Department for Transport

Reforming Rail Franchising

July 2010

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Foreword

The Coalition has pledged to put rail at the heart of its transport strategy. As well as our ambitious plans to build a new high speed network, we fully understand the importance of improving the existing railway. Not only are they pivotal for millions of commuters travelling into and out of our nation's great cities every day, but they also play a vital role in providing relief for our congested roads. Moreover, efforts to ensure rail can provide an attractive alternative to higher carbon modes of travel are an important part of our approach to reducing emissions from transport and addressing climate change.

The Government believes that the existing system of rail franchising has become too prescriptive at the point of bidding, and lacks flexibility once operational. Arguably, the Government now exercises more control over the railways than in the days of British Rail. As set out in the Coalition Agreement, we believe significant private investment could be released by granting longer franchises, resulting in important benefits for passengers. We want this investment to help us deliver the important enhancements to the railway which can have such a big impact on the passenger experience, such as station improvements, better trains, more car and cycle parking and higher quality services.

Longer franchises could also make it easier to establish the successful long term working relationships between train operators and Network Rail which are so vital to running efficient and successful railways.

We also need to move away from a system which sees Whitehall specifying highly detailed and prescriptive inputs in franchises. Instead, we want to see a stronger focus on the quality of outcomes for passengers, giving more flexibility to the professionals who run our railways to apply innovation and enterprise in working out the best way to deliver those outcomes. And we need a more qualitative approach to assessment of franchise bids – one which judges the quality of the overall package of proposals they contain to invest in the railways, improve services and grow passenger numbers, rather than focusing solely on the binary question around the level of subsidy or premia to be paid.

This consultation paper elaborates on the Government's aspirations for rail franchising – specifically, our aim to deliver a much more efficient rail industry which is more responsive to the needs and concerns of its customers and delivers the best possible value for money for the taxpayer in the face of a highly constrained public spending environment. This approach also draws on the proposals proposed in the document “Getting the Best for Passengers”, which was published in February last year.

I encourage you to consider the issues and proposals set out in this document and would welcome any comments. I am particularly keen to hear views from the wider industry on value for money improvements for passengers which might arise from any changes to the current franchising system.

The outcome of this consultation will be considered alongside the emerging findings of the Rail Value for Money study, chaired by Sir Roy McNulty, and the conclusions of the current Spending Review. Our approach will also be influenced by our commitments on climate change. Conclusions will be published towards the end of the year and we propose to begin re-letting franchises under a new model soon afterwards.

Rt. Hon. Theresa Villiers MP
Minister of State for Transport

July 2010

1. Introduction

1.1 Since privatisation, passenger rail services in Britain have largely been operated by private sector companies through franchises containing specifications set by the public sector (with some lines also served by open access operators, on a purely commercial basis). The various bodies overseeing the franchising process and the manner in which services are operated has varied and developed over time (a synopsis is provided at page 13). Franchises are generally let and managed by the Department for Transport, with some devolved to London, Merseyside, Scotland and Wales.

1.2 Many franchises pay a premium to the Government, while others receive subsidy. When account is taken of the funds paid to Network Rail to maintain and run the railways, most franchises could be viewed as net recipients of public funding. Last year, central Government spent £3.8bn on the railways, including grants paid to Network Rail. Given the significant sums of public money involved and the current economic climate, it is essential that franchises are financially robust and able to adapt to changing circumstances while delivering value for money for the taxpayers and fare payers.

1.3 The Government believes that if given appropriate and a better aligned balance of incentives and risks, private operators are more likely to commit their own resources to investment in our railways and deliver greater efficiencies. The Coalition Agreement makes the following pledge:

"We will grant longer rail franchises in order to give operators the incentive to invest in the improvements passengers want – like better services, better stations, longer trains and better rolling stock."

1.4 We propose to move away from the model used in recent years which has placed a strong emphasis on efforts by Central Government to predict demand on the railways and centrally plan how that should be addressed. We are not convinced that this is the best way to run a railway. Moreover, we are certain that it is possible to devolve more decisions to the professionals who run our railways, while retaining a demanding performance regime to protect the interests of passengers and taxpayers, and improve services.

1.5 Unlike the previous administration, the Coalition does not believe that setting detailed specifications relating to day to day operational issues is the most effective way to protect the passenger interest and improve service quality. This approach is inflexible and difficult to adapt to changing circumstances, such as altered travel patterns and the development of new technology. Central Government is not always well placed to establish what methods will deliver the best results for passengers. We believe that one of the main reasons for involving the private sector in provision of public services is to harness its expertise and innovation to improve the way services are provided and respond flexibly to user demands. In rail, as in other areas of public service provision, we want to see a move away from detailed micromanagement and specification of service inputs to an approach which focuses on outcomes for passengers and gives the private sector more freedom to determine the best way to deliver them. We are also concerned that the way revenue support provisions currently operate undermines the commercial incentive to reduce costs, improve services and grow passenger numbers.

1.6 Any changes to the franchising process must be made with an eye to other possible reforms to the rail industry. The Coalition Agreement commits to making Network Rail more accountable to its customers, the train operators, and to increase the powers of the Office of Rail Regulation. Sir Roy McNulty's Rail Value for Money Study is looking at ways of reducing the long term cost of the industry to taxpayers and fare payers. As part of that, the study is examining industry structures and incentives.

1.7 Preliminary conclusions from the value for money study will be available in September. They could well suggest a case for building on the franchising reforms discussed in this document. However, we are clear that under any prospectus for making the railway more efficient and more responsive to passengers, early changes to the franchising system are essential.

1.8 This document begins by identifying a series of guiding principles which Ministers believe should be central to any reform. We then reflect on the various models of franchising which have applied since privatisation, including current arrangements. Finally, we suggest potential features of a revised franchising model. However, we acknowledge that some elements require further development and consideration and look forward to considering the range of ideas and proposals we expect the consultation process to generate.

1.9 The scope of this consultation is restricted to those rail franchises which run primarily in England, although not those services in London and Merseyside for which franchising functions have been devolved. This consultation document does not consider fares policy.

1.10 Details of how to respond to this consultation can be found at page 35.

2. Guiding principles and objectives

2.1 Franchise reform has the potential to yield three distinctive types of benefit. First, we are determined that changes to rail franchising should result in better quality services for passengers and help address problems such as the overcrowding that blights the life of commuters on a number of routes into our major cities. Secondly, we need to ensure that the new system provides better value for money for the taxpayer and assists in our goal of reducing the cost of the railways. Thirdly, we believe intelligent and properly focused reform can create the right conditions for a successful and sustainable rail industry. The interests of these groups need not be mutually exclusive. The right franchising system should harness private sector innovation and skills to produce better services and to drive efficiency improvements to the benefit of taxpayers and passengers.

2.2 We are also keen that franchise reforms help to cut carbon emissions, as well as relieving congestion on our roads and motorways. When used to optimum capacity, train services can make a strong contribution to this aim.

Passengers

2.3 It is clear that the quality of life of millions of people in Britain is influenced by the quality of the rail services they use. Independent surveys indicate that overall satisfaction reached 83% in Spring 2010.[1] However, there can be no doubt that this overall figure disguises some significant variations, with weak scores for value for money and some important aspects of service quality. There are also big differences in the scores of the various operators. We want to reinforce the improvements in overall satisfaction and give operators the incentive to tackle the problems which they, not Ministers or officials, may be best placed to identify and address.

2.4 There have been many significant changes to service patterns since privatisation. Despite this, some train services are still provided as a consequence of history, operational expediency and political compromise. Some timetables may not have changed significantly

[1] National Passenger Survey, Passenger Focus, Spring 2010

since the days of British Rail. Heavily specified franchises with limited scope for alteration can mean operators are contractually required to run trains that over time may no longer be justified by passenger demand levels and do not contribute to the optimum use of the network as a whole.

2.5 The Government believes that enacting the right reforms to the franchising system should result in train services that are more responsive to passenger demand. We believe that passengers could benefit if operators are given more freedom to implement or propose changes to services to adjust supply (in terms of service levels, length of trains etc) to reflect changes in demand. This would give a greater say to the professionals whose business it is to run services and will often have a greater insight into passenger demands and travel patterns than central Government.

2.6 It is also important to ensure that future franchises deliver more investment in what passengers want. For example, we know that only half of passengers are satisfied with station facilities, and 39% are dissatisfied with onboard toilet facilities[2]. We envisage more flexible franchise agreements which give operators stronger incentives to make the improvements they know are important to their customers. We believe that giving the people who run train services increased opportunities and incentives to deliver improvements to the railways will help ensure such programmes are focused more closely on passenger concerns. Compared to Network Rail (which is largely tasked with these programmes at present), train operators have a much more direct interest in delivering the sort of improvements to stations and services that matter most to passengers.

2.7 Even with longer franchises and additional private sector investment opportunities, there will always be enhancements which produce important benefits for passengers, the wider economy or the environment, but which are not commercially viable and cannot be captured through the fare box. Where public funding is available to take these projects forward, it is likely that a higher level of specification will be needed. Train operators may choose to deliver improvements of this type to enable them to meet the passenger satisfaction outputs we envisage as a possible element of the new system. However, there are likely to be other cases where such measures will need to be specified in a similar way to the approach currently used. For example, the Government encourages integration of rail with local transport, through Station Travel Plans. These plans regularly deliver social, economic and carbon benefits to the local economy, but may not be directly profitable to rail operators.

[2] National Passenger Survey, Passenger Focus, Spring 2010

Taxpayers

2.8 The Government provides very substantial financial support to the railway. However, rail only accounts for about 7% of passenger mileage in Great Britain and only about 9% of domestic freight movements (as measured by ton miles). While these are relatively low shares, the substantial Government support reflects the economic benefits that the railway offers the country. Without the railway, London could not function; great cities like Manchester, Leeds and Birmingham would see a dramatic increase in road congestion, damaging their local and regional economies; and many parts of the road network would become clogged by lorries going to and from factories, ports and economic centres. In short, a successful and efficient railway is essential to our economy, our quality of life and our environment.

2.9 But while the railway is a vital national asset, it has become an increasingly expensive one. The Department for Transport and the Office for Rail Regulation have launched a value for money study, led by Sir Roy McNulty. This will consider why the industry's costs have increased since privatisation. Any new franchising policy will need to take account both of Sir Roy's findings, whose initial report will go to the Secretary of State in September, and the outcome of the current spending review.

2.10 Any review of franchising should also consider other features of the present system which could be working against taxpayers' interests. Central Government does not set an explicit budget for franchises when inviting bids. Bidders could find an early indication of the Government's view of affordability helpful, particularly if they are being given more freedom to put forward their own ideas in relation to the specification.

2.11 A further problem with the current system is the potential it offers for operators to receive up to 80% revenue support from the Government if their revenue declines sharply. Once in that position, operators have very little incentive to improve performance, even if the decline in their revenue was caused by factors within their control rather than by external impacts such as a fall in GDP. A new franchising system should allow operators to respond to changing circumstances, not simply to be protected against them. Current revenue support provisions are undermining the private sector's ability to use commercial knowledge and incentives to drive efficiency and service improvement and reduce costs for the taxpayer.

2.12 We believe that franchise reform can help us deliver important improvements for passengers at less cost to the taxpayer. There is evidence to suggest the overall cost of enhancements may be reduced with increased train operator involvement. For example, the National Audit Office has pointed out that the average cost of platform extensions undertaken by Network Rail is £5,000 per metre, compared to £4,626 when undertaken by Chiltern[3]. Moreover, enhancements carried out by train operators will provide an important benchmark against which to judge the efficiency and costs of Network Rail. Finally, longer franchises will make it more viable for train operators to buy their own rolling stock, providing a welcome new element of competition in the rolling stock market.

2.13 Perhaps the most important way in which a reform of franchising can work in taxpayers' favour is by giving operators much more freedom and opportunity to attract new customers, grow their businesses and increase their revenues. That ultimately can play an important part in securing the stable long term financial future for the railway which will help us achieve the twin goals of continued enhancement of the network and improvement of services for passengers.

The rail industry

2.14 The Government would like to see more private resources invested in the rail network, with clear benefits for passengers and the taxpayer. We want to attract new players into the rail market, with new areas of expertise (for example in customer service), and with substantial balance sheets. Giving franchisees more incentives to invest and greater operating space will make the rail industry more attractive to investors.

2.15 An important aim of the reforms we propose is to provide operators with confidence to invest for the long term. The relatively short franchises currently in place discourage capital investment in rolling stock; stations and depots, unless it is underwritten by the Government. However, current longer franchises (such as c2c and Chiltern franchises) have resulted in some commercially driven infrastructure and rolling stock improvements. Reforming existing mechanisms to recognise residual value (and the associated contractual frameworks), will further encourage private sector investment. We explore this issue in the text box on page 28.

2.16 The Government is interested not only in how much investment is made through franchises, but also in how the investment is implemented. In some cases, Network Rail takes a controlling role in infrastructure improvements which are an integral part of train operators' businesses, such as station facilities and car parks. If operators had more control over the commissioning and contracting of this work, they could focus these projects more directly on benefits to passengers which can do most to attract custom and increase revenue.

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[3] Increasing Passenger Rail Capacity, National Audit Office, June 2010

2.17 Our final objective is to give operators more control over their cost base. Some of the biggest costs a franchisee faces – notably the leasing of rolling stock, payments for track access and wage bills – are largely fixed. Longer franchises will give operators the opportunity to tackle these costs, as well as modernise working practises. This is an area which is being examined in detail by Sir Roy McNulty's value for money review. However, we are clear that reform of the franchising system is only part of the changes needed to deliver a sustainable 21st century railway.

3. Experience of franchising

History

3.1 The process of franchising rail services has developed and evolved considerably since privatisation in the mid 1990s. During that time, franchising responsibilities have rested with the Office for Passenger Rail Franchising (OPRAF) and the Strategic Rail Authority (SRA). Since 2005, the Department for Transport (DfT) has been the primary franchising body.

3.2 Each of these bodies has adopted a different approach to franchising – both in terms of the contracts let and in how they have subsequently been managed.

3.3 During this timeframe, other franchise models have been developed as a result of devolution – specifically in relation to parts of Merseyside and London. For example, Transport for London uses a very detailed approach to specification for the London Overground network. They have also developed a distinctive model for the Docklands Light Railway. International comparisons reveal a variety of approaches to private sector involvement in the railways.

3.4 This section reflects on some of the strengths and weaknesses of franchising in Britain since privatisation. To that end, we have outlined key features of the models used to date, including management of the contractual relationship.

OPRAF Model

3.5 OPRAF was the first franchising body. Over the period 1994 to 1997 it let passenger rail services across Great Britain, through 25 franchises.

3.6 These franchises ranged in length from 7 to 15 years. Of these franchises, only a few reached their full length on the same financial basis and/or with the same parent company. This was caused by a number of different factors, most notably the existence of an immature market in which some operators were over-ambitious in the amount by which costs could be reduced. A number were adversely affected by the collapse in performance and customer revenues following the Hatfield accident. Others saw changes made to facilitate the re-mapping of the franchised network with a reduction in the number of franchised rail operators.

3.7 Franchises were awarded on the basis of price with service specifications that were based on a minimum service level expressed by the Passenger Service Requirement (PSR). In many areas the level of contracted services included within the PSR was below that offered by British Rail, with the expectation that operators would then implement additional innovative services. This led some franchises to extend and re-time their services with the purpose of abstracting revenue from competing operators. As well as sometimes providing a less coherent service to the customer, this also led to performance problems on the busier parts of the network.

3.8 During evaluation of bids for some franchises, significant emphasis was placed on proposed investment (in both the network and rolling stock). Not all of these contracts were successful, but some of the longer OPRAF franchises did deliver tangible benefits for the passenger. For example, the c2c franchise ran for an initial 7 years, and then was automatically extended by a further 7 years following a major rolling stock order. The operator has also made significant investment in station enhancements and gating, and last year achieved a new rail industry record of 96.6% punctuality.

SRA Models

3.9 The initial SRA franchise replacements sought to let longer contracts tied to significant operator-led infrastructure investment (through Special Purpose Vehicles, SPVs). These were generally found to be hard to conclude because of the difficulty of comparing very different propositions, the complex nature of contracting the SPVs and concerns about the affordability to public finances in underwriting such long term commitments. The Chiltern franchise was the only one successfully let under this model. The franchise has delivered a substantial investment programmes (although a proportion of this has been funded through Network Rail’s Regulated Asset Base, RAB).

3.10 The SRA then briefly moved to a model of longer, ‘enhanceable’ franchises with five yearly review points, but only Merseyrail (25 years) and Wales & Borders (15 years) were let in this way before the SRA published a new Franchising Policy in November 2002. These longer franchises have delivered important benefits to passengers. For example, both are currently achieving Public Performance Measure (PPM) in excess of their sector average. From 2004 to 2009, the Merseyrail operator funded £7.7m of new fixed assets, with a view to improving station security, thus increasing off-peak patronage.

3.11 The SRA applied a new policy to franchises from 2004 onwards, incorporating a much more detailed approach to specification. Service Level Commitments (SLCs) set out the detail of services to be provided. Additional services could be operated, but only insofar as they could be accommodated on the network without detriment to other operators' services or their revenue. Detailed quality of service targets and monitoring were initially included but this approach was later dropped as it was felt to be unnecessarily intrusive.

3.12 Revenue risk was shared between the Government and operators in return for the more tightly prescribed service level, recognising that some risks, such as the growth in the wider economy, cannot be easily managed by operators. This quickly led to bidders offering much higher revenue growth forecasts, particularly in the latter years of the franchise. This over-bidding of revenue led to some operators receiving up to 80% of the shortfall in revenue from the Government after the early years of the franchise. Not only did this adversely affect the Government budget, but it also dis-incentivised revenue-generating activity by the operator.

DfT Model

3.13 The Railways Act 2005 (and associated orders) wound up the SRA and passed responsibility for setting strategy for the railway to Government, with some of the SRA's franchising functions being devolved to London, Merseyside, Scotland and Wales.

3.14 Assessing the current DfT model against our criteria of improving services for passengers, securing a good deal for taxpayers and giving train operators the freedom and incentive to bring private sector skills to a public service leads to a mixed picture. Although there are some positive elements to the current process, the new Coalition Government believes that the system has serious flaws, not least of which is that it involves Central Government taking detailed decisions about the way the railways are run and what services should be operated.

3.15 The current model involves Central Government drawing up a detailed service specification and itemising minimum enhancements to be delivered. Bids received from pre-qualified parties are assessed to ensure compliance with Central Government requirements and an acceptable level of confidence in their deliverability. The winning bid is then selected on price and (if bids are very close) on a scored assessment of deliverability.

3.16 This system has the advantage of giving bidders a clear picture of what the Government is seeking, enabling them to construct bids accordingly. The fact that competitions are based substantially on price (ie subsidy requirements or premium offers) submitted by pre-qualified bidders has tended to result in competitive, even aggressive, bids. Issuing franchises of around 7 years duration has meant that the market has been tested relatively frequently.

3.17 The downside of the system includes substantial bidding costs. More importantly, in some cases, it has led to over-optimistic bidding. For example, optimistic bidding was a contributory factor in the collapse of the National Express East Coast franchise. A more generalised problem with unrealistic bidding is that it can lead to unexpected shortfalls in revenue for the taxpayer and corresponding pressure on the budgets available to support the railways. This problem is exacerbated by the way revenue support provisions have operated. The current model has created a set of circumstances which has resulted in operators entering revenue support, with limited ability to move back out.

3.18 The system operated by the previous Government also has other significant limitations. A tightly defined specification limits the scope for bidders to propose their own solutions, and to make their own assessment of the problems. There is little incentive for operators to innovate, undermining the benefits private sector involvement should deliver in the context of public service provision. Despite the existing provisions in franchise agreements, bidders seldom come forward with their own ideas unless they improve the overall bid price. The short franchise period means relatively few bidder investments can earn a return.

3.19 Once a franchise is running, it tends to be inflexible. Specifications have generally been regarded as fixed, to be operated regardless of changes in circumstances. Operators need to be incentivised to run their franchise more flexibly, responding to changes in demand – in both directions – and seeking out new opportunities to attract custom and grow revenue. Short franchises give operators little incentive to reduce costs, or plan for long-term growth. They also mean that investing effectively in establishing long term relationships with Network Rail and with employees is more difficult.

3.20 A further significant weakness in the system we have inherited from the previous Government is the way it deals with risks, including macro-economic risks. Because these are risks over which operators have no control, the price of transfer to the private sector can be high. Franchises have typically provided that after 4 years of operation, operators become eligible for revenue support on a scale which can increase to 80%. Once a franchise becomes dependent on support at that level, there is little incentive on the operator to improve its financial performance (particularly fare box revenue), since this can lead to a reduction in subsidy. This is another feature of the present model which militates against private sector innovation to attract passengers and increase revenue.

3.21 The challenge for any package of reforms is to capture the positive aspects of the present system while creating the freedom and incentive for train operators to drive efficiency, innovation and investment, both in bidding for franchises and then in running them. This can deliver better results for passengers and, in the longer term, for taxpayers as well.

4. Elements of a possible approach to future franchises

4.1 There are different ways in which the principles and objectives described in earlier could be reflected in a new franchising model or models. There is unlikely to be a single "correct" solution, applicable to all franchises. While retaining certain common principles that can be applied across the board, a reformed system needs to be capable of providing a spectrum of approaches suited to different types of franchise.

4.2 We recognise that there are important differences between (and within) rail franchises, for example between inter city, London commuter and regional operations. Some inter city services are profitable (even taking into account the underlying subsidy paid to Network Rail to run the railways), and operators might well be able to operate a proportion of existing services at their own risk and expense and deliver a good service to their passengers. In comparison, many regional and local services are not viable on a wholly commercial basis and might not be operated without Government support.

4.3 It is therefore important that such differences are fully recognised in future franchises and must be taken into account in the specification of franchises, with the flexibility for contracted franchise outputs to suit varying market needs. It may well be the case, for example, that franchises with a significant proportion of subsidised services will need greater specification than those which are more commercially viable without Government support. However, even on profitable services there are features of the service (such as stops at smaller stations), that reduce overall net revenue and may therefore not be offered unless supported or mandated by Government. The franchise will therefore represent a balance between length, degree of specification, risk allocation and investment. This section sets out some of the options.

4.4 Key issues for consideration include:

- setting the franchise length;
- giving operators the confidence to plan and invest to improve passenger services in the long term, while ensuring value for money for the taxpayer;
- deciding on the minimum specification required by Government (which commercial bidders may add to);

- contractualising services, while allowing some flexibility for operators to adjust services in response to events;
- the process by which franchise bids are invited and evaluated;
- the contractual powers Government has to manage performance, operational risks and changes to outputs during the franchise life;
- options to improve value for money and efficiency.

4.5 Many of these issues are interrelated. For example, when considering the appropriate risk and reward mechanism, we must also consider franchise length and the level of specification and contractualisation. Without considering these issues together, we risk disadvantaging the passenger and taxpayer or setting a contract that is not commercially attractive to bidders (and hence more expensive to procure).

Franchise length and risk

4.6 These two issues are closely connected. The current franchise length, typically seven to ten years, is too short. It does not encourage operators to plan and invest for the long term and frequent competitions carry substantial costs, both for industry and Central Government. On the other hand, there is evidence that by testing the market frequently Government has secured higher premia/lower subsidy through regular competition. However, it should be noted that regular market testing also imposes administrative costs on the Government and substantial bid costs on the rail industry. Any new system needs to maintain good value for taxpayers, but we recognise a more sophisticated assessment of franchise bids is needed than was the case under the previous Government. We need to address the concern that the sole aim of the system was to extract as much money as possible from franchises, with the problems that caused in terms of high bids and revenue shortfall, referred to above. We need a more qualitative approach to the assessment of bids that would allow consideration of longer term plans to grow passenger numbers and enhance the network, as well as the subsidy/premia levels proposed.

4.7 The choices made on franchise length have an important bearing on the arrangements for transferring risk to operators. It is obvious that many variables can change over the course of a very long franchise. In some cases, this will work in operators' favour, giving them the time to recover from a dip in trading. But major external events, particularly if they occur early in a franchise, can blow projected revenue off course to such an extent that recovery is impossible. A further consideration is the need to ensure that long franchises do not, over time, lead to an indefensibly poor deal for the Government and unacceptably large super-profits for the operator.

4.8 The following three options for change are all worth consideration to achieve the optimum package for different franchises, bearing in mind the Government's objectives and our assessment of the current system described earlier. They could be applied either singularly or in combination:

4.9 The removal for future franchises of 80% revenue support, or a reduction in support to a lower level;

4.10 Government retaining risk in respect of GDP and (where appropriate) Central London Employment and adjusting franchise payments to reflect downward or upward trends in these indicators.

4.11 Using a profit share arrangement in future franchises, with central Government benefitting if the franchise proves unexpectedly profitable.

4.12 There are different ways of combining longer franchises with an appropriate risk and reward structure. European procurement law makes clear that contracts over 15 years require significant investment to be provided by the franchisee. Therefore, our starting proposition is that 12-15 years should be the standard length of franchises, although we would not rule out longer terms with the necessary investment undertakings. There maybe some exceptional circumstances when shorter periods might be justified, such as the recent example of the 5 year, 10 month South Central franchise. This short contract was let in order to allow for a change to the pattern of train services as part of the Thameslink programme.

4.13 For most operators, franchise revenue is normally correlated to the performance of the wider economy. Longer franchises may challenge operators' ability to accurately forecast their financial performance. This uncertainty will require a level of risk to be taken by both the Government and the franchisee. Conversely, they may allow a franchisee to manage an unforeseen economic downturn better because there is a longer period in which to recover. There are a number of approaches that could be adopted, either singularly or in combination.

Approach A

4.14 The simplest approach would be for the franchisee to accept full risk throughout the franchise (as was the case in franchises let before 2004). This approach worked well in the case of c2c, a 15 year franchise with what is arguably a relatively predictable revenue stream. It could be an option for some future franchises, but if applied everywhere could significantly increase costs to the taxpayer because operators would price this risk in their bids, impacting on the level of premium/subsidy lines.

Approach B

4.15 For franchises that are more exposed to economic change and where revenue is harder to predict, an alternative model could incorporate the following features:

- Central Government retains some GDP risk and, if appropriate, Central London Employment risk;
- There is no revenue support beyond that triggered by the provisions referred to in the previous bullet point;
- Central Government is protected if the franchise proves unexpectedly profitable by a profit sharing mechanism.

Approach C

4.16 An additional or alternative mechanism that could be built into some long franchises would be provision for reviews, either at pre-set points during the life of a franchise or in response to an exceptional change in circumstances. The design of the review mechanism would be different depending on whether it was to be used regularly or exceptionally.

Approach C1

4.17 Such a mechanism – say every 5 or 7 years – could make it easier for operators to take all risk, even for inherently riskier franchises, if they were confident that their revenue line would be reset at the review point. However, if that review point simply triggered a negotiation with Government, investors might not have the confidence that this was other than a short franchise with the possibility of extension. They would have less confidence in committing to projects with a return over a longer period. Moreover, there is a risk under procurement law that a major revision of subsidy levels or outputs (or both) could necessitate a new competition. If this option was adopted it would therefore be necessary to place clearly defined limits on what can be changed or flexed at any review points.

4.18 It seems that the most practical way in which regular review points of this sort could work would be by ensuring that there is an independent mechanism for resetting the new period's payments to or from the franchisee. It should also be emphasised that the continuation of the franchise would always be conditional on the operator meeting continuing performance level requirements.

Approach C2

4.19 A different approach would be to provide for reviews only if there was a major change in circumstances. There are potential parallels here with the "material change in circumstances" that can be used to re-open Network Rail's periodic review settlement. This option might be useful if, for example, an external event unrelated to GDP triggered a dramatic change in demand levels or if the Government wished to adjust its financial requirements for the franchise. The Government might also seek changes emerging from the High Level Output Specification process, for instance on higher capacity or performance.

4.20 A mechanism of this kind would need clear rules in the franchise agreement defining the circumstances in which Government or the operator could seek a reopener, who would judge whether the defined circumstances existed and how the review would be carried out. To create the certainty needed to retain the investment benefits offered by longer franchises, the system would likely need to provide a disincentive to either side walking away without good reason.

Approach D

4.21 In all long franchises, some form of mechanism will be needed to enable Government to alter what it buys, since it will be impossible for Government and / or bidders to envisage all the likely changes over a 15 or 20 year period. Such changes can be implemented in a number of different ways. Original franchise agreements used the No Net Loss / No Net Gain (NNL/NNG) process as a way of negotiating changes so that operators were not disadvantaged. Recent franchises have used an alternative approach, based on the initial contract, which requires bidders to submit a detailed list of assumptions, unit costs and resources referred to as the Financial Model. This is then incorporated into the franchise agreement. Any changes which are made to contracted requirements during the life of the franchise are priced on the basis of the financial model. This approach provides Government with a clear method as to how change is costed and also sets out the expected revenue implications. However, like other elements of the current model, it adds to the complexity of the franchising process. That said, it seems that both approaches have at times resulted in protracted and difficult negotiations.

Performance bonds and parental guarantees

4.22 Franchise agreements contain financial mechanisms which act to keep franchisees operating, and ensure that they are accountable for the responsibilities to which they have signed up. The two main instruments that have been used are performance bonds and parental guarantees.

4.23 Performance bonds are held by train operators with commercial bond providers. In the event of franchisee default, the Government can call on the amount in the bond to cover the costs of refranchising. Parental guarantees are a contractual undertaking that the owning group will put a specified amount of additional money into an operator that is failing financially, in order to prevent or postpone default. Guarantees therefore act to ensure that owning groups are at risk for large sums if the premium or subsidy promised at bid are not achievable. This encourages bids to be more realistic about potential revenues, and means that owning groups cannot simply exit franchise agreements, but have to support the commitments made by their operating companies to a defined extent.

4.24 With longer franchises, a larger level of performance bond and/or guarantee may be appropriate. Firstly, this recognises the potential greater value of the contract to the operator. Secondly, these mechanisms may be more important to Government on a longer franchise, where a period of slow growth or recession is more likely to occur, with the increased risk of operator default.

4.25 However, we will need to consider carefully the appropriate level of both bonds and parental guarantees – where these are necessary. High bonds have a cost to operator, reducing potential premiums and/or the amount available for investment. Larger parental guarantees represent a risk for owning groups, who are likely to pass on the costs in the price they bid for the franchise. It is therefore important to get the level of risk and commitment right for each franchise.

Level of specification

4.26 The Government will seek to ensure that franchise specifications, when combined with commercial initiatives, will deliver a service that balances the requirements of different groups of passengers, wider transport objectives, value for money for the taxpayer and affordability.

4.27 We propose to engage earlier with pre-qualified bidders in order to develop an improved specification, with an indication of the level of support the Government would be prepared to make available. This is discussed in more detail in the procurement section below.

4.28 We envisage that specifications would be considered at a number of levels and within the overall parameters of an affordability framework. The core principle is that Government would specify a base level, designed to ensure the delivery of services and service features (such as timing, and calling patterns) that are important to secure but are not necessarily commercially viable. Bidders would then flesh out this level of service with higher frequency services and additional passenger benefits that will deliver a commercial return. Key questions include:

- What level of specification should form the initial base?
- What is contractualised from bidder proposals? And
- What factors are taken into account during bid award and how?

4.29 Although we are still developing our thinking, we have illustrated this basic structure below, as a starting point for comment – with the caveat that several other designs could potentially deliver the overall aims described above.

4.30 Base specification: This would set out the Government's minimum requirements in respect of:

- **Train services to be operated.** This could include different measures for different franchises, or parts of a franchise – such as service frequency, first/last trains, stations to be served, minimum train mileage to be operated and/or key journey times. It will focus on those non-commercial services, or service features, which Minsters view as being the most essential.
- **Any specific investment requirements**

4.31 Specified outcomes to drive service quality improvements for passengers: This would set out the Government's required outcomes and bidders would be invited to put forward proposals on how best to achieve them. Our focus here is very strongly on improving life for passengers. By introducing output measures, we believe a reformed franchising system can work to incentivise operators directly to monitor and improve the aspects of service quality that have the greatest importance to passengers, such as crowding, overall journey experience and managing disruption. We welcome ideas from consultees on the best way to formulate these output measures. Options include:

- delay minutes;
- maximum acceptable crowding levels on trains into and out of key stations;
- maximum levels of ticketless travel;
- measures of quality, cleanliness, station environment and information provision.

4.32 We believe that moving to an output based approach will make it easier to respond flexibly to passenger concerns because it will not depend on precise prediction of specific operational matters at the start of a franchise. Further details of how this principal could be applied to 'service quality' are set out at Annex A.

4.33 An outcome measure of affordability (premium or subsidy) expected over the life of the franchise could also be included, in addition to the various other means of safeguarding the interests of taxpayers.

4.34 **Bidder designed core services:** One option is that in response to the base specification and outcomes (including Government's indication of the subsidy available or premium sought) the bidder might be asked to set out all services which it is proposing to meet those requirements. This could contain services that are provided solely to meet the crowding outcome (eg three trains per hour, not two), and therefore would be above the minimum frequency level set out in the inputs section. We are proposing that these are contractualised, and used in bid assessment.

4.35 **Commercial services:** In addition, bidders will have their own ideas on the level of commercial services or investment that they would be able to provide. These would be at their own risk and not form part of the bid assessment or be contractualised – unlike the services described above. It is likely that the number and value of services which are purely commercial would vary by operator, and would depend crucially on the level of Government's initial specification and specified outcomes.

4.36 Commercial services and investment are likely to fall into two categories:

- Additional services or undertakings that bidders believe are commercially viable through the marginal use of resources already purchased through the franchise to meet The Government's requirements. This would include services that are not needed to meet either the crowding target or the required frequency/calling pattern, but that the franchisee can offer because of the availability of rolling stock and staff they already require to fulfil the Government specification.
- Independently viable services or undertakings that are purely commercial and require no incremental use of the resources required for the provision of the franchise services. These would be services operated with rolling stock and staff not needed to meet the Government outputs and specifications.

4.37 **Service level flexibility:** Our proposal is that all commitments which led to an operator winning a franchise competition would be contractualised. However, during the life of a franchise, flexibility is likely to be required. In theory, franchise contracts already give operators the option to operate increased service levels, if the additional revenue will cover the costs. Longer franchises, coupled with a less prescriptive train service specification, should make this a genuinely workable proposition in an increasing number of circumstances.

4.38 The current system allows operators very little flexibility to make sensible changes to any services without the agreement of Government, and – often – time consuming discussions or negotiations. This is because almost all services are included in the contract. We believe that there is value in allowing more services to be managed flexibly by the operator, to ensure that they can target services on the areas of highest demand, and make changes where they are justified by changing demand. The structure described above, where some commercial services are not mandated through the franchise agreement will provide some flexibility. However we are also considering whether further flexibility could be provided so that operators could reduce service frequency or change calling patterns if planned demand did not materialise. This would allow them to deploy the trains or staff on routes with higher demand. Such measures would need careful design to ensure that the outputs purchased by Government on behalf of passengers continue to be delivered.

Other government bodies

4.39 In taking decisions on franchise specifications and outputs, we will listen with great care to the views of local government and local transport authorities, both in London and the regions. We would welcome responses from local government on how to improve the franchising system. We very much value the productive working relationships the Government has with local government, including the Passenger Transport Executives and Transport for London, and we fully recognise the importance of working together to improve coordination between different modes of transport.

4.40 The Secretary of State has a duty to consult PTEs or TfL before issuing an invitation to tender for a relevant franchise agreement. In addition mechanisms exist to allow TfL and PTEs to act as cosignatories to selected franchises. Inclusion of this mechanism in new franchises is subject to approval by the Secretary of State, and we do not propose to alter this process. We also propose to retain local transport authorities' ability to specify (and fund) increments and decrements to franchised rail services operating within their jurisdiction.

Investment

4.41 We view private sector investment in the railway as an essential element of any reform. The manner in which such investment would be funded is likely to vary by franchise, as well as the nature of the investment.

4.42 At present, significant elements of railway investment are delivered by train operators, but supported by third parties. For example, operators regularly negotiate rolling stock refurbishment, supported by funding from the relevant ROSCO. In other instances, operators enter into agreements with Network Rail to use their Regulated Asset Base (RAB) in order to fund station, depot and infrastructure improvements. We believe that these third party funding mechanisms should remain, but would like to see this augmented by private sector funding.

4.43 In addition there are some existing schemes funding station improvements that could benefit from re-design in order to allow other train operating companies to “bid” to carry out small-to-medium size works. Making this funding contestable and breaking Network Rail’s near monopoly over provision of this type of enhancement would have a number of benefits. For example, train operator bids could be compared to the cost of Network Rail carrying out the project. Potentially this could make scarce resources go further. There is some evidence that this allows the operator to deliver small schemes more flexibly and cheaply, without the overheads of a larger organisation such as Network Rail that also has much bigger projects to manage.

4.44 We are keen to see train operators commit to fully funding investment proposals, such as station refurbishments; journey time reductions and purchase of new rolling stock. For such investments, we would wish to see the financing risks remaining with the operator. Bidders would therefore need to demonstrate their ability to raise and repay the necessary finances, and deliver projects and their intended benefits. If operator investments could be made under such conditions, we would have strong grounds for considering franchises longer than 15 years. In order to further incentivise investment, we are considering options to improve and streamline the means by which residual value of investments is dealt with at the end of a franchise (see box on page 28).

4.45 A reform option worth considering is linking delivery of investment undertakings with planned extensions to the franchise period. This approach has worked well on c2c where the contracted franchise period was set to shrink back if the key rolling stock investment was not in the event delivered. The Chiltern franchise has also delivered investment linked to franchise length.

4.46 We believe significant benefits could be generated for passengers if operators are given an enhanced new role in relation to maintaining and improving stations. Almost all stations are owned by Network Rail, although train operators currently undertake the day to day management of most of them. We can see advantages in vesting long term, full repairing leases in train operators, because this would confer responsibility for maintaining and improving them in the people in closest contact with the passenger and with the strongest incentive to respond to passenger concerns. The proposals referred to above to improve the mechanisms by which account can be taken of residual value of investments at the end of a franchise can provide a further inducement for operator investment in stations.

4.47 We are also considering how the full benefits of major Government infrastructure investment could be achieved under a new franchising model. At present, certain franchises include detailed specifications which have been developed to that end. For example the business case for investing £9bn in the West Coast Main Line upgrade was predicated on a particular uplift in service provision (the same approach applies to the Thameslink programme). Mechanisms are needed to ensure that the benefits purchased by infrastructure projects are actually delivered. It should be noted that unless the option to specify relatively detailed levels of service improvement in relevant franchises is retained, it could be harder to develop a business case for future large upgrade projects.

Residual value

Even with longer franchises there will always be schemes and investments that would be commercially viable if costs could be recouped over a longer time period. This is especially the case in the later years of a franchise contract when new investment opportunities emerge.

The Government is considering ways in which operators can recoup some of the value from an investment when that franchise comes to an end. One model could for Government to agree with an operator an appropriate value (or set of values) for an asset at the end of the franchise term. This value would be agreed up front with Government and would be contractually binding. Any incoming operator would then be required to buy this asset at the agreed value, thus compensating the outgoing operator for the lost investment.

Any such process will need to ensure that the investment has a commercial case over its lifetime (so it does not increase overall franchise costs), that the agreed value does not overcompensate operators taking into account the investment and returns already made and that agreements are reached quickly between Government and operators.

It would also need to include provisions to ensure any asset was maintained to a set level and handed over to an incoming operator in a set condition, thus ensuring it was of value to that new operator.

Whilst a mechanism similar to this exists within the current franchise contract, it has not been widely used, and the Government has received few investment proposals.

5. Procuring future franchises

5.1 Franchise operators are currently selected following a year long procurement process. Taking part in the process requires both the Government and bidders to invest significant resource. We would like to consider how to improve this process and this section sets out some possible ways forward. An important objective here should be to reduce the cost of the franchising process where possible – while ensuring the process delivers a winning proposal that offers benefits for passengers and a focuses on long-term, as well as short-term, value.

5.2 Government may continue to advertise franchise opportunities so interested parties can seek to become accredited. We expect that between 3 and 5 bidders will be shortlisted for each competition. We are interested in bidders' views for franchises so we propose that bilateral discussions are held with each of the shortlisted bidders prior to issuing the ITT, enabling bidders to inform the specification and contract documentation.

5.3 We may consider continuing the process of specification and bid development with each bidder after issue of the initial ITT, analogous to the 'Competitive Dialogue' procedure under EU procurement rules. However, our knowledge of competitive dialogue in other fields is that it can add considerably to both bidding costs and the time taken to award a contract; so this route may not be appropriate for rail franchises.

5.4 It is proposed that the selection of the winning bidder will be on the basis of the compliant, affordable and deliverable bid, offering acceptable commitments in respect of crowding, customer satisfaction and other specified targets. Bids would be judged both qualitatively and quantitatively, with the winner putting forward the best combined financial offer of premium/subsidy, investment and broader economic benefit. This last category can embrace service quality issues such as journey times and frequency. This approach allows the selection decision to reflect both the headline financial offer and the value of additional benefits passengers would receive as a result of bid solutions and proposed investment; while at the same time respecting budget constraints and protecting the interest of the taxpayer.

5.5 This approach provides scope to place more emphasis on the quality and value of bidders' own proposals rather than on the Government's specifications. It will be important nonetheless to give bidders a clear picture of the process and the criteria. For the sake both of fairness and cost, we need to ensure the new system gives a comprehensible steer to bidders as to what they need to do to win.

5.6 At the accreditation stage of the competition, we propose to continue using the European Foundation of Quality Management (EFQM) Excellence Model as a basis for franchise tendering because this requires bidders to demonstrate positive performance trends in their businesses and encourages good governance. At the bid evaluation stage, the “RADAR logic” associated with EFQM provides a useful structure to delivery plans and an objective basis for the scoring mechanism.

6. Managing future franchises

6.1 Once a franchise is in awarded, Government puts in place appropriate management arrangements to monitor delivery against contractual obligations. As a minimum, the Secretary of State has a duty under Section 30 of the Railways Act 1993 (as amended) to secure the continued provision of passenger rail services.

6.2 Our approach to franchise management is to protect the interest of passengers and taxpayers. We appreciate the importance of working in partnership with operators, but we will take decisive action in the passengers' interest where performance is not satisfactory. In extreme cases, sanctions for poor performance will, of course, continue to include early termination of a franchise. We are also prepared to consider ways to recognise particularly successful performance.

6.3 Depending on the nature of the risk and reward model adopted for an individual franchise, an appropriate level of on-going management and periodic formal review of performance will be required. This would take into account contractual obligations, financial performance and operational performance. More flexible contractual obligations will allow Government to move away from such detailed, onerous management processes. No less rigorous in protecting the passenger, this new approach should allow franchise management to focus on more high-level monitoring. However, in the event of under-delivery against contracted obligations, franchise management processes would become more intensive. We are also giving consideration to how the ORR might play a constructive role in improving franchise monitoring and ensuring that passenger concerns can be addressed swiftly and effectively.

6.4 It is important to note that this process of performance monitoring and review is different from the reset and reopener mechanisms discussed earlier which relate to subsidy/premia lines and franchise affordability rather than day to day operational performance. However, franchise monitoring systems will need to provide the Government with sufficient visibility to guard against major financial surprises. For instance the Government will need to be able to oversee the financial health of operators in order to seek early warning on emerging risks and potential franchise defaults.

6.5 We are interested in hearing the views of consultees on retention of contractual levers to mitigate problems in relation to risks that prove unmanageable by the operator. Clearly, our reform as a whole is premised on the view that it is desirable that private sector operators take risk, for instance in designing a new timetable or procuring rolling stock. However, it should be noted that if major projects are included in the franchise bid, the survival of the business may depend, to a greater or lesser extent, on the success of that project. We want to move towards a position where operators develop and manage investment programmes, and do not want to discourage the private sector from taking risks. That said, Government has a keen interest in ensuring that operators do not take on projects that are likely to result in the collapse of the franchise. We want to guard against the danger that operational performance for passengers plunges as a result of over-ambitious projects. It is also the case that Government is required to step in and take over the operation of a failed franchise in order to ensure continuity of services. And, ultimately, any increased costs that have arisen will tend to revert to Government. For these reasons, Government may need to retain some contractual powers to veto certain categories of operator plans.

6.6 The Government may also need to veto or impose actions in order to:

- protect its financial position, and the position of other operators (for instance to stop service changes that are abstractive from other operators, and would result in a claim on the Government under the terms of other franchise agreements);
- protect value beyond the franchise term (for instance to prevent operators cutting costs at the end of a franchise that will reduce the overall value of the business for the taxpayer)

6.7 Central Government powers to impose actions or negotiate/impose a price for changes to contracted outputs have been contractually based in recent franchises on the Financial Model explained earlier. New franchise agreements will need clear mechanisms for tackling these issues.

6.8 A revenue-risk sharing system that contains any element of revenue support (ie payments that go to the operator if they underperform against the target revenue set out at bid) presents particular challenges for franchise management. Even at a lower level than the current 80% figure, Government will need powers to ensure that operators do not act perversely once they are receiving support.

7. Consultation questions

7.1 We are seeking general responses to the issues set out in the paper, and the proposals made about a new franchising approach. The specific questions below indicate the areas which we are seeking views and information on. However, this is not an exhaustive list and other issues are raised in the body of the document which respondents may have views on.

7.2 It would be helpful if respondents could consider different types of franchise, or service types within a franchise – e.g. commuter, intercity, regional. We are interest in experience and examples from the UK or elsewhere.

Franchise specification

- Is the suggested model of specification practical and would it deliver good outcomes for passengers and taxpayers? What are the key unresolved issues? Are there alternative models that work better, and what are these?
- What factors should be considered in determining franchise length?
- Would the proposal to supply an initial "affordability" figure for premium or subsidy help bidders submit realistic proposals?

Franchise procurement

- What are the benefits and downsides to the procurement process outlined in the document?
- How can we reduce the complexity of bidding, while still protecting taxpayers and passengers (especially given a greater focus on quality)?

Contract design and management

- What services, outcomes and commitments should be contracted?
- What is the best way to structure outcome measures based around passenger satisfaction levels?
- What sanctions should be used to ensure operators deliver their commitments, including outcome measures?
- What level of performance bond and/or parental guarantees are appropriate?

Revenue risk

- Should the risk inherent in forecasting revenue over a longer period be shared between operators and government, and if so, how? What are the merits or drawbacks of review points? What are the merits or drawbacks of economic indexation compared to the existing revenue support/share or leaving revenue risk entirely with the operator?

Franchise investment

- How can we add to incentive from longer franchises to remove the barriers to private sector investment?
- How can we encourage investments with long payback periods throughout the franchise term, not just at the start?

Cost control and efficiency

- How can the government incentivise operators to control cost increases over the life of the franchise, and to improve cost efficiency?

8. Next steps and how to respond

8.1 The consultation period began on 22 July and will run until 18 October 2010, please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at www.dft.gov.uk/consultations/open or you can contact the Department on the email address below if you would like alternative formats (Braille, audio CD,etc).

8.2 Any consultation responses should be sent to:

Rail Franchise Policy Team
Department for Transport
Zone 5/27
Great Minster House
76 Marsham Street
London
SW1P 4DR

Or by email to:

franchisepolicy@dft.gsi.gov.uk

8.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

8.4 The Government will consider all suggestions for reforming its rail franchising policy for the future. We will outline our revised policies later in the year, with a view to beginning new franchise procurements soon after.

Annex A

Service quality measure

A.1 The Government believe that it is vital that any franchise contract places demanding service quality requirements on operators to ensure they are delivering for passengers.

A.2 The new franchise obligations will specify outputs, moving away from the inflexible, over prescriptive lists of inputs used in recent years.

A.3 The most recent franchise competition (South Central) included requirements for bidders to propose and monitor passenger satisfaction scores related to station, trains and information and customer services. Where these targets are not achieved operators will be required to carry our further initiatives to improve their results

A.4 This feature of the franchise goes in the right direction, by placing an explicit focus on passengers, but does not go far enough. We wish to see a far greater weight given to outputs of this kind, and – crucially – use it with greater confidence in order to reduce the micromanagement and interference in the day-to-day business decisions by railway professionals.

A.5 In future the service quality output measure for franchises could include two elements:

- Passenger Opinion
- Service Quality Surveys

A.6 These combined scores would produce an overall Service Quality Output Measure for each franchise. The surveys would be comparable across all similar train operators.

A.7 Respondents are asked to consider what weight Passenger Opinion and the Service Quality Surveys should have in the overall Service Quality Output Measure.

Passenger opinion

A.8 The Passenger Opinion surveys would be run independently from the train operator and passenger would be surveyed four times per year (compared to twice per year with the National Passenger Survey). The survey will gain passengers views on a number of key elements of the journey including:

- overall quality of the service
- standard of trains standard of stations
- car and cycle parking and integration with other modes
- ticket purchasing
- information provision
- security
- attitude and helpfulness of staff
- punctuality of the service

A.9 Passengers would be asked to rate the service offered by the operator from good / satisfied to poor / dissatisfied.

Service quality surveys

A.10 The surveys would be similar to a Mystery Shopper Survey, and would require train operators to audit the performance of their services on a continuous rolling basis, assessing services at all times of day and day of week.

A.11 The surveys would cover all aspects of the service including stations, trains and information and would focus on elements such as cleanliness, upkeep and presentation and whether equipment is working (eg ticket machines, information screens). We are also considering whether requirements should exist for operators to assess ticketless travel.

A.12 The surveys would be templated across all similar operators so that the same methodology and marking scheme would be applied, allowing similar operator results to be compared. Operators would be required to publish these results.

A.13 Operators would be required to set a benchmark score for the key elements of service. There may be scope for selecting particular key features of service that are given greater weight in different franchises. It is unlikely that this benchmark would be delivered straight away so operators would set a target for the number of stations or trains that meet the benchmark for every year throughout the franchise. Where these targets are not achieved operators would be required to set out a plan (including additional expenditure) as to how the targets would be delivered in future years.

Annex B

Freedom of information

B.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

B.2 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

B.3 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

B.4 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Annex C

Code of practise on consultations

C.1 The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

C.2 The Code contains seven criteria. They should be reproduced in all consultation documents. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

C.3 The seven consultation criteria:

1 **When to consult**: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2 **Duration of consultation exercises**: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3 **Clarity of scope and impact**: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4 **Accessibility of consultation exercises**: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5 **The burden of consultation**: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6 **Responsiveness of consultation exercises**: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7 **Capacity to consult**: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

C.4 A full version of the code of practice is available on the Better Regulation Executive web-site at: http://www.bis.gov.uk/files/file47158.pdf

C.5 If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

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