

RAILWAYS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1: Transfer of Functions and Railway Strategy

Transfer of Functions

Overview

26. The Government's review of the railways concluded that it would be necessary to wind up the Strategic Rail Authority. The reasons given were that it would improve efficiency, reduce bureaucracy and provide a clearer focus on leadership within the rail industry.

Section 1: Transfer etc. of SRA functions and abolition

27. *Section 1* provides for the abolition of the Strategic Rail Authority and for the reallocation of its functions, where they are not discontinued. The Strategic Rail Authority's strategic functions and its financial obligations (see also *Section 6*) will become the responsibility of the Secretary of State for Transport, together with many of its operational functions, such as the letting and management of railway franchises. Other Strategic Rail Authority functions will be reallocated to third parties. In some cases this will not require legislative provision. The Secretary of State may make an order for the abolition of the SRA when he is satisfied (having consulted the SRA) that the liabilities of the SRA have been adequately provided for and that it is no longer necessary for the SRA to exist.
28. The intention is for the Scottish Executive and the NAW to take on increased responsibilities for passenger services and, in Scotland, infrastructure responsibilities. This section requires the Secretary of State to transfer the Strategic Rail Authority's interest in the Scotrail franchise to the Scottish Ministers. The SRA interest in the franchise agreement with Arriva Trains Wales is intended to be transferred under this section to the Secretary of State and the NAW jointly. The SRA interest in all other franchise agreements is intended to be transferred to the Secretary of State.
29. The Rail Passengers' Council, currently funded through the Strategic Rail Authority, will become a body corporate and will be funded by grant from the Department for Transport. Rail Passengers' Committees will be disbanded and the newly constituted Rail Passengers' Council will be the sole national consumer body for rail.
30. The section also provides for the transfer to the Secretary of State, and as appropriate the Scottish Ministers, the NAW and the Office of Rail Regulation of the Strategic Rail Authority's property, rights and liabilities, including shares in its subsidiary companies, such as BRB (Residuary) Limited. Provision is also made for the transfer of property, rights and liabilities to the Rail Passengers' Council.
31. This section also gives the Secretary of State powers to make modifications of legislative provisions in relation to rail pensions that may be necessary or expedient as

a consequence of the transfer of the SRA's functions or its abolition or as a consequence of a transfer scheme transferring its property rights or liabilities.

32. The provisions of Part III of the Transport Act 1980 and schedule 11 to 1993 Act, among other things, set out mechanisms under which the Department for Transport provides funding to the trustees of a number of older, partially unfunded pension schemes some of which were set up by the pre-nationalisation rail companies. The role of the SRA as sponsoring employer is likely to be transferred, on its abolition, to the Department for Transport under a transfer scheme to be made under section 1(2). The purpose of the order making power under subsection (8) is to enable consequential provision to be made in the light of that transfer of liabilities.
33. Further consideration needs to be given to the detail of the provision required. Currently, it is anticipated however that the Department for Transport will retain its existing statutory funding liabilities alongside liabilities, as sponsoring employer, which will be transferred to it from the SRA. Whatever provision is made will be designed to ensure that the existing position of beneficiaries of the relevant pension schemes and the funding of those schemes is unaffected.
34. Section 244 of the Transport Act 2000 had the effect of converting the British Railways Board's (BRB's) customary practice of providing indexation for cost of living increases for these older pension schemes into a binding obligation of the SRA. Consequential provision will be required to reflect the abolition of the SRA. It is likely this will be to transfer this obligation to the Department for Transport to reflect the expected transfer of employer obligations for these schemes to the Department. The intention again will be to ensure that the existing position of beneficiaries of the relevant schemes is unaffected by amendments made.
35. The affirmative resolution procedure will apply to any order made under subsection (8). The details of the affirmative procedure are described in section 55(4).
36. It is anticipated that the SRA will be wound up gradually, and the transfer of its functions is to be completed before it is abolished. The section includes provision to allow the Secretary of State to reduce the membership of the Strategic Rail Authority as part of the transitional period leading to abolition.

Section 2: Transfer of safety functions to the ORR

37. *Section 2* brings into effect schedule 3, which concerns the transfer of safety functions under the Health and Safety at Work etc Act 1974 ("the 1974 Act") to the ORR.

Railway Strategy

Section 3: General Duties under s.4 of the 1993 Act

38. This section amends the general duties of the ORR and the Secretary of State provided in s4 of the 1993 Act that apply to the exercise of their functions under that Act.
39. *Sections 3(2), 3(8) (a) and 3(9)* provide that the general duties do not apply to the safety functions being transferred to the ORR under Schedule 3, to which quite separate considerations apply. Thus the transferred safety functions are not subject to the balancing of the general duties applicable to other functions. This reflects the need to ensure that the transferred safety functions are not compromised in the pursuit of the ORR's other functions.
40. *Section 3(3)* provides an additional general duty to promote improvements in railway service performance in terms of reliability, punctuality and minimising overcrowding and journey times. It also removes the general duty to have regard to the SRA's strategies given the abolition of that body.

41. *Section 3(4)* retains a duty for the ORR to take into account safety matters in the exercise of its general duties. This is distinct from the safety functions being transferred to the ORR under schedule 3.
42. *Sections 3(5) and (6)* modify s.4(3A) of the 1993 Act which applies the general duties (specified in s.4(1) to (3) of the 1993 Act) to certain functions undertaken by the Secretary of State. Section 3(5) provides that these duties apply to network modification functions undertaken by the Secretary of State. Section 3(6) applies these duties to functions undertaken by the Scottish Ministers in relation to improving, providing or developing railway facilities, or network modification. It also applies the duties to functions undertaken by the NAW in relation to network modification.
43. *Sections 3(8) and (9)* modify s.4(5) of the 1993 Act which specifies further general duties applicable only to the Office of Rail Regulation. On non-safety function railway matters the ORR must have regard to general guidance from the Secretary of State and the funds he has available for the purposes of his railways functions. The ORR must also have regard to general guidance from the Scottish Ministers on Scottish railway matters with potentially different weighting where expenditure falls to the Scottish Ministers. It also must have regard to strategies and policies of the NAW on Welsh railway matters that the NAW notifies to it. Also the Secretary of State must consult NAW before giving general guidance to the ORR under section 4(5) of the 1993 Act. On matters relating to its safety functions (except enforcement functions), the ORR must have regard to general guidance from the Secretary of State only, under new section 4(5B) of the 1993 Act. Section 3(9) inserts an additional general duty, under new section 4(5C) of the 1993 Act, requiring the ORR, in considering anything affecting the interests of railway service users and providers, to have regard to the interests in securing value for money of those providing public money and of the general public.
44. *Section 3(10)* inserts new Section (7ZA) of section 4 of the 1993 Act. This Section concerns general guidance given to the ORR by the Secretary of State, including in relation to the ORR's new safety functions and by the Scottish Ministers in respect of railway matters relating to Scotland at Section 3(8)(b). It permits the Secretary of State and the Scottish Ministers to vary or revoke any advice given in respect of the purposes set out above, and places a requirement on the Secretary of State and the Scottish Ministers to publish any guidance which they may issue for those purposes in such a manner as they may consider appropriate.

Section 4: Use of access charges reviews for application of strategy

45. *Section 4*, which introduces *Schedule 4*, amends Schedule 4A of the 1993 Act which provides a process by which the conclusions of an access charges review by the ORR are taken forward. Schedule 4 of the Act also establishes the process for the prior stage of conducting the review. This includes in particular how the Secretary of State and the Scottish Ministers make inputs at various stages of the review.

Section 5: Railway strategy for Scotland

46. *Section 5* gives the Scottish Ministers the power to formulate and publish strategies in respect of railways in Scotland and to revise them from time to time as they feel appropriate. They are not obliged to formulate or revise a strategy. However, where they do formulate or revise a strategy they must publish the strategy or revised strategy in a way which will bring it to the attention of those bodies likely to be affected by it.

Part 2: Public Sector Funding Authorities for Railways

Assisting and securing the provision of services

Section 6: Financial assistance etc. from the Secretary of State

47. *Section 6* provides a power for the Secretary of State to give financial assistance for any railway purpose. The assistance may take the form of grants, loans, guarantees or investments, and may be subject to such terms and conditions as the Secretary of State thinks fit. For the purposes of section 6 the term railway is deemed to have its "wider meaning". This term is defined by section 81(2) of the 1993 Act and covers a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.
48. This section is similar to section 211 of the Transport Act 2000 (which is repealed by section 58 of and Schedule 13 to the Act) which enables the Strategic Rail Authority to provide financial assistance for railway purposes. It is intended that the Secretary of State's power will be used in particular:
- to provide financial support to train operators under franchise agreements; and
 - to provide financial support to Network Rail for the provision of rail infrastructure.

Where the support is in respect of services operated under a franchise agreement, it may only be given in accordance with the terms of that franchise agreement. The purpose of this provision is to ensure transparency, so that the provisions of a franchise agreement, which have to be published on a public register, under section 73 of the 1993 Act, cannot be amended by a private side agreement.

49. The section also replaces a power in section 17 of the Ministry of Transport Act 1919 which covers some of the same subject matter as this section and is superseded by it.

Section 7: Notification of assistance from Secretary of State for freight services, Section 9: Notification of assistance from the Scottish Ministers for freight services and Section 11: Notification of assistance from Welsh Assembly for freight services

50. Under the Transport Act 2000, the SRA has sole power (under section 211) to make or modify financial assistance schemes aimed at securing the provision, improvement or development of rail freight. The SRA must inform both the Scottish Ministers and National Assembly of Wales of these schemes (under section 249). The Scottish Ministers have the sole power to apply these schemes in Scotland and the National Assembly of Wales and SRA have joint powers to do so in Wales. These provisions of the Transport Act 2000 are repealed by this Act.
51. Under *sections 8 and 10* of this Act, the Scottish Ministers and National Assembly of Wales will have new powers to make and modify schemes of this kind themselves. The sections to which this note relates seek to encourage the co-ordination of such schemes, given that rail freight activities may cross the borders between England, Wales and Scotland.
52. *Section 7* requires the Secretary of State to notify the Scottish Ministers and National Assembly of Wales of any new or modified schemes. Sections 9 and 11 impose reciprocal duties on the Scottish Ministers and NAW to notify the Secretary of State of their own new or modified schemes.
53. *Section 6(4)* requires the Secretary of State to have regard to the desirability of acting consistently with anything notified to him by either the Scottish Ministers under section 9 or the NAW under section 11. *Sections 8(6) and 10(9)* require the Scottish

Ministers and National Assembly of Wales respectively to have the same regard to anything notified to them by the Secretary of State under section 7.

Section 8: Franchising and financial assistance in relation to Scotland

54. *Section 8(1)-(9)* provides a power, based on section 211 of the Transport Act 2000, for the Scottish Ministers to provide financial assistance in connection with "Scottish services". Similar provisions apply to the Secretary of State under section 6 and to the NAW under section 10. This power applies to both freight and passenger services.
55. *Section 8 (1)* enables the Scottish Ministers to provide financial assistance to any franchisee where the Ministers are party to a franchise agreement. They can provide financial assistance to buy services from the franchisee, including both Scotland-only services and cross border services. They can also provide financial assistance to the franchisee for any other purpose in relation to such services. This might include the provision of new passenger facilities, such as a station or the re-opening of a disused line, or improvements to existing facilities.
56. *Section 8(2)* enables the Scottish Ministers to provide financial assistance otherwise than under a franchise agreement for "Scottish purposes". It will enable them to provide funding to a wide range of parties, so as to develop the railway services within Scotland and cross-border services.
57. *Section 8 (3)* defines the meaning of "Scottish purposes" for the purposes of section 8 (2).
58. *Section 8 (4)* clarifies what may constitute the provision of financial assistance by the Scottish Ministers for the purposes of section 8.
59. *Section 8 (5)* gives the Scottish Ministers the discretion to enter into agreements and other arrangements to provide financial assistance to any party under Section (1) or (2) on whatever such terms and conditions they think appropriate.
60. *Section 8 (6)* relates to section 7 (notification of assistance from the Secretary of State for freight services). It obliges the Scottish Ministers to consider whether or not, in providing financial assistance in relation to freight services, the effect is consistent with any scheme relating to the provision of grants for freight facilities that the Secretary of State has notified to them. The section does not require the Ministers to act in accordance with the Secretary of State's scheme.
61. *Section 8(7)* clarifies the way in which the Scottish Ministers may enter into agreements or other arrangements under Section 8(2) to provide financial assistance in respect of franchised services. This clarification is needed because Section 8(2) gives the Scottish Ministers a wide power, which enables them to provide assistance outside the terms of a franchise agreement. The clarification is that where the Scottish Ministers enter into an agreement or arrangement with a "relevant person" they may only do so under the terms of a franchise agreement. This is intended to ensure transparency in relation to franchise agreements, which are public documents, kept on the public register. Section 8(7) ensures that the Scottish Ministers only enter into agreements with franchisees etc. which relate to franchised services where those agreements are entered into in accordance with the franchise agreement.
62. *Section 8 (8)* defines the meaning of a "relevant person" for the purposes of section 8 (7) as a franchisee, franchise operator, or employee, agent or independent contractor of the franchisee or franchise operator.
63. *Section 8 (9)* defines the meaning of "Scottish service", "facilities" and "railway" for the purposes of section 8. For the purposes of section 8 the term "railway" is deemed to have its "wider meaning". This term is itself defined by section 81(2) of the 1993 Act and means a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport",

"railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.

Section 10: Franchising and financial assistance in relation to Wales

64. *Section 10(1)* provides that the Secretary of State must consult the NAW before issuing an invitation to tender for or, where he does not invite tenders, entering into a franchise agreement under which the services to be provided are or include "Welsh services". "Welsh services" is defined in section 56 and means railway passenger services which start in Wales, end in Wales or otherwise make at least one scheduled call in Wales. The franchise agreements in question would include, but would not be limited to, those which are the subject of section 10(2).
65. *Section 10(2)* provides for the Secretary of State and the NAW to be joint parties to a passenger rail franchise that provides services that are or include "Wales-only services". "Wales-only services" is defined in section 56 and means services that both start and end in Wales and do not make any other scheduled calls outside Wales, and have not been excluded from the definition by an order made by the Secretary of State. In practice this means the current Wales and Borders franchise which is operated by Arriva Trains Wales, since this is the only franchise which at present provides or includes Wales-only services. The Secretary of State will not be able to enter into a franchise agreement that falls within the scope of this section on his own with a franchisee; he may only do so if the NAW joins with him as a co-signatory to the agreement. In future the franchise agreements referred to in section 10(2) could include a different franchise to the current Wales and Borders franchise, or more than one franchise, if they provided Wales-only services. As mentioned in the notes to section 1, it is intended that the SRA interest in the franchise agreement with Arriva Trains Wales will be transferred to the Secretary of State and the NAW jointly.
66. *Section 10(3)-(12)* provides a power for the NAW to provide financial assistance connected with Welsh services. This power is based on section 211 of the Transport Act 2000. Similar provisions apply to the Secretary of State under section 6 and the Scottish Ministers under section 8.
67. *Section 10(3)* enables the NAW to provide financial assistance to any franchisee where the NAW is a party to the franchise agreement. The NAW can provide financial assistance to buy services from the franchisee which operate to, from or within Wales. It can also provide financial assistance to the franchisee for any other purpose in relation to such services. This might include the provision of new passenger facilities, such as a station or the re-opening of a disused line, or improvements to existing facilities. The NAW's power under this section is not limited to franchises it is a party to for the purposes of section 10(2). It will be possible for the Secretary of State to invite the NAW to be party to other franchise agreements that provide services that make scheduled calls in Wales. In addition, it will be possible for the Assembly to be a party to a franchise agreement with the Scottish Ministers if the Scottish Ministers and NAW agreed that the Assembly should provide financial assistance to secure a service between Wales and Scotland under a Scottish franchise.
68. *Section 10(4)* enables the NAW to provide financial assistance otherwise than under a franchise agreement for "Welsh purposes". It will enable the NAW to provide funding, so as to develop the railway serving Wales, to a wide range of parties, such as Network Rail, freight operators and other third parties. In addition, subject to section 10(10), it will enable NAW to provide financial assistance to franchisees where the NAW is not a party to the relevant franchise agreement.
69. *Section 10(5)* defines the meaning of "Welsh purposes" for the purposes of section 10(4).
70. *Section 10(6)* enables the NAW to make payments to the Secretary of State or the Scottish Ministers in relation to their respective roles as "operator of last resort". This

role arises under amended section 30 of the 1993 Act when a franchise that either of them has let ends and is not replaced with another franchise agreement. Where the NAW secured services as a party to the franchise agreement in question it will be able to provide the necessary financial assistance for those services to continue to be provided.

71. *Section 10(7)* clarifies what may constitute the provision of financial assistance by the NAW for the purposes of section 10.
72. *Section 10(8)* gives the NAW the discretion to enter into agreements and other arrangements to provide financial assistance to any party under section 10(3) or (4) on whatever such terms and conditions it thinks appropriate.
73. *Section 10(9)* relates to section 7 (notification of assistance from the Secretary of State for freight services). It obliges the NAW to consider whether or not, in providing financial assistance in relation to freight services the effect is consistent with any scheme relating to the provision of grants for freight facilities that the Secretary of State has notified to it. The section does not require the NAW to act in accordance with the Secretary of State's scheme.
74. *Section 10(10)* clarifies the way in which the NAW may enter into agreements or other arrangements under Section 10(4) to provide financial assistance in respect of franchised services. This clarification is needed because Section 10(4) gives NAW a wide power, which enables it to provide assistance outside the terms of a franchise agreement. The clarification is that where the NAW enters into an agreement or arrangement with a franchisee, franchise operator, or employee, agent or independent contractor of the franchisee or franchise operator (a "relevant person") it may only do so under the terms of a franchise agreement. This is intended to ensure transparency in relation to franchise agreements, which are public documents, kept on the public register. Section 10(10) ensures that NAW only enters into agreements with franchisees etc. which relate to franchised services where those agreements are entered into in accordance with the franchise agreement.
75. *Section 10(12)* defines the meaning of "facilities" and "railway" for the purposes of section 10. For the purposes of section 10 the term "railway" is deemed to have its "wider meaning". This term is itself defined by section 81(2) of the 1993 Act and means a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992.

Section 12: Transfer schemes at end of franchising agreements

76. *Section 12* provides for the making of a Transfer Scheme when a franchise agreement terminates (for whatever reason) to transfer the relevant franchise assets (as defined in section 12(8)). Under section 27 of the 1993 Act, the SRA has power to designate property, rights and liabilities as "franchise assets" under a franchise agreement. These "franchise assets" are important to the operation of the franchised services, and accordingly section 27 provides that franchise assets may not be disposed of by the franchise operator without the consent of the SRA. Schedule 1 of this Act amends section 27 so that these functions will be exercised in future by the Scottish Ministers in relation to Scottish franchise agreements, and by the Secretary of State in relation to other franchise agreements.
77. *Section 12* is primarily intended for use where a franchise agreement is terminating, and a new franchisee is taking over from the existing franchisee. The Secretary of State or the Scottish Ministers, as appropriate, may make a Transfer Scheme for the transfer of the franchise assets from the old franchise company to the new franchise company. The old franchise company will be paid for the franchise assets in accordance with the terms of its franchise agreement.

78. However, there may be circumstances in which a franchise agreement terminates but is not replaced with a new franchisee. This may happen, for example, where the franchise agreement terminates and the services have to be provided under amended section 30 of the 1993 Act by the Secretary of State or the Scottish Ministers as "operator of last resort". In order to enable the Secretary of State or the Scottish Ministers (or a company owned by one or both of them) to discharge the duty to act as operator of last resort, it is necessary for the franchise assets to be transferred to them. Section 12(2) makes provision for this.
79. *Section 57(3) and (4)* explains the meaning of companies which are "wholly owned" and "jointly owned" for the purposes of this Act. Section 12(2) uses these terms.

Passenger Transport Executives

Section 13: Railway functions of Passenger Transport Executives

80. *Subsection (1)* provides that the Secretary of State must consult a Passenger Transport Executive in England before issuing an invitation to tender for or, where he does not invite tenders, entering into a franchise agreement which includes services where that Passenger Transport Executive have an interest.
81. *Subsection (2)* defines the services in which a Passenger Transport Executive has an interest. These are railway passenger services within a PTE's area or railway passenger services to or from a PTE area.
82. *Subsection (3)* enables a Passenger Transport Executive in England to enter into arrangements with the Secretary of State whereby the PTE can make payments to the Secretary of State that relate to railway passenger services, station services or bus substitution services provided within the PTE's area and/or the Secretary of State can use his powers in relation to those services within the PTE's area in a particular way. This would for example enable the parties to agree for the Secretary of State to secure additional railway passenger services under the franchise agreement which the PTE would fund. "Bus substitution service" is defined in Schedule 11 Paragraph 11(b) of the Act.
83. *Subsection (4)* enables Passenger Transport Executives in England to enter into agreements directly with Train Operating Companies who are rail franchisees and franchise operators in connection with railway passenger services and related station services within the PTE's area.
84. *Subsection (5)* specifies that Passenger Transport Executives in England need to obtain the approval of the Secretary of State before entering into agreements with franchisees or franchise operators (or anyone who proposes to be one). This requirement applies whether the PTE is relying on its powers under subsection (4) or any of its other powers (such as its general powers under section 10 of the Transport Act 1968 (c.73)).
85. *Subsection (6)* enables the Secretary of State to give approval to agreements for the purposes of subsection (5) under either a general approval (approving a class of agreements such as agreements relating to a specified issue) or a specific approval (for a particular individual agreement). It also enables the Secretary of State to withdraw any approval which he may give in relation to an agreement at any stage up to the point that the agreement is entered into.
86. *Subsection (7)* confirms that the agreements that a Passenger Transport Executive in England may, with the approval of the Secretary of State, enter into include rail franchise agreements which comprise or which include services within their passenger transport area.
87. *Subsection (8)* specifies that the Secretary of State and a Passenger Transport Executive in England must provide information to each other which has been reasonably requested by the other for the purposes of undertaking their functions with respect to railways or

railway services. Subsection 8(b) provides that this duty is limited to a duty to share information which the disclosing body may lawfully disclose (i.e., the information is not covered by a contractual or statutory prohibition on disclosure).

Section 14: Repeals and savings relating to Passenger Transport Executives

88. *Subsection (1)* specifies the sections of the Transport Act 1968 and the 1993 Act that are to be repealed in relation to PTEs.
89. *Subsection (2)* provides that Passenger Transport Executives which are party to franchise agreements at the time when this section is brought into force may continue to be a party to those franchise agreements.
90. *Subsection (3)* provides that subsection (2) and sections 13(4) and 13(7) of this Act must be disregarded if there are provisions within the relevant franchise agreement that enable any person to amend that agreement in such a way as to cause a Passenger Transport Executive to cease to be a party to that agreement. It also provides that a Passenger Transport Executive must comply with all directions that the Secretary of State gives to them pursuant to which they will cease to be a party to a franchise agreement.
91. *Subsection (4)* contains a transitional provision that notwithstanding the repeals in this Act and the provisions of section 14, section 34(17) of the 1993 Act (c.43) shall continue to have effect in relation to any franchise agreement to which a PTE is party before the commencement of this section. In addition any other provision that affects the meaning of section 34(17) will continue in force for the purposes of this section. Section 34(17) is a dispute resolution provision for franchise agreements to which the SRA and PTEs are party, and provides that disputes may be referred by either body to the Secretary of State, who may give such directions to the SRA and the PTE with respect to the franchise agreement as he may think fit.
92. *Subsection (5)* provides that, if the provisions of subsection (4) are used, any references to the Strategic Rail Authority are to have effect as references to the Secretary of State where the interest in the franchise agreement has been transferred to the Secretary of State.

London

Section 15: Duty of Secretary of State and Transport for London to co-operate

93. *Section 15* replaces various references in section 175 of the Greater London Authority Act 1999 (the GLA Act) to the SRA with references to the Secretary of State. The revised section 175 provides a duty on the Secretary of State and Transport for London (TfL) to co-operate. In addition it amends section 175 so that the Secretary of State must consult TfL before issuing an invitation to tender (or when entering a franchise agreement for which an ITT has not been issued) for railway passenger services to, from or within London. TfL and the Secretary of State also have a reciprocal duty to share with the other information relating to certain transport functions. Section 175 as amended also allows TfL to enter into arrangements with the Secretary of State in relation to railway services to, from or within London and for payments to be made by TfL to the Secretary of State in respect of them.

Section 16: Relaxation of contractual restrictions on Transport for London

94. *Section 16* repeals section 201 of the GLA Act, which places restrictions on the type of agreements that TfL can enter into which involve the provision of railway services by licensed operators on the national network. This section provides instead for a prohibition on TfL entering into agreements with rail franchisees without the consent of the Secretary of State. Certain agreements (those in respect of the grant of a use of a railway facility) are excluded from this prohibition.

Section 17: Membership of Transport for London

95. *Section 17* amends the GLA Act to change the membership of the TfL board. It increases the maximum membership of TfL from fifteen to seventeen (or, where the Mayor is a member, from fourteen to sixteen). It also requires the Mayor to ensure that two additional TfL board members represent the interests of people living, working and studying in areas outside Greater London that are served by railway passenger services in respect of which TfL exercises functions, and to consult the relevant regional planning bodies before making relevant these board appointments.

Provision of service by provider of last resort

Section 18: Qualification of duty in respect of services funded by others

96. *Section 18* limits the circumstances in which, if a franchise ends and is not replaced with another franchise, the relevant franchising authority is required to continue to provide the services as the "operator of last resort". The "operator of last resort" function is in section 30 of the 1993 Act (which is amended by this Act). The limitation is that the operator of last resort need not provide services that were funded under the franchise agreement in question by the NAW, a PTE or TfL if it believes that that party will not supply it with the necessary funds. The section gives the operator of last resort the discretion to decide not to provide the services if he believes the funding will not be forthcoming - i.e. before he falls short of the necessary funding. The relevant franchising authority, and therefore operator of last resort, for the purposes of this section is the Secretary of State for franchises in England and Wales, or the Scottish Ministers for Scottish franchises.

Part 3: Rail Passengers' Council and Rail Passengers' Committees

Section 19: The Rail Passengers' Council

97. *Section 19* provides for the existing Rail Passengers' Council (RPC) to be replaced by a new, recast body of the same name. The existing RPC, which exists by virtue of section 3 of the 1993 Act, is abolished by subsection (6). As with the existing RPC the new body will be an executive Non-Departmental Public Body (NDPB). But it will take on the additional responsibilities and requirements of a body corporate (see Schedule 5). The current RPC is sponsored by the Strategic Rail Authority.
98. *Section 19(2)* sets out the make-up of the new Council. The Scottish Ministers, the NAW and the London Assembly are each to appoint a member of the Council. The Council Chairman and not more than 12 other members are to be appointed by the Secretary of State.
99. *Section 19(4)* - The RPC will continue as a national GB-wide body sponsored by the Secretary of State. Payment of all Council members other than the LTUC member will come from the central RPC budget. Section 19(4) ensures that the Secretary of State is content with the terms and conditions of those Council members appointed by the Scottish Ministers and the NAW. The London Assembly will be responsible for the terms, conditions and remuneration of their Council appointee (section 19(5)) but must consult the Secretary of State.
100. *Section 19(7)* - The new Council created by subsection (1) is legally a different body to the current Council created under section 3 of the 1993 Act, even though the name of the two bodies is the same. To assist with the smooth transition to the new body, subsection (7) provides that any reference to the current body in enactments, instruments and other documents will continue to have effect but will apply to the new body. This would cover, for example, the reference to the Council in Schedule 1 of the Public Records Act 1958, and the references to the Council and its functions in section 76 of the 1993 Act.

Section 20: Delegation of functions by Council

101. This section inserts a new section 76A into the 1993 Act which enables the RPC to delegate certain of its duties to other public bodies which may agree to discharge those duties. It is anticipated that a regional transport users body may be a suitable body to enter into such an agreement with the RPC. New section 76A(4) provides that the agreement of the Secretary of State is required before any such agreement can be entered into.
102. The duties which can be delegated by an agreement under subsection (1) are those set out in section 76(7A) of the 1993 Act. These are the duties of the RPC, so far as it appears expedient from time to time to do so, (a) to keep under review matters affecting the interests of the public in relation to railway passenger services and station services; (b) to make representations to, and consult, such persons as they think appropriate about those matters; and (c) to co-operate with other bodies representing the interests of users of public passenger transport services.
103. The new RPC will operate as a national body without the existing structure of regional committees. Alternative management approaches are being developed which will enable the RPC to build and maintain contacts with the wide variety of rail interests and passenger representative bodies that already exist or will be developed across the country. This is expected to occur largely through informal co-operation. This power to delegate provides the RPC with the flexibility to formalise such working relationships for specific matters should it agree to do so with the relevant public body (and with the consent of the Secretary of State). For example a local public transport group may be better placed to pursue a rail issue of particular local concern.
104. In delegating any such duties the RPC would not be prevented from working alongside the delegatee. Section 76A(2)(b) of the 1993 Act, as inserted by section 20, expressly provides that the RPC will retain powers to do all of those things which it would have been able to do by virtue of section 76(7A) had it not delegated any of its duties under this provision.

Section 21: Rail Passengers' Committee

105. This section abolishes regional Rail Passengers' Committees. There is currently a federal relationship between the Council and the Committees, under which every chairman of a regional Committee is automatically a member of the Council. The RPC will continue to operate as a national body, but there will no longer be a federation of statutory regional committees (although it will be possible for the Secretary of State to direct that the Council should establish committees in relation to particular localities under Schedule 5 Paragraph 18, and the Council will be able to delegate certain of its functions under section 20). Section 21(3) introduces Schedule 6, which provides that the London Transport Users' Committee (which was treated as the Rail Passengers' Committee for the Greater London area by virtue of section 2 of the 1993 Act) will continue to have the functions that it has had as a Rail Passengers' Committee. The LTUC is established under section 247 of the Greater London Authority Act 1999. Responsibility for this body lies with the London Assembly.

Part 4: Network Modifications etc.

106. The main content of this Part sets out the procedures which must be followed for proposals to close certain railway services, networks or stations of specified descriptions. Generally such proposals require a public consultation and an assessment by the person carrying out the consultation whether the proposal meets criteria set out in government guidance. Such a proposal must be referred to the ORR who must issue a notice, a "closure ratification notice" before the closure is allowed to proceed. If certain conditions are not met the ORR must issue a "closure non-ratification notice" and the closure will not be allowed to proceed. The Secretary of State or Scottish Ministers are generally under duties to ensure the continued operation of services, networks or

stations if the operator ceases provision before the ORR has issued a notice or if the ORR issues a notice that does not allow a closure to proceed.

107. Proposals to which the consultation procedures do not apply include minor closures of specified descriptions, closures relating to experimental passenger services and services through the Channel Tunnel. Closure procedures for Light Maintenance Depots (LMDs) that were subject to the closure procedures under the equivalent sections of the 1993 Act are no longer subject to the statutory closure procedures.

Discontinuance of railway passenger services

Section 22: Proposal by operator to discontinue non-franchised services

108. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a service operator proposes to close all non-franchised services on a line or from a station.
109. It sets out the information an operator proposing a closure must provide to the appropriate National Authority (NA - the Secretary of State or the Scottish Ministers). This must include a summary of the assessment of the proposal carried out by the operator, following guidance provided by the Secretary of State or the Scottish Ministers or joint guidance provided by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The content of the guidance is not on the face of the Act, but is likely to include criteria that cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.
110. The NA must carry out a public consultation on any proposal that it thinks should proceed, following the approach set out in Schedule 7 to the Act. This includes a number of statutory consultees, with a minimum 12 week consultation period.
111. Following the consultation, the NA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

Section 23: Proposals by funding authority to discontinue non-franchised services

112. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all non-franchised services on a line or from a station.
113. It sets out the steps a railway funding authority (RFA) making a proposal needs to take. RFAs include the Secretary of State, the Scottish Ministers, the NAW, Passenger Transport Executives and Transport for London and the Mayor. Generally, RFAs can only initiate proposals for closures if they are parties to an agreement that provides financial assistance in support of the rail service (or network or facility) in question. The exceptions are PTEs, the Mayor and Transport for London who can initiate proposals for closures for services, networks or stations wholly within their areas, or for other services, networks or stations for which they are the only public funding body.
114. The RFA must carry out an assessment of the proposal in accordance with the guidance provided by the Secretary of State or the Scottish Ministers or joint guidance produced by a combination of the Secretary of State, Scottish Ministers or National Assembly of Wales depending on the circumstances of the closure as set out in section 42. The RFA must also consult on the proposal, again as described in the Explanatory Note for section 22.
115. Following the consultation, the RFA must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

Section 24: Proposals to discontinue franchised or secured services

- 116. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a railway funding authority (RFA) proposes to close all franchised or secured services on a particular line or from a particular station. 'Secured services' are those which an NA has a duty to provide. These are duties that arise under Part 4 of the Act or where the NA acts as 'operator of last resort' under section 30 of the 1993 Act.
- 117. The procedure is similar to that for section 23, as described above.

Section 25: Proposal to discontinue excluded services

- 118. This section sets out the circumstances and procedures under which operators can initiate proposals to discontinue all services on a particular line or from a particular station that are not 'relevant railway passenger services' for the purposes of sections 22 to 24 or experimental passenger services, and have been designated as services by Order to which this section applies.
- 119. Services may not be "relevant railway passenger services" because they have been excluded from the main closure provisions in sections 22 to 24 by an Order under section 38. Another reason may be that such services (for example tram services) fall within the wider meaning of "railway" in section 81(2) of the 1993 Act, but not within the limited meaning set out in section 81(1) of that Act.
- 120. Services that have been designated as services to which this section applies cover two categories. The first category is referred to as "special procedure excluded services" that are not "excluded London services". The second category is referred to as special procedure excluded services that are "excluded London services".
- 121. "Special procedure excluded services" are designated by order under section 25(7) by the national authority. The national authority will be the Scottish Ministers in the case of services wholly within Scotland or certain cross border services and otherwise the Secretary of State. Services that have been so designated are subject to the closure procedures set out in this section provided they are not excluded London services. The procedures are similar to the main closure provisions in section 22 that apply to closure of non- passenger franchised services. As in section 22, under section 25 the operator must not discontinue the services before the ORR has issued a "closure ratification notice" as set out in section 32. However unlike section 22, there is no duty on the national authority to secure the continued provision of the services in the event that the ORR does not ratify the closure under section 32.
- 122. "Excluded London services" are defined in section 25(7) mean any excluded service provided by TfL or that has been designated as a "London service" by the Secretary of State by order. Under section 25(8), the Secretary of State can designate a service as a "London service" if it is a service that is wholly within Greater London. Special procedure services that are excluded London services are subject to closure procedures that are set out in Schedule 8. These procedures are different to the main closure procedures set out in sections 22 to 24 passenger services. This is because they largely replicate the procedures that are currently set out in paragraph 5A of Schedule 5 to the Railways Act 1993.
- 123. Under subsections (10) and (11), services to which Schedule 5 to the Railways Act 1993 applies immediately before commencement of section 25, either by virtue of an order under section 49(3) of the 1993 Act, or under paragraph 5A(1)(b)(ii) of Schedule 5 to that Act, or because they are otherwise so treated, are deemed to be services to which section 25 applies.
- 124. Services to which this section will apply because they have been designated as services to which Schedule 5 to the 1993 Act applies are predominantly light rail or metro systems, including Manchester Metrolink, the Tyne & Wear Metro and the Croydon Tramlink.

Discontinuance of operation of passenger network

Section 26: Proposal by operator to close passenger networks

125. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an operator proposes to discontinue all or part of their passenger network. The procedures are similar to those for operators wishing to discontinue non-franchised services set out in section 22. This section applies to Network Rail's network.

Section 27: Proposal by funding authority to close passenger network

126. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes to close all or part of a passenger network. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Section 28: Proposal to discontinue operation of secured network

127. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when an RFA proposes closure of all or part of a passenger network that it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Discontinuance of use or operation of stations

Section 29: Proposal by operator to close station

128. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when operators of stations propose to close all or part of those stations. The procedures are similar to those for operators wishing to discontinue non-franchised services set out in section 22.

Section 30: Proposal by funding authority to close station

129. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can initiate proposals to close all or part of a station. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

Section 31: Proposal to discontinue operation of secured station

130. Subject to specified exceptions, this section sets out the circumstances and procedures that apply when a RFA can propose closure of all or part of a station it has a duty to provide, for example pending the outcome of a reference to the ORR. The procedures are similar to those for RFAs wishing to discontinue non-franchised passenger services set out in section 23.

References to the ORR

Section 32: References to the ORR

131. This section sets out the information a NA or RFA must provide to the ORR as part of a reference on a closure proposal following a consultation. It also sets out the duties of the ORR in considering a reference.
132. A reference to the ORR can only be made if the body intending to make it is satisfied that the proposal meets the criteria in the guidance provided by the Secretary of State, the Scottish Ministers or NAW or any combination of them, as set out in section 42.

133. If the ORR is satisfied that the consultation process was flawed or that the proposal does not meet the criteria, it must issue a “closure non-ratification notice” and the closure must not go ahead. If it is not satisfied of either of those things, it must issue a "closure ratification notice". The effect of this is that the ORR must issue a closure ratification notice on the reference made to it, but only where it has fulfilled the duties set out in this section.
134. Should the NA or RFA decide to implement the closure that the outcome of the reference allowed, then it would need to negotiate separately changes to appropriate franchise or other agreements with the relevant other parties. The outcome of the ORR reference itself does not authorise anything that would contravene such agreements.

Section 33: Closure requirements

135. This section sets out the powers of the ORR to impose specific requirements in connection with a closure. If an operator fails to comply with requirements that have been imposed on it, the Secretary of State or the Scottish Ministers may take enforcement action under the 1993 Act. This can be in the form of an order setting out steps that the operator must take or financial penalties. Requirements can also be imposed on any of the railway funding authorities and the Passenger Transport Authority but these requirements are not subject to enforcement action.

Excluded Proposals

Section 34: Minor modifications

136. This section sets out the powers of the Secretary of State and the Scottish Ministers to determine that closures of services, network and stations are 'minor modifications' and so not subject to main closure procedures. Section 35 describes the closures eligible to be treated as minor modifications. The concept of 'minor modifications' is very similar to that of 'minor closures' in the 1993 Act.
137. Under this section a closure is a minor modification if it has been determined as such or falls within a description that has been so determined. Such a determination can be made only in respect of eligible closures as described in section 35.

Section 35: Closures eligible to be treated as minor modifications

138. This section describes the type of closure proposals that are eligible to be treated as minor modifications and therefore not subject to the closure procedures in sections 22 to 31. Much of it is based on the descriptions of minor closures in the 1993 Act.
139. It also gives a power to the Secretary of State and the Scottish Ministers to make an order that any other description of closures which are temporary or have only a limited effect on the provision of passenger services should be treated as minor modifications, subject to the negative resolution procedure.

Section 36: Designation of experimental passenger services

140. This section sets out the powers of the Secretary of State, the Scottish Ministers as well as the NAW to designate passenger services as 'experimental'. The maximum period for which a service may be designated as “experimental” is five years. A service that is already so designated under the 1993 Act will continue to be so designated until the 5 years expires in their case (or the designation is revoked). Designated experimental services are not covered by the provisions in sections 22 to 24 but have a separate and simplified closure procedure as set out in section 37.

Section 37: Discontinuance of experimental passenger services

141. This section sets out the procedures for discontinuing services designated as experimental for franchised and non-franchised services. These procedures involve notice being given that the service is to be discontinued at least six weeks before the service is discontinued.

Section 38: Services, networks and stations excluded by order

142. This section gives the Secretary of State and the Scottish Ministers powers to exclude services, networks and stations from the provisions of sections 22 to 24 and 26 to 31. A similar power for the Secretary of State exists in the 1993 Act. It has been used to exempt light rail, metro and discrete parts of the heavy rail network from the closure provisions. Services that have been excluded by order under this section may be subject to the closure procedures described in section 25 if designated by order under section 25 following the negative resolution procedure.

Substitution services

Section 39: Quality contracts schemes in connection with service modifications

143. *Section 39* adapts the powers to make quality contracts schemes for local bus services in sections 124 to 134 of the Transport Act 2000. The changes apply in cases where a rail service, or part of a rail service, which is either wholly or primarily in the area of a Passenger Transport Executive (in England) is or is to be discontinued under Part 4, or otherwise reduced (e.g. with fewer stops or lower frequency).
144. Quality contracts schemes under the existing provisions of the 2000 Act are made by local transport authorities, including the Passenger Transport Authorities which control the Passenger Transport Executives, and must be approved by the Secretary of State. They may only be made if they satisfy the conditions in section 124(1) of that Act, one of which is that they must be the only practicable way of implementing policies in the authority's bus strategy.
145. Quality contracts schemes apply to an area. Within that area, they give the authority powers to determine the network, frequency and fares of bus services within the scheme. Any bus services within the area must be provided in accordance with a contract with the local authority, unless the service is excluded from the scheme. The local authority must let contracts by competitive tender to operators, who are granted the exclusive right to operate the service.
146. *Subsection (1)* provides an alternative set of tests to be met in the context of a scheme made by a Passenger Transport Authority (alone or with another local transport authority) in response to the discontinuance or reduction of a rail service in their area. The remainder of the section adds definitions or makes consequential amendments to the Transport Act 2000.

Section 40: Substitute road services

147. This section gives the Secretary of State, the Scottish Ministers and the NAW the power to secure the provision of substitute bus services if a passenger rail service is temporarily interrupted or has been discontinued.

Supplemental provisions of Part

Section 41: Proposals by funding authorities

148. This section sets out the circumstances under which RFAs can initiate closure proposals under sections 22 to 31. RFAs, except for PTEs, the Mayor and Transport for London, can initiate closure proposals if, and only if:

- (a) the closure proposal is made alongside another proposal by the authority;
 - (b) this other proposal concerns an agreement to which the authority is a party that relates to the provision of financial assistance for the passenger service, network or station that it proposes should be closed;
 - (c) in the authority's view, the proposal to change the funding agreement referred to in (b) above is likely to result in the actual closure of the passenger service, network or station concerned.
149. The effect of this is that RFAs can only initiate closures for which they provide the funding for, either directly or indirectly. PTEs, the Mayor and Transport for London can only propose closures for services, networks or stations wholly within their areas, or for services, networks or stations for which they are the only public funding body.

Section 42: Closures guidance

150. This section sets out the duties of the Secretary of State, the Scottish Ministers and the NAW in publishing guidance on assessing closure proposals referred to in sections 22 to 31. Neither this nor any other section of the Act sets out what will be in the guidance, but it is likely to include criteria that are likely to cover economic, financial, environmental and social factors based on those used by the Department for Transport for appraisals in other transport modes.
151. The section allows for the guidance to include different provisions for different purposes and for different types of closure proposal. This means that the guidance and criteria could be different for, say, operator initiated proposals and RFA initiated ones, as well as smaller and larger proposals.

Section 43: Procedure relating to publication and modification of closures guidance

152. [Section 43](#) provides for parliamentary scrutiny of Closures Guidance, and modifications to such Guidance, that the Secretary of State, Scottish Ministers and the National Assembly for Wales have a duty to publish under Section 42. Subsections (1) and (2) of the Section requires that new Closures Guidance and all modifications to it must be laid in both Houses of the Westminster Parliament and/or the Scottish Parliament as appropriate, depending on whether the Secretary of State, Scottish Ministers or both have a duty to publish the Guidance under Section 42. The Guidance, or modifications to it, is then brought into force by an order made by the Secretary of State and/or Scottish Ministers as appropriate under subsection (3). The order is subject to the negative resolution procedure. These orders are subject to the consent of the National Assembly of Wales, where they bring into force joint Guidance published by the NAW with Scottish Ministers and/or the Secretary of State.
153. Subsection (6) provides that if the order made under subsection (3) introducing the Guidance or amendments to it is annulled by the UK or Scottish Parliament, the Guidance or modifications are effectively withdrawn and that in these circumstances, existing Guidance would continue to be in force. Subsection (7) makes clear that the withdrawal of any guidance following annulment of an order to which it relates does not affect anything done in consequence of the Guidance before its withdrawal and doesn't preclude publication of further guidance.

Section 44: Exclusion of liability for breach of statutory duty

154. This section exempts specified persons from liability for breach of statutory duty in certain circumstances. Paragraphs (a), (b), (c) and (d) (to the extent they relate to closure requirements imposed on relevant operators), (e) and (f) of subsection (2) of this section are based on section 50(2) of the 1993 Act and cover obligations whose breach could lead to a final or interim order under section 55 of the 1993 Act; a breach of such an order

would carry liability for breach of statutory duty (see section 57 of that Act). Paragraph (d) (to the extent that it relates to closure requirements imposed on the Secretary of State or the Scottish Ministers) and (g) of subsection (2) of section 44 are based on section 50(1) of the 1993 Act.

Section 45: Interpretation of Part 4

155. This contains definitions of terms used in sections 22 to 45 of the Act. It also gives a power to the Secretary of State or the Scottish Ministers to designate additional bodies as RFAs subject to negative resolution procedure.

Part 5: Further Miscellaneous Provisions

Conduct and accessibility on railways

Section 46: Bye-laws

156. *Section 46* enables railway operators to make bye-laws, subject to confirmation by the Secretary of State and, where appropriate, the Scottish Ministers, to enable them and the police to control the conduct and behaviour of people using the railways. It also provides a mechanism governing the making of such bye-laws.
157. *Subsection (1)* defines the specific circumstances which the bye-laws can be made to regulate.
158. *Subsection (2)* lists some of the specific activities which the bye-laws may regulate including the issue of tickets, fare evasion, obstructing or interfering with the working of the railway, smoking, causing a nuisance, receipt and delivery of goods, and control of bicycles and other vehicles on footways.
159. *Subsection (3)* gives effect to Schedule 9, which provides the procedure for the making of bye-laws.
160. *Subsection (4)* ensures that existing bye-laws made by the Strategic Rail Authority continue to have effect until they are revoked.
161. *Subsections (5) and (6)* provide the Secretary of State with an order making power to revoke or amend bye-laws made by the Strategic Rail Authority and other bye-laws currently in force.
162. *Subsection (7)* defines the meaning of "railway operator" in the context of the power to make bye-laws under subsection (1).
163. *Subsection (8)* enables bye-laws to be applied to railway assets operated by a railway operator or rolling stock which a railway operator manages.

Section 47: Power of Scottish Ministers to make penalty fare regulations

164. Under the terms of Section 130 of the 1993 Act, as amended by the Transport Act 2000, provision is made for the making of regulations connected with the charging of penalty fares on the national rail network. The power to make regulations relating to the amount of a penalty fare is currently a power for the Secretary of State to exercise. Section 47 makes provision for the Scottish Ministers to also be empowered to make penalty fare regulations in relation to trains and stations used in connection with railway passenger services provided under Scottish franchise agreements, other Scotland-only services or services which have been secured by the Scottish Ministers. Regulations made by the Scottish Ministers will be subject to the negative resolution procedure in the Scottish Parliament (the equivalent procedure in Scotland to that which applies to regulations made by the Secretary of State under section 130 of the 1993 Act).

Section 48: Code of practice for disabled rail users in Scotland

165. *Section 48* provides the Scottish Ministers with the power to prepare (and from time to time revise) a code of practice for protecting the interests of disabled persons in Scotland who are users of railway passenger services or station services. In preparing or revising the code, the Scottish Ministers are to consult the Disabled Persons Transport Advisory Committee. Where the Scottish Ministers use this power to prepare a code of practice, they must publish the code (as revised from time to time) in such manner as they consider appropriate.

Railway administration orders for companies providing Scottish services

Section 49: Functions of Scottish Ministers in relation to railway administration

Section 50: Assistance by Scottish Ministers for companies in railway administration

166. The provision of Sections 59 to 65 of the 1993 Act deal with Railways Administration - a particular system of insolvency for the rail industry based upon the Insolvency Act 1986 but with different purposes, in that it is primarily focused on ensuring that railway services are maintained.
167. *Sections 49 and 50* provide for the Scottish Ministers to be able to exercise functions in relation to the railways administration of a franchise operator in relation to a Scottish franchise agreement. They provide the Ministers with power to apply for a railways administration order in respect of such an operator. The Scottish Ministers must also be notified in advance of any proposals to obtain a winding up order, a voluntary winding up resolution or an administration order in respect of a Scottish protected railway company. This advance notification allows time for the Scottish Ministers to apply, if they consider it appropriate to do so, for a railways administration order in respect of that company. If a railways administration order is made, this effectively blocks the proposal for the other procedure from progressing. In addition, the Scottish Ministers must be notified in advance of any proposals by any person to enforce their security over the property of a Scottish protected railway company. This advance notice again allows time for the Scottish Ministers to apply, if they consider it appropriate to do so, for a railways administration order in respect of the company.
168. They also give the Ministers power to provide funding or guarantees in order to achieve the purposes of the railways administration order, and to indemnify the railways administrator appointed under the railways administration order (and persons connected with him). They may set such conditions on the financial assistance they provide as they see fit.

Duties of co-operation etc.

Section 51: ORR to advise national authorities

169. *Section 51* places a new duty on the ORR to provide information and advice to the Secretary of State, to the Scottish Ministers and to the NAW in connection with their respective railways functions. Subsection (1) requires the ORR to meet the Secretary of State's reasonable requirements for information and advice and other assistance, including in connection with his railway safety functions. Subsection (2) imposes a similar requirement in relation to the Scottish Ministers in connection with their railway functions (which do not include railway safety functions). Subsection (3) imposes a requirement for the ORR to meet the reasonable requirements of the NAW for information and advice on its railway functions (which do not include railway safety functions).

Section 52: Duty of Passenger Transport Executives to advise Secretary of State

170. Subsection (1) specifies that the Passenger Transport Executives must provide advice to the Secretary of State when he requests it on matters connected to his functions in relation to railways or railway services. It is envisaged that advice could be sought as a useful factor to be considered as part of the Secretary of State's rail planning activities. This provision could be used to request advice on how changes in the local rail network can be made to best reflect local priorities within the resources available. This might include value for money assessments of how resources spent on rail in the PTE's area could be best allocated across all transport modes to support local transport priorities.
171. Subsection (2) provides that Passenger Transport Executives do not have to comply with a request outlined in subsection (1) if it would impose an unreasonable administrative burden.
172. Subsection (3) allows that in determining what is an unreasonable administrative burden other requests for advice made under the provisions of this section should be taken into account. This means that, although an individual request for advice might not constitute an unreasonable burden, if that request is made alongside a large number of other requests, they could in totality be seen to represent an unreasonable burden.
173. Subsection (4) defines the Secretary of State's functions in relation to railways or railway services and provides that in relation to this section these functions do not include those relating to rail safety.

Part 6: General and Supplemental

General

Section 53: Taxation

174. Section 53, together with Schedule 10, makes provision for the consequences for taxation of the various transfers under the transfer schemes for which the Act provides.

Section 54: Further amendments of the 1993 Act

175. Section 54(1) extends the scope of the Secretary of State's powers under sections 118 and 119 of the 1993 Act. It amends the 1993 Act so that for the purposes of those sections, the term railway is deemed to have its "wider meaning". This term is defined by section 81(2) of the 1993 Act and covers a railway, tramway or transport system which uses another mode of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined by section 67(1) of the Transport and Works Act 1992. Section 118 provides a power for the Secretary of State to give directions in relation to the control of railways in times of hostilities, severe international tension or great national emergency. Section 119 provides a power to the Secretary of State to give instructions to owners and operators of railway assets and providers of railway services for the purposes of ensuring that relevant assets, or persons or property on or in such assets, are protected against acts of violence.
176. Section 54(2) and (3) limit this power in relation to Scotland. In respect of an asset wholly in Scotland, the "wider meaning" of railways does not apply except where the Secretary of State's instruction is given in the interests of national security (including protection against terrorism).

Supplemental

Section 55: Expenses etc.

177. *Section 55* makes provision for money to be provided by Parliament to meet costs attributable to the Act. It also provides that sums received by the Secretary of State in relation to:
- section 6, which provides for financial assistance from the Secretary of State in relation to securing railway services or assets,
 - section 10(5), which allows the NAW to make payments to the Secretary of State in relation to the provision of services by operator of last resort;
 - section 13(2), which allows Passenger Transport Executives and the Secretary of State to enter into arrangements, including arrangements under which payments will be made by the Executive to the Secretary of State, and
 - paragraph 7 of Schedule 5, which allows the Secretary of State to give a direction to the RPC requiring it to pay him a specified sum, will be paid into the Consolidated Fund.

Section 56: Powers exercisable by statutory instrument

178. *Section 56* governs the manner in which the Secretary of State and the Scottish Ministers must exercise their powers under the Act to make orders and regulations. Where a section in the Act creates a power to make orders and regulations, the section may also provide that the statutory instrument containing the order or regulation in question is subject to the negative resolution procedure or to the affirmative resolution procedure. Section 56(2) and (3) explain what these procedures involve. The different procedures involve different levels of Parliamentary scrutiny for the statutory instrument.
179. Subsection (5) provides that most of the powers to make statutory instruments can be exercised flexibly, so that (for example) powers can make provision for different approaches to be taken in relation to different cases or different areas. This flexibility does not apply to the power to make commencement orders under section 60(2).

Section 57: Meaning of "Wales-only service" and "Welsh service"

180. *Section 57* defines the meaning of "Wales-only service" and "Welsh service" for the purposes of the Act.
181. *Section 57(1)(a)* provides the geographical description of what constitutes a "Wales-only service".
182. *Section 57(1)(b)* enables the Secretary of State to make an order to exclude any services that would otherwise fall within the definition of "Wales-only service". This will enable the Secretary of State to decide whether or not any franchises that begin to provide Wales-only services should be let jointly with the NAW in accordance with Section 10(2). For example, First Great Western currently provides services between England and Wales, but does not provide any services that are Wales-only. If the franchisee began to provide Wales-only services the Secretary of State would decide whether or not it was appropriate for the NAW to be a party to the franchise and, if not, make an order to exclude the Great Western services from the definition of Wales-only.
183. *Section 57(2)* requires the Secretary of State to consult the NAW before making an order under section 56(1) (b).
184. *Section 57(3)* specifies the Parliamentary procedure that the Secretary of State must use to make an order under section 57(1) (b) - namely the negative resolution procedure.

Section 58: General Interpretation

185. This section defines certain terms which are used in the Act. Section 58(2) provides that terms which are defined in the 1993 Act (either for the purposes of Part 1 of that Act or for the whole of the Act) have the same meaning in this Act as in that Act.

Section 60: Short title, commencement and extent

186. *Section 60(2)* provides for the Secretary of State to make commencement orders which will bring the provisions in the Act into force. The Secretary of State may make more than one such order, and may bring into force different provisions on different dates.
187. *Section 60(3)* enables the Secretary of State to make such an order as he thinks fit which would make additional legislation to deal with the way in which in the parts of the Act dealing with Network Modifications, or the repeal of sections of the 1993 Act relating to closures, are brought into force. It also enables the Secretary of State to make transitional provisions via an order in connection with the bringing into force of Section 21 which relates to the abolition of the Rail Passengers' Committees.
188. *Section 60(5)* provides that section 13 on the Railway functions of Passenger Transport Executives, and section 39 on Quality contracts schemes in connections with closures, extend only to England and Wales.
189. *Section 60(6)* provides that the Act will not apply in Northern Ireland.
190. *Section 60 Subsections (2) to (5)* enable the Secretary of State to make a scheme to modify existing railway licences and licence exemptions, granted under sections 8 and 7(3) of the Railways Act 1993, where necessary in consequence of certain provisions in the Act. The relevant provisions are set out in subsection (3) and include, for example, provisions that transfer consumer protection licensing functions from the SRA to the ORR.