



36

72/41

2/1.6

Eland House

Tel (GTN):

Fax (GTN):

6 October 2001

~~David Rowlands~~

PS / John Spellar  
PS / Permanent Secretary  
Bob Linnard  
Phillip Ward  
Judith-Anne MacKenzie  
David McMillan  
Dan Corry  
Jo Moore  
AC RM DH

## **RAILTRACK: MEETING WITH THE RAIL REGULATOR**

You were present on 5 October when the Secretary of State met with the Rail Regulator, Tom Winsor.

2. The Secretary of State said he wished to inform the Regulator of certain decisions he had taken that afternoon in relation to Railtrack.
3. The Secretary of State said that John Robinson had come to see him in June. Mr Robinson had told the Secretary of State he was appointing new advisers to review the company's financial position. John Robinson had visited him again at the end of July and reported that Railtrack's financial position was worse than previously realized. He was seeking a letter of comfort from Government and additional funding next year. In addition, Mr Robinson, and subsequently his advisers, put forward a series of proposals for a new financial and regulatory structure based on a new form of "dormant equity" model.
- 4 You said that Railtrack's proposals included: a 3-4 year convalescence period; remuneration on a "cost-plus" basis; the setting aside of the regulatory regime; and the resetting of the regulatory asset base. They had also sought initially a Government guarantee of a 350p floor price for their shares on emergence from the "convalescence" period. Mr Robinson had indicated that without additional Government support he doubted whether Railtrack would be a going concern.

## CONFIDENTIAL – POLICY AND MARKET SENSITIVE

OFFICE OF THE SECRETARY OF STATE

FROM THE PRIVATE SECRETARY

5. You said that when CSFB, Railtrack's advisors, had first presented Railtrack's proposals to Government, they had highlighted three possible ways forward: renationalisation, restructuring or receivership. In effect Railtrack were proposing that Government should underwrite their costs for the next four years.
6. The Secretary of State said he had been concerned at the financial implications Railtrack's proposals. He had therefore asked officials to look at this and other options, including the possibility of the company entering Railway Administration under the Railways Act 1993.
7. The Secretary of State said he had decided earlier that afternoon that he was not prepared, in the public interest, to offer additional financial support to Railtrack. Nor did he intend to proceed with Renewco. He intended to see John Robinson later to see if agreement could be reached on the company entering Railway Administration. He also intended to say that the Government expected to be putting forward proposals for a new private company limited by guarantee to emerge from Administration, which would put the interests of the railway network first.
8. Tom Winsor said he had had little indication that Railtrack's financial position was so poor, although Robinson had told him soon after becoming Chairman that the financial and management position was worse than he had first thought. ORR had raised Railtrack's income by 50% on 1 April and worked to improve the company's performance. He accepted Railtrack were losing money under the performance regime but there was the prospect of an interim review. You said that leaving aside West Coast, Railtrack were looking for an extra billion on top of what the Regulator had already decided they should have.
9. You said that if the licence holder – Railtrack plc – could not pay its bills, then it faced Railway Administration as provided for under the 1993 Act. This was the financial position. Tom Winsor asked whether Government had sought investment bank advice. You confirmed this had been done.
10. Tom Winsor said that if Railtrack entered Railway Administration, this would be a severe blow to industry confidence, particularly infrastructure contractors. You said funding would be made available to the Administrator, that it was the Government's intention that trade and finance creditors would be kept whole, and that a major debt management exercise had been planned, in case of an insolvency. It was hoped that this would ensure stability.
11. You said that at present Railtrack was a paralyzed company; it was trying to back out of Thameslink and go slow on other projects. The Government's intention was that Railtrack should emerge safely from any Administration and its own proposal

OFFICE OF THE SECRETARY OF STATE

FROM THE PRIVATE SECRETARY

was for a new vehicle drawing on a wide range of railway interests. There was potential for a better, more stable railway.

12. Tom Winsor asked whether Government intended to act as guarantors of the new company limited by guarantee. The Secretary of State said he expected the new company to include a wide range of members. It would not score against the public accounts.
13. Tom Winsor said that Robinson was likely to receive legal advice that he should seek an interim review. The Secretary of State said he had authority to bring forward a short bill, if need be, to enable him to give instructions to the Rail Regulator as to the exercise of his functions, which could be used to prevent an interim review from being granted that would undermine his decision not to provide additional public funding. Tom Winsor said he assumed Government would prefer not to take this course; in his view it ran counter to the face of Government statements about other regulators. Such action would run the risk of raising the cost of capital in other regulated utilities. The Secretary of State said he would pursue this course of action if it became necessary to do so.
14. Tom Winsor asked how long administration, if granted by the Court, would last. You said the aim was 3-6 months. You said you expected to have to petition the Court for an administration order by Sunday night or make an announcement about the decision not to fund at the latest on Monday morning.
5. Tom Winsor asked whether there were any steps the Secretary of State wished the ORR to take. The Secretary of State said it would be helpful if, over the weekend, Tom Winsor could give some thought to the future roles of the SRA and ORR and how the regulatory regime might change. He would welcome Tom's guidance on these issues.

Private Secretary