

Guidance on the role of Transport for London in the Department for Transport's rail franchising process

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1. Introduction

- 1.1. The *Future of Rail* White Paper and the Railways Act 2005 set out a new role for Transport for London (TfL) in relation to rail. The new arrangements give TfL greater flexibility to make choices about the balance between rail and other modes. It also provides greater clarity about their role within the franchise specification, letting and management process.
- 1.2. The Railways Act 2005 made the necessary legislative changes to enable this new framework to be put in place. This guidance note sets out in detail how TfL will be involved in the rail franchising process and how local decision-making will work in practice. This includes TfL's:
 - involvement in the long-term planning of the rail network.
 - statutory right to be consulted on rail franchises in their area.
 - role in proposing amendments to the franchise specification in their area.

2. The overall structure of the new rail franchising process

- 2.1. Following the *Future of Rail* White Paper the Department for Transport (DfT) is moving towards greater co-ordination over the long term planning of the rail network. TfL will have an active role to play in this planning process, which will inform the development of new franchise specifications.
- 2.2. The key stages are summarised further below. It is important to note that these will not necessarily occur as a linear progression, for example Regional Planning Assessments (RPAs) and Route Utilisation Strategies (RUSs) will be in place before the High Level Output Specification (HLOS) has been finalised.

High Level Output Specification

- 2.3. The Secretary of State for Transport will set desired outputs for five years on the basis of the available funding: this will be a High Level Output Specification (HLOS) for the industry. It will consider long term drivers of rail demand and the solutions that can be applied to meet these demands. It will be updated every five years (or as necessary) to form the input required to the ORR's Periodic Review Process. In conjunction with the five year regulatory review process, it will seek to prioritise Government funding to achieve the greatest value for money and the most cost-effective transport solutions. It will produce a set of outputs that the Government will expect the industry to achieve with the funding that is available.

Regional Planning Assessments

- 2.4. The Regional Planning Assessments (RPAs) will form the basis for planning rail services over the medium to long term, at a more detailed level than the HLOS, on a regional scale. The recent consultation on the regional devolution of decision-making highlighted a key role for RPAs in respect of devolved decisions around rail priorities. RPAs take into account other relevant regional policies and priorities presented in regional spatial strategies, regional economic strategies and regional transport plans. They will also reflect more local planning strategies, for example local transport plans.
- 2.5. TfL will continue to be key stakeholders in the process for drawing up relevant RPAs.
- 2.6. Under the GLA Act 1999, the Mayor has a statutory duty to produce a spatial development plan strategy (known as the "London Plan"), together with a Transport Strategy, that covers its multi-modal public transport system.

Route Utilisation Strategies

- 2.7. The 'medium level' strategic framework will be provided by RUSs which will consider in more detail the options for the best use of the network's available capacity. Within the funding and outputs specified by the Government, Network Rail will be responsible for drawing up the RUSs, taking account of funder and customer requirements, and which are then taken into account in subsequent franchise specifications. RUSs set out the detailed options for services and provide a framework for analysing the net cost and value for money of variations of services (as well as network capability and scope) from a baseline of the current service level.
- 2.8. TfL will be involved in this process in two main ways. Firstly, as members of the Rail Industry Planning Group they will be able to contribute to discussions on the RUS programme and the development of the RUS process. Secondly, they will be represented on RUS stakeholder groups considering RUSs for their area. TfL's multi-modal planning outputs and its Route Corridor Plans will be used to inform Network Rail as part of the RUS process.
- 2.9. RUSs will be an important contributor to the consideration of whether a TfL proposal is operationally viable or not. See section 4 below for further details.

Franchise Specification

- 2.10. The above information, along with the previous franchise history and the franchise-specific funding picture, enables the DfT to draw up a baseline franchise specification. This sets out the service description and expected outputs that the successful bidder would be expected to achieve. This takes into account the previous franchise specification, the National Rail Franchise Terms / template franchise agreement, the objectives for the franchise and

the level of funding available. It will also take into account relevant RPAs and RUSs¹, and other studies.

3. Consultation

3.1. The Railways Act 2005 gives TfL a statutory right to be consulted on the specification for franchises that include services to, from, or within London before an Invitation to Tender (ITT) is issued or, where no ITT is issued (e.g. extensions to existing franchises), prior to entering a new franchise agreement².

3.1.1. At the start of each baseline franchise specification process, DfT will discuss with TfL what the appropriate level of consultation should be.

3.1.2. Leading up to the formal consultation, the DfT would then be expected to undertake iterative discussions with TfL throughout the development of the baseline franchise specification. This would enable TfL to be updated on emerging proposals and provide informal feedback to DfT.

3.1.3. In response to the formal consultation, TfL would then be requested to provide (a) their formal responses to the proposed baseline franchise specification; (b) any information TfL would like to be made available to bidders, as background only, for inclusion in the DfT's data room; and (c) TfL's formal proposals for increments / decrements (discussed further below in section 4).

3.2. In taking forward any formal, or informal, feedback on the proposed baseline franchise specification, DfT will only be prepared to adopt changes proposed by TfL if they are consistent with the funding limit and objectives for the franchise. There should also be no inconsistency with the overall outputs set by the SoS in the HLOS, and no materially adverse impact on the wider network.

3.3. In addition, TfL will be consulted at various stages during the life of relevant franchises. This includes being consulted on:

- any significant changes³ to the baseline specification that will be reasonably likely to affect “inner suburban”⁴ services within London after the ITT is issued and before the letting of the contract;

¹ It is important to note that RPAs and RUSs are key components, but not pre-requisites, for a franchise specification.

² As the Government expects fundamental capacity priorities to be covered through the relevant RPAs and RUSs, consultation here should relate to the specific detail of the baseline franchise.

³ For the purposes of this document, a “significant change” would involve a material amendment to the Franchise Agreement (e.g. material changes to the Service Level Commitment, Target Performance Levels, or Service Quality Standards).

⁴ For the purposes of this document, the term “inner suburban” will be used to describe those services that predominantly serve London with multiple stops within the GLA boundary en route to terminal points at the main London terminals or boundaries that accord with the boundary

- any significant changes to the franchise during the life of the franchise that will be reasonably likely to affect “inner suburban” services within London; and
- temporary timetable changes, initiated or as a result of major infrastructure upgrades, that will affect “inner suburban” services within London if these are planned to last more than one week⁵.

3.4. DfT recognises the need to consult TfL on franchise changes and temporary timetable changes for other service types where these will have a material impact on modes controlled and managed by TfL.

3.5. These various consultations will cover significant changes to services, fares and station and service quality. The approach taken to consultation will be consistent with the *Future of Rail* White Paper policy of making the franchising process more efficient and streamlined.

3.5.1. Where the Franchise area includes London the level of consultation with TfL will generally correspond to the relevant share of overall market being served.

3.5.2. As a guide, we would expect TfL to be involved in much more active and iterative consultation on franchises that include a greater concentration of “inner suburban” services than those franchises whose services into or within London are relatively peripheral (e.g. long distance services).

3.5.3. Within the context of these principles, Annex A sets out in more detail the basic franchising process and the role of TfL.

4. Right to buy / propose savings

4.1. As the *Future of Rail* White Paper makes clear, TfL are able to ‘buy’ additional services (and also reduce fares or require better standards) on the “inner suburban” network within the Greater London Boundary if Network Rail can agree the necessary availability of capacity and if they meet the full incremental cost for as long as such costs are incurred. These are known as “increments”.

4.2. TfL can also reduce services (or increase fares/propose lower standards) on the “inner suburban” network within the Greater London Boundary and retain the savings. These are known as “decrements”.

4.3. As committed to in the *Future of Rail* White Paper, there was a public consultation in 2006 on proposals to enable TfL to specify and pay for changes on service levels on certain rail routes that run partially outside the Greater London area.. Pursuant to this exercise, **with the exception of**

described in the consultation on extending the Mayor's rail powers beyond the GLA boundary (e.g. Dartford, Sevenoaks, etc).

⁵ This includes recurring temporary timetable changes to weekend services.

increases and decreases to regulated fares, TfL can propose increments and decrements on the following “inner suburban” services, which run partially outside of the boundary:

- Services from Charing Cross, Victoria or Cannon Street, terminating at Dartford;
- Services from Blackfriars or Victoria, terminating at Sevenoaks, via Swanley;
- Services from Charing Cross, Cannon Street or Victoria, terminating at Sevenoaks, via Orpington;
- Services from Victoria or London Bridge, terminating at Caterham;
- Services from Victoria or London Bridge, terminating at Tattenham Corner;
- Services from Victoria or London Bridge, terminating at Epsom or Epsom Downs;
- Services from Waterloo, terminating at Hampton Court;
- Services from Waterloo, terminating at Shepperton;
- Services from Waterloo, terminating at Windsor and Eton Riverside;
- Services from Waterloo, terminating at Epsom
- Services from Paddington, terminating at Slough;
- Services from Kings Cross Thameslink, terminating at St Albans;
- Services from Kings Cross or Moorgate, terminating at Welwyn Garden City;
- Services from Kings Cross or Moorgate, terminating at Hertford North;
- Services from Liverpool Street, terminating at Hertford East;
- Services from Liverpool Street, terminating at Shenfield; and
- Services from Fenchurch Street, terminating at Grays, via Rainham.

The services above reflect the main weekday services and may alter for operational purposes or for some late night or weekend services.

4.4. TOCs may decide for commercial or operational purposes to operate some services outside the boundaries noted above. This is a matter for individual TOCs. TfL are only able to specify and pay for additional services which extend beyond the GLA boundary on the routes noted above.

4.5. TfL may propose increments and decrements, either during the franchise specification process or subsequently during the life of a franchise where such mechanisms exist in relevant franchise.

Acceptance Criteria

4.6. Before formally proposing any increments or decrements⁶, DfT would expect TfL to provide evidence, where appropriate, that their proposals meet with the following requirements:

⁶ The only exception would be those agreements that the Secretary of State has given a general approval under section 13(5) of the 2005 Act.

- Compatibility with objectives for the franchise and DfT's wider franchising policy objectives;
- Consistency with the principles of any relevant RUS and RPA;
- Availability of network capacity and the acceptability of impacts on performance outputs⁷;
- Can be funded by TfL based on available information of the likely cost of the proposal⁸;
- Operational deliverability; and
- Enforceable by the DfT through inclusion in relevant Franchise Agreement.

4.7. Although we will not require any evidence, we would also expect TfL proposals to be consistent with their internal policies on audit and appraisal.

Boundary and Governance

4.8. In exercising powers outside of London:

4.8.1. For increments, TfL are required to consult with Local Transport Authorities affected by any increment of service(s).

4.8.2. For decrements, TfL are required to gain agreement with Local Transport Authorities affected by any changes before formally proposing these. The only exception is when proposing the withdrawal, or decrement, of any service(s) which TfL have been independently funding as an increment. In such an instance, TfL should consult with Local Transport Authorities affected by such a withdrawal of services.

4.9. In addition, TfL are required to consult with Regional Assemblies affected and London Travelwatch.

4.10. Once TfL has consulted with the affected stakeholders and, if necessary, gained their consent, proposals will be presented to DfT [normally as part of the franchise specification process].

4.11. In instances where TfL and Local Transport Authorities cannot reach agreement, the disputes should come to the Secretary of State for Transport and feed through the normal franchise dispute resolution process. The Secretary of State shall be final arbiter of any disagreements.

4.12. The Mayor will also be required to appoint two full time members to the TfL board, who can represent the interests of people living or working in

⁷ This will need to be confirmed by Network Rail who will also consider whether the proposal generates additional infrastructure costs or requirements for compensation for other operators. Any disputes on these issues will be referred to the ORR.

⁸ The actual cost will not become clear until bidders, in the case of new franchises, or the TOCs, in the case of in life changes, have priced it. Whilst TfL will not finally commit to taking forward their proposals until the price is known, DfT would expect them to act reasonably and only submit proposals to be priced which they firmly intend to take forward and for which they will be prepared to meet the full industry cost.

areas outside the Greater London. The provisions for this requirement are set out in Section 17 of the Railways Act 2005.

Services

4.13. As part of the franchise specification process, DfT will develop a baseline service pattern that will be formally consulted on. Following this process and then subsequent award of franchise to selected bidder, this is then formalised in relevant franchise agreement as a Service Level Commitment.

4.14. For either circumstance, TfL may propose:

- buying additional “inner suburban” train services or increased capacity for passengers;
- reductions to “inner suburban” service levels and use any savings elsewhere within TfL’s jurisdiction (not restricted to National Rail services); and
- paying for, or receiving the savings from, changes to “inner suburban” train service stopping patterns.

4.15. As a general rule, TfL will not be allowed to propose additional stops on long distance and inter-city services but, in exceptional circumstances, the DfT will be prepared to consider requests for changes to stopping patterns where there is a business case for such an increment.

Fares – General

4.16. As part of the baseline franchise specification, DfT will regulate the price and conditions of certain fares, and require the Train Operating Companies (TOCs) to be a party to the Ticketing and Settlement Agreement (TSA) and other ATOC (Association of Train Operating Companies) schemes. Increases in regulated fares are capped by the Secretary of State and TOCs continue to hold revenue risk, as set out in the *Future of Rail* White Paper.

4.17. The determination of rail fares, fare levels and conditions within London is complex. Most journeys within London are now made using Travelcards and Oyster PAYG, the prices for which are determined by agreement between TfL and ATOC, and by TfL respectively.

4.18. From January 2007, individually-priced single and return point to point rail fares within London will be replaced by a simple set of consistent rail fares based on the existing London fare zones, with prices set by agreement between train operators. From January 2010, rail-only season tickets will be zonalised on a similar basis.

4.19. For services within the GLA boundary:

- TfL can propose increases and decreases to the level at which regulated fares within London are capped⁹. In this case, TfL would either provide the necessary extra funding or retain the saving. Non-regulated fares will continue to be set at TOCs' discretion.
- TfL may also propose, as increments, additional requirements on fare types in order to promote integrated transport (e.g. multi-modal ticketing). Any decision by DfT on the inclusion of such requirements in the franchise agreement will be consistent with the Government's wider transport and ticketing policies. If DfT consider that an obligation for a TOC to be a member of an integrated ticketing arrangement within the London area will generate an additional subsidy requirement, they will require TfL to meet that cost.
- In line with other increments and decrements, TfL will need to meet the full cost of fare changes (e.g. extra demand creating additional costs, abstraction from other services, modifications to TOC literature and ticketing systems) and will only be able to receive the net funding from fare increases after possible demand reductions and other costs across the entire network have been taken into account.
- On this basis, and in the context of this guidance as a whole, TfL can seek to vary fares during the life of a franchise.

4.20. The DfT may revisit whether to extend the scope of the Mayor's powers on fares setting beyond the GLA boundary at a later date.

Concessionary Fares

4.21. TfL will continue to be able to require franchisees in their areas to participate in concessionary fares schemes so long as the franchisee is held to be financially no better or no worse off through their participation.

4.22. Likewise, if TfL were seeking to either (a) significantly alter the scope of an existing multi-modal / concessionary fare arrangement or (b) create a new arrangement, TfL would be expected to consult both the DfT and all relevant TOCs prior to implementation. In line with principles previously highlighted above, the franchisees' continued participation in any such schemes would be conditional upon them being held financially no better or no worse off.

Quality and Monitoring

4.23. In line with the *Future of Rail* White Paper strategy of increasing efficiency and reducing the administrative burden on TOCs, a new Service Quality Management System (SQMS) has been introduced. A summary of the parameters of the new regime is included at Annex B.

⁹ Such powers would be limited to fares within the GLA boundary.

4.24. The new SQMS regime will only apply to the new franchises. Those currently in existence are expected to continue with the existing quality regime.

4.25. For franchises which include services to, from or within London, once the DfT have agreed the SQMS and the benchmark against which performance will be monitored with the TOC, TfL will be able to propose reasonable changes to the benchmark and other elements of the SQMS for “inner suburban” services in their area. This will usually be during the negotiation phase. The selected bidder will then price these changes and TfL will be able to decide whether to pay the full cost, or receive the full savings, of changes to the SQMS for their area.

5. Contractualisation / financial arrangements

Overview

5.1. As previously highlighted, in response to the formal consultation on the baseline franchise specification, TfL will be able to propose increments and decrements to “inner suburban” services, and service and station quality as options they wish the bidders to price. TfL will also have an opportunity, during the life of a franchise, to propose such increments and decrements to a TOC where relevant mechanisms exist. The processes, specific to each situation, are summarised further below.

5.2. Although the detailed contractual / financial arrangements and associated timescales will be finalised during the discussions on individual proposals, the criteria that would apply to both TfL increments and decrements – proposed either before a franchise is let or during the subsequent contract life – are summarised below:

- Both parties will use all reasonable endeavours to minimise the complexity and bureaucracy of these arrangements.
- The incremental costs and decremental savings will be calculated on the basis of the increase or decrease in service and station provision costs (where appropriate). Network costs (with the exception of Variable Track Access Charges) will not be taken into account unless the provision of an increment requires extra infrastructure to be built¹⁰.
- TfL will be required to meet any additional marginal costs incurred by TOCs, DfT or NR by the putting in place of any legal, contractual, financial or management arrangements in relation to increments and decrements.

¹⁰ In those circumstances, TfL must also meet both the additional operational expenditure plus the extra capital costs.

5.3. For **increments**:

- 5.3.1. TfL will commit to meeting the full net costs for as long as these are incurred. This will usually be the length of the franchise (including any extensions)¹¹.
- 5.3.2. In line with the *Future of Rail* White Paper, both direct and indirect operating and whole life costs to affected TOCs, FOCs, Network Rail and any other rail bodies will be included in addition to relevant costs arising from any extra infrastructure¹².
- 5.3.3. DfT will work with TfL and other industry bodies to ensure that as many of the potential costs as possible are identified and closed off before the proposed change is made, however TfL will be responsible for all costs, not just those identified in advance.
- 5.3.4. There will be agreement about the circumstances under which either party can seek a review of TfL subsidy contribution during the life of the franchise if the net cost base changes.
- 5.3.5. In the event of changes to the cost base for an increment which in turn triggered a cost to DfT, the following principles would guide the DfT's considerations, as would close consultation with TfL:
 - TfL will carry the risk of any increase in Variable Track Access Charges (VTACs) (other than those that are part of an industry-wide redistribution of costs that is cost-neutral overall for DfT)¹³.
 - TfL will carry the risk of any abstracted revenue implications for other TOCs which relate directly to their increment or decrement.
- 5.3.6. DfT will agree to enforce the provision of TfL-funded increments in the same manner as the rest of the franchise. The Franchise Agreement between the DfT and the TOC and any contract between the DfT and TfL will set out any agreement on reporting to TfL of delivery of TfL-funded increments.

5.4. For **decrements**:

- 5.4.1. DfT will commit to paying the agreed net saving to TfL for a set period of time, which should be proportionate to the investment accompanying the decrement being proposed. This would usually be the life of the franchise, although the DfT would be prepared to

¹¹ The costs of these services shall not necessarily transfer to the DfT when the franchise is replaced. At the end of the franchise, TfL will be invited as part of the new franchise specification process to review their previous increments and re-submit them, along with any new additions.

¹² This includes abstraction of revenue from other TOCs which are directly attributable to TfL's proposed change.

¹³ TfL will be able to withdraw any of their increments in order to mitigate the impact of such changes but will be required to continue to meet any inescapable residual costs of doing so.

consider certain exceptions on a case by case basis (e.g. major infrastructure changes)¹⁴.

5.4.2. It will also outline the basis on which either party can seek a review of the net saving being paid to TfL if the cost base changes.

5.4.3. The DfT does not intend to ring-fence the funds produced by any agreed decrements. These savings could be spent by TfL.

Process for new franchises being let

5.5. Where appropriate, DfT would include TfL proposals in the ITT as priced options to be costed as separately identified items by the bidders. Currently, franchise bids are assessed on the price of delivering the baseline specification. As a general rule, if the core specification did not deviate significantly during the interim, DfT would expect TfL to pursue all of their options where the bidder's price is not significantly different to that predicted by either the DfT's or TfL's forecasting tools. These would then be incorporated into the franchise agreement between DfT and the operator.

5.6. TfL and DfT will need to work in partnership to ensure that the development of TfL proposals does not unduly impact on the efficiency and credibility of the procurement process. A key aspect of this is ensuring that the number of proposals that are included in the ITT as options to be priced by bidders is not disproportionate to the particular franchise. Large numbers of options complicates and add costs to the process for bidders. To that end, if the Government is concerned that an excessive number have been submitted, it will discuss with TfL the bundling together of options into packages and/or the scoping of an appropriate number of options.

5.7. In addition, there is clearly a cost to the bidder of pricing these options, which will be charged back to DfT by the successful bidder as part of its bid costs. Where TfL only include a small number of priced options in the ITT (for instance, three or fewer) DfT would not usually expect to recoup these costs from TfL, but if a greater number of options, or unusually complex options were put forward by TfL, DfT may need to consider requiring TfL to make a contribution to this cost.

Process for changes to existing franchises

5.8. TfL proposals that require changes to the service level commitment or other franchise agreement commitments will be resolved trilaterally (where appropriate) in discussions with the DfT, TfL and the TOC. These would be contractualised between the DfT and the TOC through a change to the Franchise Agreement with a separate contract governing the agreement between the DfT and TfL. In line with Section 6 below on Direct Agreements, more minor proposals are likely, with the Secretary of State's agreement, to simply require a contract between TfL and the TOC. The

¹⁴ If the DfT were to agree a decrement beyond the life of existing franchise term, DfT's commitment would be to the base service level, not the associated financial value.

terms of such a contract would be a matter for TfL to arrange and ensure it is consistent with its own internal finance and audit procedures.

5.9. To ensure the best price and value for money for public expenditure, the Government would expect TfL to specify the majority of its desired increments and decrements at the commencement of a franchising/re-specification process. However, as the *Future of Rail White Paper* makes clear, TfL will also be able to propose amendments during the life of a franchise. As well as new franchises, these arrangements will apply to current franchises where the necessary contractual mechanisms exist to make changes to the franchise agreement and/or the service level commitment.

5.10. The DfT will procure the TfL-funded franchise services direct from the TOC on behalf of TfL. In order to be consistent with this approach, TfL proposals that require amendments to the franchise specification should be fed directly to the DfT. Any funding requirements created by these would need to be paid by TfL to DfT. DfT would then pass the additional funding onto the TOC. Conversely, any savings arising from a proposed decrement would be paid by DfT to TfL following a corresponding reduction in TOC payments.

5.11. The only exception to this rule is where TfL have been granted the discretion to negotiate separate agreements directly with the TOC (details of these direct agreements are set out in section 6 below). As long as TfL are meeting the full amount of the extra costs that these agreements entail for all industry parties, the financial arrangements will be a matter for them to agree with TOCs for the duration of relevant franchises.

5.12. TfL proposals for service modifications that do not individually qualify as a change (as defined by the variation mechanism clauses of the franchise agreement) can be bundled together in order to reach the threshold. Alternatively, if they would not require a change to the service level commitment and the TOC is in agreement, they could be negotiated individually, and contracted with the TOC as outlined in section 6.

5.13. TfL will submit their proposed variations in the requisite detail to DfT within a reasonable timescale for them to be processed in order to meet any relevant deadlines. This is particularly important for proposed variations including service changes as there are strict limitations on the DfT's ability to act due to the industry timetable development process. If TfL fail to ensure sufficient time for proposals to be processed or sufficient detail in the proposals it might be necessary to wait for the next industry timetable development process. Our current expectation is that such proposals can be submitted at any time during the year but this will be reviewed if it fails to work efficiently. The procedure will work as follows:

- TfL submit proposed variations to DfT, taking into account factors outlined herein.

- On receipt, DfT will consider its agreement to proceed.
- If DfT agrees, the proposal will be taken forward through relevant mechanisms in the Franchise Agreement.
- Once the inputs have been agreed by DfT and the TOCs, an assessment of the financial implications will be made in line with provisions in the Franchise Agreement.
- Should the increment be agreed, the DfT and TfL would enter into an appropriate agreement with the new services contractualised in the franchise.

5.14. The new franchise template includes the capability for TOCs to make minor timetable changes (in line with Section 6 below on Direct Agreements) as long as such changes do not impact on the service level commitment and are cleared with the relevant industry bodies. TfL will be able to make proposals to TOCs for minor changes of this sort on the following basis. TfL would reach agreement directly (and contract directly) with the TOC as to the cost, terms and conditions. The TOC would be responsible for ensuring that it meets the terms of its franchise, and that NR and ORR confirm that the change does not have a wider adverse impact on the network or abstract revenue from other TOCs.

Franchise Management

5.15. The DfT intends to apply a consistent approach to the management of franchises and, with the exception of any Direct Agreements between TfL and TOCs in line with Section 6 below, all increments / decrements agreed will be written into the franchise agreements. (A separate contract will be put in place to govern the agreement between the DfT and TfL.)

5.16. It will be for DfT to initiate the necessary enforcement proceedings if a franchise is failing to deliver on its contractual obligations.

5.17. If TfL would like to specify additional information, data or management outputs beyond this baseline, they will be able to propose them as increments in line with the process outlined above and pay the full additional costs.

6. Other

Direct agreements between TfL and TOCs

- 6.1. The Railways Act 2005 gives significant flexibility for TfL to procure 'extras', e.g. more frequent services, increased train capacity, higher quality standards etc. These can be procured both through the DfT and directly with the TOCs where they have Secretary of State's agreement. This is expected to apply to changes in quality and additional capacity, which are agreed during the franchise term.
- 6.2. The DfT recognises that it would not be desirable for TfL to have to seek agreement from the Secretary of State for every modification that they wish to negotiate directly with the TOC. The Railways Act therefore makes provisions to allow general approvals to be issued covering the specific types of agreements which TfL may enter into with TOCs
- 6.3. In advance of sections 15 and 16 of the Railways Act 2005 coming into force in England and Wales on 24th July 2005, DfT wrote to TfL to clarify that:
- 6.3.1. For the avoidance of doubt, the Secretary of State gives approval for the purposes of section 16(2) of the 2005 Act in respect of any agreements to which any member of the TfL Group is party on 23rd July 2005.
- 6.3.2. In addition, from 24th July 2005, the Secretary of State gives a general approval to TfL for the purposes of section 16(2) in respect of the following classes of agreement:
- Any agreement with a franchisee or franchise operator that does not in any way relate to franchised rail services.
 - Regulated access contracts and property leases/licences.
 - Agreements that relate predominantly to the promotion of local rail services and local transport in general.
 - Agreements that relate predominantly to advertising contracts, publicity, branding and marketing.
 - Agreements setting out extra management information requirements.
 - Any agreements predominantly related to the carrying out of routine station maintenance, station security, customer service or revenue protection duties.
 - Any agreement which, prior to the repeal of section 201 of the GLA Act 1999, a member of the TfL Group would have had power to enter into notwithstanding the restrictions set out in section 201.
 - Any modifications or supplements to any agreement to which TfL is party as at the 23rd July 2005 (excluding any significant modifications or supplements to such agreements that do not fall within the categories listed above).

- 6.3.3. From 30 June 2006, DfT also granted TfL general approval to enter into certain agreements directly with a franchisee or franchise operator in connection with the provision of passenger rail services on New Year's Eve.
- 6.3.4. For the avoidance of doubt, TfL should not enter into agreements that would impact on future franchises' costs beyond the life of the current franchise without the Secretary of State's explicit agreement.
- 6.3.5. For agreements that are not covered in the above, TfL should formally submit their request to DfT in writing. The initial contact point for any enquiries should be the Director of Rail Service Delivery. TfL should also liaise with DfT if you have any doubt as to whether a proposed contract which might be captured by the section 16 prohibition is covered by the above general approval.
- 6.3.6. TfL should keep a log setting out brief details of each section 16 agreement concluded with TOCs. A copy of this log should be provided electronically to the Director of Rail Service Delivery at the end of every 4 week rail industry period.
- 6.4. The Secretary of State will consider offering general and specific consent for agreements between TfL and TOCs on other issues on a case by case basis. The process for direct negotiations relating to service variations is set out in section 5.19 above.
- 6.5. DfT do not anticipate general or specific consents applying to decrements. In order to ensure that the correct level of saving is passed onto TfL, decrement proposals must be resolved through DfT. The only exception to this rule is where a TfL is withdrawing an increment previously directly agreed with the TOC. In these cases, TfL would be expected to also directly agree the withdrawal.

Capital Enhancements

- 6.6. If TfL were seeking to purchase any capital enhancements¹⁵ to the rail infrastructure owned by Network Rail, including the building of new stations, these would be taken forward through Network Rail's Third Party Agreements. Should TfL be seeking a resulting change in the Service Level Commitment following such implementation, these would be taken forward with the DfT and/or the TOC (where applicable) in line with processes outlined in this guidance note.

¹⁵ For the avoidance of doubt, minor enhancements, like the purchase of Passenger Information Systems and CCTV, are excluded from this definition. These would be taken forward either as part of the increment process, or subject to the Secretary of State's agreement, as a Direct Agreement between the TOC and TfL.

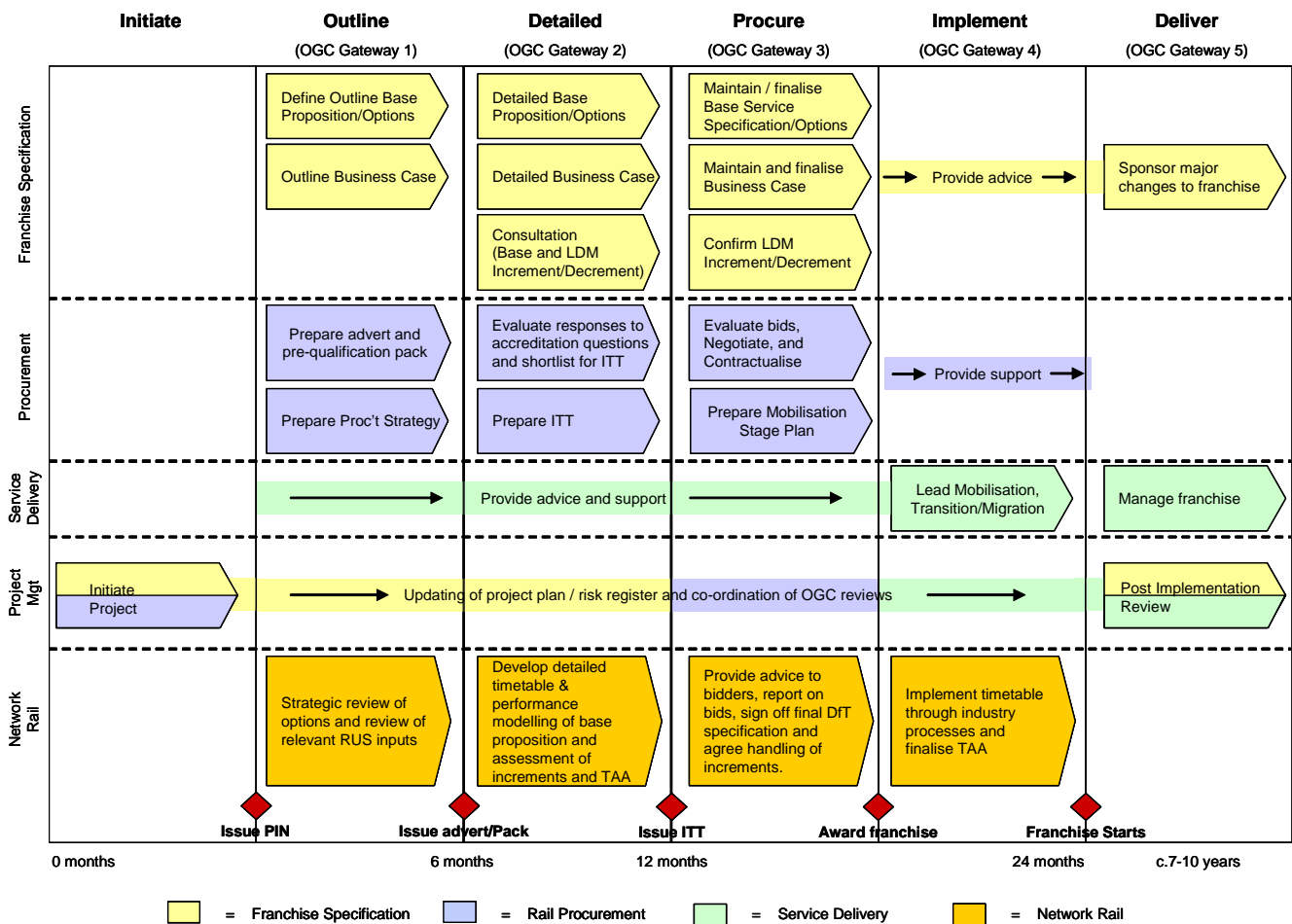
Annex A – The franchising process and the role of TfL

The Franchise Replacement Process

The diagram below sets out the franchise replacement process. The purpose of the process is to develop a specification that:

- Meets the specified objectives
- Is affordable within defined funding constraints
- Is feasible & deliverable
- Offers value for money
- Is acceptable to DfT, Network Rail, ORR and bidders
- Provides a core specification from which TfL can specify increments and decrements to “inner suburban” services

Franchise Replacement Process



The process is designed to be:

- **Objective-led:** so that there is clarity of what the expected outcomes are, provide sift criteria and limits the option generation process
- **Evidence-based:** so that decisions are robust and justifiable
- **Transparent:** so that different parties can buy-in to the outcomes
- **Staged & gated:** so that decision makers have increasing confidence during the process and that the process is manageable to deliver the specification on time

TfL involvement in the process

TfL will be involved in each stage of the process:

Initiate: An inception meeting will be held to agree the programme and process of engagement through out the project. As part of this meeting, the DfT will set out the high level objectives for the franchise and will seek to understand the objectives TfL have for the franchise.

Outline: DfT will develop options for the core specification aimed at achieving the specified objectives. DfT will, during the development and appraisal of these options, discuss the proposed options with TfL and seek their views on these options and give TfL the opportunity to identify options they would, in outline, wish to specify. The financial and operational impacts of these options will be evaluated using the same framework and tools as those used for the development of the core specification.

Detailed: The detailed stage will commence once the outline core specification has been approved within DfT Rail. During the detailed stage DfT will formally consult with TfL on the core specification and continue to develop with TfL the increments and decrements TfL would like priced from bidders. The DfT will, at the end of this stage, agree with TfL the options to be included in the ITT to be priced by bidders.

Procurement stage: TfL will not be involved in the selection of bidders. Final prices for the core specification and TfL options will be negotiated by DfT Rail. TfL will be consulted by DfT Rail during the negotiations and ultimately will need to confirm acceptability of scope, cost and funding before their options are contractualised in the franchise agreement.

Implementation: Management of delivery of outputs as contractualised (both core specification and TfL options) will be undertaken by DfT Rail and any variations to the contract will be managed by DfT.

Annex B - Quality and Standards – new Template Franchise Agreement Approach

1. The key to a new quality regime is that it should deliver the outputs that passengers want and provides a system that is auditable, with a clear failure level and remedial actions that can be taken in the event of failure. In this way it adopts many of the principles of the previous KPI regime. However, the system needs to be flexible enough to account for the different nature of franchises and not impose unnecessary bureaucracy on TOCs.
2. Therefore, as part of the information in an ITT the DfT will provide bidders with standard guidance on the outputs that the DfT wish to buy in terms of quality. For instance it will set out that bidders must be capable of monitoring key features of train and service condition (e.g. toilet availability and cleanliness standards). These key features will be set out in detail. As part of the bidding process bidders will then produce a Service Quality Management System (SQMS). This will set out how the bidder will deliver the outputs that the DfT want to buy.
3. The SQMS will be evaluated as part of the bid for the franchise. During the negotiation phase the DfT will agree the bidder's SQMS and the benchmark that the franchisee will be required to use "best commercial endeavours" to meet. The SQMS will also set out the means by which the franchisee will monitor the outputs and will require the TOC to self-certificate to the DfT every 6 months.
4. DfT will periodically monitor the self-certification and also be able to undertake discretionary audits to ensure that the self-certification process is working. These audits could be undertaken as a result of TfL providing evidence to the DfT that standards are not being met. Audits will be paid for by the TOC.
5. In the event of failure to meet the agreed benchmark the franchisee will be in breach of the contract. The DfT would require the franchisee to implement a remedial plan to be agreed by the DfT.

Conclusion

6. The SQMS approach is designed to ensure an adequate level of quality and still give bidders greater flexibility to address quality issues appropriately.
7. In addition to the SQMS, and any commercial incentives to maintain standards, TOCs will be incentivised to maintain standards by the new pre-qualification regime. The new pre qualification process, implemented for Thameslink and Greater Western, allocates 60% of a bidders score to past performance. This past performance mark is made up of three main factors – reliability, financial control and soft quality. The exact split of these three factors will differ for different franchises and for commercial reasons the split is not made public, however soft quality will be a significant factor.

8. An SQMS requirement document for bidders has been developed in draft and we intend to consult TfL on its contents.
9. This new SQMS regime will only apply to new franchises. The existing arrangements are expected to continue in all current franchises.