

# RAILWAYS ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS AND SCHEDULES

#### Part 1: Transfer of Functions and Railway Strategy

##### 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 s4(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 railway 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

*These notes refer to the Railways Act 2005 (c.14)  
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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.