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The *Transport Bill*: Part IV Railways

Bill 8 of 1999-2000

Part IV of the *Transport Bill* contains the measures dealing with railways. It establishes the Strategic Rail Authority and abolishes the British Railways Board and the office of the director of passenger rail franchising. The legislation was initially introduced in the *Railways Bill 1998-99*, which had its second reading in the House of Commons on 19 July 1999. Following that debate the bill was referred to the House of Commons Committee for the Environment, Transport and the Regional Affairs for consideration. Some changes have been made to the original bill as a result.

This research paper looks briefly at the background to the bill and then in detail at the individual clauses. It updates and largely replaces the Library's research paper 99/72 on the *Railways Bill*.

This paper deals only with part IV of the bill: other aspects are covered by research paper 99/102 on aviation, research paper 99/103 on local transport plans and buses and research paper 99/104 on road pricing and workplace parking.

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Summary of main points

Part IV of the *Transport Bill* establishes the Strategic Rail Authority and abolishes the British Railways Board and the office of the director of passenger rail franchising. It gives statutory backing to the "shadow" SRA set up by the deputy prime minister in April 1999.

The legislation was initially introduced in the *Railways Bill 1998-99*, which had its second reading in the House of Commons on 19 July 1999. Following that debate the bill was referred to the House of Commons Committee for the Environment, Transport and Regional Affairs for consideration, which published its report on 4 November.

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 May 1997 the government began a review of railway regulation. In July 1998 John Prescott published the white paper, *A new deal for transport: better for everyone*. More detail of his rail policy was given in the government's response to the report of the Committee for the Environment, Transport and Regional Affairs on a proposed strategic rail authority, published at the same time.

The main criticisms were of the performance and reliability of the train companies, of Railtrack and the amount it invests in the infrastructure, and of the ability of the regulators to oversee the industry. However, since privatisation, passenger numbers on the railways have risen more than 20% and the decline in freight volumes has been reversed. Government support for the passenger services is progressively reducing. In 1997-98 it amounted to £1790 million and by the year 2003-4 will be £670 million. Receipts from the operating companies were £6 million in 1997-98 and should be £88 million in 2003-4.

Part IV of the bill:

- establishes the SRA as a non-departmental public body, funded by the secretary of state.
- sets out its purposes, strategies and duties as to how its functions should be exercised. It has duties to promote rail use for both passengers and freight, plan the strategic development of the network and promote integration between different types of transport.
- gives the SRA the power to give grants, loans or guarantees for any purpose relating to a railway or railway services. In addition to its own funds, the SRA will be able to provide guarantees for rail projects. It will be responsible for two additional sources of funds, the infrastructure investment fund and the rail passenger partnership scheme. The SRA will be able to pay money direct to Railtrack.
- allows the SRA to take over a franchise as a provider of last resort but only in defined circumstances.
- transfers the administration of the rail freight grant scheme in England from the DETR to the SRA.
- transfers the powers and duties of the franchising director to the SRA. It will assume responsibility for the management of passenger rail franchises and the administration of

subsidy for passenger services. Existing franchises can be renegotiated and discussion has started about the next round.

- clarifies the roles of the rail regulator and OPRAF in relation to consumer benefits.
- transfers the existing responsibilities of the British Railways Board for the British Transport Police and for property sales to the SRA.
- strengthens the power of the rail regulator to require investment in the railway network.
- alters the duties of the rail regulator to include references to integrated transport and sustainable development. He also has to note any general guidance from the secretary of state about railway services.
- modifies the enforcement regime set out in sections 55-57 of the *Railways Act 1993*. It allows the Authority and the rail regulator to impose more effective sanctions on operators who break the terms of their franchise agreement or licence.
- Renames the central rail users' consultative committee and the rail users' consultative committees as the rail passengers' council and the rail passengers' committees and extends their functions.

The government is considering generally the principles that should govern how transport safety is regulated and accidents investigated. It is looking, among other things, at the case for a new safety authority that would embrace all the transport modes. Ministers are also considering whether to transfer the main functions of the Safety and Standards Directorate out of Railtrack in order to ensure public confidence that there is no conflict between safety standards and commercial interests. If legislation is necessary for such a transfer, it could be introduced as an amendment to the *Transport Bill.* It is not certain that primary legislation would be needed as much of the present arrangements are set out in regulations and licences.

Part IV of the bill extends to England, Scotland and Wales.

CONTENTS

I Background

Part IV of the *Transport Bill* establishes the Strategic Rail Authority (SRA) and abolishes the British Railways Board (BRB) and the office of the director of passenger rail franchising (OPRAF).[1] The legislation was initially introduced in the *Railways Bill 1998-99*,[2] which had its second reading in the House of Commons on 19 July 1999.[3] Following that debate the bill was referred to the House of Commons Committee for the Environment, Transport and Regional Affairs for consideration, which published its report on 4 November.[4] Some changes, most importantly to the provisions covering the powers of the SRA to act as provider of last resort (old clauses 9 and 10, now clauses 187 and 188), have been made to the original bill as a result.

This research paper looks briefly at the background to the bill and then in detail at the individual clauses. It updates and largely replaces the Library's research paper 99/72 on the *Railways Bill*.

A. Privatisation

1. Present structure

The *Railways Act 1993* provided the legal framework for the privatisation of British Railways (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 BR 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 operations. BR was divided into Railtrack on the one hand, and a residual 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 BR'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

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1 Bill 8 of 1999-2000; Explanatory notes Bill 8-EN, 1 December 1999
2 Bill 133 of 1998-99; Explanatory notes Bill 133-EN, 7 July 1999
3 Second reading debate, HC Deb 19 July 1999 cc 789-927
4 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827

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. BR 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 franchised 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.[5]

Following privatisation there has been considerable criticism 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.

When the present government took over, it was particularly concerned about whether the regulators had sufficient powers to deal with the private sector companies who now run the railways and about the supervision of public funds. As John Prescott, deputy prime minister and secretary of state at the DETR explained:

> We found that after an initial improvement in services following privatisation, there was an unacceptable deterioration two years later, which caused great concern. We found that disgruntled passengers did not know who to turn to when their trains were late, cancelled, dirty or overcrowded. We found a rail freight industry that was eager to expand but held back by red tape and underfunding. We found a lack of investment throughout the network and historical underfunding, and parts of the industry felt no sense of urgency about making up lost ground.
>
> In the first 12 months, the franchising director and the rail regulator told me that their sanctions were unwieldy and lacked teeth, so they could not enforce them and make the rail companies live up to their promises. Finally, we found that the passenger's voice was neglected.[6]

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5 More detail of the structure of the industry is given in *The privatised railway*, Library research paper 97/71, 30 May 1997

6 Second reading debate of the *Railways Bill*, HC Deb 19 July 1999 c 794

2. Trends

Passengers and freight

Since privatisation passenger numbers have risen more than 20% and freight volumes have also risen.[7] 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.[8]

Passenger Travel on National Railways
Great Britain, 1986-87 to 1998-99

	Journeys	Distance Travelled	
	(million)	(billion km)	% of all passenger travel
1986-87	738	31	5.4%
1987-88	798	32	5.4%
1988-89	822	34	5.4%
1989-90	812	33	4.9%
1990-91	810	33	4.8%
1991-92	792	33	4.8%
1992-93	770	32	4.7%
1993-94	740	30	4.5%
1994-95	735	29	4.2%
1995-96	761	30	4.3%
1996-97	801	32	4.6%
1997-98	846	34	4.8%
1998-99	892	35	4.9%
Percentage change 1994/95 to 1998/99	21%	22%	

Notes: There is some underestimation of passenger kilometres in 1997/98 and 1998/99 as information about certain ticket types is not being captured
Figures for total passenger kilometres based on calendar years

Sources: DETR *Bulletin of rail statistics Quarter 1: 1999/2000*
DETR *Bulletin of public transport statistics*

[7] Further information about statistics is available from Paul Bolton, Social & General Statistics (219 6789)

[8] Quoted by Gerald Corbett at Chartered Institute of Transport conference on *Priorities for the strategic rail authority*, 30 June 1999

Domestic freight transport by mode: 1986 to 1998
Great Britain

	Freight lifted		Freight moved	
	(million tonnes)	% of all freight lifted	(billion tonne kilometres)	% of all freight moved
1986/87	138	8%	17	9%
1987/88	144	8%	18	9%
1988/89	150	7%	18	8%
1989/90	143	6%	17	7%
1990/91	138	6%	16	7%
1991/92	136	7%	15	7%
1992/93	122	6%	16	7%
1993/94	103	5%	14	7%
1994/95	97	5%	13	6%
1995/96	101	5%	13	6%
1996/97	102	5%	15	6%
1997/98	105	5%	17	7%
1998/99	102	5%	17	7%

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 statistics Great Britain 1999*
DETR *Bulletin of rail statistics Quarter 1: 1999/2000*

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 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.[9]

[9] DETR *Annual Report 1999*, Cm 4204 pp 158-162

Government support to the rail industry
Great Britain, 1993/94 to 2001/02

	Revenue support to domestic passenger services				
	Central government grants	PTE grants	Other elements of external finance requirement	Total government support	Freight grants
£ million cash					
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	1,242	340	58	1,640	31
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
£ million 1997-98 prices					
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	1,207	337	53	1,597	30
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 that 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.

B. Government policy

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. [10]

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*[11] and on 20 July 1998 he published his conclusions in the white paper, *A new deal for transport: better for everyone*.[12]

The government recognised that the rail industry needed an element of stability and certainty if it was to plan its activities effectively. It also saw that the public was less interested in the question of who owned the railway than in its performance. Its review of railway regulation had pinpointed various structural flaws:[13]

- There was 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 was no equivalent planning body at work in the industry.

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10 Labour Party *New Labour because Britain deserves better*, Labour Party election manifesto 1997, p 29

11 DETR *Developing an integrated transport policy*, August 1997

12 DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950

13 *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 franchising director's remit was too narrowly focused on the passenger railway. He had no powers in respect of freight on the railway and was heavily constrained in what he could 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, lay in the hands of a statutorily independent regulator. The rail regulator was under no direct statutory obligation to take account of the government's objectives for the railways.

- There was 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 had a patchwork of responsibilities, and in many cases there were confusing overlaps.

- The sanctions available to the regulatory authorities were unwieldy. For example, a train operator could not be fined for a breach of the franchise agreement, however serious, if it was unlikely to recur. Sharper, more efficient sanctions were required.

- The views of rail users needed to be given more prominence. Passengers should have a greater say in the train services that were paid for with their fares and their taxes.

- The public was not convinced that safety came first. There was a widespread perception that safety standards might be compromised by commercial considerations.

- The rolling stock leasing companies were inadequately regulated. The sale of the three ROSCOs had been sharply criticised by the National Audit Office as being a poor deal for the taxpayer.[14]

- 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

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[14] NAO *Privatisation of the rolling stock leasing companies*, 5 March 1998 HC 576; Committee of Public Accounts, 65th report 1997-98, 27 July 1998 HC 782

> 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.

The House of Commons Environment, Transport and Regional Affairs Committee considered the creation of a rail authority and published its report on 18 March 1998.[15] The government's 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.[16]

To meet the flaws it had found in the system, the government proposed setting up a Strategic Rail Authority. This would provide the rail industry with the strategic leadership lacking since privatisation and the fragmentation of the sector. It would ensure the railways were run in the public interest, would promote their use and would ensure they were properly integrated with other forms of transport. According to the government's response to the transport sub-committee's report, the SRA would have a general duty to:

> ..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. [17]

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

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

16 *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

17 Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3rd report 1997-98, 18 March 1998 HC 286, para 25

Parliamentary time was not available to introduce the necessary primary legislation in the 1997-98 session, 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.[18]

Sir Alastair Morton was appointed the new chairman of the BRB on 1 April 1999. He is now responsible for advising ministers on the strategic development of the railway as a whole, including rail freight. The BRB 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 this legislation, the BRB 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 (BRB 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.

The rail regulator remains the independent regulator for the industry. A new rail regulator, Tom Winsor, took over on 5 July 1999.

II Part IV of the Bill

A. General

The aim of the *Transport Bill* is to create a more integrated transport system. Part IV of the 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 its structure and procedures and the terms and conditions for its members. It also transfers the rail

[18] DETR press notice *Prescott announces sweeping measures on the railways*, 30 September 1998

regulator's responsibilities for consumer protection to the Authority, and his responsibility for railway closures to the secretary of state. It strengthens the regulators' powers over investment and enforcement. The policy is to encourage the use of the railways through the creation of a body providing strategic leadership to the industry, and to improve the system by giving the regulators tougher powers over the train operating companies and Railtrack.

The Authority will combine the current posts in OPRAF and the British Railways Board, and inherit 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.[19]

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.[20]

Most of the main points of the bill have not changed significantly since the publication of its predecessor in July. There are some drafting changes and amendments as a result of the select committee's report.[21] Most important is the redrafting of what are now clauses 187 and 188 to limit the powers of the SRA.

Nearly all those who gave evidence to the Environment, Transport and Regional Affairs Committee during its examination of the bill were supportive of the idea of a strategic authority although some witnesses expressed reservations about certain aspects of the bill. During the second reading debate of the *Railways Bill*, John Redwood, the shadow spokesman for the DETR was prepared to support some revision of the regulatory structure, but argued that the bill was too wide-ranging and gave too much power to the secretary of state.[22] Bernard Jenkin, the shadow transport minister, told the select committee that he was "open-minded that there should be a body to bash heads together ... but we are opposed to this bill. We think that the powers in this bill for the Strategic Rail Authority are ill-defined and unspecific ... there is a danger of over-regulation, politicised regulation, and there is potential that the Strategic Rail Authority, far from

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19 *Transport Bill* Explanatory Notes, Bill 8-EN 1999-2000

20 Ibid. A copy of the regulatory impact assessment may be obtained from DETR Free Literature, PO Box No 236, Wetherby LS23 7NB (telephone 08701226 236).

21 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827

22 Second reading debate, HC Deb 19 July 1999 c 810

promoting investment, will become an investment bottleneck".[23] The Liberal Democrats have long supported the proposal for a SRA.[24]

The following sections examine part IV of the *Transport Bill* in more detail. They compares it with the *Railways Bill* introduced in July 1999 and refer to the comments made by the select committee. The clause numbering has changed now that the proposals for the railway have become one part of a much larger bill. Clauses 176 to 197 refer to the SRA and clauses 198 to 223 refer to other railway matters.

B. Constitution and funding

1. Constitution

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

Clause 176 sets up the Authority as a statutory body. It will be a non-departmental public body and its staff will not be civil servants. One effect of this is that money received by it does not automatically go to the consolidated fund.

Clause 177 say 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 178**. The secretary of state must consult the chair before appointing the other members. The Authority will appoint the chief executive, who will become a member if not one already.

The government has agreed that at least one member of the Authority should be a representative of passengers although this commitment is not explicitly stated. Several of the select committee witnesses argued that other interested parties should be represented on the Authority. For example, Alstom UK Limited said that rail manufacturers should be given a place on the Authority, the Local Government Association said that local authorities should be so represented, and the Freight Transport Association argued in favour of representation for existing and future rail freight users. However the committee did not recommend that the bill should require that individuals representing specific

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[23] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, Q 361

[24] Second reading debate, HC Deb 19 July 1999 c 816; *House Magazine* 1 March 1999 "Walk the talk"

organisations or interests should be appointed although it did recommend that at least one member of the Authority be a representative of the interests of passengers, and that at least one member be a representative of the users of rail freight services.[25]

Clause 179 introduces **schedule 13**, 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.

2. Funding

Schedule 13 part II provides for the financing of the Authority. 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 6 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 13 paragraph 6(6)(b) will be subject to the approval of the House of Commons, under the affirmative procedure.

Paragraph 7 allows loans to be made to the Authority by the secretary of state and sets out what the accounts must show (this is the only change in this schedule from the original draft). Paragraph 8 allows the secretary of state, with Treasury approval, to guarantee sums borrowed by the Authority. The requirements for accounts and audit are set out in paragraphs 9 and 10. Paragraph 11 allows the secretary of state, after consultation with the Treasury, to direct the Authority to pay him monies received or any surplus that it may have.

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[25] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 12

During the second reading debate of the *Railways Bill*, John Redwood was particularly concerned about this paragraph 6 (6). He was concerned that £3 billion could be used to buy shares, invest in the railways and run train services, in effect renationalising the railway. John Prescott pointed out that the British Railways Board already had the same powers and resources and that almost £1 billion of its debt is to be transferred to the SRA. He also confirmed that it was not the government's intention to renationalise the railway.[26]

The Railway Forum on the other hand was concerned that the very existence of a borrowing limit might affect investment:

> 17.1 We note that the Authority's initial borrowing limit has been set at £3 billion, with provision for this to be increased. In our view, the SRA has an important role to play in pump priming investment, and we welcome the provision of significant borrowing powers. However, we would welcome clarification of the thinking behind the initial £3 billion limit, and we also think it desirable that the Government should spell out its views on the respective roles to be played by grant, loans and the giving of guarantees ..
> 17.2 We would stress the continued importance of grant in the development of rail infrastructure which is not fully commercial, but where there is a strong public interest. It would be regrettable if the existence of borrowing powers had an adverse impact on the Treasury's willingness to sanction grant. Grant and loans are both powerful instruments, but they have different roles to play.[27]

The freight company, English, Welsh and Scottish Railway (EWS), was worried that the requirement to pay any surplus money to the secretary of state under paragraph 11 would hinder long term planning.[28] The select committee shared this worry and recommended that a five year budget be included in the Authority's annual report.[29] The provision will be needed because of the position of the SRA as a non-departmental public body: none of its receipts will automatically go to the consolidated fund.

Schedule 13 part III requires the Authority to give any information required to the secretary of state, part IV sets out procedure and part V makes consequential amendments.

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[26] Second reading debate, HC Deb 19 July 1999 cc 803-4

[27] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, evidence R 17

[28] Ibid, evidence R 19

[29] Ibid, report para 90

C. Purposes, strategies and duties

1. Background

The *Railways Act 1993* 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. As the franchising director is now, 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.

John Prescott set the franchising director the following principal objectives:[30]

- 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;
- 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.

In the transport white paper, the role of the Strategic Rail Authority was described as being to:[31]

- 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;

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30 The objectives, instructions and guidance are set out in full in the OPRAF annual report 1998-99, appendix I

31 DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950 para 4.14

- 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 optimises social and environmental gains;
- 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 "duties" as to how its functions should be exercised.

2.‘ Purposes

Clause 180 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.

This is the same wording as was in the *Railways Bill*. A number of witnesses to the transport sub-committee proposed amendments or additions to this. The committee wanted to emphasise more strongly the importance of freight and recommended the wording of clause 180 (a) be changed to "promote the use of the railway for the carriage of passengers, and equally importantly, for the carriage of freight".[32]

The Retired Railway Officers Society proposed that a specific provision should be made regarding safety. Discussion of the bill by the committee followed soon after the rail crash at the Ladbroke Grove junction on 5 October and so inevitably much of the oral evidence taken by the committee was about the ability of the rail companies to run a safe

[32] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 30

railway. It was also a topic that the committee had discussed on previous occasions.[33] The committee does not believe that responsibility for railway safety should lie with either the Strategic Rail Authority or the rail regulator but that "transport safety regulation should be focussed on a single, entirely independent authority".[34] It argued, as it has done before, that it was not appropriate that bodies primarily concerned with economic matters, like the Authority and the rail regulator, should take responsibility for safety: both have statutory duties to promote the railway, and to increase its use by passengers and freight, which may conflict with the goal of establishing a safe railway.

3. Strategies

Clause 181 says the Authority is to formulate "strategies" in order to carry out its purposes. It must consult the rail regulator, and others as it thinks fit, before formulating its strategy and the secretary of state may give directions and guidance.

A number of witnesses to the committee argued that the SRA should be required to consult specified bodies before making decisions.[35] The committee believed that this would be unnecessarily "bureaucratic and inflexible" but the government has added the words "and such other persons as the Authority thinks fit" to clause 181.

Concern was expressed to the committee that the secretary of state's guidance need not necessarily be published and the committee recommended that it should be. It also recommended that the SRA should publish an annual report giving details of its strategies.[36] Without this transparency there could be uncertainty and confusion as to their intentions. Clause 181 (5) has been added to ensure the strategies are published. And provision is made in clause 184 for the secretary of state's directions and guidance to be published.

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." The committee was worried that this might not be strong enough and other witnesses suggested that the clause should be amended to require the Authority to draw up other strategies.

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33 Environment, Transport and Regional Affairs Committee *Railway safety*, 1st report 1998-99, HC 30; *Integrated transport white paper*, 9th report 1998-99, HC 32; *The proposed strategic rail authority and rail regulation*, 3rd report 1997-98, HC 286

34 Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3rd report 1997-98, HC 286 para 145

35 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 27

36 Ibid, para 13-15

Channel Tunnel

The responsibility for providing regional services dates back to the *Channel Tunnel Act 1987* section 40, which required the British Railways Board to prepare a plan stating the measures it proposed to take to secure the provision and improvement of international through services:

> **Railways Board's plan for international through services.**
>
> **40.** - (1) It shall be the duty of the Railways Board to prepare a plan stating measures which the Board propose to take, and any proposals as to measures which the Board consider ought to be taken by any person in the United Kingdom or France, with the aim of securing -
>
> (a) the provision or improvement of international through services serving various parts of the United Kingdom; and
>
> (b) an increase in the proportion of the passengers and goods carried between places in the United Kingdom and places outside the United Kingdom that is carried by international through services.
>
> (2) The measures referred to in subsection (1) above are -
>
> (a) measures relating to the operation of international through services;
>
> (b) measures relating to the carrying out of works or other development connected with international through services (including collection and distribution centres for goods and inland clearance depots); and
>
> (c) measures relating to the provision or improvement of facilities or other services connected with international through services.
>
> (3) The Railways Board -
>
> (a) shall prepare the plan under this section not later than 31st December 1989;
>
> (b) shall keep the plan under review and from time to time revise it; and
>
> (c) shall cause the plan and any revisions of it to be published in such manner as they think fit.
>
> (4) In preparing the plan and any revisions of it the Railways Board shall have regard to the financial resources likely to be available to them and to any restrictions likely to be imposed on them with respect to the application of such resources.

As a result of this legislation BRB published *International Rail Services for the United Kingdom* in December 1989.

Following the rescue plan for the Channel Tunnel rail link, a management contract to operate Eurostar was awarded to a consortium, which reported on its plans for regional services in November 1998. It found that the regional services would not attract enough

passengers to make it commercially viable. Mr. Prescott was unhappy with the report and announced he would be commissioning "a thorough independent review of it".[37] He expects to make a statement to the House before the end of the year.[38] The Environment, Transport and Regional Affairs Committee reported on the regional Eurostar services and urged the government to take account of the economic impact on the regions in its review. The committee concluded that:

> .. above all, the government's review should be conducted against the background of the promise of regional Eurostar services implicit in section 40 of the *Channel Tunnel Act 1987*, and the investment of £320 million, by taxpayers across the country, already made towards providing such services. Regional Eurostars should operate, otherwise the regions will continue to be short-changed.[39]

The committee, when it came to consider the *Railways Bill*, was concerned that the wording now in clause 181 (4) did not provide such a definite commitment as that contained in the original section 40.[40] The shadow SRA, in its evidence to the committee, seemed to think that having a specific strategy with regard to through services might be a rather stronger requirement than having a plan which from time to time had to be revised.[41]

Freight

A number of witnesses to the select committee suggested that the clause should be amended to require the Authority to draw up a strategy about freight. For example the Freight Transport Association wanted more emphasis on freight and the Railway Forum suggested an amendment to clause 181(4) to include a reference to freight strategy. The committee agreed.[42] It was concerned at Sir Alastair Morton's response to a question:[43]

> **Mr. Stringer** .. How would you balance the interests of the freight users with the passenger users?
> (*Sir Alastair Morton*) With difficulty.
>
> That is why I am interested in the answer.
> (*Sir Alastair Morton*) That is a problem. The desire to have more freight on rail, indeed the progress that has been made by freight since privatisation, is creating

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37 PQ HC Deb 8 December 1998 c 135W
38 PQ HC Deb 8 July 1999 c 591W
39 Environment, Transport and Regional Affairs Committee *Regional Eurostar Services,* 5th report 1998-99, 20 January 1999 HC 89, para 40
40 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 53
41 Ibid, Q429
42 Ibid, para 54
43 Ibid, Q 413-4

> difficulties of capacity because too few lines in this country are, as it were, in the habit of carrying freight other than the odd train here or there. I find it completely insane that the principal freight route from Felixstowe, our biggest Euro port other than the Tunnel, to the West Midlands is the North London Line through the suburbs here. I think that is just manic. What are we going to do about it? What are we going to do north/south? There are preparations to put more freight on to the Midland Main Line and how it would interact with the North West and the North East further north. There are ideas about east/west freight lines. They all have a bill attached to them. In quite a lot of everything we are talking about in railways there is a bill attached to it. The meeting of that bill is a statement of policy that only the government can answer. In other words, if the government says "not a penny" through traditional Treasury staff, "not a penny for anything beyond maintaining the existing system", it will be seriously difficult to do much about freight because it gets in the way, it runs slower, it takes longer to accelerate, it takes longer to brake. The good Mr Burkhardt has put at the country's disposal some very splendid locomotives and a lot of new and good looking and useful trucks but they have still got to move.
>
> Would I be interpreting you incorrectly if I said that unless there is investment in new rail then your priority would be passengers and freight would have to wait? (*Sir Alastair Morton*) It would be a true thing to say subject only to the qualification you might expect which is that we would do everything that we could for freight within that. It would be a very real constraint. Certainly in the southern half of England, which I take to be south of a line east/west through Hull, Leeds, Blackpool or something, in distance terms half, we have probably the densest mixed-use unified rail system in the world. I cannot guarantee this but I think it must be about that. Finding paths for freight through that, as any railway person would tell me or tell you, is extraordinarily difficult.

4. Duties

Clause 182 sets out various factors that the SRA should consider while exercising its functions (as set out in clauses 186-197), but allows it to use its judgement as to their relative importance in the circumstances. It must act in accordance with any strategies that it has formulated, but also in a manner best calculated to achieve the considerations set out in clause 182 (2)(a) to (f) and to have regard to the considerations in clause 182 (3). Some of these considerations could contradict each other, so the Authority must undertake a balancing exercise in each case.

The factors set out in **Clause 182 (2) and (3)** are broadly aligned with the duties of the rail regulator set out in section 4 of the *Railways Act 1993*. The Authority 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. "Railway services" are defined in the *Railways Act 1993* section 82 and cover passenger, freight, light maintenance, station and network services.
- 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 182 (4)** that any payments made by it are such as it reasonably considers will further its purposes efficiently and economically. 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 182 (5)** as to how the Authority should carry out its functions, bearing in mind the need to balance the various considerations. The secretary of state may also direct the Authority not to exercise a function without first consulting him or obtaining his consent. Examples given of the types of topics that might be covered are the next round of franchising or the requirement to pay freight grants in accordance with EU rules.

Witnesses to the select committee raised two topics in particular, suggesting that clause 182(2) and (3) should be expanded to include additional conditions on network benefits and the environment. The committee was satisfied that the clause provided adequate direction to the Authority to ensure that the SRA would take the leading role in setting standards and objectives both for the timetable and the national rail enquiry service. It worried, however, that simply setting standards and objectives would not enable the Authority to achieve its strategies and purposes. It therefore recommended that the SRA should also be given powers to assume responsibility for formulating and publishing the

timetable and to take over management of the national rail enquiry service.[44] (Any amendment to this effect would be to clause 191 and schedule 16 and not this one).

Comments to the committee on the environment were summarised as:

> 72. A number of our witnesses suggested that the wording of clause 7(3)(c) was too restrictive, and might encourage the Strategic Rail Authority to make an overly negative assessment of the effect of the railway on the environment. Transport 2000, for example, said that "while it is important that the Authority should consider the environmental impact of rail services, we believe that this should be in the context of other modes". The National Express Group agreed, saying that "rail brings significant non-user benefits in terms of relief of congestion, reduction in air pollution, improved land use and safety. With this in mind, clause 7(3)(c) is drawn rather narrowly ... the clause should require the Authority to have regard to the broader issue of the environmental effect of transport activity and, where appropriate, of encouraging rail-based solutions to transport problems".
> 73. In our previous report into the proposed Strategic Rail Authority we commented on this matter in respect of freight. We recommended that the Authority should "encourage fairer competition between domestic road and rail freight; this may require a fresh approach to the analysis of the total costs and benefits of spending on road and on rail facilities. Rail freight is not free of environmental costs, but it can offer substantial environmental and other external benefits, such as greater safety, compared with road freight". The same argument applies to passenger travel. **We are concerned about the wording of clause 7(3)(c). In its decision-making about new rail services, the Strategic Rail Authority must balance the impact that new rail services might have on their immediate surroundings with the effect that alternative modes of transport, such as roads, would have both on the local area and on the wider environment. We recommend that clause 7(3)(c) be amended to reflect wider environmental concerns.**[45]

5. Other matters

Clause 183 allows Scottish ministers to give directions and guidance to the Authority for services that start and end in Scotland. The Authority 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.[46]

Clause 184 implements the select committee's recommendation that any directions and guidance from the secretary of state should be published.[47]

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44 Ibid, paras 58-61
45 Ibid, paras 72-3
46 More detail is given in *Travel choices for Scotland*, July 1998 Cm 4010 para 4.8
47 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 13

Clause 185 has been added to protect transactions of the Authority from being invalidated on the grounds merely that it has failed to comply with a requirement to take proper account of all the considerations set out in clauses 182 and 183.

D. Financial powers

Clauses 186 to 196 describe the main functions and powers of the SRA including those transferred from the franchising director, the rail regulator, the secretary of state and the British Railways Board.

Under **clause 186** the Authority may enter into agreements for the purpose of securing the provision, improvement, or development of any railway services or railway assets. It also has the power to give grants, loans, or guarantees for any purpose relating to any railway or railway services. The clause refers to the "wider meaning" of railway (subsection (6)). This means a railway, tramway or transport system that uses another mode of guided transport but which is not a trolley vehicle system. The Explanatory Notes make clear that the power in clause 186 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).

Under this clause, the SRA will have considerable powers to disburse money. 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.

In the *Railways Bill* certain limitations to this clause were included in the schedule and these have been moved to the main part of the Act. Thus payments for franchised services will not be paid under this clause (clause 186(3)) but under clause 190. In Scotland, the Authority will have no powers with regard to freight as this is a devolved responsibility.

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.

1. PTEs and light rail

The grants to the passenger transport authorities would be instead of the special grant now made to them each year under section 88B of the *Local Government Act 1988*.

The PTAs are responsible for drawing up local public transport policies for the seven metropolitan areas outside London (six in England and Strathclyde in Scotland).[48] It is the duty of the PTE under section 20 of the *Transport Act 1968* to secure the provision of public passenger transport services in accordance with these policies. Rail services are provided under individual franchise agreements, signed by the PTE and the franchising director jointly with the train operating companies.

Central government provides support for the net cost of such services, which is channelled to the metropolitan district councils through grant paid under the *Local Government Act 1988* section 88B, as amended by schedule 10, para 18 of the *Local Government Finance Act 1992*. Section 88 allows a secretary of state to make special grants to local authorities, over and above revenue support grant (RSG), for particular purposes. Grant is paid to the PTEs to secure the provision of rail passenger services under the franchise agreements and for any direct costs incurred in securing the services, including the advertising of rail services. It also provides support to Tyne and Wear PTA for the operating deficit of the Tyne and Wear metro (estimated to be £6.3 million in 1998/99). Scotland is dealt with separately.

When a similar grant was first introduced in 1994/95, as the metropolitan railway grant, it was intended as a transitional one-off grant, with the relevant costs again being funded through the revenue support grant in future years. It was introduced because the reorganisation of the railway industry brought in by the *Railways Act 1993* led to changes in the way in which PTAs were charged for the services they supported. In particular, instead of being treated as marginal users of the network, they were expected to bear the full cost of the services they supported. As a result information was required about the levels of access charges and rolling stock leasing charges that could not be provided at an early stage. Consequently, in order to meet the extra costs facing the PTEs, the government introduced metropolitan railway grant as a transitional measure in 1994/95 to meet the funding gap between the RSG and the extra costs of the revised charging regime. Despite originally being a one-off payment, it was also paid in 1995-96[49] and in June 1996 it was decided to continue with a special grant as explained by John Bowis at the time:

> We intended originally to continue providing support to the passenger transport executives for their rail services through the specific element of the other services

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[48] Statutory local transport plans are introduced by clause 92 of the bill and discussed in Library research paper 99/103

[49] PQ HC Deb 14 June 1995 c 531W

> block calculation for revenue support grant, as was the case for 1996-97. However, the speed and success of the franchising programme last spring compelled us to think again about the matter. We did so, because we would not have known in the autumn of 1996 - when RSG settlements for the next financial year would have been provisionally set - the dates when the PTE-related franchises would come on stream and when, how or if the cost profiles of those franchises would differ from the existing costs of PTE-secured services.
>
> We decided, therefore, to switch to special grant, which enabled us to settle a formula that will track the payments due from PTEs to franchise operators under the terms of the PTE-related franchise agreements. [50]

The amount of grant that each authority receives is broadly equal to the sum of the payments made by the executive for rail passenger services plus the administrative costs incurred in connection with those services, less any estimated revenue from rail services.

The select committee was concerned that if the SRA took over future funding of the PTAs, it would lead to a diminution of their role. It was particularly concerned about light transit schemes, which the committee is to examine in the new year.[51]

> We are concerned about the future of light railway schemes. The Chairman of the shadow Strategic Rail Authority pointed out that at certain points of limited rail capacity it was possible that the needs of light rail and heavy rail would conflict, and that investment would be required to enable both to pass through the 'bottleneck': if no affordable investment could be made, one or other would lose out. We are concerned that in such circumstances the Strategic Rail Authority, as a national body, would favour the national heavy rail network over local light railway projects. However, we note also that the Passenger Transport Executive Group saw the powers of the Strategic Rail Authority to request the rail regulator to give directions to railway facility owners as "of great help to the Passenger Transport Executives in achieving conversion or sharing of [heavy] rail lines". **We accept that there is an argument for bringing together responsibility for light rail schemes and for heavy rail schemes and that this could lead to better integration between them. There is also a case for retaining the *status quo* in the funding of the Passenger Transport Authorities and of light rail schemes, which could ensure better integration of local transport and the protection of light rail projects. We look forward to the Government clarifying and expanding on their case for giving to the Strategic Rail Authority the responsibility for funding light rail, and we will return to the matter during our inquiry into light rapid transit systems in the New Year.**[52]

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50 Debate in 5th standing committee on delegated legislation, 12 March 1997 c 3

51 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 94-5

52 Ibid, para 110

2. New grants

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 its statutory objectives. The expenditure plans announced at the same time as the transport white paper made about £100 million available for extra freight grants and the two new sources of funds.[53] The funds are intended to act as "seedcorn" for projects. They have been available through OPRAF since April 1999 and details of the criteria for bidding for the grants was published on 24 May 1999.

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.

3. Railtrack

Clause 186(2) would enable the SRA to make payments direct to Railtrack. Following a report of the Environment, Transport and Regional Affairs Committee,[54] 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."[55]

The committee was not at all confident that Railtrack would invest enough and concluded in its report on the integrated transport policy:

> 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,

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53 DETR press notice *£1.8 billion for roads, rail and local transport*, 20 July 1998

54 Environment, Transport and Regional Affairs Committee *Integrated transport white paper*, 9th report 1998-99 31 March 1999 HC 32

55 Environment, Transport and Regional Affairs Committee *Government response to the report on integrated transport white paper*, 13th special report 1998-99 12 July 1999 HC 708.

> 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. (..) 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.[56]

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

> 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 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.[57]

The railway industry is not enthusiastic about this suggestion. The 25 train operating companies argue that they alone serve passengers directly and the current way of paying subsidy means that the industry remains customer-focused. Paying the subsidy directly to Railtrack "would complicate the contractual relations within the industry and could lead to decisions which were not optimised for passenger benefit," and "moreover, train operators are better able to judge what customers want than the government." Railtrack believes that "direct funding on any significant scale would constrain its ability to make commercial investment decisions and place funding more directly in the public spending round, reducing stability of funding for long-term investments." [58]

E. Freight grants

Schedule 14 provides a transfer scheme from the secretary of state to the Authority for the administration of freight grants.[59]

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56 Environment, Transport and Regional Affairs Committee *Integrated transport white paper,* 9th report 1998-99 31 March 1999 HC 32, para 145

57 Environment, Transport and Regional Affairs Committee *Government response to the report on integrated transport white paper, 13*th special report 1998-99 12 July 1999 HC 708.

58 Railway Forum *Proposal for direct payment to Railtrack of public subsidy*, November 1999

59 These schemes are intended to replace the freight grant and track access guarantee schemes in sections 137 and 139 of the *Railways Act 1993*

The Government pays two grants to encourage private companies to use rail, the freight facilities grants and assistance with track charges.

The freight facilities grant scheme was introduced by the *Railways Act 1974* and extended to inland waterways by the *Transport Act 1981*. These are grants towards capital investment in private rail or inland waterway freight facilities. On 2 February 1993 it was announced that the scheme would be improved by first, being available for all types of railway equipment including locomotives and freight specific track and infrastructure, and second, the grant would take into account reductions in lorry traffic on motorways and inter-urban dual carriageways, making it easier for intermodal rail freight projects to qualify for assistance. It is available to freight operators, as well as customers and consignors. Provision was made in section 139 of the *Railways Act 1993*. The Public Accounts Committee reported on the scheme in April 1997 and commented that it was "concerned that freight facility grants may be having less impact than the government and Parliament intended."[60]

On 9 August 1997 the government announced new guidance to make it simpler for companies to receive grants.

It was also announced on 2 February 1993 that Railtrack would accept freight traffic on the network provided that each flow at least covered the costs it directly imposed, such as track wear. In cases where a flow genuinely could not pay even these marginal track charges, the government would be prepared to pay grant to encourage the use of rail, up to 100% of the track charges if necessary, where that is justified by wider environmental and other benefits. The legislation is contained in section 137 of the 1993 Act.

Originally it was proposed to transfer responsibility for these grants to the SRA within the same framework as existed in the *Railways Act 1993.*[61] However, as a result of the committee's comments, these limitations are not included in the present Bill. Thus the Authority is not limited in the type of grant or loan it made.

The select committee commented:

> A number of our witnesses expressed concern that the ability of the Authority to support rail freight was limited. Transport 2000 said that it was "concerned that schedule 2 limits the grants that the Strategic Rail Authority can make for freight to capital expenditure". The Freight Transport Association told us that "it is unclear whether freight would benefit from the ability of the Strategic Rail Authority to give loans or guarantees for major infrastructure projects". The Rail Freight Group told us that "capital is not [always] the constraint. Terminals may

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60 Public Accounts Committee *Freight facilities grants in England*, 24th report 1996/97, 19 March 1997 HC 284

61 The *Railways Bill* schedule 2 spelt out the conditions under which the SRA would be able to make freight facilities grants and track access grants.

> already exist and equipment can often be leased or hired. In these cases it is often the terminal costs and cartage which make it uncompetitive ... The bill as drafted explicitly prevents any alteration of the present rather narrow definitions of the track access and freight facilities grants". The Railway Reform Group cited examples of other support which might be needed to encourage rail freight, such as road haulage leasing costs, and the cost of leasing cranes and other fixed and mobile equipment.[62]

F. Provider of last resort

Clause 187 and 188 govern the Authority's powers to secure or provide railway services and replace what were clauses 9 and 10 of the *Railways Bill 1999*. The clauses will allow the SRA to take over franchises "as a last resort", for example, if a franchise was terminated or there were no acceptable private sector bids.

The original clause 9 was severely criticised for the wide ranging powers it appeared to give the SRA and the secretary of state. The SRA had an express power to provide services for the carriage of passengers and goods by railway as it considered desirable. It could do anything it wished, apparently with no caveats, 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.

John Redwood said of this clause: "In other words the bill creates not just a regulator but a body that can take public money, with the secretary of state's consent, and run passenger and goods railway services (..) This is the kernel of our case - the power is a very wide-ranging one, allowing the backdoor - or front door - renationalisation of the railways should the secretary of state be so inclined ..".[63]

The select committee received a number of submissions on this clause:

> 76. Consequently, a number of our witnesses proposed amendments to the Bill, to limit the power of the Authority to operate services. The Association of Train Operating Companies said that "in theory, the Strategic Rail Authority would be

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62 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 97

63 Second reading debate, HC Deb 19 July 1999 c 800

> able to use its powers under Clause 9 of the Bill to provide passenger railway services in competition with existing carriers. In doing so, the Authority might be able to secure favourable terms from Railtrack and the rolling stock companies ... [so there should be] a modification to the Bill to restrict the Clause 9 rights in order to ensure that the Strategic Rail Authority can only run services in the 'operator of last resort' role". The Railway Forum said that "restrictions [should be] imported into the Bill as to the circumstances in which the Authority may provide services on its own account, and for how long it may do so".
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> 77. It was also felt that the Authority should only be able to operate services on the same basis as other operators. The Central Rail Users' Consultative Committee told us that "there appears to be nothing contained in the Bill that would ensure that any services operated by the Authority would have particular quality or other standards set for them. There is no rationale for Strategic Rail Authority-provided services working within different performance and other regimes to those proposed on train operating companies". The Association of Train Operating Companies argued that the Authority should not "compete in a manner which would undermine franchises or on terms which are more favourable to those offered or available to the private sector. The Strategic Rail Authority should, for example, comply with the equivalent of a franchise agreement". The Institute of Logistics and Transport recommended that "services provided by the Strategic Rail Authority must be run by a subsidiary company and the accounts must be kept separate from those of the Strategic Rail Authority. The licences, access contracts and performance results must be available to public scrutiny on the same basis as equivalent services operated by the private sector".
>
> 78. **We recommend that the Government makes clear that Clauses 9 and 10 of the Bill provide that the Strategic Rail Authority may only operate passenger rail services in the event that no satisfactory bid for a franchise has been received, or that a service has failed. The Bill should also establish the principle that the Authority may only directly operate services under conditions of service equivalent to those that apply to private sector rail companies, and that it should do so through a subsidiary company which has accounts separate to those of the Authority.**[64]

Particular concern was also expressed about the ability of the Authority to operate freight services:

> The Freight Transport Association told us that the Strategic Rail Authority should not have powers both to operate freight services and to act as the arbiter in deciding whether or not freight services are needed. The Rail Freight Group also argued that the Authority should only be the 'operator of last resort' for freight services. English Welsh and Scottish Railway sought to amend the Bill to restrict severely the Authority's ability to operate freight services. It said that it was "concerned at the wide powers given to the Authority under Clause 9 ... [we] assume that the power to provide freight services has been included to allow the

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[64] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, paras 76-8

> Authority to fulfil its obligations to Eurotunnel plc under the Channel Tunnel Usage Contract". The company recommended that "the Bill should confirm that ... the only circumstances in which the Authority may provide a freight service will be specifically stated as relating to the Channel Tunnel Usage Contract with Eurotunnel".
>
> 80. We do not seek to limit the Authority's power to operate freight services to the extent called for by our witnesses. There may be currently unforeseen circumstances in which such a power provides the only means to provide certain freight services. However, we accept that whilst there is a need for the Strategic Rail Authority to be able to step in quickly as the 'operator of last resort' when franchises for necessary passenger services are not taken up, or fail, there will not be the same pressing need for it to do so in the case of a freight service. **We recommend that the Government makes clear that Clauses 9 and 10 of the Bill provide that the Strategic Rail Authority may only operate rail freight services in the event that a service has failed, or an operator has withdrawn from the industry. The Bill should also establish the principle that the Authority may only directly operate freight services under conditions of service equivalent to those that apply to private sector rail companies, and that it should do so through a subsidiary company which has accounts separate to those of the Authority.**[65]

Clause 187 (clause 10 of the *Railways Bill*) makes provision for the next round of franchising. The clause has been redrafted to emphasise the efforts the SRA must make to secure a franchise before it may secure the provision of the service otherwise than by franchising. The refinements are also meant to reassure those who felt the SRA might be bidding in competition with the private sector. Clause 187(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 187(3) 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. Clause 187(5) allows the regulator to reject an open access provider if he thinks it would harm an existing franchise.

Clause 188 (clause 9 of the *Railways Bill*) gives the Authority limited additional powers to run goods or passenger services where they arise as an obligation inherited from British Railways Board or they are no longer provided by another organisation. This could apply to freight services and to certain non franchised passenger services, such as Eurostar or open access services. Subsections (b) and (c) of clause 9 have disappeared and the caveat has been included that the service provided has to be the same or similar to that provided

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65 Ibid, para 79-80

before. It gives the Authority the necessary associated powers to run the service, such as storing goods.

Clause 189 allows temporary bus and taxi services to be arranged where rail services are temporarily interrupted. If they are discontinued the Authority must invite tenders for a substitute service. This latter point reflects the views of the select committee:

> Clause 9 of the Bill also allows the Strategic Rail Authority to replace rail services with buses only "where railway services have been temporarily interrupted or discontinued". This provision prompted two concerns. First, the National Express Group told us that it unnecessarily constrained the Authority, and was "inappropriate in terms of an integrated transport policy when many companies operate trains and buses. Some existing franchise agreements include bus links, and many more have been introduced by train operators to serve towns which are not rail-connected ... The provision should be removed or modified to allow rail-link bus services to be introduced or maintained by the Strategic Rail Authority via franchise agreements". Secondly, the Cyclists' Touring Club said that "there should exist a presumption against permanently replacing rail services by bus services" - so-called 'bustitution'. It proposed that Clause 9(4) should be amended accordingly. We agree with both points. **We recommend that the Government re-examine and, if necessary, amend Clause 9 to ensure that in the event that the Strategic Rail Authority takes over a franchise it is able to continue to operate existing rail-link bus services, and to extend them where appropriate. We also recommend that the Clause be redrafted to make clear that the Authority will generally discourage the replacement of rail services with buses.**[66]

G. Franchising director

Clause 190 and schedule 15 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.

The franchising director's functions are presently laid down in section 5 of the *Railways Act 1993*. 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 SRA's main responsibility, as described in the transport white paper, is to take over the powers and duties of the franchising director. It will become responsible for

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[66] Ibid, para 82

the management of passenger rail franchises and the administration of subsidy for passenger services.

1. Passenger franchises

Following privatisation the rail 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. The franchises were awarded for periods between 5 and 15 years. The majority was for 7 years and will expire in 2003-4. The seven year length of the typical franchise appears rather arbitrary and some companies, such as Great North Eastern, have started to say they cannot be expected to invest in new rolling stock for such short periods. It is noticeable that the freight sector, where the companies were sold outright, is investing heavily in new equipment.

Details of the operating companies and their franchises are given in appendix 1.

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".[67] John Prescott has specified the criteria against which applications would be judged:[68]

- Commitment to improved performance
- Extra or accelerated investment
- Better compensation arrangements
- Value to the taxpayer
- Initiatives to promote integrated transport
- Track record of the franchisee
- Willingness to give passengers a greater voice.

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. The transport white paper also said that 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".[69]

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67 DETR *A new deal for transport: better for everyone,* July 1998 Cm 3950, paras 4.18

68 See, for example, DETR press notice *Prescott announces sweeping measures on the railways,* 30 September 1998

69 DETR *A new deal for transport: better for everyone,* July 1998 Cm 3950, paras 4.18-19

Sir Alastair Morton and Mike Grant have set out the conditions that will influence their views on replacing or extending franchises and have invited proposals on the first group of franchises to expire. They expect interest from both the current incumbent and others and will consider a modified geographical version of the existing franchise. Their aim is to secure long term franchises that provide high levels of performance for passengers. They want to see proposals that will provide additional capacity as soon as possible, and in exchange for this, are prepared to consider franchise terms which would last between 10 and 20 years. [70]

2. Subsidies

Support for the passenger railway is paid to the train operating companies through the franchising director and the passenger transport executives (PTEs). In 1997-98 it amounted to £1790 million and by the year 2003-4 it is expected to be £670 million. Receipts from the operating companies should be £88 million in 2003-4, compared with £6 million in 1997-98. Details of the operating companies and the subsidy each receives are given in appendix 2. Sir Alastair Morton has said the Treasury should not see the emergence of the rail companies from subsidy as a continuing source of revenue and that the industry should be able to retain the premiums that are being paid to the Treasury.[71]

H. Rail regulator

Clause 191 and **schedule 16** 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.

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

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[70] Shadow SRA press notice *Building a better railway: franchising director invites replacement franchise proposals*, 24 November 1999

[71] See, for example, speech at Chartered Institute of Transport conference on *Priorities for a Strategic Rail Authority*, 30 June 1999; speech at National Railway Museum annual dinner, 15 September 1999

"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 that 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. All operators are under an obligation to provide impartial information, i.e. without discrimination in favour of one operator or another, as a condition of the ticketing and settlement agreement approved by the regulator on 23 July 1995. The regulator also approved the telephone enquiry bureaux agreement on the same day. To manage the mandatory services the 25 TOCs set up the Association of Train Operating Companies (ATOC), whose primary role is to provide services to which its members are committed under their franchise agreements although it also acts as the collective voice of the passenger rail industry.

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. In cases where both cover a single activity, such as the 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.

The problems of informing the public about the timetable and the various different fares available have been considerable. The select committee did not disagree that responsibility for these matters should be transferred to the SRA but it wondered whether the SRA should take on some of the functions directly. The committee commented:

> 58. The national rail timetable is generated by Railtrack. In our previous report on the proposed Strategic Rail Authority we observed that "in the past Railtrack has experienced difficulties in producing the timetable". As a result we recommended that the Authority should "take responsibility for setting criteria and objectives for the timetable, for example to maximise connections or to provide an even service pattern, and publish and publicise it". During our inquiry we had also taken evidence about the national rail enquiry service, which is operated by the Association of Train Operating Companies. In the past its performance has been judged unsatisfactory by the rail regulator.
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> 59. Clause 7(2)(d) of the bill attempts to deal with such matters. It requires the Strategic Rail Authority to act in a manner "best calculated ... to promote measures designed to facilitate the making by passengers of journeys which involve the use of the services of more than one passenger service operator (including, in particular, arrangements for the issue and use of through tickets)".

> Several of our witnesses claimed that the clause does not go far enough. Save our Railways argued that "a Strategic Rail Authority should be able to strategically develop and manage" the national rail enquiry service, and take responsibility for the national timetable from Railtrack.
>
> 60. Railtrack did not agree that responsibility for the timetable should be taken from it and given to the Authority. It told us that "the closer timetabling is done to the ground the better we feel it will be". Many of our witnesses agreed that the Strategic Rail Authority should set out guidance which governed the production of the timetable, rather than produce it directly. The Central Rail Users' Consultative Committee told us that "the Strategic Rail Authority must be strategically involved in timetabling issues. Otherwise we are not going to attain the network benefits and connections we require". The City of Plymouth council told us that it sought an integrated railway network, with improvements to the clock face timetable with regular connections. The Transport Salaried Staffs' Association agreed, and said in particular that clause 7(2)(d) should be amended "to require the Strategic Rail Authority to promote the provision and quality of the national timetable and take over from the Association of Train Operating Companies the responsibility for the associated passenger information systems, with particular reference to telephone enquiries".
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> 61. The Strategic Rail Authority must take the leading role in setting standards and objectives both for the timetable and the national rail enquiry service: we are satisfied that clause 7(2)(d) provides adequate direction to the Authority to ensure that it will do so. It is however possible that simply setting standards and objectives will not prove sufficient for the Authority to achieve its strategies and purposes. **Although we believe that Railtrack should for the time being continue to produce the national timetable, we recommend that the Strategic Rail Authority be given powers to assume responsibility for formulating the timetable, and for publishing it, and to take over management of the National Rail Enquiry Service if that is, or becomes, the most efficient way for it to meet the conditions of clause 7(2)(d).**[72]

Schedule 16 (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 its 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.

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[72] Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, paras 58-61

Schedule 16 (part II) transfers the administrative responsibility for the eight rail users' consultative committees (RUCCs) and the central rail users' consultative committee (CRUCC), set up under section 3 of the *Railways Act 1993* to the Authority. (see also clauses 202-4).

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 16 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 particular functions of the regulator.

I. British Railways Board

Following privatisation, the British Railways Board employs a staff of only 169 people, excluding the police. Other than the property company, the BRB now only owns RDDs, which holds all the designs of the rolling stock.

1. British Transport Police

Clause 192 and **schedule 17** transfer to the Authority the existing responsibilities of the British Railways Board for the British Transport Police, together with associated property, rights, and liabilities. About 2,200 officers and civilians work for the BTP, which is currently governed by a committee within the BRB. Provision is made for the transfer of staff.

The *Railways Act 1993* requires the BRB to organise a police force. The BTP are responsible for maintaining law and order throughout the railways and have similar powers and responsibilities to other police forces. All licensed operators, for example Railtrack and the train operating companies, are required to enter into police service agreements (PSAs) with the Board for core police services provided by the BTP, as a condition of their licence. Exempt operators such as London Underground and the Docklands Light Railway may also enter into PSAs. Users of BTP services meet their share of the costs. The Authority will have a general duty to promote the efficiency and effectiveness of the force.

2. Property

Clause 193 and **schedule 18** transfer the other property, rights and liabilities of the British Railways Board to the Authority. Provision is made for the transfer of staff. It is expected that this will include all the remaining functions of the BRB although provision is made in clause 213 for anything remaining to be transferred to the secretary of state.

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 land that is not required by the Authority is to be disposed of in accordance with directions from the secretary of state.

The drafting of this clause is unchanged regardless of the alarm expressed by some of the select committee witnesses:

> 99. .. Several of our witnesses were alarmed that the clause requires that "any property ... not required by the Authority for the discharge of its other functions shall be disposed of or other wise dealt with by the Authority (a) in accordance with directions given to it by the secretary of state, and (b) subject to that, in the way which appears to the Authority most economic and efficient". Furthermore, clause 14 specifically exempts the Authority from the provisions of clause 7, which in all its other activities requires it to act "with a view to furthering its purposes": In other words, in respect of the disposal of land it will not be required to act in a way best calculated to secure the development of the railway network.
> 100. The Rail Freight Group interpreted clause 14 as an instruction "to sell [land] off as soon as possible, with no possibility to retain any of it for future freight (and passenger) use". The Freight Transport Association said that the Authority "would be able to operate in the same way as the much-criticised British Railways Board, its main responsibility being to sell the land in an 'economic and efficient' way". Several other witnesses agreed. It was suggested that some areas of land formerly owned by the British Railways Board might have "potential for rail-related development", such as the expansion of rail freight facilities, for car parks and other facilities such as bus stations, for future network growth, and for heritage railway lines.
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> 101. … Its [our previous report on the proposed Strategic Rail Authority] basic sentiment holds true: the Strategic Rail Authority should "take a long term view of the capacity requirements of the railway", an approach endorsed by the Railway Forum.
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> 102. We were also concerned about the selling of land by Railtrack which might have a use in future railway development. In our previous report on the proposed Strategic Rail Authority, we recommended that the Authority should have "first option to purchase any land which Railtrack wishes to sell, at a market valuation to be determined independently, where the Authority believes that the land may be needed for future operational railway purposes. The Strategic Rail Authority should have the right to be consulted in advance about any land sales by Railtrack and should make public its views on any sales which it believes would not be in the long term interests of the railway". That view was supported by the Rail

> Freight Group, which told us that "all Railtrack's land that could be used for rail-related activities should be regulated". The chairman of the shadow Strategic Rail Authority agreed that the Authority should have the right to intervene in the development of land owned by Railtrack, but pointed out that conflicts might arise between the government's desire to use 'brownfield' sites for inner city regeneration and future railway development, which would have to be resolved by the secretary of state. The deputy Prime Minister also said that such conflicts might arise. He also said that whilst he had no power to control the sale of land by Railtrack, the new draft PPG13 planning guidance, published on 18 October, drew attention to the need to protect sites which might be of use in developing infrastructure.[73]

The government announced in the transport white paper that the British Railways Board was suspending land sales while it conducted an audit of the remaining sites. These amounted to some 1,200 sites with a book value of about £137 million. The government agreed that the BR Board could proceed with a limited number of sales in two categories. The first was where there were 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.[74]

In September 1999 it was announced that property sales had been resumed following the agreement of new marketing procedures. All available sites will be brought to the attention not only of rail interests and local authorities, but also of other transport operators, at least two months before being offered for sale. These groups will be able to seek a further two month period to allow them to work up proposals for a bid. All sites will continue to be sold at open market value in order to protect the taxpayers' interest.[75]

In practice, this is not so different to the committee's recommendation but without the legislative backing. It wanted the Strategic Rail Authority to be able to dispose of property only when it had consulted all interested parties through an established procedure. Any revenue raised by the Authority through the disposal of property will be retained by it.

J. Other powers

Clause 194 and **schedule 19** were not last session's *Railways Bill*. They change the current system whereby bylaws are made by individual train companies and Railtrack and

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73 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, paras 99-102

74 PQ HL Deb 22 February 1999 WA 105

75 DETR press notice 902 *Future sales of British rail property will favour transport use*, 14 September 1999

Railtrack and are then confirmed by the secretary of state. Instead, the Authority will have the power to make uniform bylaws for the whole railway network. They can cover such subjects as:

- the use and working of railway assets,
- travel on or by means of railway assets,
- the maintenance of order on railway assets, and
- the conduct of persons while on railway assets.

The Authority may also make byelaws:

- with respect to tickets issued for entry on railway assets or travel by railway and the evasion of payment of fares or other charges,
- with respect to interference with, or obstruction of, the working of any railway or any railway asset or the provision of any railway service,
- prohibiting or restricting the smoking of tobacco in railway carriages and elsewhere,
- with respect to the prevention of nuisance,
- with respect to the receipt and delivery of goods, and
- for regulating the passage of bicycles and other vehicles on footways and other premises and intended for the use of those on foot.

They will have to be confirmed by the secretary of state.

Clause 195 and **schedule 20** 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.

Clause 196 gives the Authority the power to promote in Parliament bills relating to railways and to oppose them. This automatically gives the Authority the power to promote railway schemes under the *Transport and Works Act 1992*..[76] Presumably this is why it is included as the general presumption is that railway construction will be made by a TWA order.

In the *Railways Bill* the Authority was specifically prohibited from promoting private bills or orders under the *Transport and Works Act 1992.* The select committee recommended this be changed:

> A number of our witnesses questioned why Clause 16(3) specifically excludes the Authority from promoting Private Bills in Parliament, or applying for orders

[76] The *Transport and Works Act 1992* section 20 allows any body able to promote bills to apply for a TWA order.

> under the Transport and Works Act 1992. The Freight Transport Association and the Rail Freight Group both thought this exclusion "surprising ... given the otherwise [wide-] ranging powers in the Bill". The Railway Development Society said that "it is essential that the Authority should enjoy *at least* the powers held by the British Railways Board in this respect prior to 1993, and currently held by other transport authorities". We note that the Deputy Prime Minister was already reviewing this part of the Bill. **We recommend that Clause 16(3) be omitted from the Bill.**[77]

It is likely that the power would only be used if there were no other sponsor.

Clause 197 gives the Authority incidental powers including entering into agreements, acquiring and disposing of property, investing money, and promoting publicity.

K. Investment

1. Background

Railtrack is responsible for funding 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 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.[78] They come from the operators of passenger services, freight operators and open access passenger services. This latter category comprises special services such as excursion trains and also Eurostar, which runs trains to Paris and Brussels through the Channel Tunnel. In addition Railtrack can raise money by borrowing from the financial institutions.

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 gradually changed and the company has become more proactive. 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.[79] Railtrack sets out in

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77 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 83

78 Railtrack *Annual report 1998/99*

79 Railtrack first identified these in its 1998 *Network management statement*

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:[80]

Sustaining the network	Ten-year total (£bn) 1999/2000-2008/09
Maintenance and renewal expenditure	16.4
Commitments to developing the network	
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
Total enhancement spend over ten years	**10.7**
Total network investment	**27.1**

It is clear that £16.4 billion is for maintenance and renewal expenditure so over the next ten years only about £1 billion was to be available each year to provide for new capacity.

The rail regulator is responsible for ensuring that Railtrack delivers the investment and maintenance underpinning access charges. His office is currently working on the periodic review of the track access charges paid to Railtrack by the TOCs. It 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.[81] Railtrack argue that the structure of the rail industry provides no incentive for it to invest because most if 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. It found that there had been little increase in network capability through development and enhancement, and that Railtrack's structure of incentives has led it to be reactive to schemes rather than entrepreneurial.[82] The Regulator's response to the report was published in November 1999.[83] At the time he said:

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80 Railtrack *1999 Network management statement for Great Britain,* p 8
81 Office of the rail regulator *Annual report 1998-99*
82 April 1999
83 Office of the rail regulator *Railtrack's stewardship of the network,* November 1999

> It is my intention to strengthen Railtrack's public accountability by amending its network licence, using the procedures in the Railways Act 1993. By making the improvements which this document outlines, the company will have greater clarity, stability and predictability in regulation. It will know far better what is expected of it, and so will its customers and those who rely on it. And it will know these things in advance and so be able to plan its business with confidence. By improving regulation in this way, we enhance its effectiveness and so facilitate the achievement of a better railway.
>
> I am therefore today announcing the commencement of my first use of the licence modification procedure. My objective is to amend Railtrack's network licence to include three new conditions concerning establishing:
>
> - a reliable and comprehensive asset database which covers all of Railtrack's network and the condition of its assets;
> - an efficient and effective regime for monitoring and reporting on the state of Railtrack's assets; and
> - a binding code of practice concerning Railtrack's dealings with its dependent customers.
>
> The steps which I have already taken, together with the criticisms which the company has faced and the measures which I have today announced, should be enough for the company now to improve significantly on its care, maintenance and improvement of the network.
>
> I want and expect Railtrack to respond positively and constructively to these initiatives. If I am not satisfied with the company's response and its performance, I will not shrink from justified and proportionate use of the powers available to me. Railtrack now has the opportunity to demonstrate urgently and beyond doubt that it takes its public interest responsibilities every bit as seriously as the public which it was established to serve.[84]

No official figure has been put on the amount needed to update the network but press reports seem to be quoting figures of £30-40 billion over the next ten years.[85] A report by Sheffield University expects demand on the railways to increase by 53 per cent in the next ten years, requiring investment of £41 billion.[86] Railtrack had based its estimates on an increase of 30 per cent. Gerald Corbett, the chief executive, said in November that the company had increased its estimate of what it would spend from £27 billion to £35 billion over the next ten years.[87] The forecast profits of the TOCs and Railtrack will not be

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84 Office of rail regulator press notice *Rail regulator announces his response to the report on Railtrack's stewardship*, 25 November 1999

85 See for example "Railtrack needs £40 billion to get up to speed" *Sunday Times* 4 July 1999

86 Sheffield University Advanced Railway Research Centre (ARRC), study prepared for the BBC; reported in "Demand from rail users set to outstrip investment" *Financial Times* 29 November 1999

87 Gerald Corbett, BBC Panorama 29 November 1999

enough to finance a bigger spending programme so fares may have to rise or extra public subsidy may be needed. Mr. Corbett suggested that the gap was about £1 billion a year although the Sheffield researchers calculate it as closer to £2 billion a year.

Until recently the monitoring and enforcement of Railtrack's investment plans was the duty of the regulator alone but OPRAF's objectives, instructions and guidance issued in November 1997 require it (now the shadow SRA) 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".

2. The bill

Clause 198 can be used to secure greater capacity over the network or to secure new network. It strengthens the power of the rail regulator to require the improvement and development of the railway. The rail regulator, on the application of the Authority or of someone else with the agreement 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 give a direction only 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 could not make a reasonable return but the press reported that a very narrow definition would be put on what was an unacceptable return. Railtrack, for example, would not be able to argue that an investment would not make money in the early years.[88]

As the main provider of the infrastructure, this clause mainly affects Railtrack. It commented:

> This clause would empower the Regulator, on the request of the SRA, to direct facility owners, principally Railtrack, to provide a new railway facility or to improve or develop an existing facility. This extremely wide power potentially undermines the commercial freedom of the railway industry to provide facilities which meet the needs of its passenger and freight customers. Inappropriately implemented, the power would make it more difficult to attract private sector finance and raise the costs of funding the industry's massive investment programme.
>
> It is unlikely that the SRA will have a sufficiently detailed knowledge of the rail market to be able to determine what investment is needed and where, and to balance the costs and benefits of the wide range of potential investments. Railtrack has already set out a £27 billion expenditure plan for the next ten years based on extensive consultation with both customers and funders. We, therefore, believe that this power should need to be exercised only exceptionally and that limits ought to be set on the scope of the clause. We suggest that one possible

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[88] "Railtrack network gets a platform for high-speed change" *Financial Times* 8 July 1999

> limit might be that the clause should apply only to facilities which would not be provided as a result of commercial negotiation with train operators and funders. Moreover, we feel that such directions should only be given after proper consultation with the facility owner and other interested parties.[89]

Other witnesses wanted the original clause, which did not refer to "any other person with the consent of the Authority", to go further and allow any interested party to apply to the rail regulator. The committee disagreed as it thought it appropriate, if one was trying to create a unified railway, that companies should apply to the SRA, who would decide whether to pass on the request to the regulator. In effect this is what will happen but the position of other interested groups is now explicitly recognised in the legislation.

The committee thought that the rail regulator should publish the basis on which he intended to establish what was an adequate reward for an alteration to the infrastructure.

The government has added an exemption to this clause: the secretary of state may make an order exempting a particular class or group of railway facility. During the select committee hearings, concern was expressed by heritage groups that preserved railways should not be inadvertently included in the scope of general legislation and this clause could be used for them.[90] It could also possibly be needed for whatever is eventually proposed for London Underground.

L. Rail regulator

1. Background

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.

In implementing the new legislation, 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

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89 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para R 20

90 Ibid, para 105

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 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. His duties under this section presently include:

- protecting the interests of users of railway services;
- promoting and developing the use of the network for the carriage of passengers and freight;
- promoting efficiency and economy on the part of those providing railway services;
- promoting competition in the provision of railway services;
- promoting measures designed to facilitate passenger journeys involving more than one operator;
- imposing on operators the minimum possible restrictions;
- enabling persons providing railway services to plan the future of their business with a reasonable degree of assurance.

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'.[91] Within the confines of the law, the regulator would carry out his duties in such a way that acknowledged the government's objectives for the railways.

2. The bill

Clause 199 amends section 4 of the *Railways Act 1993* so as to require the rail regulator to act in such a way as to support the strategies of the Authority. It inserts duties relating to integrated transport and sustainable development, similar to those currently contained in the voluntary concordat. The secretary of state will issue similar instructions and guidance to the SRA so that he can ensure there is a consistent approach.

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[91] HC Deb 6 November 1997 c 282W

The regulator's duty to promote competition is redefined to be for the benefit of "users of railway services." As John Prescott said during the second reading debate:

> … also provides that the duty on the rail regulator to promote competition will now be balanced by a requirement that competition must be for the specific benefit of railway users. The rail regulator needs to balance competition against the public interest of network provision. We are not concerned solely with the promotion of competition.[92]

Clause 199 also imposes a new duty on the regulator to have regard to "any general guidance from the secretary of state about railway services or other matters relating to railways." This includes both the passenger and freight railway. Provision is made for the guidance to be published. This restores the relationship between the regulator and the secretary of state that existed 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 date he could act completely independently.

M. Enforcement powers

1. Background

One of the government's main concerns is with the performance of the passenger train companies and the ability of OPRAF (now the shadow SRA) 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 franchising 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 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.

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[92] Second reading debate, HC Deb 19 July 1999 c 798

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 franchising 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 competition commission consider that to be in the public interest.

The House of Commons 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.[93]

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 in April 1997, 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.

2. The bill

Clauses 200 and 201 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

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93 Public Accounts Committee, 53rd report 1997-98, HC 625

break the terms of their franchise agreement or licence. Clause 200 will strengthen the enforcement procedures and clause 201 will allow the SRA more flexibility in imposing penalties.

Clause 200 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.

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."[94] It is currently developing the details of this arrangement, including the criteria and safeguards on how the money will be spent. At present 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. Legislation will not be needed to effect the change.

The committee recommended that the rail regulator (and presumably the SRA) would publish the basis on which he intended to calculate fines. In the present bill, this clause 200 (1) ensures that both the Authority and the regulator will publish their policy in respect of imposing fines and their amount.

Clause 201 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.[95] This clause also reduces the period in which a rail operator may make representations or objections to enforcement action.

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94 DETR press notice *Fast track enforcement powers put rail passengers in the driving seat*, 7 July 1999

95 Public Accounts Committee, 53rd report 1997-98, HC 625

ATOC commented as follows on these clauses:

> 5.1.3 ATOC believes that the greater the potential penalty, the greater is the need for the regime to be clear and to be demonstrably working in a fair manner. Therefore, the best interests of the government, taxpayers, passengers and TOCs will be served by an enforcement regime which is seen to be workable, fair and transparent.
>
> *5.2 Remedial Action*
> 5.2.1 The current enforcement regime gives those under threat of a penalty the chance to put matters right, thus avoiding a penalty. The proposed new regime, described in clause 19 of the bill, does not afford such an opportunity. ATOC feels that it is the successful implementation of remedial action which should be the primary objective, as this is the outcome which passengers will most wish to see. ATOC therefore asks the sub-committee to consider recommending an amendment to the bill to protect an operator who is demonstrably taking steps to remedy a problem.
> 5.2.2 Further, the enforcement regime should not have the effect of stifling innovation. Innovation, for example in the form of new trains or new technology such as the Rail Journey Information System, can involve its operators in a degree of risk. Were TOCs to face the risk of summary fines for the failure of such innovative developments during their early stages (as the bill currently would permit), this would send a signal to the industry opposed to the stated aim of government, which regards investment and innovation as a priority for the railways.
> 5.2.3 ATOC therefore asks the sub-committee to consider suggesting an amendment to the bill reflecting the undesirability of penalising such innovation, for example by including a paragraph in clause 19 requiring the regulator or the SRA to take this into account when deciding whether to levy or in determining the amount of a fine.
>
> *5.3 Retrospection*
> Unlike the current system, the proposed enforcement regime includes the power to levy penalties where a contravention of a licence condition or franchise requirement, or of a regulatory order, has occurred. However, other than the statement that the SRA and the rail regulator will not be permitted to impose penalties for contraventions occurring before the bill is enacted, there is no indication as to how far back in time the rail regulator or SRA could go. ATOC believes that there should be.
>
> *5.4 Appeals*
> 5.4.1 Clause 19 of the Bill states that the only limit on the amount of any penalty is that it must be "reasonable".
> 5.4.2 The grounds of appeal set out in proposed new section 57D of the Railways Act 1993 (clause 19 of the Bill) are extremely narrow. They mirror the existing appeal provisions relating to final or provisional orders. Where very substantial financial penalties are concerned, ATOC considers that the relatively summary procedure in the Bill is inappropriate and could operate unfairly, and that there ought to be wider and clearer grounds of appeal.

> 5.4.3 ATOC therefore asks the Sub-Committee to consider recommending the insertion in the new section 57(D) (1) a new point (d), allowing appeal on the amount of any penalty.[96]

N. Consultative committees

The present duties of the rail users' consultative committees (RUCCs) and the central rail users' consultative committee (CRUCC) are set out in sections 76-79 of the *Railways Act 1993* 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.

Last session's *Railways Bill* (clause 23) extended the scope of matters which the RUCCs and the CRUCC could investigate to include all passenger services, "open access" services as well as passenger franchise services. This is included as **clause 203 (2)** of the present bill.

The select committee did not think this went far enough:

> 137. We remain concerned, however, about the profile and funding of the Central Rail Users' Consultative Committee, and that of the regional Committees. In our previous report, we recommended their re-launch "so as to create new and effective rail consumer associations whose sole purpose will be to champion the passengers' interests. They should have a higher profile and appropriate funding". There has been no progress towards this objective. Funding remains very low: the total budget for the eight regional Committees, and the Central Rail Users' Consultative Committee is only £2.2 million. The Central Rail Users' Consultative Committee told us that "only being able to pay allowances to Rail Users' Consultative Committee members limits the ability of the Committees to attract a broad range of passenger representatives". Moreover, we were astonished to learn that the Rail Users' Consultative Committee for Eastern

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[96] Ibid, R 37

> England had an annual budget of only £400 to promote its activities to the public. It must also change its name: it said that "the biggest thing that we do seek, and which the Bill does not give us any scope to do, is to change our name". Finally, the current restrictive administrative arrangements which govern the Committees should be overhauled, enabling it to "organise its own affairs to best represent passengers". It argued, for example, that it should be able to set up sub-committees without seeking the Strategic Rail Authority's permission.
>
> 138. We were also concerned that the Central Rail Users' Consultative Committee would not seem to be sufficiently independent of the Strategic Rail Authority, and would perhaps be unwilling to criticise its decisions, if the Authority was its source of finance. We were told by the Committee that its relationship with the Authority "must be a robust one if the public are to have this faith that their interests as passengers are being represented. We are currently working with the shadow Strategic Rail Authority on the details of that relationship. Clearly that must be a partnership but recognising the quite contrasting roles which each of us has to play in the railway industry".
>
> 139. **We reiterate our belief that significant changes must be made if the Rail Users' Consultative Committees are to become influential and effective representatives of the interests of rail passengers. Their names must be changed in order to raise their profile, they must be adequately funded, and they must become able more freely to regulate their own affairs. We recommend that the Government re-examine the Bill to ensure that the Committees will be able to achieve these objectives. We further recommend that the Government ensures that the Consultative Committees are able to operate sufficiently independently of the Strategic Rail Authority, and reviews the relationship between the two bodies after an appropriate interval.**[97]

Clause 202 of the present bill renames the central rail users' consultative committee as the rail passengers' council and renames the rail users' consultative committees as the rail passengers' committees. **Schedule 21** makes consequential amendments to legislative references.

Clause 203 extends the functions of the renamed bodies not only to passenger services not provided under a franchise agreement, but to other new duties. These include keeping under review matters affecting the interests of the public in relation to the passenger railway; making representations to and consulting such persons as they think appropriate; and co-operating with other bodies representing public transport users. The government has said it wants the committees to co-operate with bus user representative bodies and to contribute jointly to the regional transport strategies that will form part of the Regional Planning Guidance.

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[97] Environment, Transport and Regional Affairs Committee *Railways Bill* 21st report 1998-99, 4 November 1999 HC 827, para 137-9

Schedule 22 makes new financial and procedural provisions for the bodies.

O. Miscellaneous

1. Access contracts

Access contracts are negotiated between Railtrack and the train operating companies and approved by the rail regulator. **Causes 205 to 207** make certain technical changes and were not in the earlier bill. **Clause 205** enables the rail regulator to give general approvals for access contracts of a specified class or description and makes provision for their publication and revocation. **Clause 206** enables the regulator to direct that an access agreement or network installation contract be amended to permit more extensive use of the railway facility or network installation in question. The clause also applies procedures in schedule 4 of the 1993 Act to these new direction powers. **Clause 207** enables the regulator to act in relation to contracts for the use of railway facilities or network installations that are proposed to be constructed or in the course of construction.

2. Closures

Clauses 208 to 212 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 208** 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 209** gives a new power for conditions to be imposed on a minor closure. **Clause 210** 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 211** allows the Authority to make a general determination of a class or description that shall be considered minor closures, rather than having to determine each case separately. **Clause 212** makes it clear that where a non-franchised passenger service is to be closed, the operator must continue the service until closure. This ensures that the burden of maintaining the service does not fall on the Authority.

3. British Railways Board

Clause 213 and **schedule 23** provide for the transfer to the secretary of state of any liabilities, properties and rights. It is intended that most rights and liabilities will have been transferred to the SRA under clause 193. **Clause 214** provides for the winding down and the abolition of the British Railways Board. once all its residual liabilities, properties and rights have been transferred to the Authority or to the secretary of state.

4. Passenger Transport Executives

Under the *Railways Act 1993* (section 34) the PTEs may specify the passenger service requirements in their area. **Clause 215** provides that the SRA must not, without a direction from the secretary of state, carry out their requirements if it would prevent or seriously hinder it from complying with directions and guidance given by the secretary of state or Scottish ministers. Nor must it comply with the statement if it would have an adverse effect on the provision of railway passenger or goods services or, unless there are special reasons for doing so, increase the amounts that the SRA must pay to franchise operators. Basically this clause clarifies the hierarchy in case of contradictory requirements.

5. Devolved powers

Clause 216 gives powers to the Scottish ministers and the NAW to provide financial assistance for freight in Scotland and Wales. These powers must be exercised in accordance with criteria notified to them by the Authority.

6. ROSCOs

The select committee argued that the bill should be amended to include reserve powers to regulate the ROSCOs should such regulation prove necessary. This was despite the evidence of the rail regulator, Tom Winsor, that he regarded the powers of the *Competition Act* as adequate for his task. He also said that a code of practice negotiated by the former rail regulator with the ROSCOs appeared to be working satisfactorily, and that "other companies other than the original three ex-British Rail rolling stock companies are coming into the market, are entering it strongly and are investing."[98]

Clause 217 makes it clear that the rail regulator may exercise functions under the *Competition Act 1998* concurrently with the director general of fair trading in relation to agreements for the supply of rolling stock and certain other railways related contracts and arrangements.

7. Information

The transport sub-committee recommended that the SRA should collect information on the performance not only of the TOCs, but also of Railtrack and the ROSCOs and that it should be made available to interested parties.[99] Under section 80 of the *Railways Act 1993* anyone holding a network or station licence must provide information as requested to the franchising director. This power is transferred to the SRA by schedule 15

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98 Environment, Transport and Regional Affairs Committee *Railways Bill*, 21st report 1998-99, 4 November 1999 HC 827, para 118

99 Ibid, para 17

paragraph 48 and amended to include all licence holders by **schedule 24 paragraph 24**. Section 145 of the 1993 Act would seem to allow disclosure by *inter alia,* the rail regulator and the franchising director in the course of carrying out their duties.[100]

8. Supplementary

Clause 218 enables the Authority to give certain guarantees to trustees of an occupational pension scheme. **Clauses 219** makes provision for stamp duty and stamp duty reserve tax in respect of transfer schemes made under powers contained in part IV of the bill. **Clause 220** abolishes the requirements for certain Treasury approvals for the remuneration of the Rail regulator's officials and chairman and members of the rail users' consultative bodies. **Clauses 221 to 223** and **schedules 24 and 25** make "minor and consequential amendments" to other enactments and provide for transitional provisions and interpretation.

III Rail safety

Neither the *Railways Bill* introduced in July 1999 nor the present bill contains more than a brief reference to safety (clause 182(3)(a)). The transport minister, Lord Macdonald, announced on 11 October 1999 that in response to concerns raised after the accident at the Ladbroke Grove junction, "Ministers are minded to transfer the main functions of the Safety and Standards Directorate (SSD) out of Railtrack in order to ensure public confidence that there is no conflict between safety standards and commercial interests".[101] He said that the government would "consider carefully where these functions are best located to ensure greater coherence on safety. If we need to legislate we will do so". Keith Hill confirmed "My department is currently considering where the best home or homes for those functions are. If legislation is necessary to secure such a transfer we are prepared to introduce proposals in the Transport Bill."[102]

If there is to be legislation, it will probably be a new clause introduced to part IV of the *Transport Bill*. However it is not certain that primary legislation would be necessary. Much of the present arrangements are set out in regulations and licences. For example the acceptance of safety cases by the SSD is done under the *Railway safety case regulations* and the organisation of the SSD, as a separate department within Railtrack reporting to the chairman rather than the chief executive, is in its licence.

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[100] A brief description of the information on performance measures currently available is given in Library research paper 99/72 *Railways Bill*, pp 22-25

[101] HL Deb 11 October 1999 c 14

[102] PQ HC Deb 23 November 1999 c 61W

This section describes briefly the present organisation of rail safety regulation. It does not include any assessment of warning systems or other safety matters.

1. Privatisation

It was feared that the entry of new operators into the railway industry and the division of control between different companies created the potential for introducing new and inadequately controlled risks onto the system. The Health and Safety Commission (HSC) was therefore asked to carry out a study of the health and safety implications of the changes and to make recommendations. It published a report *Ensuring Safety on Britain's Railways* in January 1993 and the then government accepted in full its recommendations on how best to secure safety under the privatisation proposals.

The safety controls established included:

1. The Health and Safety Executive (HSE) to carry out certain functions for the secretary of state through HM Railway Inspectorate (HMRI). The Chief Inspecting Officer of Railways advises on matters of safety and on technical matters relating to the railways. The HSE sets or recognises safety standards for the industry including standards and arrangements for assessing competence of key safety personnel.
2. A validation procedure for railway operators. Infrastructure controllers (in practice Railtrack), train service operators and station operators are required to produce a Railway Safety Case (RSC) stating how they will meet all the safety requirements. The RSC demonstrates that an operator has the systems in place to manage operations safely and meets required safety standards. It includes a safety policy, risk assessment, a description of safety management systems, and the safety side of maintenance and operational arrangements.

The report concluded that new regulations would be necessary in order to ensure that existing standards of safety were maintained. The report's detailed recommendations were implemented by three new sets of regulations made under the *Health and Safety at Work etc Act 1974*. These were designed to formalise controls over the management of safety, the competence of staff performing safety critical work and the carriage of dangerous goods, all of which had previously been covered by British Rail's internal policy and procedures. The new regulations are monitored and enforced by HMRI.

2. Regulation

The Health and Safety Commission, together with its operating arm, the Health and Safety Executive is the single regulator of rail safety in Britain. It works through HM Railway Inspectorate, which traces its origin back to 1840 and has been part of the HSE since 1990.

The *Railways Act 1993* section 117 brought all railway safety legislation within the framework created by the *Health and Safety at Work Act 1974*. This legislation imposes a general duty on employers to manage their businesses in such a way as to ensure that

risks to the health and safety of their employees are reduced to a level which is as low as is reasonably practical (the "ALARP" principle). Section 3 imposes a similar duty in relation to the health and safety of others that may be affected by the employer's activities, and this is now interpreted as embracing both passengers and members of the public at large.

The HSC and the, then separate, departments of transport and environment signed a memorandum of understanding on 10 October 1996 to ensure that certain functions were carried out for the secretary of state through HMRI. These are set out as:[103]

> The HMRI's role is to secure the proper control of risks to the health and safety of employees, passengers and others that might be affected by the operation of Britain's railways. It does this by:
>
> - ensuring through approval and inspection that **new works and rolling stock** meet acceptable safety standards such as those set out in the Inspectorate's Railway Safety Principles and Guidance;
> - considering, accepting as appropriate and monitoring compliance with **Railway Safety Cases**;
> - securing compliance with health and safety legislation through a programme of planned **inspection** and, where appropriate, **enforcement** action;
> - monitoring accident trends and **investigating selected incidents;**
> - **Influencing the industry** and others on all aspects of the regulation and management of health and safety on Britain's railways.
>
> **New works, equipment, rolling stock and level crossings**
> The Inspectorate has a statutory duty to consider, inspect and (if appropriate) approve proposals for new or altered railway "hardware". The process covers the infrastructure, signalling, vehicles and equipment and proposals for modernising level crossings. It covers any works, plant or equipment that may affect the safe operation of the system. Major works, such as new railways, are usually inspected before final approval is given. Guidance on procedures and the format of documents for submission is contained in the *Guide to the approval of railway works, plant and equipment*. Separate guidance on the Level Crossings Regulations 1997 is also available.
>
> **Providing guidance and advice**
> Soon after its formation in 1840, the Inspectorate produced the first written guidance on the standards of construction, which were important for the safety of the railway. The need for guidance has remained as the industry has grown and the technology it uses has become more complex.
> The approval process is based on the Inspectorate's published guidance and advice on the design and construction of new works and rolling stock. This is

[103] http://www.open.gov.uk/hse/railway/rihome.htm

contained in the *Railway Safety Principles and Guidance*, which is published in two parts:

- Part 1 sets out a series of high level safety principles;
- Part 2 provides further advice on how the principles may be implemented on eight key aspects of railway construction and engineering.

HM Railway Inspectorate regulates safety within what has become a geographically and managerially diverse industry by monitoring, using field inspectors, the performance of all the role players. The inspectors check the actual performance and the effectiveness of the management regimes against the commitments and goals in the safety cases.

3. Operation

The immediate responsibility for ensuring safety on the railways rests with the party who is in control of the activity, whether it is the trains or a station. However, Railtrack, as the 'infrastructure controller', is responsible for the integrating of the system itself and is able to impose conditions on access and to monitor an operator's performance to ensure compliance with these conditions. To facilitate this overall responsibility, the safety professionals at British Rail were among those transferred to Railtrack on 1 April 1994. Regulations require that operators should comply with the reasonable directions of the Infrastructure Controller and reinforcing this, access agreements include a general provision that there should be compliance with specified safety requirements.

Thus direct responsibility for safety rests with the Safety and Standards Directorate (SSD), which is part of Railtrack. The directorate devises policies covering the control of safety risk on Railtrack infrastructure and monitors their delivery. It does so by accepting safety cases from train operating companies and others, including Railtrack itself, by auditing the actions taken to deliver safety standards, and by investigating breaches of standards.

Central to the new regime is the concept of the 'safety case'. Each train service operator, station operator and infrastructure controller is required to produce a railway safety case. Operators' safety cases are accepted by the infrastructure controller (normally Railtrack), which in turn has its own safety case scrutinised by the HSE. Railtrack's safety case was accepted in March 1994 just prior to the track and the station freeholds being transferred to it in April 1994. Much of what is included in a safety case will be governed by the standards set out in the Railway Group Standards.

4. Accident investigation

All notifiable accidents on railways and tramways must be reported to HMR1 under the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR 95).*[104] The arrangements include statutory reporting on wrong side signalling failures,

[104] SI NO 3163

signals passed at danger and incidents of severe congestion, which were previously reported under administrative arrangements.

The type of investigation to be made into a railway accident is decided by the safety regulator, the HSC, usually within a few days of an accident, although the investigation technically is carried out by the HSE. In practice it is HMRI inspectors who undertake the work. Investigations with a full report are carried out under section 14(2)(a) of the *Health and Safety at Work Act 1974* and a public inquiry into a railway accident is held under section 14(2)(b). Apart from discovering the cause of an accident the HSE must decide whether there will be a need to prosecute under the HSW Act for any breaches of safety regulations.

B. Government policy

The government is considering the principles that should govern how transport safety is regulated and accidents investigated. It is looking, among other things, at the case for a new safety authority that would embrace all the transport modes, including roads. In particular it is looking at where the SSD should be cited if it is removed form Railtrack.

The transport sub-committee of the Environment, Transport and Regional Affairs Committee has recommended on a number of occasions that transport safety regulation should be focused on a single independent authority, as a means of separating regulation from operational responsibility.[105] As a result the government announced in its integrated white paper that it would carry out a review of transport safety, including accident investigation.[106] The review has the following terms of reference, "to consider whether a more integrated or unified approach to transport safety across modes would be more effective, produce a safer travelling environment and secure best value for money" and its aim was described as:

> The aim of the review is a modern institutional framework, designed to deliver continued improvements to transport safety and secure public confidence. It will focus on the principles that should govern the organisational and regulatory arrangements for transport safety, including those for personal security, and cover the main areas of public concern, from the setting of safety standards to the investigation of accidents. In particular, it will address institutional obstacles that are seen to act as a constraint to better regulation of safety and consider whether there are aspects of the current organisational arrangements that could give rise to conflicts of interest. It will not address the substance of policies for the

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[105] Environment, Transport and Regional Affairs Committee *The Proposed Strategic Rail Authority and Railway Regulation*, 3rd Report 1997-98, HC 286-I; *Air Traffic Control* 4th Report 1997-98, HC 360-I

[106] DETR *A new deal for transport: better for everyone*, July 1998 Cm 3950

> operational safety of individual modes taken forward within the current institutional framework.[107]

The government is to complete the review process and announce decisions in about 18 months. In response to a PQ Keith Hill said "If it is decided that there would be benefits, including for safety, in making changes to the present arrangements, the government will consider the most cost effective way of implementing them.[108]

The select committee has always considered the position of the Safety and Standards Directorate within Railtrack to be anomalous. It has consistently argued that safety regulation and economic interests conflict and that it was unsatisfactory that a division of a commercial company which was itself subject to regulation should perform safety regulation. In its report on the proposed Strategic Rail Authority, it recommended that "transport safety regulation be focused on a single, entirely independent authority ... Railtrack should be relieved of its role in safety regulation and its Safety and Standards Directorate should be transferred to an independent safety authority"[109].

The government announced in March 1998 that the HSE would conduct a "review of Railtrack's Safety and Standards Directorate and whether those responsibilities should remain with Railtrack or should be located elsewhere".[110] On the day of the Ladbroke Grove accident the HSE issued its interim report. It concluded that there was no "cause for immediate concern on safety grounds in the way that the Safety and Standards Directorate has operated its key safety functions ... [and] any decision on the way forward should be taken in the light of a wider and more formal sounding of views in the industry, to establish the depth and significance of any unease over the discharge of key safety functions by the Safety and Standards Directorate as an arm of Railtrack and - crucially - whether this reflects any potential compromise on the delivery of safety on the main railway network." It did, however, note that "there is some unease at the potential conflict of interest in the Safety and Standards Directorate, with its important safety and standards functions, forming part of Railtrack (a commercial interest in the industry)." The government are considering whether to move it and, if so, where to.

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[107] HC Deb 8 December 1998 c137W

[108] PQ 24 November 1999 c 113W

[109] Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3rd report 1997-98, HC 286 para 145

[110] *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 74

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17. Environment, Transport and Regional Affairs Committee *The proposed strategic rail authority and rail regulation*, 3rd report 1997-98, 18 March 1998, HC 286

18. Transport Committee *Railway Safety*, 4th report, 10 July 1996 HC 301

V Abbreviations

ATOC	Association of Train Operating Companies
BR	British Railways [latterly traded as British Rail]
BRB	British Railways Board
BTP	British Transport Police
CRUCC	Central Rail Users' Consultative Committee
DETR	Department of the Environment, Transport and the Regions
EU	European Union
EWS	English, Walsh & Scottish Railway
HMRI	HM Railways Inspectorate
HSC	Health and Safety Commission
HSE	Health and Safety Executive
HSWA	Heath and Safety at Work Act 1974
LRPC	London Regional Passengers' Committee
MMC	Monopolies and Mergers Commission
NAW	National Assembly for Wales
OFT	Office of Fair Trading
OPRAF	Office of Passenger Rail Franchising
ORR	Office of the Rail Regulator
PTA	Passenger Transport Authority
PTE	Passenger Transport Executive
ROSCO	Rolling Stock Leasing Company
RSC	Railway Safety Case
RSG	Rate Support Grant
RUCC	Rail Users' Consultative Committee
SSD	Safety and Standards Directorate
SRA	Strategic Rail Authority
SSD	Safety and Standards Directorate
TOC	Train Operating Company

Appendix 1: Franchise operators

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
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	02/03/97
Virgin Cross Country	Virgin Rail Group Limited.	15 yrs	05/01/97
Virgin West Coast	Virgin Rail Group Limited.	15 yrs	09/03/97
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

Source: OPRAF *annual report 1998-99*

Appendix 2: Franchisers' subsidies

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

		Outturn		Future payments in February 1999 prices				
		1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Anglia Railways	OPRAF	36	27	23	17	14	9	7
Cardiff Railways	OPRAF	21	17	18	17	16	15	14
Central Trains	OPRAF	135	125	115	109	106	102	99
	PTE	39	36	31	28	27	25	24
Chiltern Railway	OPRAF	14	13	10	7	5	4	0
Connex South Central	OPRAF	76	58	49	46	40	38	6
Connex South Eastern	OPRAF	115	86	65	52	43	34	29
Gatwick Express	OPRAF	-6	-8	-10	-11	-12	-13	-14
Great Eastern	OPRAF	29	14	9	3	0	-5	-10
Great North Eastern Railway	OPRAF	55	37	17	7	2	0	--
Great Western Trains	OPRAF	59	53	50	44	36	29	19
Island Line	OPRAF	2	2	2	2	1	--	--
LTS Rail	OPRAF	28	26	25	23	22	20	19
Merseyrail Electrics	OPRAF	7	7	6	6	6	6	6
	PTE	58	53	49	47	44	44	43
Midland Mainline	OPRAF	8	3	1	-1	-3	-5	-7
North Western Trains	OPRAF	100	93	86	79	76	73	70
	PTE	84	79	73	67	64	61	59
Northern Spirit	OPRAF	142	128	116	108	103	99	96
	PTE	78	70	63	58	55	53	51
Scotrail Railways	OPRAF	136	131	120	113	106	101	97
	PTE	110	106	100	91	82	76	72
Silverlink	OPRAF	49	36	31	28	24	21	18
South West Trains	OPRAF	63	60	59	53	48	38	--
Thames Trains	OPRAF	34	23	18	14	8	4	--
Thameslink Rail	OPRAF	3	-7	-17	-24	-25	-29	-30
Virgin Cross Country	OPRAF	116	101	87	74	68	51	41
Virgin West Coast	OPRAF	77	70	87	78	72	53	43
Wales & West Railway	OPRAF	74	64	61	54	50	47	41
West Anglia Great Northern	OPRAF	55	36	27	14	5	-15	-27
OPRAF Total		1,425	1,196	1,027	895	796	622	421
PTE Total		369	343	315	291	272	259	249
Total		1,794	1,539	1,342	1,185	1,068	881	670

Notes: Payments to the Franchising Director appear as negative amounts.
Excludes incentive regime payments

Source: OPRAF Annual Report 1998-99