

*These notes refer to the Transport Act 2000 (c.38)  
which received Royal Assent on 30 November 2000*

# TRANSPORT ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part I: Air Traffic

18. The Air Traffic provisions are in six Chapters. These are:

Chapter I - Air Traffic Services

Chapter II - Transfer Schemes

Chapter III - Air Navigation

Chapter IV - Charges for Air Traffic Services

Chapter V - Competition

Chapter VI - Miscellaneous and General.

#### *Chapter I: Air Traffic Services*

19. Currently en route air traffic services, and air traffic services at some airports, are provided by NATS, a company which is wholly owned by the CAA. The air traffic provisions in this Act will enable NATS to be transferred to a company owned partly by the public sector, partly by the private sector and partly by NATS employees. This new company will continue to provide the services currently provided by NATS. En route services will be provided under a licence issued by the Secretary of State, and will be subject to statutory economic regulation by the CAA. All air traffic services, whether provided by NATS or other providers will remain subject to statutory safety regulation by the CAA, who will also have responsibility for airspace policy

#### *Sections 1 and 2: General Duties*

20. *Sections 1 and 2* set out the general duties of the Secretary of State and the CAA. The Secretary of State must exercise his functions under Chapter 1 so as to maintain a high standard of safety in the provision of air traffic services. The safety duty has priority over any other function. The Secretary of State is also required to exercise his functions under chapter 1 in the manner he thinks best calculated to achieve the purposes set out in subsection 2. These purposes include furthering the interests of airlines, their passengers and freight customers, and airports, including furthering those interests through promoting competition, where appropriate. Section 2 imposes similar obligations on the CAA. In section 2, *subsection (5)* disapplies section 4 of the Civil Aviation Act 1982 ("the 1982 Act") when the CAA is performing its functions under Chapter I. Section 4 of the 1982 Act makes it the duty of the CAA to perform its functions in a manner best calculated to achieve objectives which relate to air transport services and users. This duty is not limited to functions under the 1982 Act and, if not disapplied, would apply to functions under this Act.

### ***Section 3: Restrictions on providing services***

21. *Section 3* makes it an offence for a person to provide air traffic services in respect of a managed area unless he is authorised to do so by a licence or an exemption. “Air traffic services” means:
- providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions;
  - providing instructions, information or advice with a view to securing safe and efficient flying;
  - managing the flow of air traffic with a view to ensuring the most efficient use of airspace;
  - providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft;
  - and notifying organisations of aircraft needing search and rescue facilities and assisting organisations to provide such facilities.
22. “Managed areas” are the United Kingdom and any area which is outside the United Kingdom but in respect of which the United Kingdom has undertaken under international arrangements to provide air traffic services.
23. Air traffic services provided by or on behalf of the armed forces are not to require an exemption or a licence. Nor are air traffic services provided by the CAA in pursuance of directions under section 66(1).

### ***Section 4: Exemptions***

24. *Section 4* allows the Secretary of State to grant an exemption enabling a person to provide air traffic services. It is proposed to grant exemptions to persons who are not en route air traffic service providers (eg companies which provide airport air traffic control).

### ***Sections 5 to 7: Licences***

25. *Sections 5 to 7* make provision for the grant of a licence to provide air traffic services. The purpose of the licence will be to enable the CAA to carry out economic regulation of the licensed activities. A licence may be granted by the Secretary of State after consultation with the CAA, or by the CAA with the consent of the Secretary of State. It is envisaged that only the initial licence will be granted by the Secretary of State. *Section 5* makes provision for the content of licences including what a licence may be granted for, as well as to whom it may be granted and the period it may remain in force. *Section 6* deals with procedures for the application, grant and refusal of licences. *Section 7* deals with provisions which may be included in a licence, including provisions for the payment of fees. A provision of a licence may be identified as a condition (see *section 40(6)*) in which case that provision can be modified and it can be enforced (*sections 11 to 19 and 20 to 25*).

### ***Section 8: Duties of licence holders***

26. *Section 8* imposes general duties on a licence holder to ensure that a safe, efficient and co-ordinated system for the provision of the air traffic services authorised in his licence is provided, maintained and developed for the future and that the demand for authorised air traffic services in his licensed area is met. Section 9 allows the CAA to relieve a licence holder of his section 8 duties for services which he is not providing. *Section 10* provides that no legal proceedings may be brought for a failure by a licence holder to perform a duty imposed by section 8 or a condition of a licence. This provision does not however affect a right of action in respect of an act or omission which takes place in the

course of the provision of air traffic services and neither does it affect the enforcement mechanisms specifically provided in the Act.

### ***Sections 11 to 19: Modification of licences***

27. *Sections 11 to 19* deal with circumstances where the conditions of licences may be modified. Various circumstances, including system developments and new technology may require or result in marked changes in the way in which air traffic services are provided, and there may be circumstances where licences need to be modified to reflect this. Section 11 allows the CAA to modify the conditions of the licence with the agreement of the licence holder, and allows the Secretary of State to veto any such modification. *Sections 12 and 13* allow the CAA to refer to the Competition Commission matters relating to the provision of air traffic services by a licence holder which operate against the public interest. The Commission is required to investigate and report on whether modifications to the conditions of the licence are necessary. *Section 14* requires that where the Commission's report concludes that any matter specified in the reference operates, or is likely to operate, against the public interest and specifies modifications to the conditions of the licence, the CAA must make such modifications as it thinks are needed. *Section 15* gives the Commission powers to direct the CAA not to make licence modifications proposed by the CAA in response to the Commission's recommendations where the Commission considers that those modifications would not provide a remedy. *Sections 16–18*, set out the procedure for the Commission to propose modifications of its own. *Section 19* also allows the Secretary of State to modify the conditions of the licence to such extent as he thinks is necessary or expedient when he is, by order, exercising certain powers under the Fair Trading Act 1973 relating to monopolies and mergers.

### ***Sections 20 to 25: Enforcement***

28. These sections require the CAA to make orders that will be binding on a licence holder where the licence holder is contravening, or is likely to contravene, a duty under section 8 or a licence condition. *Section 20* requires the CAA, subject to the exceptions in *section 21*, to make a provisional order when it appears to it that there is or is likely to be a contravention of a duty under section 8 or a licence condition, and to make a final order, or to confirm a provisional order, where it is satisfied that there is or is likely to be a contravention of a duty under section 8 or a licence condition. Section 21 gives the CAA a discretion to make or confirm a provisional order or confirm a final order, if it thinks appropriate in certain circumstances. *Section 22* sets out the procedural requirements to be observed before making a final order or confirming a provisional order. If the licence holder wishes to question the validity of a final or provisional order relating to it, it may do so under *section 23*. *Section 24* requires any licence holder to which a final or provisional order relates to comply with it. This duty to comply with the order is owed to any person who may be affected by a contravention of the order and breach of the duty is actionable by him.
29. *Section 25* provides the CAA with a power to obtain information in cases where it appears to the CAA that a licence holder may have contravened, may be contravening, or is likely to contravene a licence condition.

### ***Sections 26 to 33 and Schedules 1, 2 and 3: Administration orders etc***

30. *Sections 26 to 33* and *Schedules 1, 2 and 3* are concerned with the powers available and procedures to be followed where the continuity of a licence holder's air traffic services may be at risk. (In these sections and Schedules, a licence holder is referred to as a licence company.) Continuity of the services may be at risk as a result of a licence holder failing to comply with a condition of its licence or a section 8 duty, or becoming insolvent or otherwise being in a position where a winding up order would normally be made. *Section 26* provides licence holders with certain protections as follows:

- they may not be wound up voluntarily;
  - no administration order made under Part II of the Insolvency Act may be made against them; and
  - no step may be taken by any person to take control over the property of a licence company without first giving 14 days' notice to the Secretary of State and the CAA.
31. *Section 27* provides that if an application is made to a court for a winding up order in respect of a licence holder, the court must not make a winding up order or appoint a provisional liquidator. If, however, the court is satisfied that, but for this provision, it would be appropriate to make a winding up order, it must make an air traffic administration order instead. In those circumstances the Secretary of State and the CAA may nominate the person to manage the company whilst the Order is in effect. *Section 28* lists circumstances under which a court may make an air traffic administration order following an application by the Secretary of State or, with the consent of the Secretary of State, by the CAA. In summary these are:
- that the company is, or is likely to be, unable to pay its debts;
  - that, if it were not for section 27, it would be just and equitable for the licence holder to be wound up;
  - that there has been, or is likely to be, a serious contravention by the licence holder of a section 8 duty;
  - that a final or provisional order has been made, which has not been challenged by the licence holder, and there has been or is likely to be a serious contravention of the order.
32. *Section 29* describes the purpose and effect of an air traffic administration order. The main effect of the order is that whilst it is in force a person appointed by the court will manage the licence holder's affairs, business and property in a manner which protects the interests of its members and creditors and for the achievement of the following two purposes:
- to transfer as a going concern so much of its undertaking as is necessary to ensure the licensed activities are properly carried out (transfers of the undertaking may either be to a single company, or in parts to more than one company); and
  - to ensure, pending such a transfer, the continuity of the licensed activities.
33. *Section 30 and Schedule 1* apply various provisions of the Insolvency Act 1986 relating to administration orders to air traffic administration orders with certain modifications. *Schedule 2* deals with the making of transfer schemes following the making of an air traffic administration order.
34. The Government may need to support the provision of services during the period in which an air traffic administration order is in force. *Sections 31 and 32* provide a power and set out the procedures for the Secretary of State to make such grants, loans or other financial arrangements as he considers appropriate in respect of a company which is subject to an air traffic administration order.
35. *Section 33 and Schedule 3* apply the air traffic administration provisions to Northern Ireland.

### ***Sections 34 and 35: Investigations and register***

36. *Section 34* requires the CAA to investigate alleged or apprehended contraventions of licence conditions where these are reported to it by interested third parties (so long as the report does not appear to be frivolous or vexatious). *Section 35* provides for a public register to be compiled and maintained by the CAA. The register will contain copies of

all licences and related matters listed in *subsection 35(3)*, and will be available for public inspection. *Sections 35(5)* and *section 35(6)* provide for material to be excluded from the register if, in the opinion of the CAA, it would prejudicially affect a person's interests or if the Secretary of State instructs the CAA not to enter information, because, in his opinion, it would be against the public interest or any person's commercial interests to enter it in the register.

### ***Sections 36 and 37 and Schedules 4 and 5: Land and statutory undertakers***

37. *Section 36* gives effect to *Schedule 4* which amends the 1982 Act to give licence holders powers in relation to land when they are carrying out activities authorised by their licences. *Section 37* introduces *Schedule 5* which provides that licence holders are to be treated as statutory undertakers for certain purposes.

### ***Section 38: Directions in interests of national security etc***

38. *Section 38* gives the Secretary of State powers to issue directions to licence holders (either individually or generally) of a general character in the interests of national security or in the interests of encouraging or maintaining the UK's relations with another country or territory. The Secretary of State may also give a licence holder specific direction in the interests of national security or a direction in connection with fulfilling an international obligation laid on the United Kingdom. Failure to comply with a direction is an offence. The penalties for committing an offence under this section range from a fine not exceeding the statutory maximum on summary conviction, to a fine or imprisonment on conviction on indictment.

### ***Section 39: Directions relating to the environment***

39. *Section 39* allows the Secretary of State to give directions relating to the environment. The power of direction is essentially a replacement for section 6(2)(f) and, in part, section 72(2) of the 1982 Act as they currently operate. Directions currently given to the CAA are taken to extend to NATS. Post PPP it is to be possible for NATS to be a direct recipient of environmental directions, together with other licence holders as well as persons authorised by exemption to provide civil air traffic services. Persons authorised by exemption will include owners or operators of aerodromes and other companies, including NATS, which provide air traffic services on their behalf. It is considered that all air traffic service providers should be susceptible to direction since provision of such services affects the environment regardless of who is the provider.

**Section 40** defines certain expressions for the purposes of chapter 1 of Part 1

## ***Chapter II: Transfer Schemes***

### ***Sections 41 and 42: Introduction***

40. Transfer schemes are the means by which shares in the current air traffic services provider will be transferred out of the CAA's ownership and into Crown ownership, in readiness for partial sale. The transfer of ownership is the means by which the objective of separating the CAA's regulatory functions from the provision of services is achieved. The transfer scheme provisions also allow the corporate structure of the air traffic service provider's business to be reorganised in light of the new licensing regime and the proposed public private partnership.
41. *Section 41* deals with the meaning of a transfer scheme, and describes the parties between whom transfers can be made. *Section 42* contains supplementary provisions detailing what a transfer scheme may do.



***Sections 43 and 44: CAA's schemes***

42. Transfer schemes can be made by either the CAA or the Secretary of State. *Sections 43 and 44* provide the Secretary of State with powers to approve and to control the content and timetable of transfer schemes made by the CAA; but no schemes can be made until a period of three months from the date of enactment has elapsed.

***Sections 45 and 46: Secretary of State's schemes***

43. *Section 45* provides a power for the Secretary of State to make a transfer scheme where either the CAA fails to make a scheme, or the Secretary of State does not agree with the CAA's proposals. No scheme can be made until a period of three months from the date of enactment has elapsed. Where the Secretary of State does make a scheme, *section 46* gives him the power to direct interested bodies (listed in *subsections (2)(a) to (d)*), to provide such information as he may require.

***Sections 47 and 48: Accounting provisions***

44. *Section 47* deals with certain accounting and valuation matters with regard to transfer schemes. Its principal purpose is to specify rules to determine the value of any asset or liability transferred to a company under a scheme, for the purposes of the opening accounts of that company. *Section 48* defines certain terms used in section 47.

***Sections 49 to 51: Ownership of transferee companies***

45. *Section 49* applies where property, rights or liabilities are transferred by a transfer scheme and permits the Secretary of State to require certain companies receiving the property to issue securities to any person listed in *section 49(5)*. The securities must be issued at such times and on such terms as the Secretary of State directs. *Section 50* allows the Treasury (or the Secretary of State with the Treasury's consent), to acquire securities of a transferee company falling within *section 50(1)* and to acquire options to acquire or dispose of those securities.
46. *Section 51* requires the Secretary of State not to dispose of more than 51% of the shares in the designated company, and to ensure that the Crown's holding in the company is not diluted below 25%. The Crown must also not dispose of any of its shares unless it is satisfied that plans are in place which will ensure the completion of certain major projects.
47. The section also requires the Crown to hold a special share in the designated company which is to be provided for in the company's articles of association. The Crown must not alter the special share arrangements without the consent of Parliament. The provisions of this section can only be amended or repealed by order with the approval of Parliament (see *section 103(6)*).

***Sections 52 to 56: Transferee companies: other provisions***

48. *Section 52* enables the Secretary of State, with the Treasury's approval, to make loans from the National Loans Fund to transferee companies listed in *section 52(3)*, while they are still owned by the CAA or the Crown. Loan repayments and accrued interest must be paid into the National Loans Fund (see *section 278(3)*). The Secretary of State must produce an account to the Comptroller and Auditor General of sums issued and received, and how he has disposed of them. *Section 53* provides a power for the Treasury or the Secretary of State to guarantee the discharge of any financial obligation of a transferee provided that the guarantee is given when the transferee is a company falling within those listed under *section 53(3)*. *Section 54* provides a power for the Secretary of State, with the approval of the Treasury, to make grants to a transferee falling within *subsection (3)*, of such amounts, at such times and in such a manner as he sees fit. These provisions will allow the Secretary of State to offer such a transferee a range of financial assistance while it is in public ownership.

49. *Section 55* has the effect of disapplying certain provisions in the Trustee Investments Act 1961, which restrict a trustee's ability to invest in certain securities where dividends have not been paid in the five years prior to the proposed investment. The purpose of disapplying these provisions is to ensure that if any shares of a transferee company listed in *subsection (2)* are included in the Official List of The Stock Exchange, they are not subject to the investment restrictions imposed by the Trustee Investments Act 1961.
50. *Section 56* provides that for the purposes of specified sections of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, Ministers of the Crown, Northern Ireland Minister, their nominees and Northern Ireland Departments are not to be regarded as shadow directors of certain transferees or of any company associated with such transferee at a time when the condition set out in *section 56(3)* is satisfied.

### ***Sections 57 to 59: Extinguishment of liabilities***

51. *Section 57* enables the Secretary of State, with the Treasury's consent, to extinguish the debts to the CAA of a company wholly owned by the CAA. The Secretary of State may direct the CAA to release such a company from its debt to the CAA. He may also, by order, extinguish the CAA's corresponding liability to him in respect of this debt, and the assets of the National Loans Fund would be reduced accordingly by a corresponding amount.
52. *Section 58* provides for the issue, at the direction of the Secretary of State, of new equity or debt securities by the specified companies to the persons set out in *subsection (4)*. The purpose of this section is to enable the Government to alter the ratio of equity capital to debt of companies in the air traffic service provider group as part of the reorganisation. *Section 59* provides for certain accounting and valuation principles to be applied to securities and debentures issued under sections 49 or 58.

### ***Sections 60 to 64: Miscellaneous***

53. *Section 60* provides that where a transferor or transferee is required by a transfer scheme to execute an instrument or enter into an agreement, a person in whose favour such an instrument or agreement is made can ensure that obligations created by it are enforceable in the courts. *Section 61* provides that certain specified rights affecting land are not to operate or become exercisable as a result of a transfer of land under a transfer scheme and provides for compensation to be paid (determined, if necessary, by arbitration) to a person whose rights are, as a result, made ineffective. *Section 62* permits the Treasury, or the Secretary of State with the Treasury's consent, to appoint a person to act as its nominee for the purposes of sections 49, 50 or 58. A person holding any securities as a nominee of the Treasury or the Secretary of State must hold and deal with them as directed by the Treasury or the Secretary of State.
54. *Section 63* introduces *Schedule 6* which contains detailed provisions about transfer schemes, including the identification and allocation of property, rights and liabilities to be transferred, the discharge of functions by parties and transfers by agreement. It also includes provision as to documents of title, foreign properties, rights and liabilities, certificates, restrictions on dealings with land, the construction of agreements, proceedings and third parties.
55. *Section 64* introduces *Schedule 7* which contains provisions regulating the tax treatment of transfers which take place under transfer schemes. The main purpose of the Schedule is to ensure that the reorganisation of business operations and capital structure which takes place prior to the establishment of the public-private partnership will be largely tax neutral.

### **Chapter Iii: Air Navigation**

#### **Sections 66 to 72: Air navigation directions**

56. *Section 66* allows the Secretary of State to give the CAA duties and powers in connection with air navigation- essentially those functions currently carried out by the Director of Airspace Policy and which are to be transferred to the CAA. Directions will require the CAA among other things to develop and implement a policy for the use of airspace which meets, so far as practicable, the needs of all users; to promote and facilitate the continued operation of an integrated air traffic service provision; to establish a consultative forum inter alia for the reconciliation of civil and military interests in airspace use; and to meet relevant objectives, for example in relation to the environment.
57. *Section 67* gives the right of appeal on national security issues to a member of the CAA to be nominated by the Secretary of State for Defence.
58. *Section 68* provides broad guidelines on the areas which Directions under section 66(1) may cover, such as consultation and provision for referring matters to the Secretary of State or seeking his approval.
59. *Section 69* contains supplementary provisions relating to the directions and provides that these directions take precedence over all other enactment or instruments with the exception of directions under section 93 (Hostilities) or an order under section 94 (Orders for possessions of aerodromes etc.) made in times of actual or imminent hostilities, or of severe international tension or great national emergency.
60. *Section 70* details the CAA's general duties when exercising its air navigation functions and specifies how any possible conflict in the application of these provisions is to be resolved. The section disapplies the CAA's general objectives under section 4 of the 1982 Act from the CAA's performance of its functions under this Chapter. These relate to the provision of air transport services by British airlines and furthering the interests of users of air transport services and are not appropriate here.
61. *Section 71* allows the CAA in connection with its air navigation functions to serve a notice, on a person who provides air traffic services, specifying documents or information to be produced. A person commits an offence if they fail to provide the documents or information without reasonable excuse as defined in *subsection (3)*. Penalties for these offences are set out in *subsections (4) and (5)*. If a person makes default in complying with a notice the CAA may apply to a court for an order requiring the default to be made good. *Section 72* defines terms used for the purposes of the Chapter.

### **Chapter IV: Charges for Air Services**

#### **Sections 73 to 80: Charges**

62. Under section 73(1) of the Civil Aviation Act 1982, the Secretary of State currently makes regulations, requiring the payment to him or specified others of amounts calculated by reference to tariffs specified in those regulations. A regulation, once made, is the source of the obligation to pay, in addition to being the means of identifying by and to whom the charges are payable, at what rate and in respect of what airspace.
63. A similar system of charging and charge recovery is to be retained under the PPP but the CAA, as part of its responsibilities as the economic regulator, will in future specify the charges in a published notice. *Section 73(3)* imposes a duty to pay the specified charges. The CAA will continue to have statutory powers to detain and sell aircraft in respect of unpaid charges.
64. *Section 73* allows for the CAA to specify the charges payable for chargeable air services and to stipulate conditions in relation to the payment of those specified charges. Section



74 places a duty on the CAA to publish notices containing the charges specified under section 73 and any stipulation to those charges and similarly to publish notice of any amendment to, or revocation of, those specifications or stipulations. The CAA is obliged to exercise its powers under this section in the manner it thinks best calculated to take account of international agreements to which the UK is party.

- 65. *Section 75* allows the CAA to specify different charges in respect of different descriptions of services, aircraft or circumstances of their use. The section also requires the CAA to take account of tariffs approved or likely to be approved under international agreements when specifying the charges.
- 66. *Section 76* establishes the liability to pay charges required to be paid under section 73(3). The liability arises regardless of the place of registration of the aircraft, its location and from where the service is provided. This section also provides that section 73 charges are recoverable in the UK and that a court in any part of the UK has jurisdiction to hear a claim. *Section 77* defines chargeable air services for the purposes of this Chapter and as well as providing for the Secretary of State to amend the definition by order, allows a designation of aerodromes whereby air traffic services provided on behalf of the owner or manager thereof are not to be excepted from the definition of “chargeable air services”. *Section 78* allows the CAA to recover the costs of specification and publishing of charges in the amount of the charge in certain circumstances

#### ***Sections 81 to 84: Miscellaneous***

- 67. *Section 81* provides a power for the Secretary of State to make regulations in order to facilitate the assessment and collection of charges payable under section 73. The regulations may require records of aircraft movements to be kept by operators or owners of aircraft and aerodromes and to be produced on request. These requirements may be imposed regardless of whether or not an aircraft is registered in the UK, is in the UK when the service is provided, or whether or not the relevant services are provided from a place in the UK.
- 68. *Section 82* provides that a person commits an offence if he fails to comply with regulations made under section 82, including where he gives false information. A person also commits an offence if he is in possession of information obtained under the regulations and he discloses it other than in the ways described in *subsection (2)*. Penalties for these offences are set out in *subsections (4), (5) and (6)* and range from a fine not exceeding the statutory maximum to both a fine and imprisonment of up to two years.
- 69. *Section 83* provides that the Secretary of State may make regulations containing provisions which authorise the detention of, or the sale of detained, aircraft. Where there is default in paying a charge payable under section 73, regulations can provide for the detention and sale of any aircraft in respect of which the charge was incurred or any aircraft operated by the defaulter. Where there is default in complying with a requirement imposed by regulations under section 81, regulations can provide for the detention and sale of any aircraft by the defaulter. *Section 84* contains definitions for the purpose of this Chapter.

#### ***Chapter V: Competition***

##### ***Sections 85 to 89: Competition***

- 70. These sections give the CAA, as economic regulator, concurrent powers with the Director General of Fair Trading (“the DGFT”) under competition legislation in relation to the supply of air traffic services. This is consistent with the powers granted to other utility regulators (telecoms, gas, electricity, water and railway services). *Section 85* contains definitions. *Section 86* empowers the CAA to exercise concurrently the listed functions exercised by the DGFT under the Fair Trading Act 1973 (so far as they

relate to monopoly situations in relation to the supply of air traffic services) and the Competition Act 1998 (so far as they relate to agreements or conduct relating to the supply of air traffic services). [Section 87](#) requires the CAA to have regard to its general duties under this Act when exercising concurrent functions under the Fair Trading Act 1973 and disapplies its general duties under section 4 of the Civil Aviation Act 1982. [Section 88](#) allows the CAA to have regard to its general duties under this Act when exercising concurrent functions under the Competition Act 1998.

71. [Section 89](#) creates procedures for the exercise of concurrent powers by the CAA and DGFT. This is to avoid duplication of regulatory activity. These procedures are also designed to ensure that any action is taken by the most appropriate authority. If the CAA makes a reference to the Competition Commission it must help the Commission with its investigations by providing any relevant information that it has in its possession.

## **Chapter VI: Miscellaneous and General**

### **Sections 90 to 97: Miscellaneous**

72. [Sections 90 to 97](#) deal with the collection and publication of information by the CAA under these provisions, the Secretary of State's general powers to issue directions to the CAA, control in time of hostilities and the Civil Aviation Authority Pension Scheme.
73. [Section 90](#) provides for the CAA to publish information which it thinks could be useful or appropriate to users or potential users of air traffic services in the UK. [Section 91](#) requires the CAA to keep the provision of all air traffic services (in the UK and elsewhere) under review, and collect information about them. And in reviewing the provision of services it is to take account of the Secretary of State's directions as to what considerations are to affect priorities under this duty.
74. [Section 92](#) gives the Secretary of State a general power to direct the CAA as to whether and how it should exercise its various functions under Part I of this Act.
75. [Section 93](#) gives the Secretary of State the power to give directions to a wide range of persons engaged in aviation and related activities (including the holder of a licence under Chapter I) in times of severe international tension, great national emergency or actual or imminent hostilities (whether or not there has been a formal declaration of war). These powers are broadly similar to those in the 1982 Act which this Act repeals. It is an offence to contravene or fail to comply with a direction. Compensation is payable by the Secretary of State for direct injury or loss arising from compliance with a direction. The penalties for committing an offence under this section range from a fine not exceeding the statutory maximum on summary conviction, to up to two years imprisonment and a fine on conviction on indictment.
76. [Section 94](#) is a provision that enables the Secretary of State, by order made by statutory instrument (but not subject to Parliamentary procedure), to provide for the taking into possession of and use by or for the purposes of the armed forces of the Crown, any aerodrome, or any aircraft or other things found in or on an aerodrome. This may be done in the event of actual or imminent hostilities or of severe international tension or of great national emergency. The section allows for flexibility in the choice of action that may be taken at such times. [Section 95](#) defines expressions used in sections 93 and 94.
77. [Section 96](#) enables the Secretary of State to make an order providing for the allocation of assets, rights, liabilities or obligations between different sections of the Civil Aviation Authority Pension Scheme. Under section 103 (12) the Scheme Trustees must be consulted before any order is made. The Secretary of State is bound to secure that individual pension arrangements are at least as good after the order is made as before.
78. [Section 97](#) introduces [Schedule 8](#) which makes consequential amendments to various Acts

***Section 98 and 99: General interpretation.***

79. *Section 98* defines air traffic services for the purpose of Part 1 of the Act. *Section 99* defines the CAA.

***Sections 100 to 107: Other general provisions***

80. *Section 100* details the rules regarding the service of a document under this Part of the Act.
81. *Section 101* makes it an offence for a person knowingly to give false information or make a false statement in connection with this Part of the Act. A person may be subject to a fine not exceeding the statutory maximum on summary conviction, or a fine on indictment for committing an offence under this section.
82. *Section 102* introduces *Schedule 9* which prohibits the disclosure of information gained under this Part of the Act save with the consent of the person to whom it relates or where otherwise permitted. Disclosure in contravention of the schedule is an offence. A person who discloses information in contravention of the schedule is liable to a fine not exceeding the statutory maximum on summary conviction, or a fine on indictment for committing an offence under this section.
83. *Section 103* enables the Secretary of State to exercise a power to make an order or regulations under this part of the Act differently in relation to different cases, and makes other provisions in relation to the making of orders, regulations and Orders in Council.
84. *Section 104* requires a person given a direction under this Part of the Act to comply with it. Directions may be varied or revoked
85. *Section 105* and *106* apply relevant sections of Part 1 of the Act to the Crown.
86. *Section 107* provides for the extension of specified provisions to the Channel Islands, the Isle of Man or any colony.

**Part II: Local Transport**

***Sections 108 to 113: Local Transport Plans and Bus Strategies***

87. *Sections 108 to 113* provide a statutory basis for local transport plans and bus strategies in England and Wales outside London. London has its own transport planning system under the Greater London Authority Act 1999 (“the 1999 Act”). Local transport plans already exist in a non-statutory form as the basis for the Department’s allocation of capital funds for local transport expenditure, but the Act puts them on a statutory basis for the first time.
88. *Section 108 and 109* impose a duty on each “local transport authority” (defined in section 108(4)) as councils of counties and unitary authorities in England, principal councils in Wales and passenger transport authorities (“PTAs”), to formulate transport policies and publish them as a local transport plan. The policies must promote ‘safe, integrated, efficient and economic transport’ and must have regard in particular to the needs of the elderly and people with mobility problems. They must also provide a framework for, inter alia, the promotion of improvements to bus services under the powers of Part II and the introduction of charging regimes under Part III. Section 99 further provides that plans must be kept under review and altered if necessary and in any event must last no longer than five years.
89. *Section 109(5)* and *(6)* exempt a local transport authority from producing such a plan where before the date when section 108 comes into force they have already prepared a document in a form and manner equivalent to that required under the Act for local transport plans. That document is treated as a local transport plan but it must be replaced

no later than 31<sup>st</sup> March 2006, in England or a date prescribed by the National Assembly for Wales (the “NAW”), in Wales.

90. *Section 110* requires local transport authorities to prepare, as part of their local transport plans, a bus strategy containing policies as to how best to carry out their various functions in order to secure the provision of appropriate bus services in their area. The functions in question are largely contained either in the Act or in the Transport Acts of 1968 (“the 1968 Act”) and 1985 (“the 1985 Act”) as amended by the Act.
91. *Section 109(3) and (4) and 111* impose requirements as to consultation during the preparation of plans and bus strategies and as to the publication of plans and strategies and requires authorities to make copies available at no more than cost. *Section 112* requires them to have regard both to guidance issued by the Secretary of State or NAW and to the needs of the elderly and people with mobility problems.
92. *Section 113* makes special provision for the duties of local authorities in metropolitan counties, specifying which duties must be discharged jointly by the PTA and the metropolitan district council and which are to be separate responsibilities for each.

### ***Sections 114 to 123: Bus Services: Quality Partnership schemes***

93. *Sections 114 to 123* empower local transport authorities, either alone or jointly, to set up Quality Partnership (QP) schemes as part of the process of implementation of their current bus strategy. A QP scheme entails the authority providing special facilities, and setting standards to be observed by bus operators as a condition of using the facilities. A scheme must implement the bus strategy and be aimed at improving local bus services for the benefit of bus users or at improving the environment. “Local services” are defined in *section 162(3)* by reference to the 1985 Act. In essence they are bus services with stopping places less than 15 miles apart (section 2 of the 1985 Act).
94. Similar schemes currently exist as voluntary arrangements in over 100 towns and cities in England and Wales, where local authorities have agreed to exercise their functions (especially as regards traffic management) in particular ways and operators in return have agreed to provide improved bus services with the aim of promoting bus use. The principal difference between these and schemes created under the Act is that the latter will be enforceable at law.
95. *Section 114* specifies the nature of a QP scheme. The facilities to be provided under a scheme must include facilities (such as bus lanes and shelters) at specific locations along bus routes (or where appropriate prospective bus routes) which bus operators can use; they may include other ancillary facilities also. Information facilities may not be included if the authority has determined that these must be provided throughout their area under *section 139* (which is mentioned at paragraph 114 below). Standards which may be imposed on operators under a statutory QP scheme do not extend to service frequency or timing, since separate provision is made for this by the service subsidy provisions of section 9A of the 1968 Act and section 63 of the 1985 Act and a comprehensive local authority approach to determining timetables is provided for in the separate Quality Contracts sections (paragraphs 102 to 109 below). Both the facilities and the new standards must in themselves improve the quality of local services in the relevant area. The Act does not prevent authorities and operators from making voluntary arrangements as at present.
96. *Section 114(8) to (10)* require QP schemes to be made jointly by the local transport authority and the traffic authority where facilities cannot be provided without the making of a traffic regulation order for a road or roads for which the local transport authority is not the traffic authority. Traffic authorities in England and Wales (outside London) are the Secretary of State or NAW in the case of trunk roads and the non-metropolitan county councils and metropolitan district councils in the case of other roads. “Traffic regulation order” is defined in *section 162(1)*.

97. A scheme may not be made without prior consultation with bodies specified in [section 115](#), including bus operators, representatives of bus users and other local authorities. [Sections 116 and 117](#) provide for the making (as proposed or with modifications) and the postponement of schemes. In particular there is provision for excluding certain services from schemes where this is considered appropriate (for example a community bus service acting as a feeder to a main bus route). The Secretary of State or the NAW may issue guidance on QPs and make regulations about detailed matters under [sections 122 and 123](#).
98. Once a scheme is in operation, it must remain so for at least 5 years ([section 116\(2\)](#)) and duties are placed:
- on the authority to provide the necessary facilities ([section 118\(1\)](#));
  - on the bus operators to meet the necessary standards if they use the facilities ([section 118\(4\)](#)),
  - except where any of them is temporarily unable to do so because of circumstances beyond its control.
99. Compliance by the operators will be secured under the existing registration system for local bus services. Paragraphs 10 and 22 of [Schedule 11](#) amend sections 26 and 111 of the 1985 Act to empower traffic commissioners to take enforcement action if an operator is in breach of his duty under [section 118\(4\)](#).
100. [Section 119](#) enables the Secretary of State or NAW to make special provision by regulations covering cases where a QP scheme incorporates facilities which already exist.
101. [Section 120](#) makes provision for the variation and revocation of QP schemes and [section 121](#) specifies which authorities are responsible for the making of the variation and the implementation and subsequent variation or revocation of a scheme which has been varied. In the case where the Secretary of State or NAW, as a trunk road authority, jointly responsible for a scheme, wishes to remove scheme facilities from a trunk road, he or it may do so using powers to revoke traffic regulation orders under paragraph 27 of Schedule 9 to the Road Traffic Regulation Act 1984. However, by virtue of an amendment to that paragraph made by [paragraph 8 of Schedule 11](#), this may be done only after consultation with other responsible authorities. A trunk road authority is then relieved of any further responsibilities for those facilities under the scheme ([section 118\(3\)](#)).

### ***Sections 124 to 134: Bus Services: Quality Contracts schemes***

102. [Sections 124 to 134](#) enable local transport authorities, either alone or jointly, to make a Quality Contract (QC) scheme, provided that they are satisfied that it is the only practicable way to implement their bus strategy (or strategies) and also that the scheme will implement it (or them) in a way which will deliver best value, i.e. be economic, efficient and effective ([section 124\(1\)](#)). Under a QC scheme, the authority will determine what local services should be provided in the area concerned (and to what standard) and will let contracts with bus operators granting them exclusive rights to provide services to the authority's specification.
103. [Section 124](#) defines what a QC scheme is and what a "quality contract" itself is. It imposes an obligation on the authority to keep under review operators' compliance with the obligations imposed on them by QCs.
104. [Sections 125 and 126](#) require an authority to publicise and consult upon a proposed scheme before submitting it to the Secretary of State or NAW ("the appropriate national authority") for approval, stating the reasons why they want to make the scheme. There is a requirement in particular to consult operators and users' representatives. There is provision, when a scheme has been submitted for approval, for operators



affected by it to put objections to the appropriate national authority. That authority may approve the scheme only if satisfied that it is in the public interest ([section 126\(4\)\(b\)](#)) and may approve it with modifications after interested persons have been consulted ([section 126\(5\) and \(6\)](#)).

105. [Section 127](#) describes what a scheme must contain and in particular provides that certain services may be excluded from it ([subsection \(4\)](#)) and that it may vary or revoke a QP scheme ([subsection \(6\)](#)). It may not come into operation for at least 21 months after it is made. This is in recognition of the fact that some bus operators currently operating in the area may lose the right to do so, and must be allowed due time to adjust and redeploy assets. A scheme may not last for more than 10 years. [Section 128](#) provides that the operation of a scheme may be postponed.
106. [Section 129](#) provides that once a QC scheme is in operation sections 6 to 9 of the 1985 Act cease to have effect in the relevant area and no local service may be provided in that area except in accordance with a QC. Section 6(2) of that Act provides that:-  
  
“no [local] service shall be provided in any traffic area in which there is a stopping place for the service unless –  
  
(a) the prescribed particulars of the service have been registered with the traffic commissioner for that area by the operator ... ”  
  
and sections 7 to 9 make supplementary provision. The normal role of the traffic commissioners in monitoring services is therefore excluded and enforcement becomes a matter for the local transport authority in accordance with the terms of their QC – see [section 124\(7\)](#). (A “traffic area” is an area designated under the provisions of section 3 of the Public Passenger Vehicles Act 1981 and a traffic commissioner is appointed for each area by virtue of section 4 of that Act.)
107. Where a service is excluded from a QC scheme, however, sections 6 to 9 of the 1985 Act continue to apply to it and the traffic commissioner may take action for breach of any conditions under which the service is excluded ([section 129\(2\) and \(3\)](#)).
108. [Section 130](#) provides for the letting of individual contracts. Tenders must be sought by general invitation no later than 3 months after the making of the scheme and contracts when let may last no more than 5 years. Tenders may only be accepted from licensed operators of public service vehicles or persons holding a community bus permit under section 22 of the 1985 Act ([subsection \(5\)](#)). [Section 131](#) provides for cases where the normal tender procedure does not apply. Express provision is made for emergencies but the section may be extended by regulation to cover other cases. Regulations may limit the duration of these emergency contracts so as to ensure that the provisions of section 118 are not improperly circumvented.
109. [Section 132](#) makes provision for the variation or revocation of a scheme. There is also a power, in [section 133](#), for the appropriate national authority to make regulations, allowing it to revoke the scheme before it comes into operation in circumstances set out in the regulations (for example, an unexpected collapse of the tender process).

### **[Sections 135 to 138: Bus Services: Ticketing Schemes](#)**

110. [Sections 135 to 138](#) empower local transport authorities, alone or jointly, to set up ticketing schemes, whereby operators of local bus services are required to make and implement arrangements to accept each other’s tickets or provide integrated ticketing in ways specified in the scheme. “Ticketing scheme” is described in [section 135\(3\) to \(5\)](#) and may include provisions requiring bus service operators to make available tickets for journeys both for separate bus services and intermodal journeys. In making a scheme, however, the local transport authorities must be satisfied that this is in the public interest and implements their bus strategy.

111. Many bus operators are already involved in area-wide ticketing. But they cannot at present be compelled to do so by law.
112. *Section 136* imposes consultation requirements upon an authority intending to introduce such a scheme. *Section 137* provides that an authority may make the scheme as proposed or with modifications (*subsection (1)*) and may vary a scheme (*subsection (6)*). It also imposes requirements as to publicity when a decision is taken to make a scheme and requires an authority to obtain the agreement of train or tram operators before making a scheme which applies to tickets for journeys on those modes.
113. *Section 138* imposes a duty on operators to implement the scheme from the date it comes into force (not less than 3 months after making: *section 137(3)*). Failure to do so may attract enforcement action by the traffic commissioner under section 26 or 111 of the 1985 Act, by virtue of amendments made to those provisions by paragraphs 10 and 22 of *Schedule 10* to the Act. (See also *section 155(1)*.)

#### ***Sections 139 to 141: Bus Services: Provision of information***

114. *Sections 139* to *141* require local transport authorities, alone or jointly (see *section 141(3)*), to determine in accordance with their local transport plan what local bus information (as defined in *section 139(6)*) should be made available, and how, and to seek to arrange with operators for its provision. If arrangements cannot be made by agreement, the authority must make the information available or secure that it is made available, and in such a case it is given power to recover reasonable costs from the operators concerned (*section 140*).
115. *Section 141* provides that, in exercising their powers, the authority must have regard to economy, efficiency and effectiveness, and must not discriminate against operators.
116. A duty is imposed on operators by *section 140(3)* to furnish information to the authority or a third party in such circumstances, to enable the authority to meet its obligations. Failure to do so may attract enforcement action by the traffic commissioner under section 26 or 111 of the 1985 Act, by virtue of amendments made to those provisions by paragraphs 10 and 21 of *Schedule 11* to the Act.

#### ***Section 142 and 143: Bus Services: Miscellaneous***

117. *Section 142* extends the powers of the traffic commissioners to impose traffic regulation conditions on local bus services under section 7 of the 1985 Act. These powers currently allow the commissioners, at the request of local authorities, to impose restrictions on routes and stopping places in the interests of preventing danger to road users or reducing severe traffic congestion. Under this provision, a commissioner will also be able to do so for the purpose of reducing or limiting noise or air pollution.
118. *Section 143* empowers local transport authorities to obtain from operators of local services information which they may need in connection with their public transport functions. The information obtainable may be demanded in any reasonable form but is limited to total passenger numbers, total bus mileage and an operator's fare structure for the whole or part of their area (*subsections (2) and (3)*). There is provision for the protection of commercially sensitive information in *subsections (4) to (6)*.

#### ***Section 144: Bus lane contraventions: penalties***

119. *Section 144* provides for the Secretary of State or the National Assembly for Wales to make regulations in connection with allowing approved local authorities outside London, Transport for London and London local authorities to impose penalty charges for moving bus lane contraventions, and the payment of penalty charges. The section provides that regulations made must include provision for matters such as setting the levels of penalty charges, specifying the person responsible for paying the penalty charge and the application of sums received from penalty charges. They may also

include matters such as exemptions from penalty charges, provision for discounts or surcharges and the keeping of accounts

120. The section gives the Lord Chancellor powers to make regulations about the notification, adjudication and enforcement of penalty charges. This is to ensure that the same requirements apply to England and Wales. The section does not give local authorities the power to stop vehicles; only the police may do so. As the section does not remove the power of the police to enforce moving traffic offences, it provides that motorists should not be subject to double jeopardy and prosecution by the police and local authority for the same offence or contravention. The regulation would be subject to negative resolution procedure by virtue of section 160

### ***Sections 145 to 150: Mandatory Travel Concessions outside Greater London***

121. *Sections 145 to 150* give elderly and disabled persons (as defined in *section 146*) entitlement to a half-fare concession on local bus travel within the area of a “travel concession authority” and during the “relevant time” (expressions also defined in *section 146*). Eligibility is conditional on the holding of a permit issued by the travel concession authority which may make no charge for it (*section 145(2)*). There is provision enabling the Secretary of State or the NAW, after appropriate consultation, to issue guidance to assist authorities in determining who is a ‘disabled person’ for the purpose of eligibility for a permit (*subsections (4) and (5)*).
122. *Section 147* empowers the Secretary of State or the NAW:
- to extend the eligible categories to other persons eligible to participate in discretionary schemes made under section 93 of the 1985 Act (subsection (7) of that section –now amended by *paragraph 15 of Schedule 11* – specifies who they are);
  - to extend the qualifying journeys to those on other public passenger transport services and journeys to and from places outside an authority’s area (as defined in section 63(10) of the 1985 Act, a definition applied to this Act by *section 162(3)*;
  - to vary the relevant times;
  - to improve the concession to better than half the fare.
123. *Section 145(6)* makes provision whereby a person can opt for an alternative to the statutory minimum concession. If an authority is offering a concession under a scheme made under section 93 of the 1985 Act (a ‘discretionary concession’) which is more attractive to a particular person, he or she may agree not to be entitled to the mandatory concession in order to take up the discretionary concession. For example, a discretionary concession might consist of tokens which can be used on any mode of transport, an arrangement which would be more attractive to a person who finds travel by bus difficult. He or she could agree not to receive the mandatory concession in order to benefit from the discretionary scheme if the scheme so provides. The period during which such agreements are binding may, along with other matters, be prescribed in regulations.
124. *Section 148* provides that systematic failure by operators to provide the mandatory concession is an offence, attracting a fine not exceeding level 3 on the standard scale (currently £1,000).
125. *Sections 149 and 150* make provision for the reimbursement of operators by local authorities, this being based broadly speaking on the present system under the 1985 Act.

### ***Section 151: Mandatory Travel Concessions in Greater London***

126. *Section 151* makes separate provision, to similar effect, for Greater London, by modifying the provisions in the Greater London Authority Act 1999 which define when the reserve free travel scheme will be triggered. If a half-fare concession is not

made available to eligible elderly and disabled persons on journeys on the London bus network (as defined in section 181(3) of that Act) beginning at specified times, who hold an appropriate travel permit (which must be issued free of charge), the reserve scheme will come into effect. The Secretary of State has power to improve the concession to better than half the fare ([section 151\(12\)](#)).

127. The categories of persons eligible to receive travel concessions over and above the mandatory half-fare concession are extended to elderly and disabled persons defined in section 240(5) of the 1999 Act as amended by [section 151\(4\)](#). Apart from the imposition of the mandatory concession, however, nothing in the Transport Act requires any change to be made to the present voluntary free scheme agreed between the Boroughs and London Transport or to any future free scheme agreed by virtue of the 1999 Act.

***Sections 152(4) and 153 and Schedule 10: Competition provisions***

128. [Section 152\(4\)](#) removes the present constraint, imposed by section 92(1) of the 1985 Act, that in exercising powers to subsidise public passenger transport services under section 9A of the 1968 Act and section 63 of that Act local authorities must behave “so as not to inhibit competition”, a provision which requires them to consider whether competition might be inhibited, however slightly. (The duty also applies to London Regional Transport to the extent that it still subsidises such services.) This is replaced with a new duty to have regard to the interests of the public and of operators and, in the case of local transport authorities, is modified by the provisions referred to in the next following paragraph.
129. [Section 153](#) introduces [Schedule 10](#) which contains provisions applying a competition test in relation to the exercise (including the proposed exercise) of three functions of local transport authorities, namely:
- the making and varying of QP schemes
  - the making and variation of ticketing schemes
  - invitations to tender and acceptance of tenders for subsidised services under the 1985 Act (see [paragraph 1](#) of the Schedule).
130. [Paragraph 2](#) of [Schedule 10](#) specifies that the test is met unless the exercise of a function has, or is likely to have, a significantly adverse effect on competition which cannot be justified in accordance with that paragraph. A scheme or an exercise of service subsidy functions may be justified if its purpose is one of those set out in [paragraph 2\(3\)](#) and the effect on competition is, or is likely to be, proportionate to the achievement of that purpose.
131. [Paragraphs 3 and 4](#) provide for a relevant authority or operator of local services to apply to the Director General of Fair Trading (the “DGFT”) either before or after exercise of the function for a decision on whether it will meet or has met the competition test. [Paragraphs 5 to 10](#) provide for the DGFT to investigate on his own initiative, for example, after a complaint has been received. For the purpose of an investigation he is given powers to obtain information and documents by [paragraphs 6 and 7](#), subject to the provisions as to confidentiality in [paragraphs 8 and 9](#). Any decision made on such an application or following such investigation must be published with reasons ([paragraph 11](#)).
132. The DGFT may enforce his decisions by giving to the authority or authorities exercising the function directions in accordance with [paragraph 13](#), including directions to vary or revoke a scheme or to require a tender contract to be entered into with another operator.
133. [Paragraph 14](#) makes it an offence, punishable with a fine up to level 5 on the standard scale (£5,000), to give the DGFT false or misleading information. [Paragraph 16](#) makes provision for the charging of fees by the DGFT in connection with his functions under the Act.

***Sections 152(2) and (3) and 154 to 158: Financial provisions***

134. *Section 152(2)* amends the criteria by reference to which local authorities must decide which tender to accept in the case of tenders for additional subsidised public transport services under section 9A of the 1968 Act and section 63 of the 1985 Act (which are mentioned further at paragraph 140 below). It introduces a new ‘best value’ test by requiring local authorities to have regard to economy, efficiency and effectiveness and also to have regard to the relevant bus strategy, and environmental issues, namely the reduction or limitation of traffic congestion, noise or air pollution. Section 89(3) of the 1985 Act (which prohibits the inclusion of employment conditions in the terms of tender) is repealed by virtue of *Schedule 31 (Part II)*.
135. *Section 154* makes new statutory provision for grants to bus operators, including power to make regulations as to the classes of bus services for which grant may be paid, and the method of calculation. If and when introduced, this power will replace the current Fuel Duty Rebate (“FDR”) scheme under section 92 of the Finance Act 1965 with a more flexible power enabling grant to be paid by the Secretary of State or the NAW to bus operators on a different basis from the present scheme. Provision could, for example, be made for differential rates of grant to encourage the use of more environmentally friendly fuels or vehicles.
136. *Section 155* makes alternative provision to section 111 of the 1985 Act (traffic commissioners’ powers in respect of unreliable or unregistered services) as from the time when FDR is replaced by *section 154*. That section presently allows the traffic commissioners to demand repayment of 20% of eligible FDR in the event of an operator being found to have contravened section 6 of the 1985 Act. Under this section, the traffic commissioners will be able to impose a financial penalty. The maximum penalty is £550 (or such other sum as may be prescribed by order - *subsection (3)(b)* - multiplied by the number of vehicles the operator is licensed to use under his public service vehicle licence, representing approximately the same level of penalty as the current penalty. There will continue to be a right for operators to appeal to the Transport Tribunal, as now.
137. *Sections 156 and 157* empower the Secretary of State or NAW to make grants to local transport authorities other than PTAs (*section 156*) and to PTAs (*section 157*) for general local transport purposes. Grants may be paid subject to conditions or not. One effect of these sections is to put on a permanent statutory basis support for rural local transport in England and Wales which is currently covered by special grant reports approved annually by Parliament under section 88B of the Local Government Finance Act 1988.
138. *Section 158*, with *paragraph 22 of Schedule 11*, amends the present power of the traffic commissioner under section 111 of the 1985 Act to impose a penalty on a bus operator, if he fails “to a significant extent” to operate his services as registered under section 6 of the 1985 Act. Currently the commissioner must impose a penalty of 20% of the FDR rebate paid in the previous three months. The amendments will enable a commissioner henceforth to impose a penalty between 1% and 20% and he will no longer need to satisfy himself that the operator has failed “to a significant extent”, thus allowing a more flexible, and perhaps more frequent, use of the power. (This amendment only has effect, however, until such time as section 111 is replaced by the provisions of *section 154*.)

***Section 160 to 162 and Schedule 11: Supplementary***

139. *Sections 160 to 162* make provision for regulations and orders under Part II of the Act and introduce the minor and consequential amendments in *Schedule 11*, and provide for definitions.
140. In particular, *paragraphs 3 and 11 of Schedule 11* amend section 9A of the 1968 Act and section 63 of the 1985 Act in two respects. First, they remove the obligation imposed on local authorities and PTAs to formulate policies as to what subsidised public



transport services are required in their area. This is now replaced by the duties under sections 98 and 100 to produce local transport plans and bus strategies. The duty in those enactments to secure the provision of services which would not otherwise be provided commercially is retained. In the second place, they replace the duty, also imposed on local authorities by those sections of the 1968 and 1985 Acts, “not to inhibit competition” when exercising powers to promote public passenger transport services by a “best value” duty requiring local authorities to have regard to a combination of economy, efficiency and effectiveness.

141. *Paragraphs 5 and 13* of the Schedule remove disabilities imposed (by the Local Government Act 1972 and the 1985 Act) on local councillors who are either unpaid directors or employees of public transport companies preventing them from taking part in or voting on certain matters relating to those companies. They amend that legislation by providing that (in the case of the 1985 Act) councillors who are members of a company’s controlling authority or (in the case of the 1972 Act) councillors who are members or any other local transport authority may take part and vote in debates on a local transport plan or bus strategy. (A “public transport company” is defined in section 72(1) of the 1985 Act and is, in brief, a company formed by a local council or PTA to carry on a bus undertaking, as defined in section 66 of that Act, and the company’s “controlling authority” is a council or PTA.)
142. *Paragraph 7* of the Schedule amends the Road Traffic Regulation Act 1984 as regards the making or revocation of traffic regulation orders in connection with QP schemes, if the Secretary of State or NAW consents.

### **Part Iii: Road User Charging and Workplace Parking Levy**

143. The Road User Charging and Workplace Parking Levy provisions are in three Chapters. These are:
  - Chapter I - Road User Charging
  - Chapter II - Workplace Parking Levy
  - Chapter III – General and Supplementary.

#### ***Chapter I: Road User Charging***

##### ***Sections 163 to 167: Charging schemes***

144. *Section 163* enables road user charging schemes to be introduced by:
  - local traffic authorities outside London, acting either singly, or jointly with another local traffic authority or authorities, or with a London traffic authority or authorities (ie Transport for London, or London borough councils or the Common Council of the City of London) and;
  - by the Secretary of State or the National Assembly for Wales (NAW).

*Section 163* also provides that the registered keeper of a vehicle will be responsible for paying road user charges, but allows the Secretary of State or NAW to specify other persons in certain circumstances through regulations. This would, for example, provide for the transfer of liability to the hirer, where a vehicle is subject to a valid hiring agreement.

145. *Sections 164 and 165* provide that charging schemes made by local authorities may only apply to roads for which the charging authority or authorities are the traffic authority, and that charging schemes can be introduced only in support of a local transport plan (see paragraphs 83 to 88). *Section 166*, which relates to joint local authority – London charging schemes, also provides that charging can occur only on the roads for which the participating authorities are the relevant traffic authorities, and that the scheme must

support both the local transport plan(s) of the non-metropolitan authority or authorities, and the London Mayor's statutory transport strategy.

146. *Section 167* sets out the two cases where charging can be introduced on trunk roads by the Secretary of State or the NAW. The first of these is charging on trunk road bridges and tunnels of at least 600m in length. This is to allow for future cases where charging may be an option for making expensive new structures affordable, and for continued tolling on crossings when the current tolling powers are due for renewal. The Government has no plans to introduce charging on existing bridges and tunnels which are not already tolled. The second case is where a local traffic authority requests the Secretary of State or the NAW to charge on a stretch of trunk road, in order to complement a local road user charging scheme.

### ***Sections 168 to 170: Making of charging schemes***

147. *Section 168* specifies that a traffic authority or authorities acting jointly, - including local, Transport for London or the Secretary of State/NAW - wanting to introduce a charging scheme must do it by making an Order. If an authority wants to change or revoke a scheme, this must also be done by Order. Where the Secretary of State or NAW has introduced a charging scheme on a trunk road at the request of a local authority, it cannot be changed or revoked unless the local traffic authority which requested it has been consulted.
148. *Sections 169 and 170* define the role of the two national authorities in relation to local authority orders setting up, changing or revoking charging schemes. *Section 169* requires that all non-London local authority orders must be approved by the Secretary of State or NAW, as appropriate. Where there is a joint scheme between an English and Welsh local authority, there must be approval from both national authorities (see section 198(1) for definitions of "appropriate national authority"). Where there is a scheme run jointly by an English local authority and a London authority, approval will be needed from the Secretary of State and the Greater London Authority. In all cases, the approving authority can make modifications to the order.
149. Under section 169(2) the Secretary of State or the NAW will be able, by regulations, to waive the requirement for his/its consent. This will allow, for example, local authorities to make minor changes to their schemes through more streamlined, simplified procedures, provided certain conditions are met. In the longer term, it may be possible to broaden the scope of the waiver given by regulations. Orders revoking charging schemes do not need the approval of the Secretary of State or NAW.
150. *Section 170* provides for charging authorities to consult and hold inquiries, and for the Secretary of State or the NAW to consult or hold an inquiry on their own schemes, or require additional consultation or an inquiry to be held before granting approval for a local authority scheme. It also sets out the arrangements for the allocation for costs for inquiries.

### ***Sections 171 to 172: Contents of charging schemes***

151. *Section 171* sets out the basic elements which must be included in the order establishing the charging scheme - the roads to be charged, and how the charges are defined, the classes of motor vehicles which will be charged, the levels of charge, and the duration of the scheme. These elements are for the charging authority to determine. *Section 171(3)* ensures that charging powers cannot be used purely as a charge on parked vehicles.
152. *Section 171(5)* describes some of the factors by which different charges might be imposed, but this is not an exhaustive list. *Section 171(7)* allows the charging scheme to require documents or equipment to be carried in or fitted to a vehicle when it is on a charged road. This gives charging authorities the power to ensure that everyone who enters a scheme must have a permit or electronic payment unit in their vehicle, or have to pay a penalty charge.

*Section 172* provides the power for regulations to set exemptions from charges, reduced rates or limits on charges which will apply to all charging schemes. The Secretary of State will be able to set exemptions, reduced rates or charging limits applying to all local authority schemes in England (and has powers to set exemptions in London under the Greater London Authority Act 1999 ("the 1999 Act")). This could be used for an exemption, for example, for emergency vehicles or disabled persons. The NAW also has powers to set exemptions, reduced rates or limits applying to Welsh local charging schemes. Subject to these regulations, *section 172(2)* provides that any charging scheme will be able to set additional exemptions, reductions or limits as the authority wishes, subject to approval.

### ***Sections 173 to 175: Enforcement of charging schemes***

153. *Sections 173 and 175* allow the appropriate national authority and Lord Chancellor to make regulations to provide for the fair and effective enforcement of road user charging schemes. This includes arrangements for adjudication. The Act provides that non-payment of a road user charge will be a civil matter rather than a criminal offence, and outstanding charges will be recoverable as a civil debt. Charges will not apply to vehicles that are not on the road. It is expected that the registered keeper of a vehicle will generally be liable to pay any penalty charges, but that there will be a defence where the vehicle has been stolen. Deliberate tampering with documents or any in-vehicle or roadside equipment with intent to avoid payment or being identified as having failed to pay a charge by obscuring a vehicle licence plate to avoid identification following non-payment, are more serious cases and will therefore be subject to criminal rather than civil law. *Sections 174 and 175* provides powers for the appropriate national authority to make regulations to allow enforcement actions such as the examination of vehicles and equipment, and immobilisation, removal, storage and disposal of vehicles. They also allow the seizure of evidence and provide for criminal offences where the exercise of enforcement powers are hindered or immobilisation devices and notices removed without authority.

### ***Sections 176 to 177: Supplementary***

154. *Section 176* allows charging authorities to install and maintain any equipment or buildings in connection with effective operation of a charging scheme. It also provides for the Secretary of State and NAW to prescribe in regulations the basic specifications for roadside equipment, so that all schemes will be technically interoperable.
155. *Section 177* allows the Secretary of State or the NAW to direct a charging authority to put up traffic signs on their land in relation to a charging scheme; and to direct any authority to put up traffic signs in connection with a trunk road charging scheme.

## ***Chapter II: Workplace Parking Levy***

### ***Sections 178 to 182***

156. *Section 178* defines the concept of licensing schemes, and enables licensing schemes to be introduced by a local traffic authority outside London, either singly or jointly with another local traffic authority or authorities or with a London traffic authority or authorities. A licensing scheme is the mechanism for collecting the workplace parking levy. It will be for local authorities to decide whether or not to bring forward a scheme. *Section 178* also provides that the occupier of a premises will be responsible for paying charges, but allows the Secretary of State or NAW powers to specify other persons in certain circumstances through regulations.
157. The occupier of a premises will be required to apply to a local authority for a licence to park up to a stated maximum number of vehicles ("licensed units") at the premises, and pay the appropriate sum based on the charge per unit. Local authorities will be obliged to issue the licence for the number of units requested - they will not be able

to use this mechanism as a means of directly controlling the number of parking places the person provides.

158. *Sections 180 to 181* allow licensing schemes to cover any part of the area of the authority or authorities making the scheme, and require that a scheme must be in support of the relevant local transport plan or plans (see paragraphs 108 to 113), or, in the case of a joint scheme involving a London authority the transport strategy prepared and published by the Mayor.
159. *Section 182* provides the detailed definition of workplace parking. The definition is designed to include all forms of parking by those attending premises where they will carry out their work. The parking can be at or in the vicinity of the workplace - this is intended to catch, for example, parking at a car park adjacent to the workplace, but to exclude parking at a park and ride site or station car park, where the worker makes a further journey to reach the workplace. It also is designed to include parking provided by arrangement with a third party - for example where an employer has a contract with a nearby car park company to provide a certain number of spaces for its workforce.
160. Included in the definition is parking by the employer himself, his employees, suppliers, business customers or visitors, and pupils or students at an educational establishment. Suppliers can mean, for example, a photocopier engineer called out to make repairs, or an external consultant providing advice on site. The definition also includes members of organisations such as a recreational club or Chamber of Commerce, but only when they are engaged in the carrying on of any business of the body.

*Section 182* also includes a power for the Secretary of State or NAW to change this definition by regulations. This power is designed to allow the prompt closure of any loopholes which the definition may contain. It does not provide for the extension of the scope of the levy beyond workplace parking to, for example, customer leisure or retail parking.

### ***Sections 183 to 185: Making of licensing schemes***

161. *Sections 183 to 185* closely follow section 168 to 170 in Chapter I on road user charging, setting out the order-making process for introducing a licensing scheme.

### ***Sections 186 to 188: Contents of licensing schemes and licences***

162. *Section 186* sets out the basic elements which a licensing scheme must contain, and allows for variations in the charges according to different days or times of day, different parts of the licensing area, different classes of motor vehicles or different numbers of licensed units. For example, an authority will be able to choose to apply the levy only to parking during normal office hours on weekdays, to charge different rates for two-wheeled vehicles, or to set a sliding scale so that the charge per vehicle increases or decreases above certain thresholds.
163. *Section 187* mirrors section 172 in Chapter I in granting powers to set exemptions, reduced rates or limits on workplace parking charges by regulations.
164. *Section 188* sets out the essential elements that must be included in a licence under a licensing scheme. Licences may not be granted for a period of greater than one year.

### ***Sections 189 and 190: Enforcement of licensing schemes***

165. *Section 189* largely follows section 173(1) to (3) in Chapter I, in providing for regulations to set out the enforcement requirements for licensing schemes. *Subsection (3)* makes the occupier of a premises liable to pay parking levy penalty charges but allows the Secretary of State or NAW to specify other persons in certain circumstances. *Subsection (4)* enables the regulations to specify arrangements for adjudication and enforcement of licensing schemes. *Section 190* allows for a right of entry to premises by an authorised official to check that workplace parking is appropriately covered by

a licence. It also creates an offence of intentionally obstructing an authorised official in the exercise of these powers.

### ***Chapter III: General and Supplementary***

166. The following sections are common to both road user charging (Chapter I) and the workplace parking levy (Chapter II).
167. *Section 191* introduces the financial provisions in Schedule 12. *Section 192* allows charging/licensing authorities to spend money on operating a charging or licensing scheme, and to enter into contracts with third parties for the implementation and operation of a scheme. *Section 193* allows for guidance to be issued. *Section 194* allows various bodies carrying out statutory functions to share information in relation to charging schemes or licensing schemes. This will allow, for example, information needed for enforcement purposes to be given by the Driver and Vehicle Licensing Agency (“DVLA”) to the charging authority, but ensures that such information must only be used in connection with charging or licensing schemes. *Section 195* gives a regulation-making power to the Lord Chancellor to provide for appeals in respect of schemes. *Section 196* ensures that this Part applies to the Crown and its agents.
168. *Section 197* establishes that regulations are exercisable by statutory instrument; most will be subject to the negative resolution procedure in England, the power to amend the definition of workplace parking in section 182(5), and the powers to change hypothecation provisions in *Schedule 12* will be subject to affirmative resolution procedure in the House of Commons, and such regulations will be subject to approval by the Treasury.
169. *Section 198* provides definitions, *section 199* invokes *Schedule 13* which makes amendments to the equivalent provisions to the GLA Act 1999, and *section 200* exempts roads included in the road user charging scheme from local non-domestic rates.

### ***Schedule 12***

170. *Schedule 12* contains the financial provisions for road user charging and workplace parking levy schemes.
171. *Paragraph 2* defines net proceeds. In broad terms, once the gross proceeds have been received under a scheme, the charging authority will subtract the expenses of establishing or operating the scheme to give the net proceeds. *Paragraph 2(2)* allows the Secretary of State or the NAW to make regulations determining how net proceeds for local schemes are to be arrived at, and by regulations to treat certain wider expenses as deductible from gross proceeds in the case of a trunk road charging scheme. These relate to the costs of constructing, improving or maintaining the charged road. This will particularly apply to private finance contracts where a private operator may be contracted to build or maintain a road or structure as well as operating the charging scheme on it.
172. *Paragraph 2(4)* allows a complementary trunk road charging scheme and the local authority scheme which it complements to include the expenses of either scheme within its own expenses. This will allow flexibility for local authorities and the Secretary of State/NAW to agree to apportion costs between the complementary schemes as is most appropriate.
173. *Paragraphs 3 and 4* deal with the apportionment of the net proceeds of a joint scheme or of a complementary trunk road charging scheme and the local authority scheme it is supporting.
174. *Paragraphs 5 and 6* cover the accounts and funds charging or licensing authorities are required to keep and the treatment of deficits and surpluses between financial years. *Paragraph 5* allows the Secretary of State or NAW to make regulations governing the keeping and publication of accounts.



175. *Paragraph 7* sets out how net proceeds can be spent for schemes starting in the 10 years after commencement of the charging powers in the Act. It requires that net proceeds will be “hypothecated” and can only be spent in support of the authority’s local transport plan for the first ten years of a scheme’s life. It also makes provision for joint schemes, including ones involving a London charging authority where their share of proceeds must be spent in line with the Mayor’s transport strategy.
176. *Paragraph 7* also allows periods of hypothecation that are longer than 10 years to be agreed by the Secretary of State or NAW at the outset for individual schemes. It also allows regulations to make provision, where a scheme is revoked and restarted, or modified, to judge whether the same or a different scheme can be regarded as being in force for deciding when the period of hypothecation starts or ends.
177. *Paragraph 8* provides that after the period of hypothecation local authorities must spend net proceeds in accordance with regulations made by the Secretary of State. It would also allow the Secretary of State or NAW to provide that schemes starting later than 10 years after the commencement of the charging powers could be included in *paragraph 7*’s hypothecation requirements. *Paragraph 8* requires that local authorities must spend net proceeds only on things that offer value for money, and allows the NAW and the Secretary of State to issue guidance.
178. *Paragraphs 9 and 10* require local authorities outside London to prepare a 10 year general plan for spending proceeds, and more detailed plans linked to the timetable for preparing local transport plans. These have to be agreed by the Secretary of State or the NAW. *Paragraph 12* allows the Secretary of State, in consultation with the Greater London Authority, to make regulations about the application of revenues from joint schemes involving a London charging authority.
179. *Paragraph 13* covers the application of revenues from trunk road charging schemes. Schemes that are complementary to local authority charging schemes have parallel arrangements; the Secretary of State or the NAW will keep the revenue for 10 years from the start of a scheme where that scheme is started within 10 years of the legislation coming into force. The revenue must be spent on transport purposes. *Paragraph 13(2)* allows that 10 year period to be extended by regulations. The proceeds of trunk road bridge and tunnel charging schemes will be available for use of the Secretary of State or NAW for 10 years from the start of the scheme, whenever that is.

### ***Schedule 13***

180. *Schedule 13* contains amendments to Schedules 23 and 24 to the 1999 Act. In particular it extends a number of the provisions referring to the operation of charging and licensing schemes contained in this Act to London.

## **Part IV: Railways**

181. The Railways provisions are in three Chapters. These are:

Chapter I - The Strategic Rail Authority

Chapter II - Other provisions about Railways

Chapter III - Supplementary.

### ***Chapter I: the Strategic Rail Authority***

#### ***Sections 201 to 204 and Schedule 14: The Strategic Rail Authority***

182. *Sections 201 to 204 and Schedule 14* provide for the establishment of the Strategic Rail Authority (“the Authority”). The Authority will be a body corporate and will have between eight and fourteen members. Members will be appointed by the Secretary of State who may, by order made by statutory instrument, substitute different figures for

the minimum and maximum membership of the Authority. In making appointments the Secretary of State is to have regard to the desirability of appointing persons who have experience of, and shown capacity in, some matter relevant to the functions of the Authority. One member of the Board is to be appointed after consultation with the National Assembly for Wales, and one after consultation with the Scottish Ministers. In making these appointments the Secretary of State will need to have regard to the desirability of appointing a person who is familiar with the special requirements and circumstances of Scotland or of Wales.

183. The Authority will not be a Crown body but will be a Non-Departmental Public Body. The Authority's staff will not be civil servants. The chairman of the Authority is to be appointed by the Secretary of State and the other members (including any deputy chairman) are to be appointed by the Secretary of State after consultation with the chairman. The Authority appoints its own chief executive, with the Secretary of State's approval, who is to be appointed a member of the authority.
184. *Schedule 14* covers provision for the appointment, tenure and remuneration of the members and staff of the Authority and for procedural matters. *Paragraph 1(4)* makes standard provision for the Secretary of State to remove any member from office on the grounds of incapacity or misbehaviour. The Authority will have the power to make pension provisions for its staff, including the administration of Principal Civil Service Pension Scheme arrangements. The Schedule sets out provisions as to members' interests and conduct to prevent conflicts of interest arising.
185. *Schedule 14* also provides for the financing of the Authority. The Authority will be funded by the Secretary of State, and will also be entitled to borrow money, both from the Secretary of State and temporarily from other sources (eg by overdraft or bridging facility) with the consent of the Secretary of State and the approval of the Treasury. Restrictions on borrowing and a borrowing limit are set out. Provision is made as to the terms of any loans from the Secretary of State. The requirements for accounts and audit are set out, the Authority's accounts are to be audited by the National Audit Office. The Secretary of State is allowed to guarantee sums borrowed by the Authority, and the procedures which must be followed to facilitate this are laid down. The Schedule allows the Secretary of State to require the payment to him of sums which are received by the Authority, in particular where these are surplus. The Secretary of State is also able to make regulations for the purposes of eliminating or reducing the Authority's liabilities to tax.
186. The Authority is permitted to set up committees and sub committees and is allowed to delegate functions to its members, staff, committees and sub-committees and wholly owned subsidiary companies.
187. The Secretary of State is required to prepare and to update a financial framework for the Authority which will determine the rules and principles by which the Authority must run its own finances and matters relating to its employees.

### ***Sections 205 to 210: Purposes, Strategies and Exercise of Functions***

188. *Sections 205 to 210* set out the framework within which the Authority must work to bring strategic leadership to the railway industry, with a hierarchy of purposes, strategies and duties. They set out purposes for which the Authority is established and how it should seek to achieve those purposes.
189. *Section 205* sets out the primary, high level, purposes of the Authority: what might be called its "objectives" or "mission". These purposes are:
  - to promote the use of the railway 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.
190. The Authority has to explain how it will give effect to these purposes through strategies which it must formulate and keep under review ([section 206](#)). These will still be at a high level. One strategy must relate to services in various parts of Great Britain for facilitating the use of the Channel Tunnel.
191. The Authority must consult the Rail Regulator, the Scottish Ministers, the National Assembly for Wales, and other persons as it thinks fit, before formulating a strategy and as part of keeping its strategies under review. The Authority is to publish its strategies. The Secretary of State has the power to give directions and guidance to the Authority as to, for example, the matters to be covered by the strategies. Any directions and guidance issued to the Authority are to be published (see [section 209](#)).
192. The Authority will need to exercise its functions (that is all the powers and duties which it has in [sections 211 to 222](#), both those inherited from the Franchising Director, the British Railways Board, the Rail Regulator and the Secretary of State and those freshly conferred by the Act) with a view to furthering its purposes in accordance with any strategies which it has formulated ([section 206](#)). It will also need to exercise its functions in a manner best calculated to achieve the considerations set out in [section 207\(2\)\(a\)](#) to (f) and to have regard to the considerations in [section 207\(3\)](#).
193. The considerations in [sections 207\(2\)](#) and (3) are broadly aligned with the Regulator's duties under section 4 of the Railways Act 1993 ("the 1993 Act") (as amended by the Act). If they pull in different directions the Authority will need to do what it considers to be most appropriate, balancing all relevant considerations.
194. The term "users" in [section 207\(2\)\(a\)](#) includes passengers, freight customers, train service operators and, where appropriate, railway facility providers. "Railway services" is defined in section 82 of the 1993 Act and covers passenger, freight, light maintenance, station and network services.
195. The Authority must ensure that any payment made, or other financial assistance given, by it are such as it reasonably considers will further its purposes economically and efficiently. This duty includes all payments made by the Authority, whether by way of grant, under a franchise agreement, or under any other agreements made to secure provision, improvements etc. of services. This provision is based on a similar duty laid on the Franchising Director in section 5 of the 1993 Act (which will be repealed) and is often referred to as the "value for money" duty.
196. The Secretary of State may give directions and guidance to the Authority as to what it should do to achieve its purposes in a way best calculated to balance the various [section 207](#) considerations. The Secretary of State may also direct the Authority not to exercise a function in a particular manner or not to exercise it without first consulting him or obtaining his consent. For example, the Secretary of State may direct the Authority that they may only set up freight grant schemes which comply with European obligations. However, the Authority's duty to obtain value for money in any payments which it makes or any other financial assistance which it gives cannot be overridden by the directions and guidance.
197. The Scottish Ministers may also give directions and guidance to the Authority for services which 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 or the Authority's financial framework. The Scottish Ministers may also give directions and guidance on Scottish sleeper services, which the Authority must implement provided that they do not conflict with the Secretary of State's directions and guidance or the Authority's financial framework, and provided they do not impact on other services or the non-Scottish budget. The Scottish Ministers may, in addition, give advice to the Authority on all other cross border services (ie the non sleeper services).

198. *Section 210* protects 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 in sections 207 and 208.

***Sections 211 to 222. Securing the provision of railway services and assets etc***

199. *Sections 211 to 222* describe the main functions and powers of the Authority, including ones transferred from the Franchising Director, the Rail Regulator, the Secretary of State and the British Railways Board (“BRB”).
200. Under *section 211* the Authority has power to enter into agreements for the purpose of securing the provision, improvement or development by others of any railway services or assets or for any other railway related purpose. This includes a power to give grants, loans or guarantees for any purpose relating to any railway or railway services and to invest in a body corporate.
201. The section also provides certain restrictions on this power. Payments for franchised services may only be paid under the franchise agreement. In Scotland, the Authority will have no powers with regard to freight where something falls within a scheme which it has notified to the Scottish Ministers. These schemes (which are intended to replace the freight grants and track access guarantee schemes in sections 137 and 139 of the 1993 Act) will be administered in Scotland by Scottish Ministers only.
202. In this section “railway” means a railway, tramway or transport system, which uses another mode of guided transport but which is not a trolley vehicle system. This is what is meant by railway in “its wider meaning” (see *subsection* (6) of the section and section 81(2) of the 1993 Act.) The expression “railway”, “tramway” and “transport system” have, in turn, their meaning under section 67(1) of the Transport and Works Act 1992.
203. *Section 211* would enable the Authority, for example, to:
- provide grants to local authorities (Passenger Transport Authorities (“PTAs”)) in support of railway services provided or funded by them (including such services provided under franchise agreements to which the relevant Passenger Transport Executive (“PTE”) is a party);
  - fund the integration of light rapid transport systems with the heavy rail network and;
  - make grants or enter into contracts in respect of the enhancement of railway infrastructure which is not commercially viable but in the public interest.
204. Grants to PTAs would provide a substitute for the special grant which the Secretary of State makes to them each year, under the general grant power in section 88B of the Local Government Act 1988. The power in section 211 is in addition to the Secretary of State’s power in *section 157* to make such payments.
205. The power in *section 211* 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, stations), the types of railway assets involved (such as network and trains) and facilities connected with railway travel (such as parking outside stations).
206. *Schedule 15* provides a power to make a transfer scheme for the administration of grants for freight from the Secretary of State to the Authority.
207. *Sections 212 and 213* govern the Authority’s powers to secure or provide railway services. The sections meet the commitment in A New Deal for Transport (paragraph 4.19) to retain the capability for the public sector to take over franchises “as a last resort” (for example, if a franchise was terminated or there were no acceptable private sector bids).

208. *Section 212(1) and (2)* make technical amendments to the Railways Act 1993 to facilitate franchising. The Authority is required to designate passenger services which *ought* to be secured by franchise unless they are exempt services and not merely to designate services which may be *eligible* for franchising. Section 212(6) enables the Regulator to refuse to grant access rights if they might impede the provision of a service which has been designated.
209. The Secretary of State is required to publish his policy towards the use of the power in section 26 of the Railways Act to set aside the tendering process which otherwise precedes the award of a franchise and to have regard to that policy when exercising that power. The Act also sets out the use that may be made of that power.
210. The section specifies the procedures which the Authority will need to follow before it can act as the operator of last resort for services which have been designated for franchising.
211. Where the Authority has issued an invitation to tender for services which have been designated for franchising but receives no tender at all, the Secretary of State may either direct the Authority to issue new invitations to tender or direct that the service should be secured otherwise than by a franchise (by the Authority or a private contractor).
212. Where the Authority has issued an invitation to tender for services which have been designated for franchising and has received tenders for a franchised service, but considers that the services could be provided more economically and efficiently other than by a franchise agreement, the Secretary of State is required either to direct the Authority to select a franchisee or to conduct a further tendering exercise. He may not, at this stage, direct the Authority not to seek to secure provision of a franchise under a franchise agreement. If a further tendering exercise results in no tenders, or tenders are received but the Authority remains of the view that services could be provided more economically or efficiently other than under a franchise agreement, the Secretary of State may, at this stage, direct the Authority not to award a franchise. Where tenders were received, the Secretary of State still has the option to direct the Authority to re-consider these.
213. *Section 212* makes it clear that the Authority must provide services if a direction not to seek a franchise has been made by the Secretary of State or a franchise comes to an end or is terminated without a new agreement being in place. This duty remains until there is a new franchise, although it does not apply if there are already adequate services, nor does it prevent closure procedures.
214. *Section 213* gives the Authority limited additional powers to run goods or undesignated passenger services where it acquires an obligation to provide that service in consequence of a former obligation of the BRB or they are no longer being provided by another person. It gives the Authority the necessary associated powers (such as storing goods) to run that service.
215. *Section 214* confers on the Authority certain powers associated with passenger services – so that passengers can be transported by road during temporary disruptions to the rail service.

### ***Sections 215 to 218: Functions of Franchising Director, Regulator and Board***

216. *Section 215 and Schedule 16* 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 1993 Act and other enactments.
217. *Section 216 and Schedule 17* address a criticism of the current regulatory system that there is no clear division between the respective roles of the Rail Regulator and the Franchising Director in relation to the consumer. The Act transfers responsibilities for



consumer protection to the Authority as the successor to the Franchising Director. The types of matters which are considered consumer protection include telephone enquiries, through ticketing, security, the protection of the interests of disabled people and penalty fares.

218. Where the protection of consumers is secured through a licence the Authority will be responsible for the content of the licence as it relates to consumer protection (through being able to refuse the grant of a licence which does not make adequate provision for the protection of consumers), for the enforcement and modification of consumer protection provisions in a licence (as regards modification only if the Regulator also approves) and for the revocation of a licence where the licensee is in persistent contravention of these provisions. However, when it is exercising this responsibility the Authority will be under the same duties and will need to have regard to the same considerations as the Regulator.
219. For existing licences the Secretary of State may make a scheme which has the effect of separating out those parts of the licence which relates to consumer protection and enabling them to be enforced by the Authority. For new licences the split will be made in the licence when it is granted.
220. [Schedule 17](#) also transfers the administrative responsibility for the Rail Users' Consultative Committees and the Central Rail Users' Consultative Committee to the Authority (which are renamed in [section 227](#) – see below). The Authority will inherit the 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 inherit the Rail Regulator's power to make rules for penalty fares.
221. The final part of [Schedule 17](#) allows the Secretary of State to make schemes to transfer property, rights and liabilities (including any rights and liabilities relating staff appointed by the Rail Regulator) from the Rail Regulator to the Authority. This will provide the administrative support for the Authority to take on these previous functions of the Regulator.
222. [Section 217](#) and [Schedule 18](#) transfer functions of the BRB in relation to the British Transport Police ("BTP") to the Authority, with associated property, rights and liabilities. Provision for the transfer of staff is made. [Section 207](#) is disapplied in relation to the Authority's BTP functions because these provisions are not appropriate to police functions. Instead, the Authority has a general duty relating to efficiency and effectiveness.
223. [Section 218](#) and [Schedule 19](#) make provision for the transfer of all the other properties, rights and liabilities of the BRB to the Authority. Those which are not required by the Authority for railways purposes are to be disposed of and the Authority is permitted to maintain and manage property or to develop it for sale. Provision is made for the transfer of staff.

#### **[Section 219 to 222: Other Powers](#)**

224. [Section 219](#) and [Schedule 20](#) change the current system whereby byelaws are made by the individual train companies and Railtrack and are then confirmed by the Secretary of State. Instead, the Authority will have the power to make uniform byelaws for the whole rail network. The Authority will be able to designate which stations shall hold copies of the byelaws.
225. [Section 220](#) and [Schedule 21](#) 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 includes the transfer of franchise assets after a franchise comes to an end.
226. [Section 221](#) gives the Authority powers to promote Acts relating to railways and to oppose Acts. This provision also enables the Authority to promote or oppose orders

under the Transport and Works Act 1992, by virtue of section 20 of that Act. This will give the Authority the power to promote new railway schemes where there is no other appropriate sponsor.

227. *Section 222* gives the Authority incidental powers and restrictions on its powers. Powers include entering into agreements, acquiring and disposing of property, investing money and promoting publicity.

## ***Chapter II: Other Provisions about Railways***

### ***Sections 223: Directions to provide railway facilities***

228. *Section 223* gives new powers to the Rail Regulator, on the application of the Authority (or other person with the consent of the Authority) to give a direction for the improvement of railway facilities (such as track or stations) or for the provision of new facilities. The section provides that the person directed is to be the person who is an appropriate person to carry out the direction. The Regulator may only give a direction if he is satisfied that the person directed will be adequately rewarded for these improvements and facilities and the Regulator must consult the person, and others as he thinks fit, before giving the direction. The Regulator may grant an application to revoke or vary a direction, again subject to adequate reward, or compensation for abortive work. The person directed must do all that he reasonably can to comply with the direction made by the Regulator. The section sets out the procedures which must be followed before a direction can be made. This new power of direction does not affect any existing obligations (eg licence conditions) or powers. The Secretary of State may, after consulting the Regulator, exempt specified railway services from the Regulator's direction making power.

### ***Section 224: Objectives of the Regulators and the Secretary of State***

229. *Section 224* amends the 1993 Act so as to require the Regulator to facilitate furtherance of the strategies of the Authority, and to contribute to integrated transport and sustainable development. His duty to promote competition is redefined to be for the benefit of users of railway services. The section also amends the duties of the Secretary of State to reflect the fact that he is no longer exercising privatisation functions under the 1993 Act. The Rail Regulator has a new duty to take account of general guidance from the Secretary of State about railway services or other matters relating to railways. This general guidance must be published.

### ***Sections 225 and 226: Enforcement Regime***

230. *Section 225 and 226* modify the enforcement regime available under the 1993 Act.
231. Monetary penalties may be imposed by the Regulator or the Authority 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 with the 1993 Act, these will cover past breaches as well as those which are continuing. There are limitation periods, after which past breaches of licences may not be penalised. There is no specific limit on the penalty which may be imposed, but it must be of a reasonable amount and may not exceed 10% of the relevant operator's turnover (with turnover being determined in accordance with an order made by statutory instrument by the Secretary of State). In calculating a penalty the appropriate authority (the Rail Regulator or the Authority) must take account of policies which it has published with regard to such penalties. Such policies may include policies of having regard to the need to secure compliance, the consequences of the breach and deterrence of other breaches. A rail operator may apply to pay in instalments.
232. There are requirements as to the procedure, including the giving of notices with prescribed information.

233. The operator may make an application to the court to question the validity of a penalty order on prescribed grounds. The requirement to pay a penalty is suspended until a 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 on a reduced penalty.
234. The 1993 Act is amended to allow the appropriate authority, if it thinks fit, 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.
235. [Section 226](#) reduces the period for a rail operator to make representations or objections to enforcement action from not less than 28 to not less than 21 days; it reduces the period on modifications to a compliance order from not less than 28 days to not less than 7 days; and on revocation from not less than 28 days to not less than 21 days. But the Regulator or Authority can allow more time for representations to be made where that would be appropriate. The Regulator cannot make an enforcement order against a licence holder under the 1993 Act where he considers it more appropriate to proceed under the Competition Act 1998. [Section 225](#) extends this provision so that a penalty may not be imposed by the Authority or the Regulator for breach of an obligation under the conditions of a licence, or a closure restriction, where the Regulator is satisfied that the most appropriate way of proceeding is by using his powers under the Competition Act.

#### **[Sections 227 to 229: Consultative Committees](#)**

236. [Section 227](#) 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 22](#) makes consequential amendments to legislative references.
237. [Section 228](#) extends the functions of the renamed bodies. These will be extended to passenger services which are not provided under a franchise agreement. New duties include keeping under review matters affecting the interests of the public in relation to the passenger railway, making representations to and consulting such persons as they think appropriate and co-operating with other bodies representing public transport users. This might, for example, mean co-operating with a bus users' group. The Secretary of State may exempt certain services from their remit or modify the ways in which the new provisions apply.
238. [Schedule 23](#) makes new financial and procedural provisions for the bodies. This includes their financial relationship with the Authority.

#### **[Sections 230 to 233: Access agreements](#)**

239. [Section 230](#) enables the Rail Regulator to give general approvals for access agreements of a specified class or description and makes provision for their publication and revocation.
240. [Section 231](#) and [Schedule 24](#) set out procedures relating to the review by the Rail Regulator of the terms of an access agreement or a linked licence as to the amounts payable under the access agreement by one of the parties to the other (an "access charges review") for the use of a railway facility. Under [paragraph 11](#) of [Schedule 28](#) these procedures will apply to review of access charges currently being undertaken by the Rail Regulator, in the event that it has not been concluded when the new procedures come into force on Royal Assent.
241. Where the Rail Regulator wishes to initiate an access charges review he must serve a notice on the parties to an access agreement and other persons with an interest in the facility setting out, among other things, his conclusions on the access charges review

and the changes to the access agreement or linked licence which are necessary to bring these conclusions into force.

242. If the facility owner or the other person with an interest in the facility who is served with the review notice object to a review notice, the Rail Regulator must either serve a revised review notice or refer the questions raised in the access charges review to the Competition Commission, who must investigate and report on whether they operate or may be expected to operate against the public interest and whether any effects adverse to the public interests should be remedied or prevented. If the Competition Commission concludes that the matters so referred do operate against the public interest and that the adverse effects should be remedied or prevented there are procedures under which the Rail Regulator or the Competition Commission may effect the necessary changes to the relevant access agreement or linked licence.
243. If the access beneficiary – the person who uses the facility in question – objects to an access charges review or to any changes required by the Rail Regulator, or the Competition Commission in accordance with the provisions in Schedule 24, he may terminate the access agreement.
244. *Section 232* 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 section also applies procedures in Schedule 4 of the 1993 Act to these new direction powers. The section makes it clear that the Regulator may give directions requiring the parties to an access agreement which are necessary in his opinion to give effect to the conditions of a licence.
245. *Section 233* enables the Regulator to act in relation to contracts for the use of railway facilities or network installations which are proposed to be constructed or in the course of construction.

### ***Sections 234 to 239: Closures***

246. *Sections 234 to 239* simplify the provisions in the 1993 Act relating to the closure of railway services, network, stations etc. In particular, the Rail Regulator's functions in respect of major closures are transferred to the Secretary of State, so that when major closures are proposed these will be determined by the Secretary of State.
247. *Section 235* places a new obligation on the Authority to publish any proposal for a major closure at stations in the area that would be affected by the closure, and on the Secretary of State similarly to publish closure decisions. Equivalent amendments are made to Schedule 5 of the 1993 Act in respect of services to which that Schedule applies, including services in Greater London. *Section 236* gives a new power for conditions to be imposed on a minor closure. *Section 237* widens the definition of minor closures (where less stringent procedures are required to be followed), so that it can include the track within stations and depots. *Section 238* 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. Where such a general determination is revoked this does not affect the validity of the status of a minor closure already determined by the general determination. The Authority is required to inform the Rail Regulator of a decision to allow a minor closure.
248. *Section 239* makes it clear that where a non-franchised passenger service is to be closed, the operator must continue the service until closure. This will ensure that the burden of maintaining the service does not fall on the Authority.

### ***Sections 240 and 241: The British Railways Board***

249. *Section 240 and Schedule 25* allow the transfer to the Secretary of State of any property, rights or liabilities of the BRB. This is in addition to the power to transfer to the Authority – where it is intended that most rights and liabilities will be transferred.

250. *Section 241* provides for the winding down and the abolition of the BRB. Abolition will be effected when all residual liabilities, properties and rights have been transferred to the Authority or the Secretary of State.

***Sections 242 and 243: Competition***

251. *Section 242* provides a power for the Competition Commission to veto amendments to licences proposed to be made by the Regulator following a reference to the Competition Commission. The conclusion of a reference to the Competition Commission in respect of modifications to the terms of a licence is effected, under the 1993 Act, by licence modifications directed by the Rail Regulator. Section 242 provides that the Competition Commission shall have four weeks following the Rail Regulator's announcement of his intended licence amendments to veto those amendments, and instead substitute its own.
252. *Section 243* makes it clear that the Rail Regulator may exercise functions under the Competition Act 1998 concurrently with the DGFT in relation to agreements etc for the supply of rolling stock and certain other railway related contracts and arrangements.

***Sections 244 and 245: Pensions***

253. The BRB has for many years past had a practice of making provision for indexation of certain pensions arising under very old pension schemes (largely schemes of the old pre-BRB railway companies), where the schemes themselves did not make adequate provision for such indexation. *Section 244* converts the BRB's customary practice of providing indexation for cost of living increases, into a binding obligation of the Authority.
254. *Section 245* makes a number of changes to the pension protection provisions contained in the Railways Act 1993 and the Railway Pensions (Protection and Designation of Schemes) Order 1994 in order to ensure that pension protection continues after creation of the Authority and the dissolution of the British Railways Board. The section also addresses a problem that has been identified in relation to the existing arrangements under the 1993 Act. Schedule 11 to the 1993 Act and the Protection Order made under that Act are amended to provide certainty in relation to the protection of staff pensions in certain cases when there is a change of employer. *Subsections (1) and (3) to (5)* of this section (and *subsections (2) and (8)* in so far as they relate to those subsections) are given effect from the date of the Report Stage of the Act in the House of Commons (10<sup>th</sup> May 2000) (*section 275(5)*). This is done in order to ensure that no one can seek to exploit any ambiguity in the 1993 Act arrangements between the date on which the clarificatory amendments contained in those subsections became public knowledge and the date on which any Act resulting from the Act comes into force. *Subsection (7)* removes the requirement for certain disputes relating to railways pensions to be referred to arbitration. The effect will be that disputes may be referred to the Pensions Ombudsman, or (where appropriate) the Court, in accordance with newer procedures.

***Section 246 to 251: Miscellaneous***

255. PTEs may make statements to the Authority under section 34(5) of the 1993 Act specifying their passenger service requirements in their area.
256. *Section 246* provides that the Authority must not, without a direction from the Secretary of State under section 34(18) of the 1993 Act, carry out the requirements in the statement if it would prevent or seriously hinder the Authority from complying with directions and guidance given by the Secretary of State or Scottish Ministers or from complying with their financial framework. The Authority need not 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 which the Authority must pay to franchise operators. Should there be a dispute between the PTE and the Authority on the statement, the Secretary of State has the power to resolve the dispute.



257. *Section 247* will allow for the transposition of the EU Directive on the interoperability of the trans-European high-speed rail network. The Directive came into force in 1996. The section will also allow for the transposition of a similar Directive relating to the conventional rail network which is currently under discussion. The power is given to the Secretary of State to make regulations to cover the technical specifications which will be issued under the Directive.
258. *Section 248* places a new obligation on railway passenger operators to ensure that any road services that are provided in substitution for railway services during periods of rail disruption are such as to allow disabled passengers to undertake their journeys in safety and reasonable comfort. The Secretary of State may, after consultation with the Disabled Persons Transport Advisory Committee, make exemptions from this requirement..
259. *Section 249* 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 schemes which have been notified to them by the Authority.
260. *Section 250 and Schedule 26* makes provision for the consequences for taxation of the various transfers and transfer schemes for which the Act provides.
261. *Section 251* 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.

#### ***Sections 252 to 254: Supplementary***

262. Chapter III and *Schedules 27 and 28* make minor and consequential amendments to other enactments, provide for transitional provisions and interpretation

#### **Part V: Miscellaneous and Supplementary Provisions**

263. ***Section 255 - 256: Charges for Streetworks on highways.*** *Section 255* inserts a new section 74A into the New Roads and Street Works Act 1991, and allows Ministers to make regulations which would permit highway authorities to charge undertakers (such as gas, water or telecommunications companies) carrying out street works for occupying the highway from the commencement of works. The detailed arrangements for operating such a charging system would be set out in the regulations.
264. *Section 256* makes a number of amendments to section 74 of the New Roads and Street Works Act 1991, which provides for Ministers to issue regulations permitting highway authorities to charge undertakers where they fail to complete street works by an agreed deadline. Again, the detailed arrangements for operating such a system would be set out in the regulations.

#### ***Sections 257 to 260 and Schedule 29: Driver training and driving instruction***

265. *Section 257*, with *paragraphs 2 to 6 of Schedule 29*, which is introduced by *section 260*, makes provision for the training of drivers who have not passed a driving test on a particular class of vehicle. The only legislative provision requiring drivers to undertake a training course currently extant is contained in regulations made under section 89(3A) and (3B) of the Road Traffic Act 1988 and relates only to motor cycles and mopeds. Those provisions are repealed by virtue of *Schedule 31 (Part V(I))* and replaced by a power enabling the Secretary of State to make regulations imposing a training obligation on drivers –
- before they drive a particular class of vehicle on the road, or
  - before they take a test for a full licence to drive a class of vehicle, or

- who, having passed a test on one class of vehicle, would otherwise be entitled to drive a vehicle of a different class without further training.

The regulation-making power is contained in four new sections added to the 1988 Act

266. *Sections 258 to 260*, with *paragraphs 7 to 12 of Schedule 29 (4)*, amend the law relating to driving instructors.
267. *Section 258* replaces the provisions of Schedule 3 to the Road Traffic Act 1988 (which provide for appeals by driving instructors against decisions of the Registrar of Approved Driving Instructors (“the Registrar”) to be determined by the Secretary of State) by a right of appeal to the Transport Tribunal. *Section 259* amends sections 127 to 131 of the 1988 Act by providing that decisions of the Registrar are to take effect 14 days from the date when they are made unless either the Registrar suspends the decision himself or the Transport Tribunal orders the suspension of a decision on application by an aggrieved instructor. *Paragraphs 9 to 11 of Schedule 29* provide for tests of continued ability and fitness to give instruction (required to be undertaken by instructors as a condition of registration – see section 125(5) of the 1988 Act) to be subject to review by a magistrates’ court, also on application by an aggrieved instructor, and makes provision for the payment of fees.

### ***Section 261 to 263: Licensing of operators of goods vehicles***

268. *Sections 261 to 263* and *Schedule 30* relates to the Goods Vehicle (Licensing of Operators) Act 1995 which provides for a system of operator licensing for users of commercial goods vehicles that weigh over 3.5 tonnes. This is intended to ensure the safe and proper use of goods vehicles and the protection of the environment around operating centres (the place where an operator normally keeps the vehicles). Licences are granted and, where appropriate, disciplinary action taken against licence holders by traffic commissioners, who are individuals appointed by the Secretary of State. The Vehicle Inspectorate, an Executive Agency of the Department of the Environment, Transport and the Regions, has responsibility for ensuring compliance with the laws on operator licensing.
269. *Section 261* amends section 2 of the Goods Vehicles (Licensing of Operators) Act 1995 to increase the maximum fine for operating without a licence from level 4 on the standard scale (currently £2,500) to level 5 on the scale (currently £5,000).
270. *Section 262* and *Schedule 30* give the Vehicle Inspectorate powers to detain, remove and dispose of illegally operated heavy goods vehicles (“HGVs”) at roadside checks. *Schedule 30* sets out a new Schedule 1A to be inserted in the Goods Vehicles (Licensing of Operators) Act 1995. The new Schedule enables the Secretary of State to make regulations providing for the detention of goods vehicles used without an operator’s licence.
271. *Section 263* substitutes a new section 5(6) of the Goods Vehicles (Licensing of Operators) Act 1995 to abolish the “margin concession”. The current provision enables newly acquired vehicles within the maximum number authorised under an operator’s licence to be used for up to a month without notification to a traffic commissioner and without a disc being displayed. This means that a vehicle may be operating legally even though an operator’s licence disc is not displayed on the windscreen. The detention scheme will only be workable if it is clear to Vehicle Inspectorate examiners at the roadside that a vehicle is being operated without a valid operator’s licence.

### ***Section 264: Type approvals: exemptions***

272. *Section 264* of the Act allows additional flexibility by providing an Order- making procedure to exempt specified vehicles or vehicles of specified persons - for example prototypes, or vehicles constructed for specific purposes, such as carrying abnormal loads - from particular aspects of the type approval rules.

***Section 265: Vehicles subject to regulation as private hire vehicles***

273. *Section 265* amends the Public Passenger Vehicles Act 1981 (“the 1981 Act”) and the Criminal Justice and Public Order Act 1994 (“the 1994 Act”) in relation to vehicles which may be used as public service vehicles or private hire vehicles.
274. The effect of the amendment to the 1981 Act is that (subject to the limited exception mentioned below) a small public service vehicle (“PSV”) called a “small bus” in the section, can no longer be used for private hire work by virtue of its operator being licensed under the PSV operator licensing system. Instead, to undertake private hire work, the vehicles and their operators will need to be licensed under the Private Hire Vehicle (“PHV”) licensing system.
275. By virtue of Part II of the Local Government (Miscellaneous Provisions) Act 1976, the Private Hire Vehicles (London) Act 1998 and certain local legislation PSVs in general are exempt from the licensing requirements of those enactments which are otherwise applicable to PHVs. PHVs are vehicles adapted to carry no more than 8 passengers which are provided for hire with the services of a driver for the purposes of carrying passengers otherwise than at separate fares (i.e. the vehicles are hired as a whole). PSVs are divided by section 1(1) of the 1981 Act into two categories, small PSVs being vehicles of the same size as PHVs used in the course of a business to carry passengers for hire or reward at separate fares (i.e. passengers pay individually as on a bus). Operators of small PSVs are required to be licensed by the traffic commissioners under the 1981 Act but PHVs and their operators are required to be licensed by local authorities.
276. *Subsection (2)* adds a new section 79A to the 1981 Act which provides that, save in one case, a small PSV vehicle which is being used to carry passengers otherwise than at separate fares is not to be treated as a PSV for the purposes of gaining exemption from the PHV licensing requirements. The exception applies where the vehicle is provided in the course of a passenger-carrying business all but a small part of which involves the operation of large PSVs (which are vehicles having more than 8 passenger seats and are described as “large buses”). *Subsection (1)* makes a consequential amendment in section 79 of that Act.
277. *Subsection (4)* amends the prohibition on touting for the hire of taxis and PHVs in section 167 of the 1994 Act. That section currently provides a defence to someone accused of touting if the vehicle is a PSV, however it is to be used at the relevant time. This subsection limits the defence so that it only applies if the vehicle in question is to be used to carry passengers at separate fares

***Section 266: Drivers' hours.***

278. *Section 266* amends Part VI of the Transport Act 1968 to enable the Vehicle Inspectorate and the Police to prohibit drivers of vehicle registered in the UK who have exceeded their permitted driving time from continuing their journey until they have had the necessary break or rest period required under the drivers' hours rule

***Section 267: London service permit appeals***

279. *Section 267* amends section 189 of the Greater London Authority Act 1999 which provides for appeals against decisions of Transport for London relating to London service permits to be made to the Mayor. (A London service permit is a permit to operate a local service in Greater London which is not part of the London bus network as defined in section 181 of that Act.) Provision is made instead for such appeals to be heard by an independent panel.

***Sections 268 to 269: Quiet lanes and home zones and rural road speed limits***

280. *Section 268* makes provision for quiet lanes and home zones. It enables local traffic authorities to designate roads for which they are responsible as quiet lanes or home

zones. There is no constraint on the use of this power, except that the appropriate national authority may give guidance as to its use, to which local traffic authorities must have regard.

281. Designation as a quiet lane or a home zone will, in itself, make no difference to the roads in question. But it will enable the local traffic authority to make use orders and speed orders relating to these roads, subject to procedures which may be specified in regulation by the appropriate national authority, and which may include approval of the individual order by that authority or another body (which might, for example, be the Greater London Authority for orders in London.)
282. Use orders would permit the road to be used for purposes other than passage. They might be particularly appropriate in Home Zones, to give legal status to activities other than progress up and down the road, for example children's play. These activities would be subject to requirements not to obstruct the lawful use of the road by others, or to deny reasonable access to premises.
283. Speed orders would enable the local traffic authority to introduce speed-reducing measures. These could include traffic calming measures in which respect the new provisions neither add to nor detract from local authorities' existing powers. The new features of speed orders are that the scope is not limited to traffic calming measures, and that they have to specify the speed below which they are intended to hold the traffic. They will not, by themselves, impose speed limits at that level. These will need to be set by order for individual roads, and any local speed limits below 20 mph will, (unless current restrictions are changed) require the approval of the appropriate national authority.
284. The appropriate national authority, for this section, is the Secretary of State in England and the National Assembly in Wales
285. [Section 269](#) relates to a proposed hierarchy of roads in rural areas. It imposes a duty on the Secretary of State to review the application of speed limits on rural roads, and prepare a report for Parliament within 12 months of Royal Assent

### ***Section 270: School crossing patrols***

286. [Section 270](#) amends the Road Traffic Regulation Act 1984 . The purpose is to allow school crossing patrols to assist pedestrians of any age, not just school-aged children, and to remove the restrictions on the hours they can operate.

### ***Section 271: Stands etc for bicycles or motor cycles***

287. [Section 271](#) modifies section 63 of the Road Traffic Regulation Act 1984 so as to permit the provision of stands and racks for motor cycles as well as for pedal cycles. It also permits the provision of devices for securing motor cycles or pedal cycles.

### ***Section 272: Financial assistance: inland waterway and sea freight***

288. [Section 272](#) provides for the existing inland waterway freight facilities grants scheme to be extended in scope and application. Specifically, it confers powers to extend coverage to coastal and short sea shipping.

### ***Sections 273 to 280: Supplementary***

289. [Section 273](#) provides that where an offence is committed by a company with the consent or connivance of, or due to the negligence of, a director or manager or officer, that person as well as the company commits an offence.
290. [Sections 274 to 276](#) provide for repeals, commencement (by commencement order) and transitional provisions.

291. *Section 277* permits the making of further consequential amendments by order.
292. *Section 278* summarises the financial provisions for the Act.
293. *Section 279* is a summary of the extent but it should be noted that any amendments to legislation made by Parts 1 and IV, and the repeals and revocations relating to those Parts of the Act, have the same extent as the legislation amended, repealed or revoked. Where reference is made to a Part of the Act, that reference includes Schedules relating to that Part.

Provisions extending to England and Wales only - Part II, Part III, repeals relating to Parts 1 and III, sections 255, 256, 265, 267, 268, 270 and 271. Repeals in Part V (2) of Schedule 31.

Provision extending to England and Wales and Scotland only – Part IV, sections 257 to 264, 266 and 269. Schedules 29 and 30. Part V (1) of Schedule 31.

Provisions extending to England and Wales, Scotland and Northern Ireland – sections 247 and 250. Paragraph 14 of Schedule 14 and Schedule 26.