



Memorandum to the  
Transport Select Committee  
Post-Legislative Assessment  
of the Railways Act 2005



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Presented to Parliament by the  
Secretary of State for Transport  
by Command of Her Majesty  
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# MEMORANDUM TO THE TRANSPORT SELECT COMMITTEE

## Post-Legislative Assessment of the Railways Act 2005

### Introduction

1. This memorandum provides a preliminary assessment of the Railways Act 2005 (2005 Ch. 14) and has been prepared by the Department for Transport for submission to the Transport Select Committee. It will be published as part of the process set out in the document *Post Legislative Scrutiny – The Government’s Approach* (Cm 7320). The paragraphs below follow the order of the provisions in the Act.

### Objectives of the Railways Act 2005 (“the Act”)

2. The Railways Act 2005 received Royal Assent on 7 April 2005. The main purpose of the Act was to tackle the long-standing structural problems of the railways and to improve this important public service, by streamlining the structure and organisation of the railway.

3. The Act gave effect to those proposals in the White Paper *The Future of Rail* (Cm 6233) that required primary legislation. *The Future of Rail*, published on 15th July 2004, set out the conclusion of a fundamental review of the railways. The review considered the structural and organisational changes needed to enable the rail industry to deliver for its customers, as well as the regulation of safety and the progress being made by the industry in improving performance and controlling costs.

4. The current structure, introduced following the White Paper, is based on the principle of public and private partnership, and it recognises rail’s status as a public service, with strategy set by Government and delivery executed by the private sector. The Act:

- put the Government in charge of setting the strategy for the railways;
- rationalised the regulation of the rail industry – transferring safety functions from the Health and Safety Commission to the Office of Rail Regulation (ORR); and
- increased the role of Scottish Ministers, the Welsh Assembly Government and the London Mayor (through Transport for London), and streamlined and clarified the franchise specification process for Passenger Transport Executive (PTE) areas.

5. Although the Act took forward the legislative elements of the changes that were made to the rail industry, other reforms outlined in the 2004 rail White Paper did not require legislation. These reforms are no less important and the legislation should be viewed in this wider context including:

- giving Network Rail clear responsibility for operating the network and for performance;
- ensuring that track and train companies work more closely together, assisted by reducing the number of franchises and aligning them more closely with Network Rail’s regional structure; and
- delivering a better deal for freight by promoting long term access agreements to provide the stability needed to secure commercial contracts.

## Implementation and subsequent amendment

6. The provisions of the Act were commenced progressively, in line with the work to deliver organisational changes outside of legislation, to ensure a smooth transition to the new industry structure. There are no sections or Schedules which have not been brought into force. The provisions were brought into force by means of nine Commencement Orders and a Transitional Provisions and Savings Order.

7. A number of additional Orders have also been made pursuant to the Act:

- Railways (Abolition of the Strategic Rail Authority) Order 2006 S.I. 2006/2925 – pursuant to section 1(10) of the Act
- Closures Guidance (Railway Services in England and Wales) Order 2006 S.I. 2006/2836, pursuant to section 43(3)(a)
- Closures Guidance (Railway Services in Scotland and England) Order 2006 S.I. 2006/2837, pursuant to section 43(3)(c)

8. There have been a number of amendments made to the Act by other primary and secondary legislation including:

- The Local Transport Act 2008, section 74, inserted in the Act a power to confer non-rail functions on the Rail Passengers' Council;
- The Finance Act 2008, section 8(2), Schedule 2 para70(g) repealed paragraph 33, part 4 of Schedule 10;
- Section 17(6) was repealed by the Greater London Authority Act 2007 section 57 Schedule 2;
- Schedule 3 of the Act was amended by the Road Safety Act 2006 and the Legislative and Regulatory Reform Act 2006; and
- The Railways Act 2005 (Amendment) Regulations 2006 modified the definition of "railway safety purposes" in paragraph 1 of Schedule 3.

## Transfer of the Strategic Rail Authority's functions

9. The Strategic Rail Authority was abolished and the Department assumed full responsibility for providing strategic direction for the rail industry. This included letting and managing most rail franchises, setting a budget for the railways and specifying what the UK Government wants the industry to deliver in return.

10. The National Audit Office report *Letting Rail Franchises 2005-2007* (HC 1047, 2007-2008) published on 15 October 2008 said:

- "The Department's approach to rail franchising produces generally well thought through service specifications and generates keen bidding competition. This approach has delivered better value for money for the taxpayer on the eight franchises let since the Department took over from the SRA."

Since that report was published the Government has awarded the new South Central rail franchise to Southern Railways Ltd., a subsidiary of Govia Ltd. As a result of this latest award, passengers in London and the South East can look forward to more frequent rail services, improved stations, more staff and better security.

## **Transfer of safety functions to the Office of Rail Regulation**

11. The transfer of safety functions from the Health and Safety Commission to the Office of Rail Regulation under the Act was supplemented by the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (S.I. 2006/557), made under the Health and Safety at Work etc Act 1974, which designated the ORR as enforcing authority for health and safety on railways, tramways and guided transport systems, and also by the Railways Safety Levy Regulations 2006 (S.I. 2006/1010) which provided an obligation on railway service providers to pay a levy to the ORR to meet its expenses in performing railway safety activities. The ORR engaged with the Health and Safety Commission and the industry to ensure that the transfer of safety functions and enforcement responsibility from HSC to the ORR was achieved without any adverse impacts. Overall, the safety of the railways is being maintained and continues to improve in some areas.

12. Harm to train passengers is at an historic low. But the ORR says that workforce safety and public misuse of level crossings remain a concern. Network Rail has continued a major advertising campaign alerting the public to the possible consequences of level crossing misuse. The Office of Rail Regulation is contributing to a review of level crossing law being carried out by the Law Commissions for Scotland, and for England and Wales, and is reviewing its guidance on level crossing safety.

## **Railway strategy – changes in the way that ORR access charge reviews are carried out**

13. The *Future of Rail* White Paper said that the Government “would set the level of public expenditure and take the strategic decisions on what this should buy”. The Act provided the statutory framework to achieve this. To discharge that function we published, on 24 July 2007, a White Paper *Delivering a Sustainable Railway* (Cm 7176). Included within it were a statement setting out the funds the Government intended to make available to the rail industry and a High Level Output Specification (HLOS), setting out the capacity, performance and safety improvements that the Government expects the industry to deliver in return, from 1 April 2009 to 31 March 2014.

14. The importance attached to increasing rail capacity is reflected in the fact that, of the £15 billion in total Government support to the railway promised in the Statement of Funds Available, £10 billion is devoted specifically to capacity enhancement measures. The Department will continue to monitor the efficacy of the first HLOS as the programme is implemented and will review previous assumptions as it plans for the next HLOS period covering 2014–19.

15. The specification and the funding statement has ensured, for the first time, that the ORR and the railway industry have clear and timely information about the strategic outputs that Government wants the railway to deliver in exchange for the public funds it is prepared to make available. The ORR’s periodic review of access charges 2008 was the first review to be informed in this way – a change which it says has brought greater clarity and certainty.

## **Devolved administrations**

16. The Act enabled the Scottish Ministers to take increased responsibility for passenger services and infrastructure relating to Scotland. The Welsh Assembly Government took on increased responsibilities for passenger services in Wales and across the border, and was made a signatory to the Wales and Borders franchise agreement. The Act also gave new powers to the devolved administrations to support rail freight.

17. The interest of the Strategic Rail Authority in the Scotrail franchise was transferred to the Scottish Ministers by a statutory transfer scheme.

18. On 13 July 2007 the Scottish Ministers published the first HLOS for Scotland. The specification was described as the next step in firming up medium-term requirements within Scotland's railways, setting out the detail of what Scottish Ministers want the rail industry to deliver between 2009 and 2014 on behalf of Scottish rail passengers and freight users.

19. The interest of the Strategic Rail Authority in the Arriva Trains Wales franchise agreement was transferred to the Secretary of State and the Assembly by a statutory transfer scheme on 16 October 2005. The Transfer Scheme required the Secretary of State and the Assembly to enter into an agreement, by 1 April 2006, to govern the manner in which they would exercise the rights and liabilities formerly exercised by the Strategic Rail Authority. An Agreement between the Assembly and the Secretary of State was signed in March 2006.

## **Rail Passengers' Council**

20. Under the Act, the Rail Passengers' Council, operating as Passenger Focus, is a non-departmental public body sponsored by the Department which replaced the previous body of the same name and its system of regional committees.

21. The mission of the new organisation is to get the best deal for rail passengers. Its key objective is to improve the quality of rail passengers' journeys. It has a statutory role in resolving passenger complaints if the train operating companies have not been able to satisfy the complainant. Passenger Focus quickly established itself as a very effective champion of passengers' interests. It has been so successful that the Government intend, from April 2010, to extend its remit to cover the bus and coach industry. A further proposed extension of its remit, into the aviation field, is the subject of a current consultation.

22. Thanks to detailed research by Passenger Focus the Government and the rail industry are better informed about passengers' priorities, concerns, needs and experiences. Through regular contact with passengers, rail users are increasingly empowered, informed and involved in planning our future transport system. Because of evidence-based arguments and its respected advocacy, Passenger Focus has been able to secure tangible improvements across the railways.

## Passenger Transport Executives and Transport for London

23. The *Future of Rail* White Paper and the Act set out a new role for PTEs and Transport for London in relation to rail. The new arrangements give PTEs and TfL greater flexibility to make choices about the balance between rail and other modes. They also provide greater clarity about their role within the franchise specification, letting and management process.

24. Following extensive consultation with PTEs, in 2006 the Department published a Guidance Note entitled "*The New System for the role of English PTEs in the Rail Franchising Process*". A key feature of the process is that whilst the Department sets the base specification for rail franchises, PTEs have the right to buy additional services, require higher standards or reduce fares ("increments") or to reduce services, propose lower standards or raise fares ("decrements") and retain the savings arising from decrements for use elsewhere in the PTE's jurisdiction. Equivalent guidance in relation to Transport for London was also published in 2006.

25. In accordance with the Act and the Guidance Note, the Department consulted closely with Centro PTE during development of the base specification for the West Midlands franchise. As a consequence, the base specification included a number of requirements for Centro's benefit including application of Centro branding and provision of passenger usage information. Also included in the Invitation to Tender were a number of priced options which Centro advised it might wish to procure as "increments".

26. In 2006 the Department consulted on proposals to enable TfL to specify and pay for changes on service levels on certain rail routes that run partially outside the Greater London area. Pursuant to this exercise, TfL can propose increments and decrements on certain listed "inner suburban" services which run partially outside of the GLA boundary (with the exception of increases and decreases to regulated fares).

27. The Department worked closely with TfL and Passenger Focus in defining the specification for the new South Central franchise. Passenger Focus provided specific advice to the Secretary of State, based on extensive research, on the key issues that were of concern to passengers on the South Central network. This information was considered as part of the definition of the franchise specification, and where affordable and practical, was included in the specification. The information was also provided to bidders to inform their own bid development process.

28. The Department extensively discussed the London area specification of the franchise with TfL. Many of the franchise objectives were in line with those sought by TfL. However TfL provided additional funds to the Department to allow the extension of staff coverage at stations from 'first to last' train and to deliver a station 'deep clean' programme. These enhancements were not a price increment but were included within the base specification, with TfL paying DfT the agreed cost, defined using our franchise cost models.



## Network modifications (closures)

29. As a consequence of the structural and organisational changes, the Act sets out revised procedures for operators and public sector funders to follow when they wish to discontinue all passenger services on a line or from a station or close all or part of a network or station. The Act placed a duty on Scottish Ministers and the Secretary of State to publish closures guidance.

30. Joint Guidance was issued on 18 October 2006 following public consultation and agreement with the devolved administrations. It said that proposers will need to undertake an assessment based on the standard approach to appraising the value for money of transport projects and policies, covering environmental, safety, economic, accessibility and integration factors. The guidance is not a comprehensive statement of all the factors that funding authorities and operators may take into account in considering closures. But it does set out an objective test which must be satisfied if closure is to be permitted. The ORR has also issued guidance on its role.

31. The rail White Paper 2007 said that the Government does not propose to close any regional or rural routes on the national rail network (in England) in the period 2009-14.

## Post-legislative reviews

32. The Transport Select Committee conducted a detailed inquiry into the White Paper *Delivering a Sustainable Railway* during 2008. The Committee published its Tenth Report of Session 2007-08, *Delivering a Sustainable Railway: a 30-year strategy for the railways?* on 21 July 2008. The Committee published the Government's response to the report on 15 October 2008.

33. The National Audit Office (NAO) published on 15 October 2008 its report *Letting Rail Franchises 2005-2007* on the Department for Transport's letting and management of eight passenger rail franchises since it assumed responsibility for most rail franchise contracts from the former SRA.

34. The Public Accounts Committee (PAC) has conducted its own inquiry on the subject of the NAO report. The PAC published its report *Letting Franchises 2005-2007* (HC191, 2008 -2009) on 19 May 2009. The Government response will be published shortly.

35. The White Paper *Delivering a Sustainable Railway* has also been the subject of a number of debates in the House of Commons during 2009, including ones on 12 February and 9 March 2009.

## Conclusion

36. Success has come to Britain's railways because the Government has been prepared to reform the industry organisation, and to make the substantial investment needed to turn the network around. The Railways Act 2005 has been successful in helping to achieve prompt implementation of the conclusions of the rail White Paper 2004. As a result of all these factors, there has been a massive reversal in rail's fortunes with:

- rail punctuality and reliability improving by over 10% in the last five years. The public performance measure (PPM) measuring trains arriving on time was 90.6% at the end of March 2009 (the industry target). This is the highest since the measure was introduced in 2001;
- the level of risk to passengers from train accidents reducing to less than half the March 2002 level;
- improving security across the board;
- the average age of rolling stock declining – it was 20.67 years in the fourth quarter of 2000 and 15.50 years at the end of March 2009;
- some of the highest of levels of rail patronage ever witnessed in Britain; and
- the percentage of passengers who are satisfied with their journey overall rising from 74% (2004) to 83% (2008).

**Department for Transport**  
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