



Department for
Transport

A greater role for ORR regulating passenger franchisees in England & Wales

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Foreword

1. A fundamental aim of this Government is to simplify the landscape of regulation. At present, the regulation of the rail sector in England and Wales is divided between the Department for Transport (DfT) and the Office of Rail Regulation (ORR).
2. This consultation seeks views on the potential for an expanded role for ORR in respect of new passenger rail franchises in England and Wales. It sets out areas where the Government believes there may be a case for ORR doing more in relation to the protection of passenger interests, in line with the Programme for Government commitment to turn the rail regulator into a powerful passenger champion.
3. The Government and ORR recognise the need for better alignment of incentives across the industry. Government also believes it should be less prescriptive and less involved in the detail of how the railways are run. These two changes form an important element of the Government's reform programme to improve value for money for passengers and taxpayers, and enable rail to play its full part in supporting sustainable economic growth.
4. This document seeks views on whether, to facilitate these improvements, ORR might take up a wider role around franchises, for example, taking on responsibility for assessing whether train operators are meeting their commitments on operational performance. The consultation sets out a balanced assessment of whether there is a case for changing the allocation of functions between the DfT and ORR.
5. The proposals in this document should not increase the overall regulatory burden on train operating companies or other private sector participants in the industry. The areas where it is proposed ORR might play a bigger role are currently subject to monitoring and enforcement by DfT, either through franchise contracts or responsibilities given to DfT under the licensing system. The Government believes that in some areas a move towards a more ORR-led approach using licences may enable reduction in the level of prescription to which franchised train operators are subject, freeing franchisees to better meet passenger needs and improve value for money while still ensuring passengers' interests are properly protected.

The Rt Hon Theresa Villiers MP
Minister of State for Transport

Anna Walker
ORR Chair

1. Introduction

Structure of this document

- 1.1 This chapter sets out the structure of the document and explains how to respond.
- 1.2 Chapters 2 and 3 examine whether change is needed and summarise what is proposed. Chapter 2 also asks for views on ORR's role in holding Network Rail to account.
- 1.3 Chapter 4 sets out immediate proposals for changes to new licences in respect of complaints handling procedures and disabled people's protection policies.
- 1.4 Chapter 5 describes further possible reforms which would extend ORR's role to regulating train operating company (TOC) performance and service quality standards.
- 1.5 Annex A contains the proposed changes to the licensing system for the elements described in chapter 4 and indicative licence conditions to show the approach ORR might take to the elements described in chapter 5. Annex B contains the full list of consultation questions.

Responses

- 1.6 Please send your comments on any aspect of these proposals to:

Gordon Herbert
Office of Rail Regulation
1 Kemble Street
London WC2B 4AN
or networkregulation.enquiries@orr.gsi.gov.uk.

- 1.7 Please send your comments by **2 March 2012**.
- 1.8 This is a joint ORR and Department for Transport (DfT) consultation so all responses will be shared between ORR and the DfT.

- 1.9 If you would like your response, or any part of it, to be kept confidential please say this clearly. Otherwise ORR intends to publish the responses on its website in full.
- 1.10 If you disagree with a proposal please say why. Also, where possible please include estimates of any likely costs and benefits for you of these changes.

Question 1: May we publish your response?

2. The case for change

- The Government and ORR wish to explore whether a regulatory approach to the protection of passenger interests, implemented through the licensing system, could deliver useful benefits in certain areas.
- If appropriately targeted, this approach has the potential to simplify and better align industry accountabilities, giving greater flexibility in how customer needs are met, while giving assurance that passenger interests are protected.
- If we go ahead with change in this area, it would be necessary to ensure that train operators know how the approach would work in practice, including being clear about who is regulating what. ORR would need to ensure it had the right resources and skills to do the job, and ministers would need to be satisfied that they would continue to make decisions for which they need to be accountable to Parliament.

The current regulatory system

- 2.1 Currently, responsibility for regulation of the railways in England and Wales is divided between the DfT and ORR. Responsibility for day-to-day delivery of railway services rests with the industry. Passenger Focus is the independent passenger watchdog for the sector¹, but lacks the statutory powers needed to take enforcement action against industry parties. The Government and ORR intends for it to continue its valuable work in ensuring that the concerns and interests of passengers are brought to the attention of policy makers.
- 2.2 ORR is the independent economic and safety regulator for the railways². ORR has a wide ranging role. It already regulates both Network Rail and TOCs through the licensing system and through competition and consumer law. Its remit covers key areas such as health and safety and it has responsibility for approving contracts to access stations, track and light maintenance depots.

¹ London Travelwatch has this function for transport users in and around London.

² ORR's website is at <http://www.rail-reg.gov.uk/server/show/nav.1>.

- 2.3 However, there are important areas where ORR is not involved in TOC regulation. For example, while ORR regulates Network Rail's income, delivery of outputs and stewardship of the network through access charges reviews and the company's network licence, the delivery of most outputs by most TOCs is secured through the franchising system. Since 2000, the DfT and other franchising authorities have been responsible for regulating a range of consumer issues that were previously dealt with by ORR.
- 2.4 The Government and ORR consider that in view of the number of new franchises that will shortly be let it is timely to consider whether this allocation of accountabilities should be changed.
- 2.5 This consultation is concerned with the extent to which ORR should use its powers to influence and regulate the behaviour of licence holders in the interests of passengers. As the licensing authority ORR has wide powers to specify the conditions with which licence holders must comply; and it has powers of enforcement available to it depending on the circumstances.
- 2.6 Scottish ministers have franchising responsibilities for train services in Scotland³. This document is about franchises let in England and Wales by DfT, although ORR will want to consider with Transport Scotland whether any aspects should also be applied to services franchised by Scottish Ministers. For England and Wales, ORR and DfT intends to discuss with other franchising authorities whether the changes should apply to franchises⁴ they let.

The Rail Value for Money Study

- 2.7 The Rail Value For Money Study (RVFMS)⁵ concluded that significant changes are needed if the rail industry is to achieve its full potential in meeting the needs of users and funders, and do so in the most efficient way.
- 2.8 The RVFMS said that the industry needs to take more responsibility for deciding how the railway is to be delivered, with the Government focusing on the strategic decisions about what society wants from the railways, and how much subsidy should be put in, and less on the detail of delivery.

³ And also for Anglo-Scottish sleeper services.

⁴ Including concessions.

⁵ <http://www.dft.gov.uk/publications/realising-the-potential-of-gb-rail/>

- 2.9 To be effective these changes would require much better alignment of incentives in the rail industry. The incentives need to be such as to align the industry with the needs of customers and funders of the railway and to deliver these needs in the most efficient way. But they will also need to be better aligned across the industry. The Government's proposed franchise reform, alongside greater decentralisation of responsibilities within Network Rail, is designed to facilitate this improved alignment. ORR's periodic review of access charges, now under way, is also a key means by which this alignment will be achieved.
- 2.10 This raises questions about the role of regulation in the rail industry. As part of its central theme of closer working between different parts of the industry, the RVFMS concluded there should be a move towards a single regulator for the whole industry. It said "such a move would provide greater clarity between the roles of government and the regulator, on the basis that the setting of policy direction and the making of politically sensitive trade-offs between high-level objectives is clearly the role of Government, whereas the day-to-day regulatory decisions are made by the independent regulator, the ORR".
- 2.11 The RVFMS envisaged ORR taking on the regulatory role in relation to franchises, and, possibly, at some point in the future, the regulation of fares, as well as regulating cross-industry outcomes, general passenger-focusing obligations, and reviews of outputs and franchise changes (the DfT would continue to handle procurement of franchises under this scenario).

The Government's franchising policy and its implications for regulation

- 2.12 The Government is committed to improving services for passengers and enhancing the value of the franchising system through moving to longer and less prescriptive franchises⁶.
- 2.13 More flexible franchise specifications, combined with longer franchises and the reform of incentives, should allow train operators more room to respond to signals from passenger demand. The Government intends that different locations remain properly served through the train service specification it

⁶ <http://www.dft.gov.uk/news/statements/hammond-20110805>

requires the franchisee to deliver. And output requirements in franchises should ensure that passenger interests are protected.

- 2.14 The Government and ORR wish to examine whether a regulatory approach towards the delivery of these outputs, implemented through the licensing system, may enhance the protection of passenger interests and the ability of TOCs to contribute to the reduction of the industry's cost base.
- 2.15 The Government and ORR see potential advantages in a new approach, particularly:
- Giving assurance that passenger interests are protected while allowing TOCs more flexibility to meet customer needs in different ways and to contribute to the reduction of the industry's cost base.
 - Creating better alignment of industry accountabilities, thus contributing to better alignment of incentives across the industry, with a single regulator helping to secure whole-system outcomes in certain key areas.
 - Simplifying current regulatory responsibilities to the benefit of users and TOCs.
 - Providing a means by which decisions which require Ministerial accountability can be made by the Government, but allowing more decisions about how policies are to be delivered to be made under the supervision of an independent regulator applying clear, transparent rules.

Thus, enlarging the role of ORR could potentially deliver benefits to users, taxpayers and the rail industry. But the Government would retain the ability to specify particular outputs and enhancements that it wished to purchase, as part of the franchising process. It must also retain responsibility for decisions for which ministers need to account to Parliament.

Question 2: Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed.

- 2.16 The changes being consulted upon are not intended to increase the amount of regulation in the industry. In some areas, it is envisaged elements of previous franchise contracts could vanish entirely, with no equivalent replacement regulation. In areas where it is suggested ORR might take on a role, it would need to perform it in line with its statutory duties. These include

enabling operators to plan their businesses with a reasonable degree of assurance and minimising the restrictions and regulatory burdens the regulator imposes.

- 2.17 Independent regulation relies on formal functions – setting frameworks and incentive arrangements, monitoring and enforcing – but also on influence and transparency.
- 2.18 The Government intends to set out its longer term approach in a Command Paper to be published in early 2012. This document sets out for consultation a package of changes on which the Government and ORR are seeking views in advance of the Command Paper. This is to enable decisions to be made on what changes should be incorporated in franchises to be let in 2012.

ORR reporting on whole industry and train operator efficiency and performance

- 2.19 Following the RVFMS, ORR is developing proposals to undertake and publish regular reports on whole-industry and TOCs' efficiency and performance to increase transparency on the industry's money flows and value for money. It expects to publish initial thinking on this early in 2012.

Franchise change

- 2.20 The Government has also noted concerns around whether the present franchising system facilitates efficient and timely change in what the Government wants from the railways, for instance in the high level strategies it produces as part of the periodic review process. This is likely to become a more important issue with longer franchises. Current mechanisms rely on a combination of principles set out in advance in the contract, negotiation and Ministerial direction. By contrast, the efficient cost of changes in what is required of Network Rail is determined by ORR.
- 2.21 The Government is not proposing changes to existing franchise change mechanisms as part of this consultation exercise. However, the Government and ORR welcome views on whether ORR, as independent regulator, might play a role with respect to franchise change in relation to future franchises.

2.22 Possible options for the role of ORR in franchise change might include:

- Providing independent advice on the efficient cost of changes to franchise outputs which might include the impact of an access charges review.
- Acting as an arbiter between the Government and TOCs during negotiations on changes to franchise outputs.

Question 3: Do you see any potential benefits or drawbacks in moving towards giving ORR an enhanced role in respect of franchise change?

ORR's role in respect of Network Rail

2.23 This document does not touch in detail on ORR's role in respect of the economic regulation of Network Rail. Neither Government nor ORR propose that existing roles should change in this area.

2.24 Government is committed to ensuring that Network Rail is properly accountable and will work with the company, other stakeholders and with ORR to ensure this is achieved. At the same time, ORR will continue to apply and refine the regulatory regime by which it holds Network Rail to account. ORR will ensure that the incentives placed upon Network Rail are effective and properly targeted as part of its 2013 periodic review. ORR is consulting on the incentive framework as part of the 2013 periodic review.

2.25 The Government's forthcoming Command Paper is to consider the mechanisms for holding Network Rail to account. The intention is that it will set out proposals aimed at reducing the company's costs while improving the service it offers to both passenger and freight train operators.

2.26 Following the publication of the Command Paper, ORR intends to begin a consultation on whether its licence conditions in respect of Network Rail's corporate governance and executive remuneration are appropriately scoped and effective. As part of this exercise, the Government and ORR would consider whether ORR's current statutory powers in respect of Network Rail are sufficient.

2.27 While not the primary purpose of this document, the Government and ORR are interested in views on the areas that consultees think this exercise might wish to focus on.

Question 4: Are there any representations you would like to make concerning ORR's role in holding Network Rail to account?

3. Summary of proposals and general principles

This chapter sets out:

- the scope of the proposals,
- the underlying principles,
- ORR's approach to monitoring and enforcement,
- transitional arrangements, and
- the funding issues.

Scope

- 3.1 This consultation sets out proposals for changes to conditions in new passenger train operator licences issued by ORR under the Railways Act 1993 and in equivalent Statements of National Regulatory Provisions (SNRPs)⁷ issued to TOCs covered by European licensing rules⁸. For the immediate future, it is proposed that the new licensing conditions would apply only to new franchises. At present neither the Government nor ORR have any plans to amend existing franchise contracts or licences to include changes that might result from this consultation. ORR intends to discuss the proposed changes with existing and potential open access operators separately from this consultation.
- 3.2 To the extent that, following this consultation, new provisions are included in licences, DfT would not include overlapping provisions in franchise agreements.
- 3.3 In March 2011 ORR consulted on modifications to train operator, Network Rail and station operator licences to improve accountability for providing passenger information, especially in times of disruption⁹. ORR has now announced that it wishes to proceed with these modifications and has

⁷ In this document, further references to licences and licence conditions include SNRPs except where the context makes it clear that it does not.

⁸ As implemented in GB by the Railways (Licensing of Railways Undertakings) Regulations 2005.

⁹ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10368>

launched a further consultation to that effect. This issue is not therefore covered in this consultation document.

3.4 This consultation proposes immediate changes to ORR's model licence conditions relating to:

- complaints handling, and
- disabled people's protection policies (DPPPs).

These would be introduced starting with the new InterCity West Coast franchise, which is due to start operations in December 2012.

3.5 This document also discusses potential changes relating to:

- train service performance, and
- service quality standards.

3.6 Future franchises are expected to include provision for TOCs to take over responsibility for all aspects of station asset management from Network Rail. The Greater Anglia and InterCity West Coast franchises are to be the pilots for this and licences are to contain conditions setting out how station stewardship is to be regulated. This is not covered in this document as it is essentially a transfer of asset stewardship from Network Rail, rather than a substantive change to the regulatory regime. ORR expects to cover this issue in a future consultation.

Principles underlying the proposed changes

3.7 The principles behind the proposed changes in each of these areas differ and have informed the scope and timing of these proposals.

3.8 In the case of complaints handling and DPPPs, the proposed change involves a straightforward transfer of responsibilities from the Secretary of State to ORR. The outcome of the proposed change is that a single regulator would have responsibility for complaints handling and DPPPs as opposed to the current system where responsibility is divided between DfT and ORR.

3.9 The Government and ORR are interested in exploring the benefits of a transfer to ORR of responsibility for the regulation of TOC performance. There could be potential benefits in giving oversight responsibility for the

performance of both Network Rail *and* the TOCs to a single body. This could help facilitate the development of aligned industry-wide plans to improve performance. However, a move away from the current allocation of responsibilities has some risks because the importance passengers attach to performance means that Ministers will always face questions about this issue at the dispatch box. If some powers in this area are transferred to ORR, the Government would certainly need to retain responsibility for setting the overall requirements for performance via franchise specification and the periodic review processes.

- 3.10 The Government and ORR are also interested in the question of whether it might be beneficial to move to a licensing approach for service quality standards. This might potentially allow for the better alignment of cross-industry action to deliver improvements for passengers. Again, the Government is conscious of the need to retain appropriate levels of Ministerial responsibility where decisions would impact on the expenditure of public funds.

Making the changes

- 3.11 For each possible change this document sets out:
- the current position and the reasons for proposing change,
 - a potential licence condition, and
 - an assessment of what ORR expects it would mean in practice (including the approach to monitoring and enforcement, based on existing policies).
- 3.12 Passenger franchises have very different business models from Network Rail. Regulation of franchises has generally been implemented through input-based contractual provisions. The current Government is seeking to move away from this model and the franchise reform programme is focused more strongly on outputs rather than on detailed inputs.
- 3.13 Having regard to its duty to enable providers of railway services to plan their businesses with a reasonable degree of assurance, ORR is setting out its proposed approach to putting possible new conditions into practice in this document. This chapter sets out the general principles of ORR's proposed approach, the sections in later chapters give more specific detail on each of the conditions.

- 3.14 The proposed obligation for train service performance is purposive, setting a general objective with an obligation to take reasonably practicable steps to meet it, having regard to all relevant circumstances. A purposive approach could also be adopted for the proposed service quality standards licence condition.
- 3.15 This approach is one that ORR already has experience of using. For example, Network Rail's obligation to secure the operation of the network so as to meet its customer and funders' reasonable requirements is set out in purposive terms. The advantage of such an obligation is that it can set a clear objective to be achieved while leaving the operator a great deal of flexibility as to how it should go about achieving it. But ORR recognises that licence holders need to be able to understand how the conditions are to be applied in practice.

ORR's approach to monitoring and enforcement

- 3.16 ORR adopts a proportionate approach to enforcing licence conditions, as set out in its economic enforcement policy¹⁰. This policy sets the powers ORR has to enforce compliance with the licence and its approach on when (and why) it does so. It also sets out the remedies available to ORR if a licence holder is not complying with its licence, and how it will decide whether and how to use them.
- 3.17 ORR expects to apply the same enforcement policy to any new licence obligations it might receive as a result of this consultation. In particular ORR:
- would focus on serious and systemic issues, taking a proportionate approach,
 - expects licence holders to use industry processes to resolve problems wherever appropriate, and
 - is mindful of the need to avoid double jeopardy.

DfT would not include obligations in franchise agreements that overlap with the proposed new licence conditions. DfT expects ORR to monitor and enforce the obligations and if it has concerns about delivery it may take this up with ORR.

¹⁰ <http://www.rail-reg.gov.uk/upload/pdf/395.pdf>

Enforcement orders and penalties

- 3.18 In some situations, ORR has the power to make enforcement orders to require licence holders to remedy a breach or prospective breach of the licence.
- 3.19 ORR is also able to levy penalties for breach of licence or when it makes some enforcement orders. ORR's policy is to do this where it considers it is an effective way to incentivise compliance and change future behaviour. The DfT has similar powers to levy penalties and impose enforcement orders. However, in most cases where a franchisee has not complied with a term of its franchise agreement but the DfT is satisfied that the franchisee has agreed to take, or already taken, remedial action to secure compliance with the franchise agreement obligation, or the contravention has not affected passengers or led to an increase in public expenditure, then the DfT will serve notice of this fact on the franchisee and publish the notice on the Secretary of State's public register. Only very rarely has the DfT imposed a penalty or issued an enforcement order under the Railways Act.

Question 5: Should ORR consider any revisions to its enforcement and penalties policies if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements for passengers as an alternative to levying a penalty?

Supplying information

- 3.20 ORR has considered whether to seek to reinstate a previous licence condition that required licence holders to provide information to ORR upon request. However, ORR believes that it can rely on the general information gathering powers at section 80 of the Railways Act 1993 and, for these proposals, additional powers through a dedicated licence condition are not needed.

Regulatory statement

- 3.21 Subject to the outcome of this consultation ORR expects to set out the way it sees the conditions actually working in practice in a regulatory statement to be issued at the time it announces its decision on whether to introduce new conditions. This is something ORR has previously done, for instance in respect of its approach to joint performance improvement plans and its

approach to the regulation of High Speed 1. Such statements are designed to give assurance to those affected about the approach to be adopted.

Transitional arrangements

3.22 The proposal is that if new licence obligations are to be introduced they would be included in future franchises, not current ones. This means that existing franchises would remain covered by existing accountabilities to the Secretary of State or other franchising authorities. With a large majority of franchises coming up for renewal over the next four years, ORR and DfT believe this is largely a transitional issue and can be managed. During the period of transition ORR and DfT are to put in place arrangements to co-ordinate their respective approaches.

Question 6: Are there any specific points on which DfT and ORR should set out their proposed approach during the transition period?

Funding

3.23 ORR is funded, for its economic regulatory functions, through a licence fee paid by Network Rail. This followed reviews in 2004 and 2005¹¹. In turn Network Rail's costs are reflected in its access charges. The system spreads costs amongst all licensed operators and is efficient. However if a significant part of ORR's activity were to involve economic regulation of train operators, it would be necessary to ensure that ORR remained adequately and appropriately funded.

Question 7: Should ORR review its funding arrangements in the light of the changes proposed in this consultation?

¹¹ <http://www.rail-reg.gov.uk/upload/pdf/250.pdf>

4. Immediate package of reforms

It is proposed that ORR should take on additional responsibilities for complaints procedures and DPPPs, transferred from DfT.

Background

- 4.1 The Government and ORR propose that responsibility for two passenger facing obligations is transferred to ORR. Currently DfT has involvement in these through franchise conditions and approval roles under licences.
- 4.2 The obligations concerned are maintenance of and compliance with:
- an acceptable passenger complaints handling procedure, and
 - disabled people's protection policies (DPPPs).
- 4.3 For each of these areas the Government and ORR currently envisage that implementation would only take place in respect of new franchises. Already-let franchises would be expected to remain within the existing system until they reach the point of renewal.

Complaints handling procedures

It is proposed that ORR should be responsible for all aspects of approving, monitoring, and enforcing compliance with complaints procedures through station and passenger train operator licences.

Introduction

- 4.4 Operators are required by their licences to comply with a complaints procedure (which sets out how the operator will deal with and respond to complaints from those using its services), approved by the Secretary of State.
- 4.5 It is proposed that this condition is amended so that responsibility for approving operators' complaints procedures transfers from the Secretary of State to ORR. It is also proposed to clarify aspects of the procedural arrangements and align these between the complaints procedure and DPPP conditions.

Current arrangements

- 4.6 Licensed operators are currently required to:
- “comply with a procedure (“Complaints Procedure”) approved by the Secretary of State as at the date on which this licence came into force for handling complaints relating to licensed activities from its customers and potential customers.”¹²
- 4.7 In addition to approving complaints procedures, the Secretary of State may also require the licence holder to carry out a review of its complaints procedure and make such alterations to it as are reasonably required.

Reasons for change

- 4.8 The enforcement mechanism sits with ORR, through the licence. Through its role in the approval of complaints procedures, DfT has responsibility for policy and monitoring compliance.
- 4.9 This arrangement therefore means that responsibilities in relation to complaints procedures are fragmented, being split between DfT and ORR.
- 4.10 Transferring responsibility for the approval of complaints procedures to ORR would bring the policy, approval, monitoring and enforcement roles in relation to complaints procedures together in a single place.
- 4.11 It would also bring these functions together with ORR’s role in respect of the collection and publication of complaints data, where it is already working with the industry to improve the quality and consistency of this data.
- 4.12 The consolidation of these functions would mean that ORR is better placed to monitor the industry’s performance with regard to its obligations in this area, for example through analysis of complaints data, as well as to engage with the industry in the delivery of improvements for passengers.

Scope of proposed change

- 4.13 The proposal is that the Secretary of State’s role in approving complaints procedures, as well as the power to require complaints procedures to be

¹² Condition 6 of the model passenger SNRP, http://www.rail-reg.gov.uk/upload/pdf/lic-pass_SNRP.pdf and model station licence, <http://www.rail-reg.gov.uk/upload/pdf/lic-stn Lic.pdf>

reviewed and modified, is transferred to ORR. A draft licence condition, showing the proposed changes, is at annex A.

- 4.14 It is also proposed to make some changes, which are mainly designed to clarify and standardise the processes in the complaints handling and DPPP conditions, to remove any potential doubts about what is required. These changes were consulted on in June 2010¹³ but not taken forward at the time and the wording has now been amended slightly to provide greater clarity.

The proposed changes in practice

- 4.15 The result of the proposed changes would be that responsibility for approving complaints procedures, and the associated power to require their review and modification, would transfer from the Secretary of State to ORR.
- 4.16 The underlying nature of the obligation contained in the licence would not change – licensed operators would still be required to comply with a complaints procedure – the difference being that it would be ORR, rather than the Secretary of State, that would be responsible for approving and reviewing complaints procedures.
- 4.17 Where ORR requires modifications to be made to a complaints procedure following a review by the licence holder, ORR would expect the licence holder to develop those modifications itself. It would only be in exceptional circumstances that ORR would propose modifications, for example, where the licence holder failed to develop suitable modifications.
- 4.18 These changes should not therefore have a material effect on the obligation as it currently stands and therefore should not result in any additional burdens.
- 4.19 The amendment requiring a notice to show where the complaints procedure can be found may require additional notices to be displayed, alongside those already required to show where the DPPP can be found. Licence holders would be required to make available copies of the complaints procedure which could be electronically or, if necessary, a copy downloaded and printed specifically for passengers without access to the internet.

¹³ The 11 June 2010 consultation is at:
http://www.rail-reg.gov.uk/upload/pdf/pro_licence_review_consultation.pdf

- 4.20 While TOCs are required to comply with an approved complaints procedure, there are no statutory or mandatory requirements as to its content. However, in 2005, the Strategic Rail Authority published guidance¹⁴ setting out the “fundamental principles which the Authority will expect to see reflected in any complaint handling procedure submitted to it for approval and the way in which those principles should be incorporated into operators’ procedures.” This guidance remains the standard against which complaints procedures are currently assessed and approved.
- 4.21 ORR would continue to approve complaints procedures in line with the current guidance in the short term but would conduct a review of the guidance, which would include consultation with all relevant stakeholders, including licensed operators and passenger bodies.
- 4.22 The review would consider whether current complaints procedures are fit for purpose, in particular the extent to which they meet passengers’ expectations, both in terms of how their individual complaint is handled and how train companies respond to the issues raised by complaints.

Question 8: Do you have any comments on the proposals for regulating complaints handling procedures?

Disabled people’s protection policies

It is proposed that ORR should be responsible for approving, monitoring and enforcing compliance with DPPPs through station and passenger train licences.

Introduction

- 4.23 Disabled people’s protection policies (DPPPs) are the vehicle for operators to set out their commitments and standards of service provision, as well as relevant policies and practices, with regard to disabled people using the rail network. They also provide an overview of the accessibility of the operators’ facilities and services.
- 4.24 Operators are currently required by their licence conditions to establish and comply with a DPPP, which is approved by the Secretary of State.

¹⁴

<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/rail/sra/sracomplaintshandling.pdf>

- 4.25 It is proposed that this licence condition is amended in order to transfer responsibility for approving operators' DPPPs from DfT to ORR, as well to align the procedural elements of the DPPP and complaints handling conditions.

Current arrangements

- 4.26 Currently, train and station operators are required by their licences¹⁵, issued and enforced by ORR:

“to establish and comply with a statement of policy and a detailed body of arrangements, procedures, services and other benefits to be implemented or provided by the licence holder designed to protect the interests of people who are disabled (which together form the DPPP).”

- 4.27 DPPPs, and changes to them, are subject to the approval of the Secretary of State, who may also direct a review of an operator's DPPP.
- 4.28 In establishing its DPPP and making any changes to it, an operator must have regard to the code of practice published by the Secretary of State.
- 4.29 The current code is called “Accessible Train Station Design for Disabled People: A Code of Practice”¹⁶. It “identifies standards for passenger train and station operators that licensed operators must follow whenever they install, renew or replace infrastructure or facilities. It also provides advice and recommendations of good practice for all operators to provide greater opportunity to travel for, and further enhance the experience of, disabled people using the railways...”
- 4.30 Where an operator cannot meet the standards in the code of practice, then it must apply to DfT for a dispensation. The preparation and publication of the code of practice is a statutory obligation¹⁷ on the Secretary of State. No changes to this arrangement are proposed and the Secretary of State would

¹⁵ See condition 5 of the model passenger SNRP, <http://tinyurl.com/6gypt4e> and model station licence, http://www.rail-reg.gov.uk/upload/pdf/lic-stn_lic.pdf

¹⁶ <http://tinyurl.com/6bhfd6>

¹⁷ Section 71B of the Railways Act 1993 (as amended) requires the Secretary of State to prepare and publish a code of practice for protecting the interests of users of railway passenger services or station services who are disabled.

remain responsible for the preparation and publication of the code, as well as for granting dispensations from it.

4.31 In addition to the code of practice, DfT also publishes guidance¹⁸ to those writing DPPPs on their expected content and its approach to their approval.

4.32 According to its introduction, the guidance¹⁹

“...sets out the criteria the Department will normally adopt in exercising its function, under the ‘Provision of Services for Disabled People condition of the passenger and station licences, of approving each operator’s Disabled People’s Protection Policy (DPPP). In particular it explains what the Department would normally expect an approved DPPP to contain in order to comply with the licence condition. It also provides an introduction to the relevant background material that licence holders will need to take into account when drawing up a DPPP for the Department’s approval.”

Reasons for change

4.33 This arrangement means that responsibilities in relation to DPPPs are currently fragmented, being split between DfT and ORR.

4.34 In addition to its responsibility for enforcement in relation to DPPPs, ORR is also responsible for the enforcement of the Rail Vehicle Accessibility Regulations (RVAR) and the Persons with Reduced Mobility Technical Specification for Interoperability (PRM TSI), which relate to the accessibility of rail vehicles.

4.35 Transferring the responsibility for the approval of DPPPs from DfT to ORR would therefore bring together the policy, approval, monitoring and enforcement role in relation to DPPPs in a single place as well as bringing together the regulation of how the industry treats passengers with reduced mobility more generally.

4.36 Bringing these functions together would provide ORR with a broader insight into how the industry is performing in respect of its disabled passengers and

¹⁸ ‘How to Write Your Disabled People’s Protection Policy: A Guide for Train and Station Operators’.
<http://www.dft.gov.uk/transportforyou/access/rail/railstations/disabledpeoplesprotection/pdf/peoplesproguide.pdf>.

¹⁹ As above, p.8.

ensure that is better placed to identify issues of concern and engage with the industry and with passengers in the delivery of improvements.

Scope of proposed change

- 4.37 It is proposed that the role of the Secretary of State in approving DPPPs and the associated power to require reviews and modification of DPPPs are transferred to ORR. Where ORR requires modifications to be made to DPPPs following a review by the licence holder, ORR would expect the licence holder to develop these modifications itself. It would only be in exceptional circumstances that ORR would propose modifications, for example where the operator failed to produce suitable modifications.
- 4.38 As with the complaints procedures licence condition, it is also proposed to make some changes, which are mainly designed to clarify and standardise the processes in the complaints handling and DPPP licence conditions, to remove any potential doubts about what is required. These changes were consulted on in June 2010²⁰ but not taken forward at the time and the wording has now been amended slightly to provide greater clarity.
- 4.39 The requirement that the licence holder shall not be obliged to undertake any action that entails excessive cost would remain unchanged.

The proposed changes in practice

- 4.40 As with the proposed changes to the complaints procedures condition, the underlying nature of the obligation contained in the licence would not change – licensed operators would still be required to establish and comply with a DPPP – again, the difference being that it would be that ORR would now be empowered to approve and oversee the review of DPPPs directly, underpinned by a code of practice set by the Secretary of State.
- 4.41 The proposed amendments to the process for updating the DPPPs make it explicit that changes should be made if deficiencies are identified following a review. This is implied in the current obligation as operators must make changes in order to comply with paragraph 1 of the condition. The change covering making copies of the DPPP available allows greater flexibility for

²⁰ The 11 June 2010 consultation is at: http://www.rail-reg.gov.uk/upload/pdf/pro_licence_review_consultation.pdf

those licence holders who would prefer to send the DPPP electronically, rather than having to prepare printed leaflets. Where the customer is unable to receive electronic versions, a downloaded and specifically printed version may be acceptable.

- 4.42 As with the proposed changes to the complaints handling licence condition, the proposed change would not therefore have a material effect on the obligation as it currently stands and, as such, should not result in any additional burdens.
- 4.43 The current guidance on writing a DPPP (referred to above) was published by DfT in November 2009, following a public consultation on draft revised guidance in 2008 and subsequent discussions carried out in a working group consisting of representatives from the rail industry and from groups representing the interests of disabled rail passengers.
- 4.44 Following the publication of the guidance, DfT began a review of licensed operators' DPPPs. Responsibility for concluding that review and for approving any DPPPs associated with new franchise lets would transfer to ORR as of the time at which the relevant licence changes are made.
- 4.45 While it will be necessary to amend the guidance to reflect the proposed procedural changes outlined above, it is not intended that any substantive changes will be made to the guidance for the time being.

Question 9: Do you have any comments on any of the proposals for regulating DPPPs?

5. Additional package of reforms

This chapter considers whether to expand ORR's role in respect of train service performance and service quality standards.

Background

5.1 The Government and ORR are seeking views on the potential to further expand the role of ORR in two additional areas:

- the monitoring and enforcement of train service performance; and
- the monitoring and potential enforcement of TOC responsibilities in respect of service quality standards.

5.2 Further details about the proposals for ORR to take over responsibility for monitoring and enforcing train service performance are provided below as are high level proposals for ORR to take over responsibility for ensuring train operators monitor and publish, or, alternatively, monitor and comply with, certain service quality standards.

Train service performance

The Government and ORR are considering whether responsibility for the monitoring and enforcement of train punctuality and reliability should be located in one place – ORR.

Introduction

5.3 At present, ORR is responsible for monitoring and enforcing Network Rail's performance against the operational performance targets established by the periodic review process and based on high level output specifications set by governments. Government is responsible for monitoring and enforcing franchisees' performance against the operational performance requirements specified in franchise agreements. Delivery of performance requires a joint effort by Network Rail and TOCs, but the monitoring and enforcement of this is split and accountabilities are divided.

- 5.4 It is being considered whether, instead of the present division of regulatory responsibility between the DfT and ORR, the monitoring and enforcement of operational performance (train punctuality and reliability) should become the responsibility of ORR. DfT and ORR want to establish whether this could provide a more consistent approach and help provide a stronger focus on the best and most efficient whole-industry solution. Alignment of accountability could potentially play a role in wider reform plans aimed at aligning incentives, reducing industry costs and delivering better value for money. We note the RVFMS conclusion that there were efficiency and performance benefits to bringing together the regulation of industry performance in one place.²¹
- 5.5 However, there are potential drawbacks and risks associated with removing performance issues from direct Ministerial accountability. The Government will wish to examine the full implications for taxpayers and passengers before deciding whether any change to the current arrangements for monitoring and enforcing performance and reliability should be made.
- 5.6 The Government is also aware that, at least for a period while the industry gains familiarity with the new arrangements, franchisees may consider that they would be subject to greater uncertainty than they are under the present contractual performance arrangements. This uncertainty may be reflected in the value of franchise bids. The proposals in this document are designed to allow train operators to better understand how a licensing system for performance might operate in practice; this and the competitive nature of franchise letting should help to mitigate this risk.
- 5.7 The proposals cover implementation of a regulatory approach to the monitoring and enforcement of performance levels in respect of new franchises. Existing franchises would remain within the present contractual performance arrangements until expiry and re-letting. As a consequence, there would, in the medium term, need to be dual-running of contractual and licensing systems. This is likely to present some administrative challenges that would need to be overcome if this proposed change were to go ahead.

²¹ <http://assets.dft.gov.uk/publications/report-of-the-rail-vmf-study/realising-the-potential-of-gb-rail-summary.pdf>

Possible licence change

- 5.8 The Government and ORR believe consideration should be given to giving ORR power to monitor and hold TOCs and Network Rail to account against their respective licences – with a new condition in operator licences complementing the current condition 1 of Network Rail’s network licence.
- 5.9 The purpose of the proposed passenger train licence condition would be:
- ‘to secure punctuality and reliability of services for the carriage of passengers by railway so as to satisfy the reasonable requirements of passengers and funders, including potential passengers and potential funders’.
- 5.10 Franchisees would be required to achieve the purpose of the condition to the greatest extent reasonably practicable having regard to all relevant circumstances (including the available funding).
- 5.11 This obligation is similar to the purpose and obligation in condition 1 of Network Rail’s network licence. However, that licence condition covers a range of Network Rail’s activities, as a monopoly infrastructure manager, and any condition on operators would be for operational performance only.
- 5.12 Should such a transfer of responsibility be deemed desirable, ORR would expect to introduce the condition when a licence is issued at the start of a new franchise.
- 5.13 The condition being considered for TOCs would also include a requirement to cooperate with Network Rail to produce and deliver performance plans. The terms of condition 1 of Network Rail’s licence already, in effect, place a similar obligation on Network Rail. These obligations would provide a backstop provision, enforceable by ORR, in support of the contractual provisions on cooperation dealing with performance in the Network Code which are enforceable by the parties themselves.

Putting the approach into practice

Setting performance targets

- 5.14 Under the possible new arrangements under consideration the reasonable requirements of users and funders under the proposed condition could be based on performance targets established at the time of a periodic review.

- 5.15 For the current control period (2009-14) ORR has set Network Rail targets for the public performance measure (PPM) and cancellations and significant lateness (CaSL). These “whole industry” targets require Network Rail to work with train operators to deliver them.
- 5.16 Should the possible shift to a licensing system be adopted for the current control period, the annual performance targets already set for Network Rail could also become franchise performance targets, established at the start of any new franchise.
- 5.17 It would be necessary to establish performance targets for the later years of the franchise (beyond the current control period). In many cases this could be done at the time of franchise competition. Alternatively, if it were not considered sensible to lock these targets in for the whole of the franchise, new targets might be established through the periodic review process. Provision would need to be made for the financial implications to be established through the franchise change process.

The obligation to meet the target

- 5.18 In the event of a change to the licensing system, the obligation to meet the target, and thus achieve the purpose, would be qualified so the requirement is to do so to the greatest extent reasonably practicable having regard to all relevant circumstances (including the available funding). If DfT made a referral or ORR considered that performance was likely to be materially worse than a performance target²² and that this reflected a material failure to take steps which a party could reasonably take to address poor performance, ORR would consider whether this was evidence of breach of licence. In the case of TOCs, ORR would expect to have particular regard to their role in the reasons for any failure and what assumptions were made in the franchise agreement.
- 5.19 The targets enforced through this licence condition would be minimum requirements. It would be open to train operators and Network Rail, through the joint performance improvement plan (JPIP) process to agree more challenging targets. Such targets would not be enforceable on the train operators, but Network Rail could be required to facilitate their achievement if this were required by its licence obligations.

²² other than a target explicitly expressed as an aspirational or stretch target.

Enforcement

- 5.20 ORR would expect its approach to enforcement to build on the approach it currently adopts to enforcing Network Rail's performance targets. ORR would expect parties to try to resolve any problems themselves in the first instance through the JPIP process. This has its own triggers for them to establish remedial plans and for notifying ORR if performance falls below the agreed levels. There is a process for notifying ORR if the parties cannot agree a JPIP. The National Task Force (NTF)²³ has also agreed standard JPIP threshold levels for both the reviews between Network Rail and the relevant TOC and more formal reviews that may lead to referral to ORR.
- 5.21 If the DfT made a referral or ORR considered that an annual performance target had been missed or is likely to be missed, it would begin by seeking to understand the reasons for the failure and what needed to be done to address it. Only after this would it expect to consider formal enforcement action.
- 5.22 In deciding what action to take, ORR would look at all the circumstances of the case including past, current and likely future performance, attribution of delays, whether parties were offering suitably challenging targets, what action had been taken to try to resolve the problem, whether the initiatives in the JPIP to improve performance were adequate and appropriate and any mitigating or aggravating factors, as well as looking at whether parties had acted reasonably and in the best interests of users of the railway. ORR would ask the respective operators for their views and normally hold a meeting with all the relevant parties before establishing whether any further action is appropriate.

Question 10: Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made? Are there any alternative ways of doing this?

²³ Comprising ATOC, Network Rail, ORR, DfT, RSSB, Train operators.

Service quality standards

The Government and ORR are exploring the possibility that the monitoring and enforcement of service quality standards agreed in the franchise and/or committed to by way of the franchise bidding process could be implemented by ORR via a licence condition rather than by the Government through a contractual mechanism.

Introduction

5.23 This section sets out a potential way in which the regulation of service quality standards might be undertaken by ORR. It sets out the scope and purpose of a proposed licence condition on service quality standards and invites views on:

- the possible framework for service quality, what it should include and how it should be measured;
- the nature of the obligation. The core proposition is for the licence holder to achieve certain standards of service to its passengers and to publish the outcomes it is supposed to achieve and how it is doing in delivering them. ORR and DfT are inviting comments on whether an obligation to monitor and publish should be supported with an obligation to monitor and comply;
- whether this would best be monitored and enforced by ORR as a licence condition, and what form monitoring and enforcement should take if that were the case.

5.24 A service quality management system (SQMS) has historically been a feature of franchise agreements. The SQMS comprised service quality standards and benchmarks against which the franchisee monitored its own performance and the resources required to comply. The franchise set out the procedures for periodic reporting of performance and audits of the system and for identifying and rectifying failures against benchmarks. It set out the Secretary of State's role in agreeing amendments to the system and undertaking independent audits.

5.25 The Government consulted in July 2010²⁴ on a proposed overall Service Quality Output Measure for each franchise based on the combined scores from passenger opinion and service quality surveys. The passenger opinion

²⁴ Reforming rail franchises, July 2010 (www.dft.gov.uk)

surveys would cover key elements of the journey. Service quality surveys would require train operators to audit the performance of specific aspects of their services on a rolling basis focusing on elements such as cleanliness, upkeep and presentation and whether ticket machines are working.

- 5.26 The Government also set out its proposal for operators to set a benchmark score for the key elements of the service, with scope for selecting particular key features that would be given greater weight in different franchises. The intention was for operators to set a target for a selected number of elements within stations or trains that meet the benchmark every year throughout the franchise ('service quality targets').

The possible approach and licence condition

- 5.27 Government and ORR believe the following policy principles should be adopted:

- moving to a less specified framework but at the same time retaining assurance that the franchisee can be held to account for failure to deliver on its commitments, and
- giving more prominence to transparency and public accountability by obliging the licence holder to periodically publish its performance against its own service commitments.

- 5.28 Government proposes to agree service quality measures with train operators during the franchise bidding process, based around passenger satisfaction scores. It is also considering what commitments to apply in relation to these obligations. Apart from a potential core of service requirements applying to all, the specific service quality measures and targets could vary by franchise, depending on the nature of the market in which the franchise is operating, the strength of other incentives on the franchise, and what Government is seeking from the specific franchise. Government wishes to concentrate on what matters most to passengers and to avoid too much detailed prescription of how the franchisee delivers the commitments. The aim is to focus more strongly on outcomes to be achieved (including passenger satisfaction) while giving franchisees more flexibility on how best to deliver them. For instance in the case of the West Coast franchise, Government has proposed measures based on overall disaggregated passenger satisfaction measured by Passenger Focus's National Passenger Survey (NPS).

Question 11: What are the key areas that should be covered by service quality measures and commitments? How should Government decide what to include in each franchise? Is there merit in having a core set of requirements that apply to all?

5.29 These service quality measures and commitments could in principle be enforced through the franchise. But transferring the responsibility for monitoring and enforcement of these requirements to ORR, rather than leaving them with the Government to enforce through a contractual mechanism, may potentially deliver some benefits. These are summarised in chapter 2. In particular, ORR might be better placed to ensure alignment across the whole industry to plan and deliver improvements for the passenger. The change could complement the wider role for ORR outlined elsewhere in this document by enabling the regulator to look across the whole of the passenger experience.

Question 12: Please comment on the specific benefits and disbenefits of the requirements on service quality measurement and commitments being enforced by licence rather than by contract.

5.30 The possible licence condition under consideration has two key elements:

- a transparency obligation requiring the licence-holder to monitor and publish performance against the service quality commitments. ORR would be able to issue guidance on how performance against the commitments should be measured (to ensure comparability), and to require an independent audit of the data, and
- a compliance obligation requiring the licence holder to comply with the commitments. Depending on the precise nature of the commitments, this might need to be qualified, for instance to confine the obligation to doing all that is reasonably practicable to deliver it. A more purposive approach could also be adopted, similar to that proposed for performance.

A draft licence condition is at annex A.

5.31 Government and ORR believe that a transparency requirement, which includes a requirement to monitor and publish the results, would of itself lead to benefits for passengers through reputational incentives. A key question is whether this would be sufficient incentive to ensure committed improvements

are delivered. On balance, Government and ORR believe that passengers and indeed Government should have stronger assurance about the delivery of the commitments being made, with a requirement to comply with them.

Question 13: Do you believe that the proposed licence condition would provide effective and proportionate accountability for delivery of service quality standards? Would a transparency obligation, relying on reputational incentives, be adequate? Or should it be supplemented by a compliance obligation? Should the compliance obligation be subject to doing what is reasonably practicable to deliver it, for instance through a purposive approach similar to that being considered for performance?

The approach in practice

5.32 The Government proposes to consult on its initial proposals for service quality measures and commitments for a franchise as part of the consultation that is run before the franchise competition takes place. Bidders would be free to make their own proposals, and the measures and commitments would be agreed through the bidding process. Before they were contracted in the franchise, Government would consult ORR on the monitoring and enforcement implications.

The transparency obligation

5.33 This element of the licence condition would require the licence holder to measure and publish its performance against service quality measures and targets.

5.34 Government and ORR expect that measurement of service quality would be by a combination of passenger opinion surveys and service quality surveys. It will be important that the different approaches complement each other so that periodic assessments can be generated. Measurement will need to be credible, reliable and accurate, and ORR would expect to require periodic independent reviews of the measurement systems to ensure this is the case.

5.35 While not wanting to create unnecessary prescription, the Government and ORR will want to ensure that measurement is carried out in a way that provides consistency from one reporting period to another. There might also be advantages to ensuring some consistency between different franchisees. However, as set out above, the nature of passenger satisfaction targets to be

achieved may vary from franchise to franchise which would affect the viability of delivering a uniform approach to reporting methods.

- 5.36 The Government and ORR see this framework as one which forms an important part of the service promise which a train operator makes to its passengers and as such it is an important element of the compliance framework. It enables the passenger to challenge and to compare and to lobby for improvement in those areas which are failing and which matter to them.
- 5.37 ORR would expect train operators to respond to what passengers are telling them directly. Part of ORR's focus would be on ensuring that the passenger voice is heard and responded to (in particular through its complaints handling role).
- 5.38 A critical part of this approach would also be in ensuring that the reporting processes are transparent and create a reputational incentive for improvement. If this reform were to go ahead, ORR would propose to publish reports on train service performance against their service quality standards as part of its regular publications on industry performance.
- 5.39 ORR would publish guidelines which it would develop in consultation with DfT, train operators and passenger bodies. These could cover such matters as:
- the form and periodicity of reporting,
 - the approach that ORR will expect the licence holder to adopt in determining the best method and periodicity of publication of the standards, targets and its performance against targets,
 - what ORR would expect to see in terms of self-measurement mechanisms and the form and periodicity of audit.

Question 14: What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers? How do we ensure that we give sufficient clarity and flexibility for franchisees in guidelines?

The compliance obligation

- 5.40 Under the potential licence condition, ORR, as well as monitoring and enforcing compliance with the transparency obligation, would be monitoring and enforcing compliance with the service quality commitments themselves.
- 5.41 ORR would see its role as:
- providing assurance to the Government that the franchisee is delivering any promises made in the bid,
 - providing assurance to passengers with an audit trail for failure to deliver, and
 - creating assurance for government and the passenger that there is a regulatory remedy in the event of failure.
- 5.42 In its approach to monitoring and enforcement, ORR would focus on serious and systemic failings, and look across the range of different aspects of service quality. ORR would expect to focus in particular on the effectiveness of the licence holder's systems for managing service quality. There is a parallel here with safety management where ORR's railway management maturity model helps to identify how well duty holders are meeting the requirements of their safety-management systems. This is an approach which ORR thinks could be adapted for the monitoring of service quality standards commitments. If this reform goes ahead ORR would expect to meet with train operators periodically to gain the intelligence necessary to put the reports into context.
- 5.43 As part of the bid evaluation, ORR and Government would seek to ensure that the service quality metrics which the bidder promises to deliver are consistent with other obligations in the licence and are deliverable within that context. The intention would be to avoid creating a parallel system of compliance and to develop a framework of regulation which is cohesive and provides ORR with the insight into how successful industry processes and licence holder's systems are in delivering passenger satisfaction in those areas in practice. In terms of enforcement, ORR would expect to inform the licence holder under which licence condition it was investigating a breach, and why, at the outset.

Question 15: Do you agree with the approach set out on monitoring of compliance with the service quality commitments? In particular do you think that an adapted safety management maturity model could be applied in this context?

Enforcement

- 5.44 ORR's approach to enforcement would be as set out in Chapter 3, using its regulatory powers to address serious and systemic failings in a proportionate way. Thus ORR would expect to focus on those areas that matter to passengers, while enabling train operators to respond flexibly to the needs of the market.
- 5.45 ORR would expect any failure to comply with targets over one or more elements of the service quality standards framework to be addressed by way of an improvement plan, which the licence holder would supply together with its periodic reports. The improvement plan would need to set out how performance would be improved and the timescales for delivering each standard where targets have not been reached. ORR might require the licence holder to alter the improvement plan prior to its implementation in the event ORR identified potential deficiencies in the plan. ORR could publish guidelines setting out what it would expect to see in an improvement plan.
- 5.46 ORR would not expect to take formal enforcement action against the licence holder unless the improvement plan was failing to have effect and there was evidence of harm to passengers. Such harm would be measured by way of either of a series of passenger opinion surveys which showed little or no improvement over time and/or compelling evidence including from passenger complaints.
- 5.47 This approach is similar to the DfT's approach to enforcement.

Question 16: Do you agree with ORR's proposed approach for service quality commitments of requiring improvement plans as a prelude to formal enforcement action?

A. Proposed changes to licences

This annex contains proposed new licence conditions for each subject discussed in this consultation document.

The draft conditions in this annex are:

Condition 6: Complaints handling

Condition 5: Disabled people's protection policies

Condition 29: Train service performance

Condition 30: Service quality standards

The proposed new SNRP conditions would be similar but with some differences. For example, where appropriate, the word 'licence' would be replaced with 'SNRP'. Other slight variations to wording may be needed with station licences.

Please note that these conditions are therefore basic templates, and subject to consultation, before any revised SRNPs and licences are used.

The current model licences and SRNPs can be found on ORR's website at <http://www.rail-reg.gov.uk/server/show/nav.1962>.

CHPs

Condition 6: Complaints handling

1. The licence holder shall by the date on which this licence comes into force establish and thereafter comply with a procedure for handling complaints relating to licensed activities from its customers and potential customers (the “Complaints Procedure”).
2. The licence holder shall not establish, or make any material alteration (save in respect of any alteration required in paragraph 3(b)), to the Complaints Procedure unless and until:
 - (a) the PC and, where appropriate, LTUC has been consulted; and
 - (b) the licence holder has submitted the Complaints Procedure, or (as the case may be) the proposed alteration, to ORR and ORR has approved it.
3. Where ORR requires the licence holder to carry out a review of the Complaints Procedure or any part of it or the manner in which it has been implemented, with a view to determining whether any alteration should be made to it, the licence holder shall:
 - (a) promptly carry out a review and shall submit a written report to ORR setting out the results or conclusions; and
 - (b) make such alterations to the Complaints Procedure, or the manner in which it is implemented, as ORR may reasonably require after ORR has received a report under paragraph 3(a) and consulted the licence holder, the PC and, where appropriate, LTUC.
4. The licence holder shall:
 - (a) send a copy of the Complaints Procedure and of any alteration to it to ORR and the PC and, where appropriate, LTUC;
 - (b) in a place of reasonable prominence at each station at which trains of which the licence holder is the operator pursuant to this licence are scheduled to call,

display or procure the display of a notice giving the address from which a current copy of the Complaints Procedure may be obtained; and

- (c) make available free of charge a current copy of the Complaints Procedure to any person who requests it.

DPPPs

Condition 5: Disabled people's protection policies

1. The licence holder shall by the date on which this licence comes into force establish and thereafter comply with:
 - (a) a statement of policy; and
 - (b) a detailed body of arrangements, procedures, services and other benefits to be implemented or provided by the licence holder,

designed to protect the interests of people who are disabled in their use of trains of which the licence holder is the operator pursuant to this licence and to facilitate such use (together the "disabled people's protection policy").
2. In establishing the disabled people's protection policy and in making any alteration to it, the licence holder shall have due regard to the code of practice published by the Secretary of State pursuant to section 71B of the Act and to articles 19 and 20(1) of the PRO Regulation.
3. The licence holder shall not establish, or make any material alteration (save in respect of any alteration required in paragraph 4(b)), to the disabled people's protection policy unless and until:
 - (a) the PC and, where appropriate, LTUC has been consulted; and
 - (b) the licence holder has submitted the disabled people's protection policy, or (as the case may be) the proposed alteration, to ORR and ORR has approved it.
4. Where ORR requires the licence holder to carry out a review of the disabled people's protection policy or any part of it or the manner in which it has been implemented, with a view to determining whether any alteration should be made to it, the licence holder shall:
 - (a) promptly carry out a review and shall submit a written report to ORR setting out the results or conclusions; and
 - (b) make such alterations to the disabled people's protection policy, or the manner in which it is implemented, as ORR may reasonably require after ORR has received a report under paragraph 4(a) and consulted the licence holder, the PC and, where appropriate, LTUC.

5. The licence holder shall:
 - (a) send a copy of the disabled people's protection policy and of any alteration to it to ORR and the PC and, where appropriate, LTUC;
 - (b) in a place of reasonable prominence at each station at which trains of which the licence holder is the operator pursuant to this licence are scheduled to call, display or procure the display of a notice giving the address from which a current copy of the statement may be obtained; and
 - (c) make available free of charge a current copy of the statement to any person who requests it.
6. Nothing in this Condition shall oblige the licence holder to undertake any action that entails excessive cost, taking into account all the circumstances including the nature and scale of licensed activities.

Train service performance

Draft indicative licence condition 29: Train service performance

Purpose

1. The purpose is to secure punctuality and reliability of services for the carriage of passengers by railway so as to satisfy the reasonable requirements of passengers and funders, including potential passengers and potential funders.

General duty

2. The licence holder shall achieve the purpose in paragraph 1 to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available.

Specific obligation

3. The obligation in paragraph 4 of this condition is without prejudice to the generality of the general duty in paragraph 2 and compliance with the obligation in paragraph 4 shall not be regarded as exhausting that general duty. In fulfilling the obligation in paragraph 4, the licence holder shall at all times comply with the general duty.

Planning and co-operation

4. The licence holder shall plan and co-operate with Network Rail and other operators, as necessary, to secure the purpose in a timely, efficient and cost effective manner across the industry.

Service quality standards

Draft indicative condition 30: service quality standards

1. The licence holder shall publish [and comply with] a set of commitments relating to its service quality standards.

2. The licence holder, having due regard to any guidance published by ORR, shall:
 - (a) measure and publish its performance against the commitments relating to its service quality standards;

 - (b) [as requested by ORR, procure an independent review of the measurement undertaken in paragraph 2(a) the results or conclusions of which shall be submitted to ORR and published thereafter by the licence holder; and]

 - (c) [procure where appropriate and] publish passenger opinion surveys on its performance against the commitments relating to its service quality standards.

B. List of consultation questions

Publication

1. May we publish your response?

General principles

2. Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed.
3. Do you see any potential benefits or drawbacks in moving towards giving ORR an enhanced role in respect of franchise change?
4. Are there any representations you would like to make concerning ORR's role in holding Network Rail to account?
5. Should ORR consider any revisions to its enforcement and penalties policies if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements for passengers as an alternative to levying a penalty?
6. Are there any specific points on which DfT and ORR should set out their proposed approach during the transition period?
7. Should ORR review its funding arrangements in the light of the changes proposed in this consultation?

Specific proposals

8. Do you have any comments on the proposals for regulating complaints handling procedures?
9. Do you have any comments on any of the proposals for regulating DPPP's?
10. Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made? Are there any alternative ways of doing this?

11. What are the key areas that should be covered by service quality measures and commitments? How should Government decide what to include in each franchise? Is there merit in having a core set of requirements that apply to all?

12. Please comment on the specific benefits and disbenefits of the requirements on service quality measurement and commitments being enforced by licence rather than by contract.

13. Do you believe that the proposed licence condition would provide effective and proportionate accountability for delivery of service quality standards? Would a transparency obligation, relying on reputational incentives, be adequate? Or should it be supplemented by a compliance obligation? Should the compliance obligation be subject to doing what is reasonably practicable to deliver it, for instance through a purposive approach similar to that being considered for performance?

14. What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers? How do we ensure that we give sufficient clarity and flexibility for franchisees in guidelines?

15. Do you agree with the approach set out on monitoring of compliance with the service quality commitments? In particular do you think that an adapted safety management maturity model could be applied in this context?

16. Do you agree with ORR's proposed approach for service quality commitments of requiring improvement plans as a prelude to formal enforcement action?