



*Final*

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Outline response

**'A greater role for ORR regulating  
passenger franchises in England &  
Wales'**

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## 1. Introduction

- 1.1. **pteg** represents the six Passenger Transport Executives (PTEs) in England which between them serve more than eleven million people in Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire, Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). Leicester City Council, Nottingham City Council, Transport for London (TfL) and Strathclyde Partnership for Transport (SPT) are associate members of **pteg**, though this response does not represent their views. The PTEs plan, procure, provide and promote public transport in some of Britain's largest city regions, with the aim of providing integrated public transport networks accessible to all.
- 1.2. **pteg** welcomes the chance to respond to this consultation.

## 2. General comments

- 2.1. PTEs are seeking a greater devolved role in the delivery of local rail services in the West Midlands and North of England, and discussions are currently underway between the PTEs and the DfT on this issue. The McNulty review identified potential benefits relating to devolved funding, specification and management of local rail services and **pteg** will be looking to the ORR to help facilitate this wherever possible.
- 2.2. Devolution would probably mean a much more substantial role for PTEs in the specification, development and funding of passenger franchises. The PTEs are also considering what the most appropriate risk allocation is likely to be and whether to propose to take more direct control over such things as station management and operations. This means taking a greater interest in the outcomes for passengers and how those outcomes are contractualised, delivered and monitored.
- 2.3. A clear benefit of devolving responsibilities for local rail services is the ability of PTEs to integrate rail services with other modes (bus, tram, walking and cycling) and support cross-modal activity.
- 2.4. In a devolved scenario, we would indirectly become Network Rail's client in our areas, as we have an extremely keen interest in reducing rail industry whole-life costs, but also in delivering growth and passenger satisfaction. Our ability to hold Network Rail to account and get the most value for money out of the railways will be influenced by the industry framework as it emerges from the PR13 process. Delivering a more transparent costs base is a key requisite for reducing overall unit costs.
- 2.5. Under any devolved arrangements we might expect to take on some of the roles that ORR currently or is planning to take over, therefore collectively we need to be thinking about how this is effectively managed and how ORR can facilitate devolution in this regard.
- 2.6. It is important that Passenger Focus continues to play an important role in representing passenger views and that the ORR is able to act on their requests and recommendations if they are to take on a greater role. It would be helpful to understand the relationship between Passenger Focus and ORR, as well as how this might work under devolution.

## 3. Consultation Questions

### 1. *May we publish your response?*

- Yes

## General principles

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

- We agree that the general principles as set out with the consultation are sound, but we are concerned that they (as currently drafted) fail to take account of both the role of ITAs/ PTEs into account. Under the government's localism agenda, we are moving towards a situation where in all likelihood ITAs and PTEs are going to have a greater say in the specification and management of local rail services (even if the form that may take has yet to be agreed). Under devolved arrangements the responsibility for some aspects of performance monitoring and service quality are likely to remain with the franchising authority (which could be ITAs and PTEs).
- We support a specific role on issues for the ORR where there are clear contractual and licensing concerns, such as complaints handling and DPPP. However we strongly believe that performance and quality monitoring issues should rest with the franchising authority. We believe that the performance and specification of local rail services within a local area should continue to be dealt with at a local level (through the PTE), as any national organisation – be it Department for Transport (DfT) or Office of Rail Regulation (ORR) - will lack the local focus.

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

- It is not clear from the consultation document (para 2.16) which parts of the franchise regime will change or 'vanish entirely' and we would need to understand more fully these changes and their impacts.
- It does seem to be sensible for the ORR to have a role in assessing those changes and where responsibility should sit if they are to be addressed outside of the franchising system, particularly in the context of a devolved environment.
- The emphasis should be on making sure that change occurs only where needed, is fully consulted upon and involves those parties directly affected. ORR should also make sure that any involvement by them would not lead to any delay in the process.

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

- It remains important that Network Rail continue to be held to account, and therefore it is essential that if the ORR were to take on more responsibility, then their regulation of Network Rail is not diluted.

For devolution to happen and the costs base of the railway to be tackled, ORR needs to ensure that there is sufficient accountability in Network Rail which is aligned to the franchise map (i.e. that Network Rail's new structures do not preclude this or the proper disaggregation of costs at an appropriate level). ORR has a critical role in overseeing this.

### ***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?***

- It is indeed appropriate to consider penalties being levied for non performance and this can be a feature of either the licence or as noted in the franchise specification. Although commitments to make improvements may be welcomed in the future, there must be a guarantee that this will be done and that the potential benefits outweigh the inconvenience suffered as a result of poor performance. The role of the passenger must be paramount however, and whatever penalty system is introduced must ensure that a robust and fully understandable compensation scheme is available.

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

- As franchises have been let under the present regulatory arrangements, it is vital that operators know of any changes to their business model as result. As noted in the document, there are a large number of franchises due to be let in the next few years, it should be possible to ensure consistency. Operators must be fully aware of the regulatory conditions (including penalties) that will apply.

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

- Yes. Any further burden on the industry (and ultimately the passenger) should be avoided and therefore any extra funding required must come from central government as an overhead in running the present railway system.

**Specific proposals**

***8. Do you have any comments on the proposals for regulating complaints handling procedures?***

- No issues – as long as operators handle complaints in accordance with their franchise commitments (including specific compensation awards) and licences.

***9. Do you have any comments on any of the proposals for regulating DPPPs?***

- No issues as the DPPP regulation falls in with other areas (such as Rail Vehicle Accessibility Regulations).

***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?***

- Having regulation in one place seems sensible, however performance issues should be under the auspices of the relevant franchising authority or local transport authority. It is important that the PTEs should continue to be responsible for local monitoring and enforcement of rail services in keeping with their wider objectives and role.

**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?**

- Under any devolved arrangements, it will be for the local franchising body to decide on what is included within these measures and commitments. Having said that a core set might be helpful, but there needs to be sufficient local flexibility.

**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.**

- We would see that service quality would be a key part of any franchising agreement and contractual arrangements. Operators would know better through the agreement what their service standard requirements are for a specific service group which will be helpful in them assessing their bids and the risks involved.

**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?**

- If the licence obligation was pursued then there should be no need to add a further compliance area - the licence should determine what is expected.

**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?**

- PTEs have a number of service quality measures that could be used as part of an overall reporting strategy.

**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?**

- In principle, yes.

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

- We would expect operators to be able to put forward their remedial plans before formal action is taken.