

Secretary of State's policy on rail franchising - Consultation response summary

Respondent	Date of response	Comments from respondent	DfT comment
Stagecoach	29/8/07	<p>1. Statement did not address circumstances where the term of an existing franchise may be extended.</p> <p>2 Proposed that where an initiative would provide VfM or other public benefit, and that the SoS considered a similar offer could not be made in the timescale, then the SoS should</p>	<p>1. The reason why the Statement of Policy doesn't cover the circumstances where the term of an existing franchise may be extended is that it is outside the scope of the statement the Department is required to produce under the Act. Section 26(4A) of the Act requires the SoS to publish a statement of policy as to how she proposes to exercise her power under section 26(1). That power is "to select the person who is to be the franchisee in relation to a franchise agreement". That expression only captures new franchise agreements, not extensions of existing ones. The extension of an existing agreement, where it is allowed for in the franchise agreement, is simply varying the terms of the agreement between the existing parties, not selecting any party to it. An additional paragraph has been added to the statement to clarify this point vis:</p> <p><u><i>Franchise extension provisions in franchise agreements</i></u></p> <p>15. <i>A franchise agreement may contain provision for the term of the franchise to be extended either automatically in specified circumstances or at the discretion of, or by agreement with, the Secretary of State. This statement of policy does not apply to such extensions. However it is likely that the Secretary of State will exercise any such discretion, and consider any such agreement, in accordance with the criteria set out at paragraph 8 above.</i></p> <p>2. For the Secretary of State to accept an incumbent franchisee's offer, in circumstances where the offer amounts to a request for a new franchise, the Secretary of State would need to be confident that the market would not be able to match that offer. Such circumstances are very unlikely to arise. It is hard to imagine that one bidder in the market would be so far ahead of its competitors</p>

		<p>retain a discretion to extend the term of the existing franchise to allow the franchisee an appropriate return on the initiative. Also, that SoS could negotiate VfM extensions in other circumstances such as restructuring, industry re-organisation or a major industry shock.</p> <p>3. Add to para 9 'appoint the existing franchisee on terms substantially the same as those of the existing franchise if there are circumstances other than those listed in para 9 which provide a more attractive solution.</p>	<p>in terms of VfM that the Secretary of State could discount the possibility that other bidders might be able to match it. Furthermore, it is hard to see what good reason there would be for the incumbent not keeping its offer open long enough for it to be measured against other bidders in a competitive process. As such, these would be truly exceptional circumstances. But they are not inconceivable. There are also other mechanisms in place in the franchise agreement to ensure franchisees can get an appropriate return on investments made during the franchise term, even where the period of return on the investment is longer than the franchise period</p> <p>3. Comments as per 2 above.</p>
ORR	15/08/07	No comments	
National Express Trains Division	8/8/07	<p>4. That para 9 is too restrictive. Suggest that a franchise could be extended in return for private sector investment in franchise assets or services. This might incentivise the franchisee to bring forward such franchising enhancing proposals from knowledge of the local market et al.</p> <p>5. Suggest add to para 9A - An invitation to submit a tender for the right to provide, or to secure</p>	<p>4. See response at paragraph one (1) above.</p> <p>5. See response at paragraph two (2) above.</p>

		<p>that a wholly owned subsidiary provides, passenger railway services under a franchise agreement will not be issued, where the Secretary of State agrees to an extension, or replacement with a revised version, of a current franchise agreement with the current franchisee, in circumstances where such alterations are associated with enhancements to the franchise services/assets, and where, in the Secretary of State's opinion, best value would be secured by this approach</p> <p>6. Concerned about definition of short term in para 12. If a franchise is unprofitable the franchisee may not wish to extend on 'substantially the same terms' and that the SoS should therefore have unfettered discretion to vary the current terms. That in para 13 the SoS is limiting his discretion.</p> <p>7. That the consultation does not comply with the policy to consult in that the consultation does not overtly invite comment as to the content of the policy. NB. Further letter sent to consultees to clarify this point.</p>	<p>6. It should be sufficiently clear what 'short-term' means from the context. Para 12 (and para 13) set out the action which the SoS <i>proposes</i> to take, not what she necessarily will do in any circumstances.</p> <p>7. Actioned. Letter of clarification sent July 2007.</p>
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Virgin Trains	15/8/07	<p>8. Similar to Stagecoach and NX response vis Statement did not address circumstances where the term of an existing franchise may be extended. Proposed that where an initiative would provide VfM or other public benefit, and that the SoS considered a similar offer could be made in the timescale, then the SoS should retain a discretion to extend the term of the existing franchise to achieve an appropriate return on the initiative.</p> <p>9. Also, rather than extend the term of an existing franchise, a more attractive option might be to appoint the existing franchisee on terms substantially the same as those of the existing franchise agreement.</p>	<p>8. See para 1 above.</p> <p>9. See para 2 above.</p>
Transport for London	10/8/07	<p>10. Suggest that 'consistency with the Mayor's objectives for rail in London for those franchisees operating urban or suburban services within the Greater London area' be added to para 8 of the policy. The omission of such a reference could conceivably allow the</p>	<p>10. Para 8(a) refers to 'consistency with the Secretary of State's strategic objectives, and hence there is no need to make specific reference to TfL or the Mayor. The situation with regard to Wales is different as the Welsh Assembly Government is joint party to the Wales and Borders franchise agreement with the SoS, whereas TfL is not party to any franchise agreement. A comma will be added after the word objectives in para 8(a) for clarity.</p>

		<p>award of a franchise which did not take into consideration the Mayor's Transport Strategy.</p> <p>11. That the statement of policy should include reference to the Mayor's Transport Strategy.</p> <p>12. That the policy would not apply to the London Overground Concession (formally Silverlink Metro Services) which is now the responsibility of the Mayor/TFL</p>	<p>11. As above. Also, it is DfT policy to hold full formal and informal consultation with TfL over the course of the franchise specification period. The Mayor's Transport Strategy is considered during this process, and the outcome is reflected in the final specification issued to bidders by DfT as franchising authority. This process removes the potential for confusion between competing objectives.</p> <p>12. The London Rail Concession is not a franchise within the meaning of the Act and so it is not covered by the Statement of Policy.</p>
SPT	30/8/07	No comment as statement of policy does not apply to Scotland	
RMT	6/9/07	<p>13. The RMT expressed disappointment that the SoS was seeking to consolidate existing arrangements in relation to the franchising process. Particular concerns related to: a successful bidder selling on a franchise to another company to operate the service. Example quoted was the London Rail Concession and Chiltern Railways let by TfL.</p>	<p>13. The SoS has the power to require granting of her consent to a change of control and there is provision for this in the Franchise Agreement. If an owning group decides to sell a franchise, they must seek prior consent from DfT, which can not be unreasonably withheld. If they do not seek prior consent, this is an event of default and DfT would have the option to terminate the franchise.</p>

		<p>14. That no consideration has been given to a company wholly owned by DfT (the SRA subsidiary set up to run South East Trains (SET) was quoted as an example) continuing to operate services for an indefinite period.</p> <p>15. That the 1993 Act precludes public sector operators from running a franchise, and that the SET example demonstrates that the public sector is capable of operating in an economic and efficient manner ie to return rail to the public sector.</p>	<p>14. A situation could arise where DfT is required to step in temporarily to ensure continuity of train services. However it remains the SoS policy to continue with the present system of rail franchising, which is by means of competitive process whenever possible.</p> <p>15. As per para 14 above</p>
First Group	10/9/07	16. That the statement may require further clarification vis: that is does not in any way restrict or constrain any decision by the SoS to exercising his rights or discretions under any provision in an existing or future franchise agreement permitting or contemplating the extension of that franchise agreement beyond any initial or similar period	16. See paras 1 and 2 above.
Merseytravel	10/8/07	A holding letter indicating that Merseytravel will respond although no formal response received.	
CENTRO. WMPTA	10/9/07	17. Suggest that the 'appropriate' circumstances	17. We have included those circumstances which we believe might occur that would prevent the issue of a tender, but clearly it would

		<p>where no ITT is issued (para 13) are defined in a clear and unambiguous a manner. That without an ITT it may be difficult to test VfM.</p> <p>18. That where an ITT is not issued some other form of consultation process be established to facilitate local stakeholder input. In the event that no adequate tender was received for an area up to 25 miles from a PTE boundary then the PTE would expect the SoS to consult with the PTE at a detailed level on proposed arrangements</p>	<p>be unreasonable to limit the SoS to specific examples when the purpose is to provide flexibility to cater for the unknown or unforeseeable. The fundamental principle remains that the SoS intends to award franchises by means of a competitive process.</p> <p>18. Agreements on consultation arrangements are not covered by this statement; However, the circumstances described are ones where the SoS may need to act quickly to let a short-term franchise to ensure continuity of services. It is unlikely that it would be desirable to substantially change rail services in such a situation. If there was a requirement to make such changes to services within the 25 mile boundary of a PTE area, DfT would consult with PTEs, including a determination of any priced options PTE's may intend to fund.</p>
PASSENGER FOCUS	13/9/07	<p>Queries covered the following issues:</p> <p>19. When the 'likely criteria' (para 8) would and would not be used to assess bids.</p> <p>20. The need to focus on a bidder's past record in delivering passenger services and passenger satisfaction.</p>	<p>19. The approach taken by the Act, when setting out in detail what the statement of policy is required to contain (see section 26(4B)), states only what criteria are 'likely' to be applied. It is therefore not necessary to set out exactly how the SoS proposes to use the section 26(1) power in every circumstance.</p> <p>20. DfT's view is that the past record of bidders is a material piece of evidence relating to criteria C in paragraph 8 of the statement ("the ability of the bidder to deliver the specification set out in the invitation to tender"). The current process used by DfT requires companies wishing to bid for rail franchises to submit Expressions of Interest (EOI). The EOI evaluation process includes a section on previous performance. Potential bidders are required to support their statements on previous performance with evidence, preferably over at least a 3 year period. The use of the NPS</p>

		<p>21. When we refer to VfM, who does that apply to - the passengers or the taxpayer, as the two are not necessarily mutually compatible? Particular concern over the SWT off peak fare rise of 20%.</p> <p>22. Also concern that there is insufficient debate over the specification, and that we should be more open about fare increases, although they did acknowledge that this had improved in the recent round of franchises.</p>	<p>survey results could provide strong supporting evidence and would be assessed accordingly.</p> <p>21. The Secretary of State has a legal obligation under section 28(2) of 'the Act' which says that she must ensure that franchise agreements contain such provision as is necessary to ensure that the fares charged pursuant to them are reasonable. The DfT also has a responsibility to obtain value for money for the taxpayer.</p> <p>22. The DfT aims to be transparent in all its rail franchising activity. DfT is working with Passenger Focus to ensure that the specification process is as open and responsive as possible It is now the Department's policy to publish future ITTs containing the specification at the same time as issuing it to bidders.</p>
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