Agreements. I will look for proposals that would commit train operators to higher standards of punctuality and reliability, leading to a progressive improvement in services to passengers. I will want to secure extra investment, for example in high-quality rolling stock; promote integrated transport; give passengers a greater voice in the level and standard of services; and provide value for the taxpayer.

The Franchising Director and I are ready to do business on this basis. I do not rule out extension of some existing franchises where that would provide clear benefits for passengers and the public purse.<sup>19</sup>

Mr Prescott has made clear that the performance of existing franchises will be a key criterion for future franchise awards.

Sir Alastair Morton gave his initial views in a recent speech on 30 June:

I want to see the franchises for inter-urban and London TOCs, and perhaps a few of the rest renegotiated, extended or re-let so as to be securely lodged in the hands of franchisees who are determined to flourish without subsidies, or with very limited subsidies paid under circumscribed performance conditions; and who will stand up for their rights as customers and invest in improving their services.

It seems to me there are several conditions precedent to such a happy state of affairs in the future and I will work to get them recognised and agreed. They are:

- Franchises must be longer, to permit capture of returns on investment;
- The Treasury must not see their emergence from subsidy as continuing source of "tax" revenue;
- Owners with credible management must agree to perform and invest to meet the demanding objectives of a "bigger and better network".

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<sup>18</sup> DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950 para 4.20

<sup>19</sup> DETR press notice 30 September 1998 "Prescott announces sweeping measures on the railways"

I do not doubt that if those three strategic conditions are satisfied the next round of franchises can be valuable to their owners. There may not be as many of them and their geography may change somewhat – or not.

This story will run for the next couple of years. We will not advance on all fronts from day one and we will start by listening to their proposals. Over the period there will be winner and losers, but right now I would suggest non-performers will be non-starters for the process.<sup>20</sup>

## **2. The role of the Franchising Director**

All the passenger businesses had been let by the 1997 general election. Since then OPRAF has become more involved in managing contracts and monitoring the performance of franchise operators.

The Franchising Director's functions are laid down in section 5 of the *Railways Act 1993*. These will be transferred to the SRA.<sup>21</sup> He is responsible for securing the provision of railway passenger services by entering into franchise agreements, with franchisees being selected through a competitive tendering process. The Act requires the Franchising Director to exercise his statutory functions so as to fulfil objectives given to him by the secretary of state and to ensure that his expenditure represents value for money in achieving these objectives.

The present secretary of state set the Franchising Director the following principal objectives:<sup>22</sup>

- increase the number of passengers travelling by rail;
- manage existing franchise agreements in a manner which he considers promotes the interests of the passenger; and
- secure a progressive improvement in the quality of railway passenger and station services available to railway passengers.

His additional objectives are to:

- stimulate the development of railway service, by promoting high levels of cost-effective investment in the network;
- protect passenger network benefits by the strict application of existing contractual obligations, and seek to enhance their effectiveness;

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<sup>20</sup> Speech at Chartered Institute of Transport conference on *Priorities for a Strategic Rail Authority*, 30 June 1999

<sup>21</sup> Transferred by clause 11 of the Bill. More detail is given in Part IV of this Research Paper

<sup>22</sup> The Objectives, Instructions and Guidance are set out in full in the OPRAF annual report 1997-98, appendix I

- support the development of railway services and facilities which make it convenient and cost-effective for passengers to make journeys involving more than one mode of transport;
- promote the personal security of passengers travelling by rail;
- promote the enhancement of facilities for disabled passengers; and
- encourage efficiency and economy in the provision of passenger railway services.

### 3. Performance Measures

Much publicity has been given to the increase in the numbers of complaints about poor punctuality and reliability of train services. Delays are caused by both the train operating companies and Railtrack.

There are various different ways of measuring performance and complaints and these are outlined below. On 25 February 1999 the Franchising Director announced that he was consulting the rail industry and passenger representatives on a new standard measurement of overall performance which would reflect the experience of all passengers.<sup>23</sup> The Franchising Director said that OPRAF had been aware of the limitations of the passenger charter and particularly concerned at the dramatic increase in the number of days discounted.

#### a. OPRAF

OPRAF reports on the performance of the train operating companies. It publishes a quarterly bulletin describing the operating performance of franchise operators, and these are collated in its annual report.<sup>24</sup> The National Audit Office said the monitoring system should be strengthened and procedures put in place to "obtain independent assurance" on the systems and data used.<sup>25</sup>

OPRAF reports two sets of figures, which are unrelated. The first shows a train operating company's reliability and punctuality compared with the passenger charter figures for the previous year and measures the improvement or decline in percentage terms. The data is provided by the individual TOCs and then presented by OPRAF in a convenient summary form. The definitions of 'punctuality' and 'reliability' follow the requirements of the passenger charter. These figures are also reported in DETR's quarterly *Bulletin of Rail Statistics*. Each route group is assigned a grade for reliability and punctuality and an overall grade is assigned each operator. As an example the performance figures for the latest quarter available (December 1998 -March 1999) are given in appendix I of this paper.

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<sup>23</sup> OPRAF news release 25 February 1999, *OPRAF consults on new performance regime*

<sup>24</sup> Publication of the bulletin has been mandatory since the new objectives, instructions and guidance were issued to the Franchising Director on 6 November 1997

<sup>25</sup> Public Accounts Committee 53<sup>rd</sup> report 1997-98 HC 625

The OPRAF bulletin also gives the amounts paid or received under the performance regimes. These are judged on different criteria to the charter requirements. Before privatisation British Rail was set targets that varied as to load factors, timekeeping and percentage of trains operated. These requirements have been maintained under the franchising regime but were made more onerous by the possible imposition of financial penalties or even the termination of the franchise for continued failure to meet the standards. The information is collected by OPRAF from the industry computer system TRUST, which records the passage of all trains on the network. The system is run by a main frame operator on behalf of Railtrack and the integrity of the system is subject to an independent audit.

OPRAF performance regimes apply regardless of cause but operators have separate arrangements with Railtrack that provide compensation where Railtrack causes the delays.

The standards can be considered under various quality of service factors. The Punctuality Incentive Payment (PIP) applies to peak London commuter lines and regional and rural services. It measures lateness and cancellations on the day against planned timetable. The Short Formations Incentive Payment (SFIP) applies to peak services into London and some other cities. Each operator must have a plan showing how capacity will be delivered and a SFIP will be charged if he fails to meet this plan. The majority of services other than London commuter services are not subject to load factor regulation although sometimes the passenger service requirement may specify the number of seats to be provided on certain services. Where neither load factor regulation nor capacity requirements apply, the franchise operator "will be required to use reasonable endeavours to provide sufficient capacity to avoid excessive overcrowding."<sup>26</sup>

The Timetable Change Incentive Payment (TCIP) penalises operators who change the timetable from that printed. To give operators an incentive to handle disruption in a planned way, it substitutes for the higher PIP payment. The operator therefore pays more if he simply cancels the train without warning.

### ***b. The Passenger Charter***

For most passengers the most familiar indicators of operational performance are those contained in the Passenger's Charter. OPRAF requires all operators to continue to provide a charter at least as good as that previously operated by British Rail and in most cases those now being operated include enhancements. As part of the obligation TOCs are also required to collect and publish Passenger's Charter data. The Charter arrangements do not, however, involve OPRAF and its financial regime but are an arrangement between the TOCs and their passengers.

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<sup>26</sup> OPRAF *Passenger Rail Industry Overview*, September 1995

The charter will include more than promises about reliability and punctuality. It will include waiting times at ticket offices, how complaints are dealt with and so on, but it is only reliability and punctuality that can trigger payments to passengers. Furthermore the charter data collected by each operator only covers part of the services - for instance operators may exclude delays and cancellations caused by events outside their control, such as vandalism.

The trigger levels for season ticket discounts are measured against a moving average for a whole year. This removes any normal seasonal variation from the figures. The statistics are compiled by the TOCs and are subject to annual independent audit. Any enquiries about an individual train company's performance should be addressed to that company.

TOCs obtain their data either from accessing TRUST, making records at the stations or a mixture of the two, whichever is the easiest way to obtain the figures. The choice is not left to the TOC as the method must be approved by Sheffield University who supervises the independent audit.

**c. *Customer Satisfaction Survey***

The franchise train operator is expected to carry out its own customer satisfaction surveys at least every six months. They must be carried out by an independent, professionally accredited market research company. The surveys are not designed to compare levels of customer satisfaction between operators as different methodologies are used, and the benchmarks and issues surveyed are unique to each operator. The franchise operator is expected "to use all reasonable endeavours to secure an improvement during the franchise term in the overall level of customer satisfaction."<sup>27</sup> If the survey indicates that any element of customer satisfaction has fallen below an agreed benchmark the Franchising Director can request the operator to come up with proposals to rectify the lack of customer satisfaction. If the Franchising Director is not satisfied that these proposals will work and the two parties cannot agree on a mutually acceptable solution, the dispute may be referred under the dispute resolution rules.

The results of the surveys are published in the OPRAF bulletin.

**d. *Rail Regulator***

Details of the complaints received about the TOCs (as opposed to their performance) are monitored, in different ways, by the Rail Regulator and by the Central Rail Users Consultative Committee. Each passenger and station operator, as a condition of its licence, has to have a complaints procedure in place that has been approved by the Rail

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<sup>27</sup> OPRAF *Passenger Rail Industry Overview*, September 1995

Regulator and is based on guidelines issued by him.<sup>28</sup> The Rail Regulator's office is responsible for organising the collection and collation of complaints statistics from the TOCs and these have been provided by the companies since September 1997.

On 1 July 1998 the Rail Regulator published his first report on rail complaints and the second appeared in February 1999. The report shows the passenger complaints made direct to the train companies and so is not comparable to the CRUCC report (which relates only to the complaints made to it and the regional committees). Train operators are given the opportunity to comment on their statistics.

*e. Central Rail Users Consultative Committee*

The Central Rail Users Consultative Committee (CRUCC) publishes details of complaints it receives twice yearly and in its annual report. It uses the passenger charter information as well as information about the number of cancellations and delays not covered by the charter. In the forward to the latest report, the chairman comments that, important as it is to measure and report on the performance of the railways because of the high level of public funding, the way that it is done has very little impact on the passenger. Nearly all the published performance data applies to the performance of train operators and to Railtrack and not to passengers' perceptions and needs. Passengers are not interested in whether the operator or Railtrack are responsible for a delay but in the reduction of those delays.

*f. Track Access Agreement*

The other incentive for good timekeeping is based on the track access agreement between the franchise operator and Railtrack. This includes a cost for cancellations as well as lateness. Railtrack has to pay the franchise operator a penalty whenever it is responsible for delaying trains; the franchise operator has to pay Railtrack a penalty if the operator is responsible for the delay. There is a complicated procedure if the cause of the delay is disputed. Unlike the OPRAF incentives the charges under the Access Agreement Performance Regime have not been published.

#### **4. Network Benefits**

The Regulator has a wide range of consumer functions under the *Railways Act 1993*. Conditions in their licences require TOCs to participate in industry-wide arrangements covering:

- through ticketing and ticket retailing
- telephone enquiry bureaux

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<sup>28</sup> Rail Regulator *Summary of principles for complaints handling procedures*, September 1995 (Published as Enclosure 4 in the package on licensing of operators of railway assets)

- publication of the national timetable and the sharing of operating information between licence holders

Consumer benefits can also involve the Franchising Director but even in cases where he does not have a statutory function, the Regulator frequently has a formal right to be consulted. This has been confusing and these consumer functions are to be transferred to the SRA by clause 12 of the Bill.

"Through" journeys refer to journeys involving more than one passenger train operator. The *Railways Act 1993* made provision for through ticketing a condition of a passenger service operator's licence. Inter-available tickets mean that tickets issued by one train operating company are available for the same journey on other operators' trains. Their provision is obligatory except in those cases where the Franchising Director considers the benefits of price competition outweigh those of inter-availability. Competing operators may introduce additional non-inter-available fares which allow passengers to trade flexibility in return for a lower price.

The problems of the timetable and the telephone enquiry service have been considerable. Railtrack is responsible for the timetable. The TOCs are responsible for the enquiry service. To manage the mandatory services the 25 TOCs set up the Association of Train Operating Companies (ATOC). ATOC's primary role is to provide services to which its members are committed under their franchise agreements although it acts as the collective voice of the passenger rail industry. These include the National Rail Enquiry Service and various codes of practice. It is also responsible for revenue allocation. Total revenues in the passenger railway is about £3 billion a year. Of this a third is generated on journeys where either multiple operators are involved or where the total revenue on a route is divided between a number of operators. Such revenue is allocated by ATOC through the Rail Settlement Plan.

## **5. The Rail Summit**

In November 1998 the government, together with the rail industry, drew up a 10-point improvement plan to be completed by 2002. This included the establishment of a national punctuality task force and the training of 800 drivers.

On 25 February 1999 a national rail summit was convened by the government and attended by an invited audience of 200 interested parties in the rail industry, including passenger and freight operators, Railtrack, rolling stock companies, local authorities and passenger representatives. The deputy Prime Minister stressed his desire to end the blame culture and to raise both service quality and investment. The agreement was summarised in a PQ:

At the Summit, the Government:

- announced they were prepared to renegotiate existing franchises and specified the criteria against which applications would be judged;

- introduced Sir Alastair Morton as the new chairman of the British Railways Board and head of the shadow Strategic Rail Authority;
- launched the consultation exercise which will lead later in the year to the shadow SRA's strategic plan for the railway;
- announced the start of work on a National Passengers Survey and on ways of measuring more accurately train operators' performance;
- promised legislation to regulate the rolling stock leasing companies if they do not voluntarily restrict their market power.

The passenger train operators jointly promised that:

- on average, train services will be more punctual next year than they are now;
- by 2002, half the current rolling stock fleet will have been replaced or refurbished;
- by April next year, all stations in Great Britain will have passenger information systems;
- an additional £39m will be spent on measures to improve the security of passengers.
- The industry have given a commitment to work to deliver real improvements which are measurable year on year. There will be a second Summit in spring next year to review progress and maintain the momentum which was created on 25 February.<sup>29</sup>

## **6. Powers of the Regulators**

One of the government's main concerns is with the performance of the passenger train companies and the ability of OPRAF to monitor compliance with the arrangements set out in the franchise arrangements.

Sections 55 and 56 of the *Railways Act 1993* establish the enforcement procedures available to the Rail Regulator and the Franchise Director to ensure compliance with relevant conditions or requirements of licences, franchises or closure restrictions, and, in the case of the Rail Regulator, of access agreements. Section 55 imposes a duty on the Franchising Director to act to prevent or rectify any breach or likely breach of the franchise agreement by the franchisee or franchise operator. The Franchising Director achieves this by issuing either a provisional or final order which specifies the action required to prevent or rectify the breach and which, in the case of a final order, may

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<sup>29</sup> PQ HC Deb 3 March 1999 c 739-40W

impose a financial penalty. Provisional orders do not require any notice period and expire within three months of their being made unless confirmed during that period. Before a provisional order can be confirmed or a final order issued, the Franchising Director must publish it and must consider any representations or objections that are made. At least 28 days must elapse between publication and confirmation or issue of such orders. He cannot make a final order or confirm a provisional order if the franchise operator is taking appropriate steps to remedy the breach.

Section 57 provides rights of appeal to the High Court for an operator against whom an enforcement procedure is brought and against actions brought for breach of compliance with an enforcement order. Section 58 empowers the Rail Regulator or Franchise Director to require disclosure of documents or information in connection with contravention or requirements.

The Franchising Director acts in a rather different way to that of the Rail Regulator. The Regulator monitors compliance with the terms of the licences that he grants and the Franchising Director monitors compliance with the franchise contracts he negotiates. As a result the existing ability of the Regulator to change a licence against the will of the licensee is far greater than the ability of the Franchising Director to change a franchise agreement if the franchisee does not agree to do so. When they were drawn up, franchise agreements had more of the feel of commercial contracts rather than regulating instruments about them and accordingly the change mechanisms they contain are very limited. By contrast, licences enforced by the Regulator are purely regulatory in nature, and the legislation allows him to amend them if the Regulator and the Monopolies and Mergers Commission consider that to be in the public interest.

The Public Accounts Committee considered the Franchising Director placed too much emphasis on his contractual obligations to make franchise payments to train operating companies, as opposed to ensuring they met their obligations for the delivery of passenger rail services. Nor did he appear to distinguish between major and minor breaches of contract.<sup>30</sup>

Cancellations, short running and using the wrong rolling stock are areas that cause most concern. Performance targets were set at undemanding levels to ensure bids were received for franchises. As a result the fines OPRAF can levy have little financial impact on the train operators. The performance bonuses they can earn can easily cancel out a poor service penalty. More realistic fines and penalties are needed for late and cancelled trains. A weakness of the current regulatory regime is that train companies can escape fines if they agree not to repeat an offence. South West Trains faced a fine of £1 million for cancelling large numbers of trains, but avoided the penalty by reinstating a proper service in the following months. Fines have only been used once under the present legislation, when the train operators telephone inquiry service failed to meet its targets.

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<sup>30</sup> Public Accounts Committee 53<sup>rd</sup> report 1997-98 HC 625

Clause 19 of the *Railways Bill* will strengthen the enforcement procedures and clause 20 will allow the SRA more flexibility in imposing penalties.

In evidence to the Environment, Transport and Regional Affairs Committee's examination of the proposed SRA, there was some disagreement over whether the Regulators' powers were inadequate or whether they were not always prepared to use them.<sup>31</sup> In its evidence the government said it was not convinced that the powers and sanctions available to the Regulator and the Franchising Director were adequate. Its view was that they were "complex, take a long time to implement and allow limited scope for financial penalties. Penalties can be avoided altogether by an operator who takes swift corrective action after a contractual breach". Both the Regulator and the Franchising Director considered their powers effective but agreed they could be strengthened.<sup>32</sup>

Other commentators held similar views: The Association of Train Operating Companies (ATOC) believed that the regulators had the requisite powers and were prepared to act; CRUCC thought the powers could be effective but highlighted a number of areas which had caused problems; the PTE group thought the Franchising Director need greater powers as it made no sense if a company received a performance bonus while cancelling trains as had happened with Regional Railways North East; and the pressure group, Save our Railways thought the powers inadequate.<sup>33</sup>

A further problem is that when a fine is levied the proceeds go to the Consolidated Fund with no direct benefit to the passenger, whereas incentive payments for good performances come out of the Franchising Director's own budget. However, the government has agreed in principle that the SRA will be able to retain income from penalties and reinvest it in the railways. It has stressed that this is a "one-off exception to the normal rules for such income."<sup>34</sup> It is currently developing the details of this arrangement, including the criteria and safeguards on how the money will be spent. The arrangements will be kept under review.

## **B. Investment**

### **1. Franchising Director**

The SRA will take over the OPRAF's budget for making franchise payments to the passenger railway and also DETR's allocation of freight grants. The Passenger Transport Executives will continue to support services in metropolitan areas, but these could be

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<sup>31</sup> Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3<sup>rd</sup> report 1997-98, 18 March 1998 HC 286 para 20

<sup>32</sup> Ibid, para 21 & 22

<sup>33</sup> Ibid, paras 23-7

<sup>34</sup> DETR press notice 7 July 1999 "Fast track enforcement powers put rail passengers in the driving seat"

funded via the SRA. There are also powers in the Bill to enable the SRA to make payments direct to Railtrack.<sup>35</sup>

In addition the SRA will control two additional sources of funds announced in the white paper and available through OPRAF since April 1999:<sup>36</sup>

1. The Infrastructure Investment Fund supports strategic investment projects aimed at addressing capacity constraints at key infrastructure "pinch-points" on the existing rail networks. These projects will supplement the commercial infrastructure investment undertaken by Railtrack and will help to ensure that sufficient capacity is available both for existing demand and for new demand arising from initiatives to encourage more passengers and freight onto the railway.
2. The Rail Passenger Partnership scheme is designed to encourage and support innovative proposals at the regional and local level that develop rail use. Support will be targeted at proposals that offer the greatest opportunities for modal shift and integration with other modes, for example those that increase accessibility for disabled people and more generally improve the attractiveness of rail to both existing and potential new users. Support for these projects will help to increase further the quality of service offered for local and regional rail.

The SRA will have a broad power to make payments to any person whether by means of grant or in contractual agreements, where it considers the payments will further the achievement of the Authority's statutory objectives. The expenditure plans announced at the same time as the white paper made about £100 million available for extra freight grants and the two new sources of funds.<sup>37</sup> The funds are intended to act as "seedcorn" for projects. Details of the criteria for bidding for the grants was published on 24 May 1999. The Franchising Director reported that 30 applications had already been received for projects such as park and ride, joint ticketing arrangements between trains and buses, and more frequent train services.<sup>38</sup>

The Franchising Director is expected to "secure an overall improvement in the quality of railway passenger and station services available to railway passengers". If appropriate and affordable, he may provide support by the use of section 54 of the *Railways Act 1993* for necessary investment which would not otherwise be made and where there is a substantial value for money gain. Thameslink 2000 is being part financed under this section. He may also provide additional revenue support to train operators to pay (through higher access and/or leasing charges) for essential major investments which are not commercially viable. Where for example the use of section 54 is necessary to secure investment in new rolling

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<sup>35</sup> See clause 8 of the *Railways Bill*

<sup>36</sup> DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950

<sup>37</sup> DETR press notice 20 July 1998 "£1.8 billion for roads, rail and local transport"

<sup>38</sup> Reported in *Financial Times* 25 May 1999 "Watchdog outlines bids for £105m rail fund"

stock, the Franchising Director may require a successor franchise operator to continue using the stock on similar lease terms. Section 54 should only be used as a last resort where it is clear that the market cannot provide the required investment by any other route. The SRA will inherit the power.

In 1999 the Franchising Director published *Appraisal of support for passenger rail services - planning criteria*. This set out a new system for assessing the costs and benefits of rail schemes, including extra services and new investment. The criteria give due weight to the social and environmental benefits which railway investment can provide as part of the government's integrated transport policy.

## **2. Railtrack**

Railtrack became a separate government owned company on 1 April 1994 when the track, signalling and freeholds of stations, other buildings and operational land were transferred to it. It employs about 11,000 people (of whom 6,000 are signalmen and supervisory staff) organised in seven geographical zones. It owns and manages the vast majority of track, signalling and other infrastructure of Britain's railways. Train operators are granted access rights to the track and are charged for that access. Railtrack is in charge of co-ordinating train movements through central timetabling, train planning and signalling and is also responsible for the safety of the operational network. It operates the rail network, including signalling, and provides electricity for the train operators.

Railtrack is the freeholder of passenger train stations and light maintenance depots. In most cases, stations and depots are leased to the passenger train operator which runs most of the services through the station or makes greatest use of the depot. Railtrack retains responsibility for operating the 14 large mainline stations which have potential for commercial trading or property development and aims to involve private sector operators in developing these stations. It also has a property portfolio including, as well as the stations, operational railway land, buildings and installations which it took over from British Rail.

Railtrack's main sources of revenue are the charges it levies on train operators for track access and the lease income it receives for stations and depots. It does not receive direct revenue subsidy from the government although it is indirectly dependent on the significant amount of public sector support received by the train operating companies who in turn pay access charges to Railtrack (£2,169 million in 1998/99). Track access payments provide the major part of its income: in the year 1998/99 they accounted for £2,338 million of its total turnover of £2,573 million.<sup>39</sup> They come from the operators of passenger services, freight operators and open access passenger services. This latter category comprise special services such as excursion trains and also Eurostar which runs trains to Paris and Brussels through the Channel Tunnel.

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<sup>39</sup> Railtrack *Annual Report 1998/99*

Railtrack must fund the maintenance of and the investment in the rail infrastructure, including track and stations, and other operating costs, for example the provision of signalling on the network and the supply of electricity for traction. Railtrack's licence (condition 7) states:

Condition 7: Stewardship of the Licence Holder's Network.

The purpose is to secure:

- (a) the maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, economic and efficient manner so as to satisfy the reasonable requirements of persons providing services for the carriage of passengers or goods by railway and funders in respect of the quality and capability of the network.

Railtrack was initially slow to invest, taking the attitude that it was up to the TOCs to decide what new infrastructure investment they wanted - and were prepared to pay for - and then Railtrack would consider doing it. That attitude has now changed and the company has become much more proactive.

Railtrack sets out in an annual statement, the *Network Management Statement*, how it intends to carry out its duty in respect of projections for future network quality, planned modifications to the network, and the financing arrangements for these. The latest statement, published in March 1999, set out Railtrack's plans for the next 10 years and pointed to a total investment of £27 billion over that period:<sup>40</sup>

<b>Sustaining the network</b>	Ten-year total (£bn) 1999/2000-2008/09
Maintenance and renewal expenditure	16.4
 <b>Commitments to developing the network</b>	
New schemes from last year's NMS	1.8
New commercial projects	1.4
New partnership schemes requiring some funder support	3.6
Contractor schemes undertaken on behalf of the Strategic Rail Authority or Passenger Transport Executives (including station improvements)	2.7
Other enhancement	1.2
 <b>Total enhancement spend over ten years</b>	 <b>10.7</b>
 <b>Total network investment</b>	 <b>27.1</b>

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<sup>40</sup> Railtrack 1999 *Network Management Statement for Great Britain* p 8

It is clear that £16.4 billion is for maintenance and renewal expenditure so over the next ten years only about £1 billion is available each year to provide for new capacity. The main problems on the network are caused by 25 main bottlenecks. With some parts of the network operating at close to full capacity, each additional train movement can lead to disproportionate delays.<sup>41</sup> No official figure has been put on the amount needed to update the largely Victorian network but recent press reports seem to be quoting figures of £30-40 billion over the next ten years. Railtrack would not be expected to provide this on its own.<sup>42</sup>

The Environment, Transport and Regional Affairs committee is not at all confident that Railtrack will invest enough and concluded in its recent report on the integrated transport policy:

145. Railtrack does not propose to take a significant risk on much of its proposed investment programme. We doubt that it is about to become a dynamic, entrepreneurial organisation. Moreover, it does not have a good record in fulfilling its investment programmes, and we are concerned that there are at present no adequate means of ensuring that Railtrack carries out these programmes. We believe that it is important to establish the appropriate mechanisms to ensure that a high level of investment takes place. The declining, but still large public subsidies to the rail industry must be used more effectively to achieve higher levels of investment. There is a need for significant changes in the way Railtrack receives its income. We recommend that access charges be split into operating and investment charge elements. The operating charge should be paid by the TOCs to Railtrack, while the investment charge would be paid to fund a consolidated investment programme under the control of the SRA. The programme would specify the network improvements that should be made by Railtrack, and payment would be made as and when the investment was made. The Regulator should be willing to impose substantial penalties on Railtrack if it fails to meet performance standards.<sup>43</sup>

In its reply the government agreed the SRA should negotiate direct with Railtrack rather than through the TOCs:

We expect the Regulator to take appropriate action to ensure that Railtrack complies with its licence obligations (...)

We share the Committee's view that the SRA should be able to contract direct with Railtrack where public money is needed to enhance the network, rather than having to negotiate via the train operating company which happens to hold the

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<sup>41</sup> Railtrack first identified these in its 1998 *Network Management Statement*

<sup>42</sup> See for example *Sunday Times* 4 July 1999 "Railtrack needs £40 billion to get up to speed"

<sup>43</sup> Environment, Transport and Regional Affairs committee *Integrated transport white paper*, 9<sup>th</sup> report 1998-99 31 March 1999 HC 32

franchise to operate on the relevant part of the network. A direct relationship between the SRA and Railtrack would better reflect the long-term, strategic significance of enhancements to railway infrastructure. It will also give the SRA more direct control over the specification and delivery of publicly-funded enhancements. The Railways Bill, introduced earlier this month, contains provisions allowing the SRA to enter into contracts with, and make payments direct to, Railtrack.<sup>44</sup>

Until recently the monitoring and enforcement of Railtrack's investment plans was the duty of the Regulator alone but OPRAF's new Objectives, Instructions and Guidance issued in November 1997 require it to "...provide an assessment of Railtrack's investment plans as part of a wider review of the type and level of service which the network should provide". This responsibility will be taken over by the SRA.

### **3. The Role of the Regulator**

The rail industry's activities are subject to a high degree of regulation under both the *Railways Act 1993* and the network and station licences. The Regulator's main functions are the issue, modification and enforcement of licences to operate trains, networks, stations and light maintenance depots; the enforcement of domestic competition law in connection with the provision of railway services; and the approval of agreements for access by operators of railway assets to track, stations and light maintenance depots. The track access charges approved by the Regulator determine the main costs of the train operators and the major part of Railtrack's income. By regulating access contracts and licences, the Rail Regulator therefore has a significant role in deciding the legal and economic background in which both Railtrack and the franchisees operate. He is also responsible for ensuring that Railtrack delivers the investment and maintenance underpinning access charges.

The secretary of state appoints the Regulator for a five-year period and once appointed he cannot be removed except for "incapacity or misbehaviour." The Regulator is therefore completely independent of government and guided in his duties only by the statutory requirements set out in section 4(1) of the *Railways Act*. He has a general duty to protect the users of the network but also not to make it unduly difficult for network operators to finance their activities. He is also expected to have regard to the financial position of the Franchising Director and of Railtrack. His duties under section 4 include:

- the promotion and protection of passengers' interests;
- promoting and monitoring delivery of network benefits;
- promoting the development of rail freight in a manner which best meets the need of freight customers;

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<sup>44</sup> Environment, Transport and Regional Affairs committee *Government response to the report on integrated transport white paper, 13<sup>th</sup> special report 1998-99* 12 July 1999 HC 708. The power is in clause 8 of the Bill.

- monitoring compliance by Railtrack with its commitments under its licence to maintain, renew and enhance the railway network;
- preparatory work on the approach to the periodic review (due to be completed by 2001) and co-ordination with the regulatory programme for Railtrack;
- developing further the ORR's view on the competitive structure for the industry, including the review of the operation of rolling stock companies.

The Regulator's aims and objectives were reviewed following the general election. The government has no power to impose its views on the Regulator, but they agreed a voluntary concordat in November 1997, which the government claimed provided a 'framework for better regulation of the railways'.<sup>45</sup> Within the confines of the law, the Regulator will carry out his duties in such a way that acknowledges the government's objectives for the railways.

The Rail Regulator has been active in various areas. Regulatory objectives have been set and published for passenger train and station operators, for rail freight and for Railtrack and his office is monitoring delivery of these objectives. He has persuaded Railtrack to agree a change in its licence conditions concerning investment and will be monitoring progress in implementing its station regeneration programme. He has been consulting with Railtrack and the TOCs on such issues as track access charges and the safety code.

#### **4. Track Access Charges**

In 1994 the Regulator issued documents on passenger and freight access charges. Papers were published on the structure of the charges<sup>46</sup> and the level of charges.<sup>47</sup> Individual track access charges for franchised passenger services were to fall by 2% a year in real terms from 1996-97 onwards, broadly in line with the reduction in Railtrack's overall costs, until 1 April 2001. 91% of the total charge is fixed. Payments must be made irrespective of the type and number of trains operated or the amount of passenger revenue generated by these services. The remainder is variable and is for track usage and traction.<sup>48</sup> Additional charges are levied for the use of stations and to fund specific new investment projects. A system of performance-related payments is used to reflect achievement of quality of service objectives, for example the punctuality of trains. Charges to freight and open-access passenger operators are negotiated directly and reflect the value to operators of using rail infrastructure and also recover at least the marginal costs.<sup>49</sup> In addition to the track access charges

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<sup>45</sup> HC Deb 6 November 1997 c282w

<sup>46</sup> Office of the Rail Regulator *Railtrack's Track Access Charges for Franchised Passenger Services: Developing the Structure of Charges: a policy statement* November 1994

<sup>47</sup> Office of the Rail Regulator *Railtrack's Access Charges for Franchised Passenger Services: The Future Level of Charges* January 1995

<sup>48</sup> More detail is given *Rail privatisation: a progress report*, House of Commons Library Research paper 95/96 6 September 1995 pp 27-30

<sup>49</sup> Office of the Rail Regulator *Framework for the Approval of Railtrack's Access Charges for Freight Services: a policy statement* February 1995

Railtrack also obtains rental income from retail lettings at major stations, from letting arches and other commercial property and from property disposals and developments.

The Regulator is currently reviewing Railtrack's access charges as part of the periodic review. A progress report and consultation document was published in July 1998 and a further progress report along with conclusions on corporate finance issues was published in December 1998. Decisions on outputs of the network (for example performance, capability and capacity) are principally for funders and train operators. In particular, given that any reduction in access charges goes back to the Franchising Director, there is a key role for the SRA and government. It is up to the Regulator to decide the price of these outputs, and then to ensure that agreed outputs are delivered.

The Periodic Review does not merely cover the overall structure of Railtrack's access charges, and the associated outputs. It also considers incentives for network usage and performance and provision capability and quality. The current charging structure has a very high level of fixed charge, and correspondingly low variable charges, with individual negotiations for the pricing of new services. As a result the Regulator has begun work jointly with Railtrack on possible options to improve the charging structure. Among the issues being covered are:

- whether the existing charges reflect the short term wear and other costs imposed on the network;
- whether the charging structure can be used more effectively to remunerate investment in network capacity, and whether a better one could be developed;
- whether there are other ways (for example through a link between charges and passenger revenue or passenger volume) of giving Railtrack a greater incentive by sharing in the risks and rewards of growth in rail traffic.

The Regulator's office has also begun work to consider whether the arrangements, between Railtrack and train operators to incentivise better train performance, could be improved, and the appropriate balance between incentives and explicit targets for Railtrack. Given the linkage to performance regimes under passenger train operator franchises, they are working closely with the Franchising Director on these issues.<sup>50</sup>

Railtrack argue that the structure of the rail industry provides no incentive for it to invest because most of its track access income is fixed. Spending on doubling track or building new rail flyovers benefits the train operators but does little for Railtrack's bottom line.

As part of the Periodic Review, the Regulator commissioned Booz-Allen and Hamilton to review all aspects of Railtrack's performance between 1995 and 2001.<sup>51</sup> The report's findings can be summarised:

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<sup>50</sup> Office of the Rail Regulator *Annual report 1998-99*

<sup>51</sup> April 1999

It reviews the period 1995-2001, based on three years' actual data, and projections based on Railtrack's 1998 Business Plan.

As a privatised rail infrastructure authority, Railtrack is unique in the world, so its performance was measured against other infrastructure managers, and other sectors.

The report's main findings include the following:

- Most of the reductions in train delays – significant over the whole period – were achieved over the first year: the Regulator could have expected a greater improvement nationally.
- Asset renewal has been below expectations, though the period is a very short timeframe for this assessment, and Railtrack has, appropriately, re-examined the required rates of renewal. An increased risk of deteriorating long-term asset condition has arisen from efforts to generate short-run performance improvements.
- There has been little increase in network capability through development and enhancement, and Railtrack's structure of incentives has led it to be reactive to schemes rather than entrepreneurial, though there are major schemes under way.
- Renewal expenditure has exceeded the Regulator's assumptions, and expenditure on management, operation and maintenance has been more efficient than expected. Despite the somewhat arbitrary distinction between maintenance and renewals, expenditure has been roughly at expected levels.
- Significant improvement in operational and management processes, productivity and cost efficiency have been achieved. Additional efficiencies could have been delivered in management of contractors and project management: management effort required to supervise contractors was initially under-estimated, and while Railtrack's development of new contractual forms is praised, there have been problems with the contracting industry's ability to assimilate the changes.
- The Regulator's allowances for operation, maintenance and renewals were sufficient to support reasonable expectations of capability condition and performance, as confirmed by experience in the better zones.
- Improving the quality of data on assets has not received great focus, especially given changes in the maintenance and renewals philosophy, and the need to demonstrate long-term renewal expenditure is appropriate. This has been recognised by the appointment of a Director, Asset Management early in 1999.

- Railtrack should have a more clear and open approach to a long-term network strategy, and engage all its constituencies in achieving it. Its technology strategy should be discussed with suppliers, users and funders – this is at present incomplete, causing frustration and possibly higher costs.<sup>52</sup>

## IV The *Railways Bill*

The *Railways Bill* establishes the Strategic Rail Authority and abolishes the Office of the Director of Passenger Rail Franchising and the British Railways Board.

The SRA will provide the leadership necessary for the rail industry and will work closely with the new Commission for Integrated Transport. It will be charged with establishing targets for both freight and passenger traffic although it is not clear what the legal status of these targets will be. Government ministers have made it clear they expect the rail system to carry many more people as part of a wider transport policy aimed at reducing existing car use. If the railway is to expand, it will need to change and this will need to be done through the SRA.

According to the government's response to the transport committee's report, the SRA will have a general duty to:<sup>53</sup>

..formulate, and keep under review, a strategy for the operation and development of railways in Britain. That strategy will need to reflect the plans, objectives and needs of those who operate and use the railway; and just as importantly the needs of travellers and freight customers yet to be wooed from the car and the lorry. We will ask the SRA to develop targets for both the passenger and freight industry.

It will tell the train operators what services and network benefits the government wants to buy. It will ensure that the railway is properly integrated with other forms of transport and that the railway system is run as a network, not merely a collection of different businesses, particularly when franchises are re-let or re-negotiated. It will also ensure that the plans of freight operators are taken into account in the planning of the network as a whole.

The Authority will take over the functions, rights and liabilities of the Franchising Director and the residual functions, rights and liabilities of the British Railways Board (including responsibility for the British Transport Police). The Bill transfers the Rail

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<sup>52</sup> *Modern Railways* June 1999

<sup>53</sup> Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3<sup>rd</sup> report 18 March 1998 HC 286 para 25

Regulator's responsibilities for consumer protection to the Authority, and his responsibility for railway closures to the secretary of state.

It retains the Rail Regulator as an independent regulator.

The Authority will combine the current posts in OPRAF, the British Railways Board, and some posts from the Office of the Rail Regulator and the DETR. The Bill should therefore have few financial and manpower effects although there may be some additional staff costs in supporting the strategic role of the Authority and in setting it up. In total this is calculated to be around £5 million per annum for 1999/2000, 2000/2001 and 2001/2002. This has been accounted for in the DETR's Comprehensive Spending Review settlement.<sup>54</sup>

The regulatory impact assessment has shown that there should be no significant costs to business although the financial effect of the new regulatory framework will depend on how the industry reacts to the new regime. Both the Authority and the Rail Regulator will be required to act in a manner which enables the providers of rail services to plan the future of their businesses with a reasonable degree of assurance.<sup>55</sup>

## 1. Constitution

Part 1 of the Bill sets out the objectives and functions of the Authority. It establishes the structure and procedures of the Authority and the terms and conditions for its members.

**Clause 1** sets up the Authority as a statutory body. It will be a non-departmental public body and its staff will not be civil servants.

**Clause 2** says it will have between 8 and 15 board members appointed by the secretary of state. This number can be changed by Order subject to the negative procedure in Parliament. Members are expected to have relevant experience.

The chairman and deputy chairman are appointed by the secretary of state under **clause 3**. The secretary of state must consult the chair before appointing the other members. The Authority will appoint its chief executive who will become a member if not one already.

**Clause 4** introduces **schedule 1**, which gives more detail of procedural matters and the financing of the Authority. Paragraph 1 allows the secretary of state to remove members on grounds of incapacity and misbehaviour. Paragraph 3 allows him to determine their remuneration.

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<sup>54</sup> *Railways Bill* Explanatory Notes, Bill 133-EN

<sup>55</sup> *Ibid.* A copy of the regulatory impact assessment may be obtained from DETR Free Literature, PO Box No 236, Wetherby L23 7NB (telephone 08701226 236).

The Authority will be funded by the secretary of state and will also be allowed to borrow, from both the secretary of state and others with the consent of the secretary of state and the approval of the Treasury. Paragraph 5 states:

(5) The Authority may not borrow if the effect would be-

- (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over its borrowing limit, or
- (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.

(6) The Authority's borrowing limit is-

- (a) £3 billion, or
- (b) such greater sum as the Secretary of State may, with the approval of the Treasury, specify by order made by statutory instrument.

Any order under schedule 1 paragraph 6 (b) will be subject to the approval of the House of Commons.

Paragraph 8 allows the secretary of state, with Treasury approval, to guarantee sums borrowed by the Authority. Paragraph 17 relates to members' interests.

## **2. Purposes, Strategies and Duties**

Like the Franchising Director, the SRA is to be subject to instructions and guidance laid down by ministers but, unlike him, it will also have specific objectives in primary legislation.

In the transport white paper, the Authority's role was described as being to:<sup>56</sup>

- promote the use of the railway within an integrated transport system;
- ensure that the railways are planned and operated as a coherent network, not merely a collection of different franchises;
- work closely with local and national organisations, including local authorities, regional planning conferences, regional development agencies, transport operators, the Highways Agency and the equivalent organisations in Scotland and Wales to promote better integration;
- participate actively in the development of regional and local land use planning policies, and ensure as far as possible that decisions on the provision of rail services dovetail with these policies;
- ensure that rail transport options are assessed in a way which constitutes good value for money and optimise social and environmental gains;

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<sup>56</sup> DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950 para 4.14

- take a view on the capacity of the railway, assess investment needs, and identify priorities where operators' aspirations may conflict with one another;
- promote the provision of accessible transport for disabled people;
- keep under review and advise Government on the contribution that the railway can make to sustainable development objectives;
- draw up policies and criteria for any future framework for competition between passenger train operators.

This has been refined in the Bill and the SRA will have "purposes", "strategies" and "guidance" as to how its functions should be exercised.

**Clause 5** sets out the primary "purposes" of the Authority as:

- to promote the use of the railways network for passengers and freight;
- to secure the development of the railway network; and
- to contribute to the development of an integrated system of transport of passengers and freight.

**Clause 6** says the Authority is to formulate "strategies" in order to carry out its purposes. It must consult the Rail Regulator before formulating its strategy and the secretary of state may give directions and guidance.

No detail is given about these strategies in the Bill except that one must "relate to services in various parts of Great Britain for facilitating the carriage of passengers or goods by rail by way of the Channel Tunnel."

**Clause 7** is rather confusing: it states that the Authority shall exercise its functions "with a view to furthering its purposes in accordance with any strategies which it has formulated with respect to them." The Explanatory Notes on the Bill do not make this much clearer. It says: "However, the Authority will not be required in every case to give effect to its purposes and strategies regardless of all other considerations. Rather, it will be required to exercise its functions in a manner best calculated to achieve the considerations set out in clause 7(2)(a) to (f) and to have regard to the considerations in clause 7(3). Some of these considerations could contradict each other, so the Authority must undertake a balancing exercise in each case."

Basically the clause sets out various factors which the SRA should consider while exercising its functions (as set out in clauses 8 to 16), but allows it to use its judgement as to their relative importance in the circumstances. Under **clause 7 (2)** it should act to:

- protect the interests of users of railway services. The Explanatory Notes make it clear that "users" includes passengers, freight customers and train service operators;
- contribute to the achievement of sustainable development;
- promote efficiency and economy on the part of persons providing railway services;

- promote measures to facilitate journeys involving the use of the services of more than one passenger service operator (including, in particular, arrangements for through tickets);
- impose on the operators of railway services the minimum restrictions which are consistent with the performance of the Authority's functions; and
- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

The Authority should also have regard to:

- the need to protect all persons from dangers arising from the operation of railways (including, in particular, by taking into account any advice given by the Health and Safety Executive);
- the interests of persons who are disabled; and
- the effect on the environment of activities connected with the provision of railway services.

The Authority must ensure under **clause 7 (4)** that any payments made by it are such as it reasonably considers will further its purposes economically and efficiently. This duty refers to all payments made by the Authority, whether by way of grant, under a franchise agreement, or under any other agreements made to secure the provision, improvement etc. of services. This provision is based on the similar duty laid on the Franchising Director in section 5 of the *Railways Act 1993* (which will be repealed) and is often referred to as the "value for money" duty. This duty cannot be overridden by the secretary of state.

The secretary of state may give directions and guidance under **clause 7 (5)** as to how the Authority should carry out its functions, bearing in mind the need to balance the various clause 7 considerations. The secretary of state may also direct the Authority not to exercise a function (e.g. the next round of franchising) without first consulting him or obtaining his consent.

### **3. Functions**

**Clauses 8 to 16** describe the main functions of the SRA, including the transfer of functions from the Franchising Director, the Rail Regulator, the secretary of state and the British Railways Board.

The overall intention was set out in the transport white paper. The SRA's main responsibility is to take over the powers and duties of the Franchising Director. It will assume responsibility for the management of passenger rail franchises and the administration of subsidy for passenger services. Existing franchises can be renegotiated but "only where this would secure a dividend for the passenger in terms of improved investment and services as well as value for money". Once a franchise expires, the SRA will expect to see more demanding performance standards from all new operators. The performance of existing franchises will be a key criterion for future franchise awards.

When new franchises are awarded changes will also be made to the controls over fares to ensure train operators "structure and market their fares to offer value for money for their customers and to reflect the fact that the railway is a national network which needs to be marketed accordingly and in a way which encourages people to switch from car to train". The SRA will be responsible for promoting freight as well as passengers on the railway (the Franchising Director is only responsible for passengers) and will take over from the DETR the function of administering the rail freight grant scheme in England.<sup>57</sup>

Under **clause 8** the Authority has power to give grants, loans, or guarantees for any purpose relating to any railway or railway services. It may also enter into agreements for the purpose of securing the provision, improvement, or development of any railway services or railway assets. The clause refers to the "wider meaning" of railway (subsection (5)). This means a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The power in clause 8 relates to anything connected with railways as a mode of transport. It relates, for example, to anything connected with the type of railway services which are 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).

At the moment the government puts in public money but has few real controls over how the money is spent. It is simply committed to paying a certain level of subsidy in return for a given level of train services. The legislation will allow it to take a more proactive role. The SRA will take over the OPRAF's budget for making franchise payments to the passenger railway and the DETR's allocation of freight grants. The Passenger Transport Executives will continue to support services in metropolitan areas, but these could be funded via the SRA instead of under the general power in section 88B of the *Local Government Act 1988*. **Clause 8** also enables the SRA to make payments direct to Railtrack. The government announced that it favoured a direct relationship between the SRA and Railtrack, which "would reflect the long-term, strategic significance of enhancements to railway infrastructure" and "give the SRA more direct control over the specification and delivery of publicly-funded enhancements."<sup>58</sup> It is likely that after 2001 part of the track access charges will be paid through the TOCs as now but part providing for infrastructure investment will be paid direct to Railtrack by the SRA.

In addition to its own funds, the SRA will be able to provide guarantees for rail projects. This appears to have been obtained despite Treasury insistence that a guarantee given last year for part of the Channel tunnel rail link project was a one-off.

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<sup>57</sup> DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950 paras 4.18-19

<sup>58</sup> Environment, Transport and Regional Affairs committee *Government response to the report on Integrated transport white paper, 13<sup>th</sup> special report 1998-99* 12 July 1999 HC 708.

Some examples of what the Authority could do are given in the Explanatory Notes. It could, for example

- provide grants to local authorities (including Passenger Transport Authorities) in support of railway services provided or funded by them (including such services provided under franchise agreements to which the relevant Passenger Transport Executive is a party);
- fund the construction and operation of light rapid transit systems; and
- make grants or enter into contracts in respect of the enhancement of railway infrastructure which is not commercially viable but which is in the public interest.

**Schedule 2** imposes some limits on the powers to make payments. These ensure that the system for payment for franchised services is preserved and that freight facilities grants and track access grants are transferred from the secretary of state to the Authority with the same framework as in the *Railways Act 1993*. The schedule provides a transfer scheme from the secretary of state to the Authority for the administration of these grants.

**Clauses 9 and 10** govern the Authority's powers to secure or provide railway services, otherwise than through franchising. The clauses reflect the commitment in the transport white paper to retain the capability for the public sector to take over franchises "as a last resort", for example, if a franchise was terminated or there were no acceptable private sector bids.<sup>59</sup>

**Clause 9** gives the Authority an express power to provide services for the carriage of passengers and goods by railway. It may do anything it wishes including:

- (a) providing and operating network services, station services and light maintenance services,
- (b) entering into agreements (including agreements with carriers outside Great Britain for the carriage of passengers or goods by rail by way of the Channel Tunnel),
- (c) acquiring the whole or any part of an undertaking, and
- (d) storing goods and consigning them from any place to which they have been carried by rail.

This reflects the fact that the Authority's capacity to operate train services "in the last resort" is not to be restricted to the franchised services.

This clause also allows temporary bus and taxis services to be arranged where rail services are temporarily interrupted or discontinued.

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<sup>59</sup> DETR *A New Deal for Transport: better for everyone*, July 1998 Cm 3950 para 4.19

**Clause 10** makes provision for the next round of franchising. **Clause 10(1)** makes a technical amendment to the *Railways Act 1993* section 23 (1) to facilitate subsequent rounds of franchising. The amendment requires the Authority to designate passenger services which "ought" to be secured by franchise rather than merely to designate services which may be eligible for franchising. **Clause 10(2)** inserts a new section 26A into the *Railways Act 1993*. Under the existing provisions of that Act, it is not clear what powers the Franchising Director has when, after the termination or expiry of an existing franchise, he invites tenders for a new franchise but no tenders are received or the tenders received are inadequate. The new section makes it clear that the Authority may, in some circumstances, secure the provision of the service otherwise than by franchising.

**Clause 11 and Schedule 3** transfer to the Authority all the functions, property, rights, and liabilities of the Franchising Director (including any rights and liabilities relating to staff appointed by the Franchising Director). Once this transfer is effected the office of the Franchising Director will be abolished and the schedule makes the necessary amendments to the *Railways Act 1993* and other enactments.

**Clause 12 and Schedule 4** clarify the responsibilities of the Rail Regulator and the Franchising Director in relation to the consumer. The Bill transfers responsibilities for consumer protection to the Authority as the successor to the Franchising Director. This includes matters such as telephone enquiries, through ticketing, security, the protection of the interests of disabled people and penalty fares.

At present there is considerable confusion between the roles of the Rail Regulator and OPRAF in this area. The Regulator is responsible for consumer protection and, the promotion of passengers' interests under the *Railways Act 1993* and is also the sponsor of the statutory Central Rail Users Consultative Committee. Yet one of the Franchising Director's objectives is to protect passenger network benefits. This has led to widespread confusion about their respective roles. In cases where both cover a single activity, such as the recent poor performance of the National Rail Enquiry Service, the Regulator has tended to take the lead in enforcement. The Regulator imposed an enforcement order on passenger train operators and levied fines to seek to ensure calls to the National Rail Enquiry service were properly answered.

**Schedule 4 (part I)** sets out the administrative detail of what happens where the protection of consumers is secured through a licence. The Authority will be responsible for the content of the licence as it relates to consumer protection (through being able to refuse the grant of a licence which does not make adequate provision for the protection of consumers), for the enforcement and modification, and for its revocation where the licensee is in persistent contravention of its provisions. For existing licences the secretary of state may make a scheme which has the effect of separating out those parts of the licence which relate to consumer protection and enabling them to be enforced by the Authority.

**Schedule 4 (part II)** transfers the administrative responsibility for the eight Rail Users' Consultative Committees and the Central Rail Users' Consultative Committee, set up under section 3 of the *Railways Act 1993* to the Authority. Their duties are set out in sections 76-79 of the 1993 Act and are basically to protect the interests of the users of the services and facilities provided on the rail network. The RUCCs are presently appointed and funded by the Regulator. The CRUCC co-ordinates their work and deals with issues affecting rail users generally.

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. The Regulator can refer matters to the RUCCs for investigation and the RUCCs can ask the Regulator to use his powers to take action where necessary. They have a special responsibility for assessing the effect on users if stations or lines are proposed for closure.

The consultative committees will also cover "open access" passenger services as well as passenger franchise services under **clause 23** of the Bill. The government has said it wants the committees to co-operate with bus user representative bodies and to contribute jointly to the regional transport strategies which will form part of the Regional Planning Guidance.

The Authority will inherit the Rail Regulator's code of practice for protecting the interests of disabled railway users and the duty to revise it from time to time and encourage its adoption and implementation.

The Authority will also inherit the Regulator's power to make rules for penalty fares.

The final part of schedule 4 allows the secretary of state to make schemes to transfer property, rights and liabilities from the Rail Regulator to the Authority (including any rights and liabilities relating to staff appointed by the Regulator). This will provide the administrative support for the Authority to take on these previous functions of the Regulator.

**Clause 13** and **schedule 5** transfer to the Authority the existing responsibilities of the British Rail Board for the British Transport Police, together with associated property, rights, and liabilities. Provisions for the transfer of staff are made. 2,194 work for the BTP, which is currently governed by a committee within the BRB. The Authority will have a general duty to promote the efficiency and effectiveness of the force.

**Clause 14** and **schedule 6** transfer all the other property, rights and liabilities of the British Railways Board to the Authority. Those which are not required by the Authority are to be disposed of. Provision is made for the transfer of staff.

Following privatisation the British Rail Board now employs only 169 staff (excluding the police). It still owns RDDs which holds all the designs of the rolling stock. A BR property company was set up to sell the assets of the BR Property Board. The SRA will be permitted to maintain and manage property or to develop it for sale.

The following PQ described the present policy regarding property sales:<sup>60</sup>

**Ms Glenda Jackson:** The Government announced in the White Paper "A New Deal For Transport: Better for Everyone" that the British Railways Board was suspending land sales while it conducted an audit of the remaining sites. These amount to some 1,200 with a book value of about £137 million.

The Board will immediately enter into discussions with key players in the rail industry on the latter's plans for the future. It will report to the Government, as the review progresses, on sites which in the light of these discussions appear to the Board to have a realistic prospect of use for transport purposes in the foreseeable future, so that they may in due course be offered for sale to Railtrack, the rail businesses, other transport operators and relevant local authorities at open market value.

Sites which appear to the Board to have no realistic use for transport purposes in the foreseeable future will be put on sale, but local authorities and the rail industry will be given at least two months notice of the intention to sell any site in the category so that they will still have full opportunity to bid for it. The Board will consider sympathetically any request to delay the sale of such a site where it can be shown that a transport use is already under active consideration.

The review has been completed but the government decided to wait for the appointment of the new chairman of BR before taking a decision on it.

The government agreed that the BR Board could proceed with a limited number of sales in two categories. The first was where there are buyers for transport purposes. The second was where development proposals and the sales process had reached an advanced stage when the review was announced, or where planning permission had already been granted for a non-transport purpose, and for which completion had become a matter of urgency.<sup>61</sup>

**Clause 15 and schedule 7** give the Authority powers to transfer any of its property, rights, liabilities and staff to a wholly owned company, the secretary of state, or a franchise company. This power extends to the transfer of franchise assets after a franchise comes to an end.

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<sup>60</sup> PQ HC Deb 31 July 1998 c 640W

<sup>61</sup> PQ HL Deb 22 February 1999 WA 105

**Clause 16** gives the Authority incidental powers including entering into agreements, acquiring and disposing of property, investing money, and promoting publicity. The Authority is prohibited from promoting private bills or orders under the *Transport and Works Act 1992*.

#### **4. Rail Regulator**

**Clause 17** and **clause 18** relate to the position of the Rail Regulator. The SRA will set the longer term policy framework for competition, ensuring safeguards against the erosion of a properly integrated rail network. In implementing the new arrangements the Regulator will have to take account of the policy aims set out by the SRA as well as the SRA's assessment of the overall benefits of individual service proposals.

However, the SRA will **not** be responsible for setting the charges which form such a large part of the subsidy bill. This will remain one of the key tasks to be left to an independent Rail Regulator. The Regulator's functions will include setting the charges for track and station access, and for any investment required by the SRA. He will continue to assess whether Railtrack is delivering the investment and maintenance programmes underpinning the charges, and to be responsible for securing compliance with Railtrack's network licence. The Rail Regulator will continue to have concurrent powers, including those granted under the *Competition Act 1998*. The Rail Regulator's existing duties will be enhanced by a new duty to have regard to statutory guidance from the secretary of state on his broad policy objectives for the passenger and freight railway. These will be similar to those currently contained in the voluntary concordat agreed in November 1997 and include duties relating to integrated transport and sustainable development. The secretary of state will issue similar instructions and guidance to the SRA so he can ensure there is a consistent approach.

**Clause 17** strengthens the power of the Rail Regulator to require the improvement and development of the railway. It sets out a rather elaborate procedure whereby the SRA asks the Regulator to tell a rail company to spend more money. The Rail Regulator, on the application of the Authority, can direct the owner of railway facilities (such as tracks or stations) to improve them or to provide new facilities. The Regulator may only give a direction if he is satisfied that the facility owner will be adequately rewarded for these improvements and facilities. The facility owner must do all that he reasonably can to comply with the direction made by the Regulator. In theory the rail company could refuse if it cannot make a reasonable return but the press report that the SRA will put a very narrow definition on what is an unacceptable return. Railtrack, for example, will not be able to argue that an investment will not make money in the early years.<sup>62</sup>

**Clause 18** amends section 4 of the *Railways Act 1993* so as to require the Rail Regulator act in such a way as to support the strategies of the Authority and to contribute to

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<sup>62</sup> *Financial Times* 8 July 1999 "Railtrack network gets a platform for high-speed change"

integrated transport and sustainable development. His duty to promote competition is redefined to be for the benefit of railway users.

The Regulator has a new duty to have regard to "any general guidance from the secretary of state about railway services or other matters relating to railways." This restores the position immediately after privatisation. The 1993 Act provided for the Regulator to take account of any guidance given by the secretary of state until 31 December 1996. It was only after that he could act completely independently.

## 5. Enforcement

**Clauses 19 and 20** modify the enforcement regime set out in sections 55-57 of the *Railways Act 1993*. The Bill allows the Authority and the Rail Regulator to impose more effective sanctions on those train operating companies and network licence holders who break the terms of their franchise agreement or licence.

**Clause 19** allows monetary penalties to be imposed for contraventions of licence conditions, franchise requirements and the provisions of orders made to secure compliance with an operating licence or passenger service franchise. In contrast to the 1993 Act, these will cover past breaches as well as those which are continuing.

There is no limit on the penalty which may be imposed but it must be of a "reasonable" amount. In calculating a penalty the appropriate authority may take into account, among other things, the need to secure compliance, the consequences of the breach and deterrence of other breaches. A rail operator may apply to pay in instalments. There are requirements as to the procedure for the imposition of penalties, including the giving of notices with prescribed information. The operator may appeal to the court to question the validity of a penalty order on prescribed grounds. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the timescale to pay. It may also require interest to be paid by the SRA on a reduced penalty.

**Clause 20** amends section 55 of the *Railways Act 1993* to allow the authority to refrain from taking action requiring compliance with a relevant licence condition or franchise requirement where an operator is taking appropriate steps to comply or where a breach would not adversely affect railway users or lead to an increase in public expenditure. This meets the criticism of inflexibility made by the Public Accounts Committee.<sup>63</sup> This clause also reduces the period in which a rail operator may make representations or objections to enforcement action.

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<sup>63</sup> Public Accounts Committee 53<sup>rd</sup> report 1997-98 HC 625

## 6. Other Provisions

**Clauses 21 and 22** amend provisions relating to closures of railway services, network, stations etc in sections 37-50 the *Railways Act 1993*. The current procedures for dealing with proposed closures will be simplified: the SRA will consider any proposals for closure or discontinuance of a service and the secretary of state will take over the Regulator's existing role of final decision maker. All proposals will continue to be examined by the relevant rail users consultative committee. **Clause 21** transfers the Regulator's present function for closures to the secretary of state, so that when major closures are proposed these will be determined by him. **Clause 22** widens the definition of minor closures (where less stringent procedures are required to be followed), so that it covers the track associated with a minor closure.

**Clause 23** extends the scope of matters which the Rail Users' Consultative Committees and the Central Rail Users' Consultative Committee may investigate so as to cover "open access" passenger services as well as passenger franchise services.

**Clause 24** provides for the winding down and the abolition of the British Railways Board. Abolition will be effected when all its residual liabilities, properties and rights have been transferred to the Authority.

**Clause 25** enables the Authority to give certain guarantees to trustees of an occupational pension scheme.

**Clauses 27 and 28** refer to devolution. These clauses make provision for the devolution of some executive functions to the Welsh Assembly and to the Scottish ministers. Freight facilities grant is to be administered by the Welsh Assembly in Wales within criteria relating to the whole of Great Britain. The Welsh transport white paper announced plans to set up a "Rail Authority" to secure improvements in rail services, although no further detail was given:

8.3 Wales is a peripheral region in European terms, located at some distance from its key markets. Communications links of all kinds are therefore vital to its economic prosperity, and problems with any of those links cause not just physical difficulties but even more important, affect perceptions of the country's accessibility. In transport terms, these vital links include air, where much has been done in recent years to enhance services, and rail, where recent changes have not been entirely beneficial and where we will be taking action to set up a Rail Authority to secure improvements.<sup>64</sup>

Scottish ministers will administer freight facilities grants and track access grants in Scotland, again within these criteria. The Scottish ministers may give directions and guidance to the Authority for services which start and end in Scotland. The Authority

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<sup>64</sup> Welsh Office *Transporting Wales into the future*, July 1998 para 8.3

must implement these provided that they do not conflict with the secretary of state's directions and guidance. The Scottish ministers may also give directions and guidance on Scottish sleeper services, which the Authority must implement provided that they do not conflict with the secretary of state's directions and guidance and provided that they do not impact on other services or the on the non-Scottish budget.<sup>65</sup>

**Clause 29** gives power to the secretary of state to amend other legislation in consequence of the Bill, subject to the approval of Parliament. **Schedule 8** makes consequential amendments to various Acts and **Schedule 9** gives the secretary of state the power to make any necessary transitional provisions and savings. The schedule also makes specific provisions for first appointments to the Authority. **Schedule 10** makes consequential repeals to various Acts.

## V Further Reading

### Papers and reports since June 1997

1. DETR *Railways Bill*, Bill 133 1998/99, 7 July 1999
2. DETR *Railways Bill: regulatory, environmental and equal treatment appraisals*, Bill 133-EN July 1999
3. DETR *The Government's response to the 9<sup>th</sup> report of the Environment Transport and Regional Affairs Committee on the Integrated Transport White Paper*, 13 July 1999, HC 708
4. House of Commons Environment, Transport and Regional Affairs Committee *Integrated Transport White Paper, 9<sup>th</sup> report*, 28 April 1999, HC 32-I & HC 32-II
5. DETR *Annual Report 1999*, Cmd 4204
6. NAO *The flotation of Railtrack*, 16 December 1998, HC 25
7. DETR *A new deal for transport: better for everyone*, July 1998, Cm 3950
8. DETR *The Government's response to the Environment, Transport and Regional Affairs Committee's report on the proposed strategic rail authority and rail regulation*, July 1998, Cm 4024
9. Railway Forum *Financial support to the rail industry before and after privatisation*, April 1998

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<sup>65</sup> More detail is given in *Travel choices for Scotland*, July 1998 Cm 4010 para 4.8

10. House of Commons Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3<sup>rd</sup> report, 18 March 1998, HC 286
11. Office of the Rail Regulator *Annual Report 1998/1999: regulating the railway in the public interest*, June 1999
12. Office of Passenger Rail Franchising *Assessment of the type and level of services the network should provide, consultation package*, May 1999
13. Office of Passenger Rail Franchising *Improved Public Performance Measure: consultation document*, March 1999
14. Office of Passenger Rail Franchising *Annual Report 1997/98*, July 1998
15. Office of Rail Regulator *A Fair Deal for Consumers: modernising the framework for utility regulation*, 2 June 1998
16. Office of the Rail Regulator *New Service Opportunities for Passengers: a policy statement*, 31 May 1998
17. Office of the Rail Regulator/DETR *Concordat between the Secretary of State for the Environment Transport and the Regions and the Rail Regulator: providing a framework for better regulation of the railways*, 6 November 1997
18. Office of the Rail Regulator *Regulatory objectives for passenger train and station operators*, June 1997

### **Parliamentary Debates**

1. *Debate on the rail industry*, HL Deb 10 March 1999 cc 294-326
2. *Statement on transport policy*, HC Deb 20 July 1998 cc784-802
3. *Debate (on adjournment) on railway regulation*, HC Deb 25 March 1998 cc435-455

### **House of Commons Library Research Papers**

1. *The Privatised Railway* House of Commons Library Research Paper 97/71, 30 May 1997
2. *Rail Privatisation: a Progress Report* House of Commons Library Research Paper 95/96, 6 September 1995

## Abbreviations

<b>ATOC</b>	Association of Train Operating Companies
<b>BR</b>	British Rail
<b>CRUCC</b>	Central Rail Users' Consultative Committee
<b>DETR</b>	Department of the Environment, Transport and the Regions
<b>LRPC</b>	London Regional Passengers' Committee
<b>MMC</b>	Monopolies and Mergers Commission
<b>OFT</b>	Office of Fair Trading
<b>OPRAF</b>	Office of Passenger Rail Franchising
<b>ORR</b>	Office of the Rail Regulator
<b>PTA</b>	Passenger Transport Authority
<b>PTE</b>	Passenger Transport Executive
<b>ROSCO</b>	Rolling Stock Leasing Company
<b>RUCC</b>	Rail Users' Consultative Committee
<b>SRA</b>	Strategic Rail Authority
<b>TOC</b>	Train Operating Company

## Appendix

### Performance Grade by Operator, December 1998-March 1999

Train Operator	Punctuality Average Year ending March 1999	Punctuality Grade	Reliability Average Year ending March 1999	Reliability Grade	Average No of Charter Trains per four week Period	Overall grade at 12 Dec 1998	Franchisee and ultimate holding company
<b>Category A</b>							
Island Line	95.0	A	99.6	A	1,685	A	Stagecoach Holdings plc
<b>Category B</b>							
ScotRail	95.7	A	99.4	B	43,872	B	National Express Group plc
Merseyrail Electrics Central (excluding Centro)	95.3	A	99.1	B	13,401	B	MTL Rail Ltd (MTL Services PLC)
Anglia Railways	92.7	B	99.5	A	10,710	B	National Express Group plc
WAGN	91.7	B	99.3	B	5,512	B	GB Railways Ltd (GB Railways Group plc)
Midland Main Line	90.7	B	99.0	B	18,541	B	Prism Rail PLC
	90.3	B	99.8	A	1,447	C	National Express Group plc
<b>Category C</b>							
LTS Rail	93.6	B	98.6	C	6,569	C	Prism Rail PLC
Northern Spirit	93.3	B	98.8	C	32,159	C	MTL Rail Ltd (MTL Services PLC)
Wales & West	91.6	B	98.8	C	13,469	C	Prism Rail PLC
Connex South Central	89.6	C	99.0	B	32,692	C	Connex Rail Ltd (Vivendi SA)
Great Eastern	89.5	C	99.6	A	15,635	B	FirstGroup plc
Thameslink	89.5	C	98.6	C	5,508	C	GOVIA Ltd (Go-Ahead Group plc and Via G.T.1 SA)
Gatwick Express	89.3	C	99.6	A	4,316	B	National Express Group plc
South West Trains	89.2	C	99.3	B	31,462	C	Stagecoach Holdings plc
Great North Eastern	88.8	C	99.2	B	2,400	C	GNER Holdings Ltd (Sea Containers Ltd)
Chiltern Railways	87.8	C	99.6	A	4,844	C	M40 Trains Ltd (John Laing plc)
Great Western	86.0	C	98.9	C	3,607	D	Great Western Holdings Ltd (FirstGroup plc)
Connex South Eastern	85.1	C	98.8	C	31,808	D	Connex Rail Ltd (Vivendi SA)
<b>Category D</b>							
North Western Trains	90.7	B	98.4	D	35,519	D	Great Western Holdings Ltd plc)
West Coast	84.3	D	99.3	B	3,358	C	Virgin Rail Group Ltd
Thames Trains	83.8	D	98.6	C	15,454	D	Victory Railway Holdings Ltd (The Go-Ahead Group plc)
<b>Category E</b>							
Silverlink Trains	90.1	B	97.9	E	10,532	E	National Express Group plc
Cardiff Railway	86.1	C	97.7	E	7,044	D	Prism Rail plc
CrossCountry	79.7	E	99.2	B	2,291	D	Virgin Rail Group Ltd

Source: OPRAF Bulletin, Performance of the Passenger Rail Network, 13 December 1998 - 31 March 1999