SEWEL MEMORANDUM

RAILWAYS BILL

MOTION

1. The motion to be put to the Parliament is:

Railways Bill: "That the Parliament agrees that those provisions that confer executive powers and functions on the Scottish Ministers in the Railways Bill and those that relate to devolved matters should be considered by the UK Parliament".

SUMMARY AND BACKGROUND

2. The Railways Bill, introduced in the House of Commons on 25 November incorporates proposals that require primary legislation in the UK White Paper *"The Future of Rail"*, published on 15th July, 2004.

3. The White Paper set out the conclusion of the rail review which the Secretary of State for Transport announced on 19th January 2004. The aim of the review was to develop proposals for a simplified structure and organisation for Britain's railways.

4. The purpose of this memorandum is to outline the terms of those provisions in the Bill that require the consent of the Scottish Parliament, by virtue of the Sewel Convention, because they apply to Scotland and are for devolved purposes or alter the executive competence of the Scottish Ministers.

Current Legislative framework

5. At present the provision and regulation of railway services is reserved. Section E2 of Part II of Schedule 5 to the Scotland Act 1998 already contains exceptions to this reservation following the implementation of a package of measures for railways devolution known as the McLeish Settlement which were agreed during the passage of the Scotland Act 1998. The current exceptions to the reservation essentially give the Scottish Parliament the legislative competence:

   - To require Scottish public authorities with mixed functions to produce joint transport strategies relating to rail services.
   - To transfer to certain Scottish public authorities the existing rail responsibilities exercised by a Passenger Transport Authority or Passenger Transport Executive in Scotland.
   - Over the promotion and construction of new railways wholly within Scotland.

6. A section 30(2) order will also be made in Privy Council shortly which will allow the Scottish Parliament to legislate to transfer the rail functions of Strathclyde Passenger Transport to the Scottish Ministers.

7. The Scottish Ministers also have powers and functions in respect of railways in Scotland which are limited to:
   - Power to give the SRA directions and guidance.
   - Power to fund the Scottish passenger rail franchise.
   - Administration of freight facilities and track access grants in Scotland.
   - Appointment of the Convener of the Rail Passengers' Committee for Scotland (RPC(S)) and tabling of the reports of the RPC(S) before the Scottish Parliament.

Legislative proposals – summary

8. As shown above, the Scottish Ministers currently have a limited statutory role with regard to railways services in Scotland, the most visible aspect being the specification and funding of the ScotRail franchise. The proposed devolution of additional powers to the Scottish Ministers is significant and includes:

   - the tasks of planning, specifying, letting (including signing), managing and financing rail passenger franchises in Scotland will fall to the Scottish Ministers;
   - powers to secure the provision, improvement or development of railway services in Scotland. (Scottish Ministers will no longer have to rely on other bodies to do this for them.)
   - the specification and financing of rail infrastructure in Scotland.

9. Following the proposals in the Railways Bill the Scottish Ministers will have broadly the same role in Scotland as the Secretary of State for Transport has in England and Wales (the main differences will be with regard to rail safety and the licensing of operators – which will remain reserved).

FINANCIAL SETTLEMENT

10. The Scottish Executive is currently working with Network Rail, Office of Rail Regulation and the Department for Transport to establish the Scottish funding requirement following the transfer of powers and functions envisaged by the Railways Bill, with a view to reaching agreement on an appropriate resource transfer during January 2005. The UK Government and the Scottish Executive are agreed on the principle that the transfer of powers and functions is subject to agreement on a fair and appropriate financial settlement.

OVERVIEW OF THE BILL STRUCTURE

11. The Bill is in six parts with thirteen Schedules. The main proposals of the Bill are as follows.

Part 1: Transfer of Functions and Railway Strategy

12. Provides for the Strategic Rail Authority (SRA) to be wound up, and for the SRA's strategic and financial functions to pass to the Department for Transport and to the Scottish Ministers as regards Scotland. The Bill also enables the SRA's assets, rights and liabilities to be transferred to third parties, including the Scottish Ministers.

13. Provides for changes to the access charges review process, with duties on the Secretary of State and the Scottish Ministers to specify the outputs to be delivered by the rail industry – this is set out in detail in Schedule 4 to the Bill.

14. Gives the Scottish Ministers the power to prepare and publish a strategy for carrying out their functions in relation to railways in Scotland.

Part 2: Public Sector Funding Authorities for Railways

15. Provides powers for the Scottish Ministers to give financial assistance for railway services, including passenger services, freight and infrastructure.

16. Modifies Passenger Transport Executive (PTE) powers in England and repeals certain PTE provisions mainly in relation to franchise agreements.

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

17. Establishes the Rail Passengers Council as a single national body reporting to the Secretary of State and dissolves the formal federal structure of regional Committees. The Scottish Ministers will have the ability to appoint a member to the Council.

Part 4: Network Modifications etc.

18. Sets out procedures to follow for operators and public sector funders, including the Scottish Ministers as regards Scotland, when they wish to discontinue all passenger services on a line or from a station, or close part or all of a network or station or light maintenance depot used in connection with passenger railway services. It replaces the current procedures in sections 37 to 49 of the Railways Act 1993 as amended by the Transport Act 2000.

Part 5: Further Miscellaneous Provisions

19. Enables railway operators to make bye-laws subject to confirmation by the Scottish Ministers where the bye-laws relate to the use of railway assets (trains, stations, etc) within Scotland and the Scottish Ministers and the Secretary of State jointly where an asset is used in both Scotland and England. The bye-laws enable operators and the police to control the conduct and behaviour of people using the railways.

20. Makes provision for the Scottish Ministers to be able to make penalty fares regulations for Scotland.

21. Provides the Scottish Ministers with the power to prepare and revise a code of practice for protecting the interests of disabled rail users in Scotland.

22. Provides for the Scottish Ministers to be able to exercise the functions of the Secretary of State in relation to a railway administration order involving a Scottish railway company.

23. The Bill provides for a duty on the ORR to provide the Secretary of State, the Scottish Ministers and the NAW with advice and information.

Part 6: General and Supplemental

24. Part 6 contains general and supplementary provisions, including provision relating to powers exercisable by statutory instrument.

PROPOSALS RELATING TO SCOTLAND

PART 1: TRANSFER OF FUNCTIONS AND RAILWAY STRATEGY

TRANSFER OF FUNCTIONS

Clause 1: Transfer etc. of SRA functions and abolition

25. The UK Government's review of the railways concluded that it would be necessary to wind up the SRA. The reasons given were that it would improve efficiency, reduce bureaucracy and provide a clearer focus on leadership within the rail industry. It is anticipated that the SRA will be wound up gradually, and the transfer of its functions is to be completed before it is finally abolished.

26. Clause 1 provides for the abolition of the SRA and for the reallocation of its functions, where they are not discontinued. The clause requires the Secretary of State to transfer the SRA's interests in the current Scottish passenger rail franchise to the Scottish Ministers.

27. The clause also provides for the transfer, where appropriate, to the Scottish Ministers of the Strategic Rail Authority's property, rights and liabilities, including shares in its subsidiary companies.

RAILWAY STRATEGY

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

28. Clause 3 amends the general duties of the Office of Rail Regulation (ORR) under section 4 of the Railways Act 1993 so that it must have regard to general guidance on railway matters from the Scottish Ministers concerning railway matters in Scotland (this does not extend to guidance relating to its safety functions). The guidance must be published and the Scottish Ministers can amend or revoke the guidance at any time.

29. It also inserts an additional general duty 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 (which includes the Scottish Ministers) and of the general public.

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

30. Clause 4, which introduces Schedule 4, amends Schedule 4A of the Railways Act 1993 which provides a process by which the conclusions of an access charge review by the ORR are taken forward. Further detail is provided below in relation to Schedule 4.

Clause 5: Railway strategy for Scotland

31. Clause 5 gives 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 it in a way which will bring it to the attention of those bodies likely to be affected by it.

32. This provision is required as the Scottish Ministers currently have no statutory power relating to the production of railway strategies.

PART 2: PUBLIC SECTOR FUNDING AUTHORITIES FOR RAILWAYS

ASSISTING AND SECURING THE PROVISION OF SERVICES

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

33. Clause 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 clause 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 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.

34. Tramways are generally a devolved matter. This clause would give the Secretary of State the ability to fund tramways in Scotland.

Clause 7: Notification of assistance from Secretary of State for freight services

35. Under section 211 of the Transport Act 2000, the SRA has sole powers to make or modify financial assistance schemes aimed at securing the provision, improvement or development of rail freight. The SRA must currently inform the Scottish Ministers of these schemes under section 249 of the 2000 Act. Following the abolition of the SRA the Scottish Ministers will have new powers to secure the provision, improvement and development of rail freight in Scotland, this is set out in clause 8.

36. Clause 7 will require the Secretary of State to notify the Scottish Ministers of any new or modified freight schemes. As rail freight activities may cross the borders between England, Wales and Scotland, this clause encourages the co-ordination of freight schemes across Great Britain.

37. The clause uses "railway" in its wider meaning (taken from section 81 of the Railways Act 1993). This definition of the term covers a railway, tramway or transport system which uses another form of guided transport but which is not a

trolley vehicle system. The terms “guided transport”, “railway”, “tramway” and “trolley vehicle system are defined in section 67(1) of the Transport and Works Act 1992. Should any freight scheme set up by the Secretary of State use other modes of rail transport then the Scottish Ministers would have to be informed.

Clause 8: Franchising and financial assistance in relation to Scotland

38. Clause 8 provides the Scottish Ministers with new powers to provide financial assistance for the railways, whether wholly or partly in Scotland and may include freight as well as passenger services.

39. This clause is similar to section 211 of the Transport Act 2000 which enables the SRA to provide financial assistance for railway purposes. It 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.

40. Clause 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.

41. Clause 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.

42. Clause 8(5) gives the Scottish Ministers the discretion to enter into agreements and other arrangements to provide financial assistance to any party under Clause (1) or (2) on whatever such terms and conditions they think appropriate.

43. Clause 8(6) relates to clause 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 clause does not require the Ministers to act in accordance with the Secretary of State's scheme.

44. Clause 8(7) clarifies the way in which the Scottish Ministers may enter into agreements or other arrangements under Clause 8(2) to provide financial assistance in respect of franchised services. This clarification is needed because

Clause 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. Clause 8(2) 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.

45. Clause 8(8) defines the meaning of a "relevant person" for the purposes of clause 8(7) as a franchisee, franchise operator, or employee, agent or independent contractor of the franchisee or franchise operator.

46. Clause 8(9) defines the meaning of "Scottish Service", "facilities" and "railway" for the purposes of clause 8. For the purposes of clause 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.

Clause 9: Notification of assistance from Scottish Ministers for freight services

47. This clause ensures that should the Scottish Ministers make or modify a freight scheme using their powers under clause 8 then they must inform the Secretary of State.

Clause 10: Franchising and financial assistance in relation to Wales

48. This clause enables the National Assembly for Wales to provide financial assistance for railways services that serve Wales.

49. This clause would allow the Assembly to be a party to a franchise agreement with the Scottish Ministers if the Scottish Ministers and National Assembly of Wales agreed that the Assembly should provide financial assistance to secure a service between Wales and Scotland under a Scottish franchise.

50. The Clause would enable the National Assembly for Wales to make payments to the Scottish Ministers in relation to the Scottish Ministers role as "operator of last resort". This role arises when a franchise ends and is not replaced with another franchise agreement. Where the National Assembly for Wales 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.

Clause 12: Transfer schemes at end of franchising agreements

51. Clause 12 provides for the making of a Transfer Scheme when a franchise agreement terminates (for whatever reason) to transfer the relevant franchise assets.

52. Currently under section 27 of the Railways Act 1993, 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. These functions under section 27 will under this Bill be exercised in future by the Scottish Ministers in relation to Scottish franchise agreements.

53. Clause 12 is primarily intended for use where a franchise agreement is terminating, and a new franchisee is taking over from the existing franchisee. The Scottish Ministers will be able to 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.

54. 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 section 30 of the Railways Act 1993 by the "operator of last resort", currently the SRA. Under the Bill, this function will be exercisable by the Scottish Ministers in relation to Scottish franchise agreements. Clause 12 enables the Scottish Ministers to discharge the duty to act as operator of last resort by providing that the franchise assets may transferred to them.

PASSENGER TRANSPORT EXECUTIVES

Clause 14: Repeals and savings relating to Passenger Transport Executives

55. The clause specifies the sections of the Transport Act 1968 and Railways Act 1993 that are to be repealed in relation to PTEs. Including:

- Subsection 10(1)(vi) and (viza) of the Transport Act 1968 that relate to powers to enter into agreements with the SRA. This will no longer be required following the abolition of the SRA.

- Sections 20(2)(b) and (3) of the Transport Act 1968 that relate to the PTE duty to enter into agreements to secure the provision of railway passenger services in their area. Following the reform of transport delivery mechanisms in Scotland being delivered through the Transport (Scotland) Bill the duty will no longer be relevant to the PTE and the Scottish Ministers.

- Sections 34 and 35 of the Railways Act 1993 that concern the role of PTAs and PTEs in relation to franchise agreements. As the Scottish Ministers will become the sole party to the Scottish passenger franchise agreement, these powers will not be required.

56. The clause contains transitional provisions that will allow SPT to remain a party to the ScotRail franchise agreement until such time as the Scottish Ministers become the sole party to the franchise agreement. This is important given the legislation that is passing through the Scottish Parliament and Westminster and will ensure that the transition process can be managed effectively and smoothly.

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

57. Clause 18 limits the circumstances in which, if a franchise ends and is not replaced with another franchise, the Scottish Ministers (for Scottish franchises) are required to continue to provide the services as the "operator of last resort".

58. The limitation is that the operator of last resort need not provide services that were funded under the franchise agreement in question by a specified party if it believes that that party will not supply it with the necessary funds. The clause 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.

PART 3: RAIL PASSENGERS' COUNCIL AND RAIL PASSENGERS' COMMITTEES

Clause 19: The Rail Passengers' Council

59. Clause 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 Railways Act 1993, is abolished by subsection (6).The new body will be an executive Non-Departmental Public Body sponsored by the Secretary of State. 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.

60. The Scottish Ministers will appoint a member to the Council. The Council Chairman and not more than 12 other members are to be appointed by the Secretary of State.

61. The reform of the current structure will streamline the GB framework of passenger committees. The proposals will still allow a Scottish passenger voice to be heard at the national level and nothing in the Bill will prevent the Scottish Ministers being able to set up appropriate arrangements in Scotland.

Clause 20: Delegation of functions by Council

62. Clause 20 inserts a new section 76A into the Railways Act 1993 which enables the RPC to delegate certain of its duties to other public bodies which may agree to discharge those duties. New section 76A(4) provides that the agreement of the Secretary of State is required before any such agreement can be entered into.

63. This power to delegate provides the RPC with the flexibility to formalise working relationships for specific matters should it agree to do so with the relevant public body.

Clause 21: Rail Passengers' Committee

64. This clause abolishes regional Rail Passengers Committees. As a consequence, the Bill amends the Scottish Public Services Ombudsman Act 2002 to remove the reference to the Rail Passengers' Committee for Scotland.

PART 4: NETWORK MODIFICATIONS ETC.

65. 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 proposals 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 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.

66. 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 clauses of the 1993 Act are no longer subject to the statutory closure procedures. Further, facilities for purposes of the equivalent clause of 1993 Act are no longer subject to the main closure procedures.

67. The Scottish Ministers will be responsible for closures of lines, stations or rail services in Scotland.

DISCONTINUANCE OF RAILWAY PASSENGER SERVICES

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

68. Subject to specified exceptions, this clause 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..

69. It sets out the information an operator proposing a closure of Scottish services must provide to the Scottish Ministers. This must include a summary of the assessment of the proposal carried out by the operator, following guidance provided by the Scottish Ministers.

70. The Scottish Ministers must carry out a consultation on any proposal that it thinks should proceed, following the approach set out in Schedule 7 to the Bill. This includes a number of statutory consultees, with a minimum 12 week consultation period.

71. Following the consultation, the Scottish Ministers must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

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

72. Subject to specified exceptions, this clause sets out the circumstances and procedures that apply when the Scottish Ministers, propose to close all non-franchised services on a line or from a station.

73. It sets out the steps the Scottish Ministers must take when making a proposal. In making a proposal the Scottish Ministers must carry out an assessment of the proposal in accordance with their own guidance. The Scottish Ministers must also consult on the proposal, following the approach set out in Schedule 7 to the Bill.

74. Following the consultation, the Scottish Ministers must then decide whether to refer the proposal to the ORR, the outcome of which will determine if the closure may proceed or not.

Clause 24: Proposals to discontinue franchised or secured services

75. Subject to specified exceptions, this clause sets out the circumstances and procedures that apply when the Scottish Ministers propose to close all franchised or secured services on a particular line or from a particular station.. 'Secured services' are those which the Scottish Ministers have a duty to provide, including where it acts as 'operator of last resort' for franchised services.

76. The procedure is similar to that of clause 23, as described above.

Clause 25: Proposal to discontinue excluded services

77. This clause 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 have been excluded under clause 38 from the main closure provisions under sections 22 to 24 and designated by order under this clause as being subject to the provisions of this clause. Clause 38 of the Bill gives the Scottish Ministers powers in Scotland to exclude services, networks and stations from the main closure provisions in clauses 22 to 24 and 26 to 31. Orders under this clause and under clause 38 are subject to the negative resolution procedure.

78. Services to which this clause will apply because they were excluded and designated under the equivalent provisions in the 1993 Act are predominantly light rail or metro systems.

79. The procedures are similar to those applicable to those where operators wishing to discontinue non-franchised services as set out in clause 22. The operator must not discontinue the services before the ORR has issued a "closure ratification notice" as set out in clause 32. However, there is no duty on the Scottish Ministers, as national authority, to secure the subsequent provision of an excluded service where the ORR issues a closure non-ratification notice.

Clause 26: Proposal by operator to close passenger network

80. Subject to specified exceptions, this clause 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 clause 22. This clause applies to Network Rail's network.

Clause 27: Proposal by funding authority to close passenger network

81. Subject to specified exceptions, this clause sets out the circumstances and procedures that apply when the Scottish Ministers, as a railway funding authority (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 clause 23.

Clause 28: Proposal to discontinue operation of secured network

82. Subject to specified exceptions, this clause sets out the circumstances and procedures that apply when the Scottish Ministers, as 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 clause 23.

Clause 29: Proposal by operator to close station

83. Subject to specified exceptions, this clause 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 clause 22.

Clause 30: Proposal by funding authority to close station

84. Subject to specified exceptions, this clause sets out the circumstances and procedures that apply when the Scottish Ministers, as a railway funding authority, can initiate proposals to close all or part of a station. The procedures are similar to those set out in clause 23, to discontinue non-franchised passenger services.

Clause 31: Proposal to discontinue operation of secured railway facility

85. Subject to specified exceptions, this clause sets out the circumstances and procedures under which the Scottish Ministers, as a railway funding authority, can propose closure of all or part of a station it has a duty to provide, for example, pending outcome of a reference to the ORR.. The procedures are similar to those set out in clause 23, to discontinue non-franchised passenger services.

REFERENCES TO ORR

Clause 32: References to the ORR

86. This clause sets out the information the Scottish Ministers must provide to the ORR as part of a reference on a closure proposal in Scotland following the consultation exercise. It also sets out the duties of the ORR in considering such a reference.

87. A reference in Scotland 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 Scottish Ministers.

88. The ORR must consider whether the required consultation was carried out in accordance with the provisions in the Bill under schedule 7, and determine if the proposal meets the criteria in the guidance provided by the Scottish Ministers. If the ORR is satisfied on these points, then the closure may go ahead. If the ORR is not satisfied, then the closure must not go ahead.

89. Should the Scottish Ministers decide to implement the closure that the outcome of the reference allowed, then they 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.

Clause 33: Closure requirements

90. This clause sets out the powers of the ORR to impose specific requirements in connection with a closure. This can include duties on the Scottish Ministers to comply with the requirements when the ORR considers it appropriate.

EXCLUDED PROPOSALS

Clause 34: Minor modifications

91. This clause sets out the powers of the Scottish Ministers to determine if closures of services, network and facilities in Scotland are 'minor modifications' and so not subject to the main closure procedures. The concept of 'minor modifications' is very similar to that of 'minor closures' in the 1993 Act.

92. Under this clause 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 clause 35.

Clause 35: Closures eligible to be treated as minor modifications

93. This clause describes the type of closure proposals that are eligible to be treated as minor modifications and therefore not subject to the closure procedures in clauses 22 to 31. Much of it is based on the descriptions of minor closures in the 1993 Act.

94. It also gives a power to the Scottish Ministers to make an order that any description of closures in Scotland 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.

Clause 36: Designation of experimental passenger services

95. This clause sets out the powers of the Scottish Ministers to designate passenger services as 'experimental'.

96. The purpose of experimental services was intended to encourage new investment by allowing operators to introduce new services for a trial period to test whether or not they are appropriate, without the full requirements of the closure procedures applying.

97. The idea behind the provisions on experimental services in the Railway Act 1993 and in this Bill is that unless you gave new services special treatment, there would be a natural disincentive upon operators to introduce new services. The services might not be successful, and in addition to the natural inconvenience of the service being unsuccessful, operators would have to spent time and resources on

observing the closure procedures.

98. Clearly, inhibiting new services from being developed is not desirable. By providing that services could be designated experimental for a maximum of 5 years from introduction, the disincentive effect is lessened. Therefore, designated experimental services have a separate and simplified closure procedure as set out in clause 37 to reflect there trial nature.

Clause 37: Discontinuance of experimental passenger services

99. This clause 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. The Scottish Ministers have responsibility in connection with Scottish experimental services set up under clause 36.

Clause 38: Services, networks and stations excluded by order

100. This clause gives the Scottish Ministers powers to exclude services, networks and stations in Scotland from the provisions of clauses 22 to 24 and 26 to 31, A similar power exists currently in the 1993 Act for the Secretary of State where it has been used to exempt light rail, metro and discrete parts of the heavy rail network from the closure provisions.

SUBSTITUTION SERVICES

Clause 40: Substitute road services

101. The clause gives the Scottish Ministers the power to secure appropriate substitute bus services if a Scottish passenger rail service is temporarily interrupted or has been discontinued.

SUPPLEMENTAL PROVISIONS BY PART

Clause 41: Proposals by funding authorities

102. This clause sets out the circumstances under which the Scottish Ministers, as a railway funding authority, can initiate closure proposals under clauses 22 to 31. The effect of this clause is that the Scottish Ministers can only initiate closures for which they provide the funding for, either directly or indirectly. The clause extends to other railway funding authorities, including the Secretary of State.

Clause 42: Closures guidance

103. This clause sets out the duties of the Scottish Ministers in publishing guidance as referred to in clauses 22 to 31 of the Bill on assessing closure proposals in Scotland. The clause does not specify what will be in the guidance, which will be for the Scottish Ministers to decide. This duty includes, where necessary,

publishing joint guidance with the Secretary of State or the National Assembly of Wales in relation to cross-border services when the funding is provided by the Secretary of State or the National Assembly of Wales.

104. The clause also allows for the Scottish Ministers guidance to include different provisions for different types of closure proposals.

Clause 43: Exclusion of liability for breach of statutory duty

105. The clause makes it clear that any obligation of the Scottish Ministers under Part 4 of the Bill will not give rise to any liability for breach of their statutory duty. A similar exclusion currently applies to the SRA under section 50 of the Railways Act 1993.

Clause 44: Interpretation of Part 4

106. This clause contains definitions used in Part 4 of the Bill. . It also gives a power to the Secretary of State to designate additional bodies as RFAs subject to negative resolution procedure.

PART 5: FURTHER MISCELLANEOUS PROVISIONS

CONDUCT AND ACCESSIBILITY ON RAILWAYS

Clause 45: Bye-laws

107. Clause 45 enables railway operators to make bye-laws (subject to confirmation by, as appropriate, the Scottish Ministers and/or the Secretary of State) 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.

108. The activities which the bye-laws may regulate include: 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.

109. Schedule 9 to the Bill sets out in more detail the procedures to bring into force bye-laws, including the roles of the Scottish Ministers and the Secretary of State in authorising such bye-laws. The outcome will be that train operators in Scotland can make bye-laws relating to their assets (trains, stations, etc) but these must be authorized by the Scottish Ministers if the assets are situated in or are used wholly within Scotland ("Scottish assets"). Where some but not all of the assets are Scottish assets or include assets that are used partly in Scotland and partly in England and Wales, the Scottish Ministers must authorise the byelaws jointly.

110. Existing bye-laws made by the Strategic Rail Authority continue to have effect until they are revoked, and provide the Secretary of State with an order making

power to revoke or amend such bye-laws.

Clause 46: Power of Scottish Ministers to make penalty fare regulations

111. Under the terms of Section 130 of the Railways Act 1993, 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.

112. Clause 46 makes provision for Scottish Ministers to also be able to make penalty fares regulations in relations 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.

Clause 47: Code of practice for disabled rail users in Scotland

113. Clause 47 provides the Scottish Ministers with the power to prepare (and revise) a code of practice for protecting the interests of disabled persons in Scotland who are users of Scottish railway passenger services or Scottish 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 in such manner as they consider appropriate.

RAILWAY ADMINISTRATION ORDERS FOR COMPANIES PROVIDING SCOTTISH SERVICES

Clause 48: Functions of Scottish Ministers in relation to railway administration

Clause 49: Assistance by Scottish Ministers for companies in railway administration

114. Sections 59 to 65 of the Railways 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.

115. Clauses 48 and 49 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, including the 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.

116. The clauses also give the Scottish 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 them). The Scottish Ministers may also set such conditions on the financial assistance they provide as they see fit.

ORR'S DUTIES OF CO-OPERATION

Clause 50: ORR to assist and advise national authorities

117. Clause 50 places a new duty on the ORR to provide information and advice to the Secretary of State and to the Scottish Ministers in connection with their respective railway functions. It requires the ORR to meet the Scottish Ministers reasonable requirements for information and advice and other assistance in connection with their railway functions (which do not include railway safety functions).

PART 6: GENERAL AND SUPPLEMENTAL

GENERAL

Clause 53: Further amendments of the 1993 Act

118. Clause 53 extends the scope of the Secretary of State's powers under Sections 118 and 119 of the Railways Act 1993.

119. By giving the term "railway" it’s wider meaning it applies the definition of that term contained in section 81 of the 1993 Act. This definition of the term covers a railway, tramway or transport system which uses another form of guided transport but which is not a trolley vehicle system. The terms "guided transport", "railway", "tramway" and "trolley vehicle system" are defined in section 67(1) of the Transport and Works Act 1992.

120. 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.

Clause 55: Powers exercisable by statutory instrument

121. Clause 55 governs the manner in which the Scottish Ministers must exercise their powers under the Bill to make orders and regulations. Where a clause in the Bill creates a power to make orders and regulations, the clause 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. The different procedures involve different levels of Parliamentary scrutiny for the statutory instrument.

122. The clause also 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.

Clause 57: General Interpretation

123. This clause defines certain terms which are used in the Bill. Clause 57(2) provides that terms which are defined in the Railways Act 1993 (either for the purposes of Part 1 of that Act or for the whole of the Act) have the same meaning in this Bill as in that Act.

Clause 59: Short title, commencement and extent

124. The purpose of this clause is to deal with how the Act will come into force and which parts of the UK the Act will apply to.

125. The clause 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. This flexibility does not apply to the power to make commencement orders under clause 59(2).

SCHEDULES RELATING TO SCOTLAND

SCHEDULES 1 AND 2

126. Schedules 1 and 2 allow for the transfer, abolition or reallocation of the Strategic Rail Authority's functions and also of its property, rights and liabilities.

SCHEDULE 1 - TRANSFER ETC. OF FUNCTIONS OF THE STRATEGIC RAIL AUTHORITY

127. This schedule deals with the transfer or abolition of the Strategic Rail Authority's functions.

128. Paragraphs 1 to 10 transfer from the SRA to the ORR all functions relating to consumer protection conditions attached to licences and licence exemptions. As a result there is no longer a need for the distinction drawn by the 1993 Act

between consumer protection and other conditions.

129. Paragraphs 11 to 26, 29 – 33, and 35 transfer to the Scottish Ministers functions in relation to Scotland which are currently with the SRA. The functions relate to railways facilities, access and franchise agreements, the operator of last resort duty, enforcement conditions, the code of practice for the protection of disabled rail users, the registers kept for the purposes of functions under the 1993 Act, the Rail Passengers' Council, the power to require information from licence holders and concessionary travel

130. Paragraph 11 gives the Scottish Ministers the power to make an application (or consent to an application by others) to the ORR in order to provide, improve or develop railway facilities in Scotland. The ORR has the power of direction to ensure that the new railway facility is provided. The intention is that the power is to be used as a last resort if an owner/operator - such as Network Rail - has no commercial incentive to provide investment that would be of benefit to other operators/passengers. The ORR can direct that the investment be undertaken, but only where it is satisfied that the owner/operator will receive adequate reward for doing so.

131. Paragraph 12 amends section 17 of the Railways Act 1993. This section allows the ORR to direct a facility owner to enter into agreements with another party (the beneficiary) for the use of their facilities such as track, stations, and depots. There are exceptions and limitations to the directions, including operating a network or a station.

132. Paragraph 12 ensures that these exceptions do not apply when the direction refers to the beneficiary operating the services on behalf of the Scottish Ministers. the purpose of section 17(3) of the Railways Act 1993 is to say that while a facility owner can be directed to enter into agreements with the beneficiary, so that for example a station owner has to make his station available for the beneficiary's train service to call at it, the facility owner cannot be directed to let the beneficiary operate the facility owner's station. Section 17(3)(d-f) provide that the same principle applies where the beneficiary is (for example) a station owner and wants access to the track - the ORR can direct that the track owner enters an agreement to permit the beneficiary to use the track, but cannot usually direct an agreement to permit the beneficiary to operate the track. The exception is where the beneficiary is operating the station on behalf of the appropriate authority, in which case the direction may provide that the beneficiary may operate the track in question even though it belongs to the facility owner.

133. Paragraphs 13 – 26 transfer the functions relating to Scottish franchise agreements to the Scottish Ministers. Statutory responsibilities include any re-tendering of the Scottish passenger franchise, fares policy, the requirement to be the operator of last resort should any tendering exercise fail to secure the provision of rail services and ensuring compliance with the franchise agreement and the imposition of an associated penalty.

134. Paragraphs 31 transfers the functions of the SRA in relation to the upkeep of a public register of documents relating to their functions under the Railways Bill and the Railways Act 1993. Paragraph 30 provides the same for the Secretary of State and allows the Scottish Ministers to inspect the documents at any time without any charge being imposed.

135. Paragraph 33 amends section 80 of the Railways Act 1993 to enable the Scottish Ministers to request information from licence holders (including franchise operators and Network Rail) and they would be under a duty to provide such information.

136. Paragraph 34 amends section 130 (penalty fares) of the Railways Act 1993 to include the Scottish Ministers where necessary, see clause 46 above.

137. Paragraph 35 amends section 135 of the Railways Act 1993 relating to concessionary travel for railway staff etc to include the Scottish Ministers where necessary. The section provides a power for the Scottish Ministers to promote railways staff concessionary travel, to enter into agreements concerning the provision of railways staff concessionary travel and to make it clear that any franchise agreements could include conditions with respect to railways staff concessionary travel.

138. Paragraph 37 inserts appropriate definitions into the Railways Act 1993 to take into account the new responsibilities of the Scottish Ministers in relation to railways.

SCHEDULE 2: TRANSFER SCHEMES

139. This Schedule contains further provisions governing Transfer Schemes made under Clauses 1 and 12. Provision is for powers to be given to the Scottish Ministers to transfer property, rights and liabilities for two different purposes:

    i. the power to move the SRA's property, rights and liabilities in connection with its abolition; and

    ii. the power to move franchise assets at the end of the franchise term.

    Only the Secretary of State has power to make Transfer Schemes for the first of these purposes.

140. Paragraphs 1 and 2 set out how a Transfer Scheme may specify or identify property, rights and liabilities to be transferred. They also provide when the Scheme may come into force and define what may be transferred under a Scheme. A Transfer Scheme may include the transfer of property, rights and liabilities which could not be transferred by other arrangements (such as by contract). It may also provide that rights and interests which might otherwise be created, terminated or changed as a consequence of Transfer Scheme or anything relating to it shall only be enforceable to the extent that the Scheme provides that

it is enforceable. Because this latter type of provision may affect the rights of third parties, there is provision in Paragraph 10 which sets out circumstances in which third parties may be paid compensation in relation to this.

141. Paragraphs 3 and 4 allow the maker of the Transfer Scheme to modify the property, rights and liabilities to which it relates and to place obligations on transferees and transferors in connection with the Transfer Scheme.

142. Paragraph 5 provides that Transfer Schemes made under this Act shall have the effect of vesting property, rights and liabilities in the transferee without the need for any further formalities.

143. Paragraph 6 contains provisions which enable persons making Transfer Schemes to transfer the ability to progress and operate a railway project from one person to another. The provision permits both the transfer of the relevant property rights and the transfer of any statutory powers or duties the transferor may have in relation to that property.

144. Paragraph 8 allows the transferor and transferee to modify a transfer scheme by agreement after it has come into force. Where the agreement would relate to a contract of employment or adversely affect the interests of a third party, the agreement will only be valid if the relevant employee or third party is party to it.

145. Paragraph 9 contains provision for continuity of employment rights for employees of the transferor who become, by virtue of a Transfer Scheme, employees of the transferee.

146. Paragraph 10 provides the circumstances in which compensation may be payable to third parties as a result of provisions in the Transfer Scheme. This paragraph only applies to Transfer Schemes made under clause 1, not to schemes made under clause 12.

147. Paragraph 11 provides a power for the person making a Transfer Scheme to require the transferor and transferee to provide him with the information which he needs in order to be able to make the Scheme. The transferor and transferee may be subject to fines if they do not comply with a request for information.

SCHEDULE 4: REVIEWS BY ORR OF ACCESS CHARGES AND LICENCE CONDITIONS

Background

148. Currently the ORR has to have regard to any general guidance given to it by the Secretary of State about railway services or other matters relating to railways, but there is no requirement for the Secretary of State to provide such guidance, nor is there any requirement for the ORR to advise or assist, nor any process for facilitating the preparation of guidance.

149. The proposals are intended to provide for a new iterative process in relation to access charges reviews between the Scottish Ministers (or Secretary of State) and the ORR. The Scottish Ministers will be required to provide to the ORR information about what they want to be achieved by Scottish railway activities and the public finances that are, or are likely to become, available for purposes that contribute towards the achievement of what they want. If it appears to the ORR during the access charges review that the information that has been provided by the Scottish Ministers shows that the public financial resources notified will be inadequate to secure the achievement of what the Scottish Ministers want, they have the opportunity to revise their output specification.

CONDUCT OF ACCESS CHARGES REVIEW

150. Paragraph 2 broadens the scope of an access charges review so that this must include licence conditions for example in relation to the desired outputs (such as capacity and reliability) of the railway, and include the timing of the next review and the circumstances in which this could be brought forward.

151. It also requires the ORR to give notice to the Scottish Ministers of its proposal to undertake an access charges review giving at least four weeks in urgent cases (and subject to consultation), and otherwise three months.

152. The Scottish Ministers are required as appropriate to provide within the notice period information about what they want to be achieved (i.e. their desired output specification) for railway activities and the public finance available in Scotland. The notice can be extended or withdrawn by the ORR and the Scottish Ministers may also notify the ORR that previously supplied information remains valid. The Schedule includes examples of objectives and standards that the information which the Scottish Ministers give to the ORR about what they want to be achieved by Scottish railway activities may include. such as:

- The capacity (in terms of types and numbers of trains) of networks;
- The frequency of railway passenger services;
- Journey times;
- Reliability of railway services (both in terms of punctuality and otherwise)
- The taking of measures to prevent or mitigate overcrowding;
- Levels and types of fares;
- The quality of information provided to passengers;
- The accessibility of railway services to people with disabilities;

- The carrying out of major projects to improve railway services; and

- The protection of persons from dangers arising from the operation of railways.

153. The Scottish Ministers may revise the information they had provided if the ORR finds as a review of access charges progresses that the desired output specification cannot be achieved within the public financial resources. If such a revision still does not match desired outputs with resources there is a requirement to repeat the process once.

154. The ORR must conduct a review of access charges (which engages its general duties under section 4 of the 1993 Act) in a manner that it considers most likely to secure what the Scottish Ministers seek (as revised) within the public financial resources notified.

155. Where the ORR considers that the public financial resources are not sufficient to meet the Scottish Ministers' desired output specifications despite revisions made by them, the ORR will determine how much of what is wanted by Ministers should be achieved using the available resources.

156. Paragraph 4 requires the ORR, before consulting more widely on its review conclusions, to consult the Scottish Ministers on the linked proposed modifications to licences dealing with output requirements for which the Scottish Ministers had provided information.

157. Paragraphs 5 to 10 relate to what happens if the ORR's access review conclusions give rise to objections. In considering any revised review notice the ORR must endeavour to achieve what the Scottish Ministers want (as revised) within the public financial resources notified. The information that the Scottish Ministers supplied must be provided by the ORR to the Competition Commission to accompany any reference or to assist the Commission in considering vetoing or making changes. Where the ORR proposes to make changes following a Competition Commission report, or subsequently modifies its proposals the Scottish Ministers may, within a specified period of time, revise the information they supplied. The ORR must then consider the revised information before making the changes and include it with any notice to the Competition Commission.

158. Paragraph 11 is a transitional provision that covers the situation where the ORR has given a review notice of its conclusions before the revised access charges review procedures set out in Schedule 4 come into force. Where there are objections to that notice, any new review notice or reference to the Competition Commission may or may not follow the new procedures set out in this Schedule at the ORR's discretion.

SCHEDULE 5: RAIL PASSENGERS' COUNCIL ESTABLISHED BY S.17(1)

159. The RPC established by clause 17(1) of the Railways Bill will be subject to the provisions set out in Schedule 5 (including accounting, remuneration, finance, status and procedure).

160. Paragraph 11 provides that the RPC must send a copy of its annual report to the Scottish Ministers who in turn must lay a copy before the Scottish Parliament.

SCHEDULE 7: CONSULTATIONS UNDER PART 4

161. This schedule sets out how the consultation on a network modification proposal required under Part 4 of the Railways Bill must be carried out.

162. The schedule requires the Scottish Ministers when carrying out a consultation under Part 4 to publish a notice in two successive weeks in local newspapers available in the area affected by the proposals as well as national newspapers. The minimum consultations period is 12 weeks. The notice must set out:

- The particulars of the proposal;
- The proposed date;
- How copies of the initial assessment can be obtained and at what cost (if any); and
- A statement indicating that any comments should be sent to an identified person within a period specified in the notice.

163. The schedule lists bodies that are statutory consultees, and includes the relevant railway operators, station operators and bodies representing the interests of railway passengers.

SCHEDULE 9: BYE-LAWS BY RAILWAY OPERATORS

164. Paragraph 1 of this Schedule defines the circumstances where, in relation to any bye-laws, the appropriate national authority means the Secretary of State or the Scottish Ministers.

165. Paragraph 2 sets out the penalties for contravening the bye-laws and provides for maximum fines not exceeding level 3 on the standard scale (currently £1000).

166. Paragraph 3 provides that, before bye-laws come into force, they must have been confirmed by the Scottish Ministers where they are the appropriate national authority.

167. Paragraph 4 requires the operator to give notice of his intention to make bye-

laws. The manner in which the notice is published must be approved by the Scottish Ministers where they are the appropriate national authority. The operator must allow a specified time for representations to be made about the bye-laws to the Scottish Ministers where they are the appropriate national authority, and must consider such representations before seeking confirmation of the proposed bye-laws.

168. Paragraph 5 enables the Scottish Ministers where they are the appropriate national authority to confirm the bye-laws (with or without modification) and fix the date for their coming into force, or refuse to confirm them.

169. Paragraph 6 sets out how the bye-laws are to be made publicly available.

170. Paragraph 7 ensures that production of a certified, printed copy of the bye-laws is sufficient evidence in any legal proceedings of the existence and validity of those bye-laws.

171. Paragraph 8 provides that railway operators have the power to amend or revoke any bye-laws which they make, and that the Scottish Ministers are able to revoke bye-laws for which they are the appropriate national authority by order.

SCHEDULE 11: MISCELLANEOUS AMENDMENTS OF 1993 ACT

172. Paragraph 3 provides that references in section 17 and 19 to a person operating a railway facility "on behalf of the Secretary of State" are, following the amendments to these sections in Schedule 1 Paragraph 12, to be construed as references to a person operating a railway facility under an agreement or arrangement with either the Secretary of State or the Scottish Ministers where the Secretary of State or the Scottish Ministers have a duty or power to secure the operation of that facility. This amendment provides that the relevant duty or power may exist in either Part 1 of the 1993 Act or in Part 4 of the Bill. This reflects the fact that the closure provisions in Part 1 of the 1993 Act are repealed by the Bill, and replaced with the network modification provisions in Part 4 of the Bill.

173. Paragraph 5 amends section 50 of the 1993 Act so that the Scottish Ministers are excluded from liability for breach of statutory duty arising from Part 1 of the 1993 Act in place of the SRA. This reflects the revised procedures for Network Modifications in the Bill.

174. Paragraph 6 enables the Scottish Ministers to enter into agreements and arrangements under which they give undertakings as to the exercise of their functions relating to railway franchising, where they do so for the purpose of encouraging investment in railways.

175. Paragraph 7 revises section 55 of the 1993 Act to take account of the Network Modification sections in Part 4 of the Bill that replace the closure provisions in

sections 37 to 50 of the 1993 Act.

176. Paragraph 12 amends section 136 of the Railways Act 1993 to provide that the Scottish Ministers are the competent authority for the purposes of the railways financial status regulations (Council Regulation (EEC) No 1192/69 on common rules with respect to the financial status of railway undertakings). They also provide that the Scottish Ministers are, where appropriate, the competent authority for the purposes of the public service obligations regulations (Council Regulation (EEC) No 1191/69 on public service obligations in transport, as amended by Council Regulation (EEC) No 1893/91).

177. Paragraph 13 ensures that whenever the Scottish Ministers exercise the powers that the Bill gives them to make secondary legislation by means of regulations or an order under the Railways Act 1993 the secondary legislation is made by means of a Statutory Instrument. It also gives the Scottish Ministers the ability to make incidental, supplemental, consequential or transitional provisions in the relevant Statutory Instrument in relation to the subject matter of the order or regulations. This is so as to ensure that the Scottish Ministers have sufficient flexibility to implement their regulations or orders in the most practicable way. This amendment to section 143 of the 1993 Act also gives the Scottish Ministers the discretion to use their powers to apply orders and regulations only in certain cases or to apply them differently depending on the case in question. These provisions are intended to give the Scottish Ministers a reasonable degree of flexibility to exercise their relevant powers in a way that reflects the reality of the situation rather than being unduly constrained by the narrow interpretation of the power they are exercising.

178. Paragraph 14 amends section 145 of the Railways Act 1993, which provides for a general prohibition on the disclosure of information which relates to the affairs of any individual or business and which has been obtained under that Act. The amendments relate to the exceptions to the general prohibition.

179. The amendments in sub-paragraph (1) are intended to ensure that the exceptions are extended so as to cover the disclosure of information which is made for the purpose of assisting the Scottish Ministers in the exercise of their railways functions (including, but not limited to, their statutory functions under the Railways Act 1993, the Transport Act 2000, and this Bill). The intention behind extending the exception in this way is to ensure that the Scottish Ministers can receive information which will help them to exercise their railway functions, notwithstanding the general prohibition on disclosing sensitive information obtained under the 1993 Act.

SCHEDULE 12 OTHER MINOR AND CONSEQUENTIAL AMENDMENTS

180. Paragraph 2 enables the Scottish Ministers (and other national authorities) to enter into agreements with local authorities under which the Scottish Ministers may fetter their discretion as to the exercise of their railway functions and under which the local authorities may provide financial assistance in respect of capital expenditure on public passenger transport facilities. It is similar to the existing provisions which enable such agreements to be entered into with the SRA.