Passenger Rail Industry Overview

June 1996
IMPORTANT NOTICE

This Document is issued by the Director of Passenger Rail Franchising (the "Franchising Director") pursuant to his functions and duties under the Railways Act 1993 (the "Act") and has been approved for the purposes of section 57 of the Financial Services Act 1986 by KPMG Corporate Finance, Coopers & Lybrand (advising through their Corporate Finance Services Division — Coopers & Lybrand Corporate Finance) and by Price Waterhouse Corporate Finance (a division of Price Waterhouse). KPMG Corporate Finance, Coopers & Lybrand Corporate Finance and Price Waterhouse Corporate Finance are authorised to carry on investment business by the Institute of Chartered Accountants in England and Wales. The principal place of business of KPMG Corporate Finance is 8 Salisbury Square, London EC4Y 8BB where a list of partners' names is open for inspection. The principal place of business of Coopers & Lybrand is 1 Embankment Place, London WC2N 6NN where a list of partners' names is open to inspection. The principal place of business of Price Waterhouse is Southwark Towers, 32 London Bridge Street, London SE1 9SY where a list of partners' names is open for inspection.

The Franchising Director has a duty to issue, to certain selected persons, an invitation to tender (the "ITT") for the right to provide or secure the provision of certain railway passenger services under franchise agreements. Each person to whom an ITT is issued is hereafter referred to as a 'Recipient'. Such railway passenger services (the "Passenger Services") are currently provided by the British Railways Board and/or its subsidiaries ("British Rail" or "BRB") or by companies which are wholly owned subsidiaries of private sector franchises.

Before deciding whether to bid for a passenger rail franchise or to acquire shares in a passenger train operating company ("TOC"), consideration should be given as to whether such franchise or shares are a suitable investment. It is not expected that shares in the TOCs will be listed on any stock exchange.

This Document is not a recommendation by the Franchising Director, or any other person, to enter into a franchise agreement or to acquire shares in a TOC. In considering any investment in a franchise or in the shares of a TOC, you should make your own independent assessment and seek your own professional financial and legal advice. Your attention is drawn to the section headed "Investment Considerations".

The information contained in this Document has been prepared to assist interested parties in making their own evaluation of the franchise and/or the shares of the TOCs and does not purport to be all inclusive or to contain all of the information that a prospective franchisee or shareholder may require. None of the Franchising Director, the Rail Regulator, HM Government (whether the Secretary of State for Transport, the Department of Transport or any other instrumentality of HM Government), British Rail, Railtrack Group PLC, KPMG Corporate Finance, Coopers & Lybrand Corporate Finance, Price Waterhouse Corporate Finance, nor any of their respective subsidiaries or associates, nor the directors, employees, agents or advisers of any such person (such directors, employees, agents or advisers being hereinafter referred to as "representatives") makes any representation or warranty (express or implied) (and no such representatives have any authority to make such representations or warranties) as to the accuracy, reasonableness or completeness of the information contained in this Document, or any other written or oral communications transmitted to or information provided to or otherwise acquired by the Recipient or any of its subsidiaries or associates or the respective representatives of any of them in the course of its or their evaluation of any franchise or the shares of any TOC or any other decision ("Additional Information"). All such persons or entities expressly disclaim any and all liability (whether in respect of their or their own fraudulent misrepresentation) based on or relating to any such information or representations or warranties (express or implied) contained in, or errors or omissions from, this Document or any Additional Information or based on or relating to the Recipient's use, or the use by any of its subsidiaries or associates or the respective representatives of any of them, of this Document or any Additional Information. In the absence of express written warranties or representations as referred to below, neither the information in this Document nor any Additional Information shall form the basis of any franchise agreement or any other agreement entered into in connection with the acquisition of a passenger rail franchise or shares in a TOC or otherwise.

The only information which will have any legal effect and/or upon which any person may rely will be such information (if any) as has been specifically and expressly represented and/or warranted in writing to a successful franchisee in the relevant franchise agreement or in any relevant agreement entered into at the same time as the franchise agreement is entered into or becomes unconditional.

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Information in this Document has been compiled as at 14 June 1996, except where otherwise stated. It is contemplated that this Document may be revised and updated from time to time as ITTs relating to various TOCs are issued.

This Document is designed as an introduction to passenger rail franchising. As such this Document purports, inter alia, to summarise or refer to certain salient features of many other documents, such as the Railways Act, various regulations made under the Act, the General Authority and Guidance given to the Rail Regulator by the Secretary of State for Transport, Objectives, Instructions and Guidance given to the Franchising Director by the Secretary of State for Transport, certain publications issued by the Rail Regulator and the Franchising Director and others, the general form of contracts (subject to customisation) and others. These summaries or references do not purport to be complete and are qualified in their entirety by reference to the full document or, where applicable, the relevant contract and any other information made available to Recipients whether in a TOC data room or otherwise. (Adviser).

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HOW TO USE THIS DOCUMENT

The purpose of this Document is to provide an introduction to the restructured passenger rail industry in Great Britain. The creation of separate businesses within the British railway industry has meant that the relationships between them have had to be formalised in a network of contracts which, together with new statutory and regulatory regimes, defines the way in which the industry now operates. This Document provides an overview of the new arrangements relating to passenger rail franchising to enable those with an interest, whether as potential participants or otherwise, to understand the new industry framework. It is not intended to provide all of the detailed information which will be required by a potential franchisee in deciding whether or on what basis to submit a tender.

This Document summarises the industry as a whole and is public. It does not provide information on individual TOCs. A separate information memorandum and ITT describing each TOC's business has been or will be issued in confidence to pre-qualified applicants as and when each franchise is offered.

The descriptions of the contractual arrangements which govern a TOC's business are of a general nature only. Particular TOCs' contracts may differ in material respects from the general descriptions contained in this Document. This Document does not take account of any changes which a TOC may have made to its contractual arrangements after its franchise had been awarded.

The Document is divided into six main sections.

Section 1—The British Railway Industry
This section sets out the background to the privatisation process for the British railway industry. It introduces the main participants in the new industry and describes the continuing role of British Rail.

It also explores the historic trends in Great Britain's passenger transport industry generally as well as in the passenger rail market itself.

Section 1 concludes with an overview of passenger rail franchising. This summarises the activities of the TOCs in their role as passenger rail operators and explains the principles by which stations and depots are owned and operated, as well as how those needing to use these facilities obtain access to them. It also provides a brief summary of some of the more important aspects of the franchise agreement which, for each franchise, will govern the relationship between the franchisee and the Franchising Director.

Section 2—The Operational Environment
This section describes the operational environment in which a franchisee will secure the provision of passenger rail services by its subsidiary, the franchise operator. It explains the functions and duties of the Franchising Director and the Regulator and the relationship between them. It also explains the requirement for railway licences and Safety Cases, the composition and roles of the rail users' consultative committees and the role which the PTEs will play in specifying and supporting Passenger Services in certain of the franchises.

Section 2 also sets out the Regulator's policy on competition in the passenger rail industry and points out areas of UK and European competition regulation which may be of relevance to potential franchisees.

Section 3—Franchise Agreement
This section introduces the typical features of a franchise agreement which is the main document governing the terms of a franchise as well as the relationship between the Franchising Director and a franchisee.

The section also contains details of the policies behind a number of areas dealt with by the franchise agreement such as PSRs, load factors, capital requirements and the regulation of the price of fares.

A draft of the relevant franchise agreement will be sent to prospective bidders together with the relevant ITT and accountant's long form report.

OPRAF Passenger Rail Industry Overview 1
Section 4—Other Commercial Arrangements

This section is an introduction to the principal contracts (other than the franchise agreement) which contain (or will contain) the detailed terms upon which a franchised TOC will conduct its business. It provides a guide to the agreements governing access to track, stations and depots, to rolling stock leases and to the contracts which govern the repair and maintenance of such rolling stock.

Sections 3 and 4 do not attempt to provide comprehensive summaries of the agreements which they describe, but rather to provide an introduction to their provisions in the order in which they appear in the agreements. The intention of this is to assist potential franchisees and their advisers when reviewing the agreements. This approach should enable such persons to familiarise themselves with the purpose and structure of the underlying contracts in advance of their reviewing them.

Certain agreements which are material to each TOC’s business will be placed in a data room specific to that TOC. Persons who have pre-qualified to tender for a particular franchise and who wish to review any of these agreements in detail will be given access to them on the basis set out in the ITT for each franchise in respect of which they have pre-qualified. The regulated access agreements (from which certain commercially sensitive provisions have been deleted) will also be available to the public upon payment of a fee to the Regulator.

Section 5—ATO C and ATO C Schemes

This section introduces ATOC which has been established to facilitate commercial arrangements both between TOCs and between TOCs and open access operators and to promote the use of the rail network. The section also describes the system for clearing and settlement of revenues and the various arrangements which have been established to retain the advantages of certain network-wide benefits, such as through and inter-available fares and Discount Cards.

Section 6—Industry-wide Arrangements

This section describes the industry-wide procedures for dispute settlement, the new regimes for insurance and pensions, arrangements for the ownership of and access to intellectual property and information technology and discusses some of the arrangements with remaining parts of British Rail. It also provides some guidance on the taxation implications of some of the arrangements discussed throughout the Document.
The Passenger Rail Industry Overview was first issued in May 1995 and was updated and re-issued in September of that year. In December 1995 a supplement was issued which was superseded by a second supplement in March 1996.

Since the issue of the second supplement considerable progress has been made in relation to rail privatisation generally. The franchising programme has continued whilst Railtrack Group PLC has been privatised by way of an international offering of shares and is now listed on the London Stock Exchange. This Document has been updated to include all of the developments described in the two supplements and has been further revised and updated to reflect any subsequent changes. Some of the major areas of change since the March 1996 supplement are identified below in order to assist potential franchisees and others who are already familiar with the earlier versions of this Document.

This section does not attempt to identify all of the changes made since the March 1996 supplement. In particular there are changes since the March 1996 supplement which are not referred to in this section but which may be material to any person considering bidding for a franchise.

**Investment Considerations**

This section has been revised to reflect developments in the industry.

**Section 1—The British Railway Industry**

Information in "Development of the Railway Network" has been updated to reflect developments in recent major railway projects.

**Section 2—The Operational Environment**

This section has been revised to reflect changes to the regulatory regime and text on recent and proposed legislation has been inserted.

**Section 3—Franchise Agreement**

Certain changes have been made in line with recent developments and section 3.2 has been amended to describe the standard form of the share purchase agreement entered into between BR and a franchisee when a franchise is awarded.

**Section 4—Other Commercial Arrangements**

The section has been updated to reflect industry developments and the privatisation of Railtrack.

**Section 5—ATOC and ATOC Schemes**

The section has been substantially amended to reflect the development of the contractual arrangements, changes to some of them and the progress being made in finalising the remainder.

**Section 6—Industry-wide Arrangements**

The section has been updated generally, and information has been provided on the Systems Code which is now in operation and which regulates access to, use of and changes to systems the use of which are necessary to run trains on Railtrack's network.

**Appendix**

This section has been revised to delete the operational statistics for the 25 TOCs as this information is now available in a more up-to-date form in the ITTs.
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DEFINITIONS AND GLOSSARY OF TECHNICAL TERMS

Certain terms defined below are also defined for statutory purposes in the Railways Act or in certain access or other agreements. The statutory definitions used in the Railways Act or definitions used in such agreements may differ from the definitions used in this Document.

“access agreements” Agreements, some of which are regulated access agreements and others which are unregulated, under which train operators obtain permission to use a relevant railway facility (track, station or depot) from the owner or principal operator of that railway facility.

“Access Dispute Resolution Committee” The committee appointed under the Access Dispute Resolution Rules.


“AEEU” Amalgamated Engineering and Electrical Union.

“Applicable Rules of the Plan” The rules regulating, for any part of the network, the standard timings and other matters necessary to enable trains to be scheduled into the working timetable applicable to that part of the network.

“Applicable Rules of the Route” The rules regulating, for any part of the network, restrictions on the use of any track or section of track and other matters necessary to enable the inspection, maintenance, renewal or repair of any track or section of track or other railway asset within that part of the network.

“ASLEF” Associated Society of Locomotive Engineers and Firemen.

“ASLEF dispute with BRB” The series of strikes in summer 1995 planned by members of ASLEF which were suspended after the first two episodes and were subsequently withdrawn following the reaching of a framework agreement on the restructuring of train drivers’ working practices and terms and conditions of employment.

“ATOC” The Association of Train Operating Companies, an unincorporated trade association with responsibility for operating certain Schemes which are common to some or all TOCs.

“ATOC Dispute Resolution Rules” The procedures for the resolution of disputes under Schemes operated by ATOC set out in the document entitled “The ATOC Dispute Resolution Rules”, as amended from time to time.

“ATOC Dispute Resolution Committee” The committee appointed under the ATOC Dispute Resolution Rules.

“BRIL” British Rail International Limited, a subsidiary of British Rail.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;British Rail&quot; or &quot;BRB&quot;</td>
<td>The British Railways Board and its subsidiaries</td>
</tr>
<tr>
<td>&quot;BRT&quot;</td>
<td>RACAL-BR Telecommunications Limited</td>
</tr>
<tr>
<td>&quot;BTOG&quot;</td>
<td>British Transport Officers' Guild</td>
</tr>
<tr>
<td>&quot;Business Systems&quot;</td>
<td>British Rail Business Systems, a division of the Central Services division of British Rail</td>
</tr>
<tr>
<td>&quot;CAPRI&quot;</td>
<td>The suite of computer programs used by the RSP to collect and process passenger revenue and other settlements for TOCs and third parties</td>
</tr>
<tr>
<td>&quot;Central Services&quot;</td>
<td>A group of businesses created by British Rail in April 1992 as part of the Organisation for Quality initiative, with the object of commercialising them and then transferring them to the private sector. The businesses included Signalling Control U.K. Limited (signalling projects), Rail Occupational Health Services Limited, the TESCOs and Quality and Safety Services Limited, each of which has now been transferred to the private sector and also BR Research, Railtest and Business Systems</td>
</tr>
<tr>
<td>&quot;consumable spares&quot;</td>
<td>Rolling stock spares which it is more cost-efficient to replace than repair</td>
</tr>
<tr>
<td>&quot;CRUCC&quot;</td>
<td>The Central Rail Users' Consultative Committee established under the Act</td>
</tr>
<tr>
<td>&quot;CSEU&quot;</td>
<td>The Railways Sub-committee of the Confederation of Shipbuilding and Engineering Unions</td>
</tr>
<tr>
<td>&quot;dedicated fare&quot;</td>
<td>A fare which only entitles the purchaser to use the trains of a single operator</td>
</tr>
<tr>
<td>&quot;dedicated ticket&quot;</td>
<td>A ticket which evidences a dedicated fare</td>
</tr>
<tr>
<td>&quot;depot&quot;</td>
<td>Any land or other property leased by Railtrack to a TOC which is normally used for or in connection with the provision of Light Maintenance Services, whether or not it is also used for other purposes</td>
</tr>
<tr>
<td>&quot;depot access agreement&quot;</td>
<td>A regulated access agreement under which a train operator obtains permission from a DFO to use a depot</td>
</tr>
<tr>
<td>&quot;depot lease&quot;</td>
<td>A lease of a depot granted by Railtrack</td>
</tr>
<tr>
<td>&quot;Depot Services&quot;</td>
<td>Any services, including Stabling and certain off-depot services (other than in respect of Heavy Maintenance), provided under a regulated access agreement at or from a depot</td>
</tr>
<tr>
<td>&quot;DFO&quot;</td>
<td>A depot facility owner, being the tenant of a depot under a lease from Railtrack</td>
</tr>
</tbody>
</table>
**“Discount Card”**
A document (other than a warrant) which entitles the purchaser of it to purchase a fare at a lower price than would otherwise apply (such as Young Persons' and Disabled Railcards)

**“EPS”**
European Passenger Services Limited

**“EU”**
European Union

**“facility owner”**
Railtrack, a DFO or an SFO as appropriate

**“fare”**
The right, subject to the rights and restrictions applicable to it and the payment of the relevant price (less any applicable discounts), to make one or more journeys on the network (whether or not together with other rights)

**“flow”**
The route or group of routes from one station to another and, where relevant, via any other station(s) and/or within a particular geographical area or areas, as specified in the fares manuals used by operators. Where the routes between two stations require a passenger to travel via somewhere, those routes constitute a different flow from the routes between the same stations which require a passenger to travel via somewhere else or which do not require him to travel via any particular place

**“franchise”**
The right and obligation to secure the provision of defined passenger rail services provided by a TOC, by means of the acquisition of the issued share capital of that TOC, on and subject to the terms of a franchise agreement

**“franchise agreement”**
An agreement between a franchisee, a franchise operator and the Franchising Director (and, for certain franchises, one or more PTEs) under which the franchisee undertakes to secure the provision by the franchise operator of the passenger rail services to which the franchise agreement relates throughout the term of the franchise agreement

**“franchise assets”**
Property, rights and liabilities of a franchise operator which are designated as franchise assets under a franchise agreement

**“franchisee”**
A party entitled and obliged to secure the provision of certain passenger rail services under the terms of a franchise agreement

**“franchise operator”**
A company holding the licences necessary to operate the Passenger Services comprised in a franchise (which in the first round of franchises will be a TOC) and which will operate Passenger Services as a subsidiary of a franchisee

**“Franchising Director”**
The Director of Passenger Rail Franchising appointed pursuant to section 1 of the Act
"Heavy Maintenance" Any maintenance required to be performed on rolling stock under the relevant Heavy Maintenance Programme (identified in a Lease Supplement), including correction of corrosion of body shells and underframes necessary to ensure the structural soundness of rolling stock throughout the lease period.

"Heavy Repairs" Any repairs, rectifications or modifications to rolling stock for which a ROSCO is responsible pursuant to the Master Lease in connection with defective heavy maintenance, design or endemic faults, major faults and Mandatory Modifications.

"HSE" The Health and Safety Executive, a statutory body with responsibility for accepting the Safety Case of Railtrack and some other rail operators.

"Independent Depots" The six Heavy Maintenance depots formerly owned by British Rail or British Rail Maintenance Ltd. and located at Doncaster, Eastleigh, Springburn, Wolverton, Chart Leacon and Ilford.


"Industry Dispute Resolution Committee" The committee appointed under the Railway Industry Dispute Resolution Rules.

"Initial Leases" The lease contracts currently in place between ROSCOs and TOCs, most of which are for a term of eight or 10 years from 1 April 1994.

"insurance spares" Rolling stock spares which are purchased at the same time as new rolling stock and retained for use in the event of accident or failure.

"inter-available fare" A fare which entitles the purchaser of it, in making a journey, to choose between the trains of more than one operator.

"ITT" An invitation to tender for a franchise.

"Lease Supplement" The document detailing the rolling stock which is the subject of each current leasing relationship and the specific terms relating to such rolling stock.

"licence" A licence to operate railway assets granted in accordance with section 8 of the Act.
"Light Maintenance Services" Services of any of the following descriptions: (a) the refuelling or the cleaning of the exterior of locomotives or other rolling stock; and (b) the carrying out on locomotives or other rolling stock of maintenance work of the kind which is normally carried out at regular intervals of 12 months or less to prepare the locomotives or other rolling stock for service. This includes the detection and rectification of faults.

"load factor" A load specification for rolling stock used in the provision of Passenger Services determined by reference to the number of seats and standing room in such rolling stock.

"LRT" London Regional Transport

"LUL" or "London Underground" London Underground Limited, a wholly owned subsidiary of LRT

"Mandatory Modifications" Modifications to rolling stock which are required to be made under applicable law or any directive of Railtrack, the HSE or any governmental authority.

"Master Lease" The standard document setting out the principal terms of each rolling stock leasing relationship between a ROSCO and a TOC.

"MDC" Metropolitan District Council

"MRG" Metropolitan Railway Grant

"national conditions of carriage" The national conditions of carriage relating to domestic fares (as amended from time to time) as described in section 5.2 of this Document.

"National Fares Database" The fares data maintained by the RSP.

"network" The rail network of which Railtrack is the owner and operator and which is situated in Great Britain.

"non-passenger depot" Any land or other property which is normally used for or in connection with the provision of Light Maintenance Services, whether or not it is also used for other purposes, and which is not leased, or intended to be leased, to a TOC.

"NRES" National Rail Enquiry Scheme

"OBS" O.B.S. Services Limited, formerly a wholly owned subsidiary of BRB providing catering and catering procurement services which was sold on 4 October 1995 to a management buy-out team.

"open access operator" A person (other than a franchisee, a franchise operator, a company wholly owned by the Franchising Director or BRB acting under a contract with the Franchising Director or a PTE) providing passenger rail services.

"OPRAF" The Office of Passenger Rail Franchising.
"ORCATS" The suite of computer programs which provides the CAPRI system with a file of allocation factors that may be used to apportion, to individual TOCs, passenger revenue on certain flows

"Passenger’s Charter" The British Rail Passenger’s Charter and the standards set out in that document as updated from time to time

"passenger journey" A journey by one rail passenger, by whichever route is followed, between the places at which the passenger joins and leaves the railway system

"passenger mile" A unit of measurement representing the transport of one rail passenger by rail over a distance of one mile

"passenger receipts" Revenue received from all ticket sales (including season tickets)

"passenger revenue" Amounts attributable to a TOC, recognised on the accruals basis of accounting, in respect of the provision of passenger rail and other passenger related services excluding Public Service Obligation and PTEs and other grants and any other contract payments received from HM Government, the Franchising Director or PTEs but including payments from local authorities in respect of concessionary fare schemes

"Passenger Services" The passenger rail services which are, or are to be, provided under a franchise agreement

"PSR" The Passenger Service Requirement which represents the minimum level of services (including any load factors or minimum capacity requirements) which must be provided by a franchise operator and is specified in its franchise agreement

"PTAs" Passenger Transport Authorities, which are bodies funded by local authorities in the relevant areas

"PTEs" The Passenger Transport Executives, statutory bodies subject to local authority control which are responsible for the planning and funding of passenger rail services in certain metropolitan areas

"public service contract" A contract between a transport undertaking and a competent authority of an EU Member State in order to provide the public with adequate transport services and under which compensation may be paid to the transport undertaking in respect of what would otherwise be a Public Service Obligation without pre-notifying the European Commission under the European legislation on State aid

"Public Service Obligations" Obligations which a transport undertaking would not assume or would not assume to the same extent or under the same conditions, if it were considering its own commercial interests and in respect of which a Member State of the EU may provide compensation

1 Passenger journeys and passenger miles are not based on direct observations of passenger volumes but are estimates calculated by CAPRI from revenue and timetable data and based on a number of assumptions, for example in relation to the use of season tickets. For these reasons, caution should be taken in interpreting trends in passenger journeys and passenger miles and in statistics derived from these figures.
<table>
<thead>
<tr>
<th>Term</th>
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<tbody>
<tr>
<td>&quot;Railpart&quot;</td>
<td>Railpart Limited, the manager of rolling stock spares, currently a wholly owned subsidiary of BRB</td>
</tr>
<tr>
<td>&quot;Railtrack&quot;</td>
<td>Railtrack Group PLC, a listed publicly owned company, together with its subsidiaries</td>
</tr>
<tr>
<td>&quot;Railway Group Standards&quot; or &quot;RGS&quot;</td>
<td>Railway Group Standards, which are the mandatory operational and engineering standards for ensuring safety on the network as administered by the Safety and Standards Directorate, part of Railtrack</td>
</tr>
<tr>
<td>&quot;Railway Industry Dispute Resolution Rules&quot;</td>
<td>The procedures for the resolution of disputes not falling within either of the Access or ATOC Dispute Resolution Rules, set out in the document entitled &quot;The Railway Industry Dispute Resolution Rules&quot;, as amended from time to time</td>
</tr>
<tr>
<td>&quot;Railways Act&quot; or &quot;Act&quot;</td>
<td>The Railways Act 1993</td>
</tr>
<tr>
<td>&quot;RAVERS&quot;</td>
<td>A computer program currently owned by BRB known as Rail Vehicle Records System and used to record maintenance and engineering data on vehicles and components</td>
</tr>
<tr>
<td>&quot;RCL&quot;</td>
<td>Railway Claims Limited, a company limited by guarantee</td>
</tr>
<tr>
<td>&quot;regulated access agreement&quot;</td>
<td>An agreement permitting the use of a relevant railway facility (track, station or depot) which may be entered into or amended only with the prior approval of the Regulator</td>
</tr>
<tr>
<td>&quot;Regulator&quot;</td>
<td>The Rail Regulator appointed pursuant to section 1 of the Act</td>
</tr>
<tr>
<td>&quot;repairable spares&quot;</td>
<td>Rolling stock spares which are removed from a vehicle and refurbished before being used on the same or a different vehicle</td>
</tr>
<tr>
<td>&quot;reservation&quot;</td>
<td>The right to a seat, sleeper or the carriage of an item of luggage, an animal or (in the case of a train which involves the transport of vehicles) a vehicle on a particular train if the person with that right purchases a fare for a flow on which that train runs</td>
</tr>
<tr>
<td>&quot;RGS&quot;</td>
<td>Railway Group Standards</td>
</tr>
<tr>
<td>&quot;RMT&quot;</td>
<td>The National Union of Rail, Maritime and Transport Workers</td>
</tr>
<tr>
<td>&quot;RMT dispute with Railtrack&quot;</td>
<td>The series of strikes in the summer of 1994 by signalmen who were employees of Railtrack and who were principally members of the RMT</td>
</tr>
<tr>
<td>&quot;ROSCOs&quot;</td>
<td>The three rolling stock leasing companies, being Eversholt Leasing Limited, Porterbrook Leasing Company Limited and Angel Train Contracts Limited</td>
</tr>
<tr>
<td>&quot;route miles&quot;</td>
<td>The distance between two or more given locations on the rail network measured in miles</td>
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<td>Term</td>
<td>Definition</td>
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<tr>
<td>“RPI”</td>
<td>The Retail Prices Index (all items measure, unless the context otherwise requires)</td>
</tr>
<tr>
<td>“RPI minus X”</td>
<td>The annual percentage change in the RPI less X percentage points</td>
</tr>
<tr>
<td>“RSG”</td>
<td>Revenue Support Grant</td>
</tr>
<tr>
<td>“RSP”</td>
<td>Rail Settlement Plan Limited, a limited company established in connection with the Ticketing and Settlement Scheme</td>
</tr>
<tr>
<td>“RSTL”</td>
<td>Rail Staff Travel Limited, a limited company established in connection with the ATOC Staff Travel Scheme</td>
</tr>
<tr>
<td>“RUCCs”</td>
<td>Rail Users’ Consultative Committees established under the Act</td>
</tr>
<tr>
<td>“Running Maintenance and Repairs” or “Running Maintenance”</td>
<td>Any maintenance work required to be performed on rolling stock under the relevant Running Maintenance Programme (identified in a Lease Supplement) and work arising from that maintenance, including the detection and rectification of any faults, the making of any modifications to such rolling stock other than Mandatory Modifications and any repairs, rectifications or replacements other than those for which a ROSCO is responsible</td>
</tr>
<tr>
<td>“Safety Case”</td>
<td>A railway safety case, being a statement of the way in which safety related matters will be handled which is required by statute to be produced by all train and station operators and by all infrastructure controllers, the acceptance of which is a condition of the relevant operator’s licence</td>
</tr>
<tr>
<td>“SAPPHIRE”</td>
<td>The financial, accounting and management information system used by most TOCs</td>
</tr>
<tr>
<td>“Scheme”</td>
<td>An arrangement adopted or to be adopted by some or all of the members of ATOC in relation to a particular matter, as contemplated by the constitution of ATOC</td>
</tr>
<tr>
<td>“Secretary of State”</td>
<td>The Secretary of State for Transport</td>
</tr>
<tr>
<td>“SFO”</td>
<td>A station facility owner, being either the tenant of a station under a lease from Railtrack or, at Independent Stations, Railtrack</td>
</tr>
<tr>
<td>“Sparesco”</td>
<td>A company jointly owned by the ROSCOs which owns the existing stock of repairable and insurance spares for rolling stock</td>
</tr>
<tr>
<td>“Stabling”</td>
<td>The parking or laying up of trains, together with ancillary shunting or marshalling</td>
</tr>
<tr>
<td>“station access agreement”</td>
<td>A regulated access agreement under which a train operator obtains permission from an SFO to use a station</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>&quot;station lease&quot;</td>
<td>A lease of a station granted by Railtrack</td>
</tr>
<tr>
<td>&quot;Systems Code&quot;</td>
<td>The Code produced by Railtrack and approved by the Regulator, which is required by Railtrack’s network licence, governing access to, use of and changes to systems which are necessary or expedient for or in connection with the operation of trains on or access to Railtrack’s infrastructure. In the case of expedient systems the Code only applies to those systems owned by Railtrack</td>
</tr>
<tr>
<td>&quot;TEB&quot;</td>
<td>A Telephone Enquiry Bureau which provides information on aspects of rail services to the public</td>
</tr>
<tr>
<td>&quot;TESCOs&quot;</td>
<td>Train Engineering Service Companies, formerly subsidiaries of BRB, which have been transferred to the private sector</td>
</tr>
<tr>
<td>&quot;through fare&quot;</td>
<td>A fare which is valid for a journey that must involve the use of the trains of more than one operator or a combination of two or more fares in respect of a whole journey which are, together, valid for such a journey</td>
</tr>
<tr>
<td>&quot;ticket&quot;</td>
<td>A document which evidences the purchase of a fare</td>
</tr>
<tr>
<td>&quot;timetable&quot;</td>
<td>The timetable published from time to time by an operator in respect of passenger services provided by it</td>
</tr>
<tr>
<td>&quot;TOC&quot;</td>
<td>A passenger train operating company which was formed as a wholly owned subsidiary of British Rail to take over the operation of a business previously operated by a particular TOU and which operates the Passenger Services comprised in a particular franchise</td>
</tr>
<tr>
<td>&quot;TOPS&quot;</td>
<td>A suite of operational systems owned by Railtrack used to monitor the planned movement of trains and the maintenance and state of repair of those trains</td>
</tr>
<tr>
<td>&quot;TOU&quot;</td>
<td>A passenger train operating unit each of which was a division of British Rail responsible for the operation of certain Passenger Services before its business was transferred to a TOC</td>
</tr>
<tr>
<td>&quot;track access agreement&quot;</td>
<td>An agreement under which a train operator obtains permission from Railtrack to use its track and which, in the case of most operators (including all TOCs) will be a regulated access agreement</td>
</tr>
<tr>
<td>&quot;Track Access Conditions&quot;</td>
<td>The Railtrack Track Access Conditions 1995, as amended from time to time</td>
</tr>
<tr>
<td>&quot;train mile&quot;</td>
<td>A unit of measurement representing the movement of a train scheduled to carry passengers over one mile</td>
</tr>
<tr>
<td>&quot;train plan&quot;</td>
<td>The plan and/or diagram of a franchise operator for the operation of trains and train formations under its timetable</td>
</tr>
</tbody>
</table>
"Travelcard" A range of one-day and season tickets which are available on their own or as part of other tickets. Travelcard tickets entitle passengers to travel over a range of zones in or surrounding the Greater London area. They are accepted on London Underground, the Docklands Light Railway, LRT bus services and on certain of the TOCs’ passenger rail services.

"Travelcard Agreement" The agreement between the TOCs and LRT which governs the arrangements for providing and honouring Travelcards and for allocating sales revenue between the parties.

"TRUST" An operational system owned by Railtrack for recording train running performance and comparing it with planned performance as monitored by TOPS.

"TSDB" The computer database operated by Railtrack known as the Train Service Data Base which is the database of agreed train plans.

"TSSA" Transport Salaried Staffs’ Association.


"VAT" Value added tax as provided for in the Value Added Tax Act 1994.

"Vehicle" A locomotive or coach or other hauled vehicle or an individual vehicle within a multiple unit.

"vesting" In relation to passenger operators, refers to the process of transferring certain assets, rights and liabilities of BRB which have formed the substance of a TOU’s business, to a TOC.

"Working timetable" The timetable prepared from time to time by Railtrack showing, so far as reasonably practicable, every train movement on the network.

The term "reporting periods" when used in this Document in relation to British Rail, refers to the 13 periods into which British Rail’s results for the financial year are subdivided. Each such period is 28 days, with the exception of periods one and 13 which may vary from this length in order to achieve an aggregate of, normally, 365 days in each year (or 366 days in a leap year).
THE FRANCHISING PROPOSITION

The Opportunity

Since 1 April 1994, the railway industry in Great Britain has undergone a period of major restructuring. Previously, British Rail owned substantially all rolling stock, track, stations and other rail infrastructure and operated substantially all freight and passenger services.

A very different industry structure has now emerged. Most of the track, signalling, stations and depots are now owned by Railtrack, which derives much of its income by charging for access to this infrastructure. Railtrack was privatised in May 1996. The great majority of passenger rolling stock is now owned or leased by three privately owned ROSCOs which derive income by leasing such rolling stock to train operators.

A central part of the restructuring has been the reorganisation of British Rail's passenger operations into 25 train operating companies or "TOCs". Collectively, the TOCs operate the passenger rail services which the Franchising Director is in the process of franchising by way of competitive tender.

Franchises provide the opportunity to operate the Passenger Services on a commercial basis with financial support from the Franchising Director (and in some cases one or more PTEs) where appropriate or in exchange for payments to the Franchising Director. The successful tenderer will enter into a franchise agreement with the Franchising Director (and in some cases one or more PTEs) and will acquire the share capital of the relevant TOC.

Nature of the Franchise

The Franchising Director is seeking to award franchises to parties who are committed to the future development of passenger rail operations. Tenders are normally invited on the basis of a duration of seven years; but the Franchising Director will consider awarding franchises for longer periods, for example, where he wishes to secure investment in rolling stock which would not otherwise be made and a prospective franchisee is able to demonstrate that this is justified in terms of improved value for money. He may also consider franchises of less than seven years where, for example, operation of the franchise is likely to be affected by a major infrastructure project.

On commencement of a franchise the TOC will have in place the necessary licences, Safety Case and material contracts to operate the franchise. The franchise agreement will specify the franchisee's commercial obligations including, amongst other things, the PSR, any capacity requirements and the extent of fares regulation. Within that framework, the Franchising Director is concerned to provide franchisees with as much commercial freedom as practicable with the aim of encouraging development of the business and securing an improvement in passenger rail services.

The Franchising Director will be contractually bound to pay levels of financial support or entitled to receive franchise payments throughout the franchise period as determined by the tendering process and set out in the franchise agreement. Under the Railways Act, the obligations of the Franchising Director under franchise agreements are to be met by the Secretary of State out of funds voted by Parliament.

Services and Performance

TOCs are essentially customer service businesses having a direct interface with the passenger. Management of staff, and of major suppliers such as Railtrack and the ROSCOs, is critical to providing good services safely to passengers.

Arrangements exist between TOCs and Railtrack to deliver good performance (measured in terms of both reliability and punctuality). These are intended to incentivise the parties to improve performance to their commercial and financial benefit and to penalise poor performance. In the case of commuter and regional TOCs, there are also incentive arrangements between the TOCs and the Franchising Director. Good performance should result in increased passenger revenue and/or higher financial support for the TOCs and extra revenue for Railtrack; poor performance should have the reverse effect.
Good performance also depends on continuous availability of serviceable rolling stock. TOCs are responsible for Running Maintenance and Repairs, whereas the ROSCOs are responsible for Heavy Maintenance. The ROSCOs currently contract with third parties including some TOCs to provide the Heavy Maintenance. Thus, in addition to their relationships with the Franchising Director and Railtrack, franchisees need to manage effectively their relationships with the ROSCOs and other third party maintenance providers.

The franchise agreement requires a franchisee to establish its own passenger’s charter which must include compensation arrangements at least as favourable as the current Passenger’s Charter. British Rail published its Passenger’s Charter in 1992. It sets out targets (revised most recently in April 1995) for the punctuality and reliability of Passenger Services together with details of ex gratia compensation arrangements for passengers where targets are not met. In addition, the Passenger’s Charter includes targets relating to matters such as queuing times at ticket offices and response times for TEBs.

All TOCs are expected to be members of ATOC and will be required to co-operate in certain ATOC Schemes. Products and services such as through-ticketing and Discounts Cards delivered through ATOC Schemes will continue to provide some of the benefits of a national network for both passengers and TOCs.

Financial Considerations

TOC revenues are principally generated by passenger receipts and by financial support from the Franchising Director, and, in the case of certain TOCs providing local services in Scotland and central and northern England, from PTEs. In general, costs are high in relation to passenger receipts such that the great majority of the TOCs incur losses prior to receipt of financial support. In the case of those TOCs receiving support from both the Franchising Director and PTEs, support covers between two-thirds and three-quarters of costs. A proportion of each TOC’s revenue is subject to fares regulation by the Franchising Director and, in some cases, PTEs and a significant proportion of costs, in particular those relating to charges for access to the infrastructure and rolling stock, is essentially fixed.

Once franchised, it is anticipated that TOCs will be able to exercise a substantial degree of freedom in managing their businesses by concentrating on specific areas of income and costs. The scope for these opportunities varies by franchise. There may be opportunities to enhance revenues, for example, through improved performance, marketing initiatives, and new services to attract additional passengers, particularly in off-peak periods. In addition there may be opportunities to reduce costs, for example, through effective management of staff and suppliers, control of key operating costs and improvements in productivity. In part these opportunities arise because TOCs under BRB ownership are affected by public expenditure controls which will not apply to franchisees.

Most TOCs have negotiated short-term leases for a portion of their fleet. This coupled with the ability to sub lease is designed to provide franchisees both with a degree of flexibility to manage their rolling stock and the ability to earn revenue by sub-leasing. Some TOCs also have short-term leases of rolling stock nearing the end of its economic life which may have extension options. These could provide some flexibility to replace rolling stock near the end of its economic life.

TOC passenger revenues are inevitably affected by economic and demographic changes, whereas agreed levels of financial support will be determined and paid under the franchise agreement. Passenger revenues may also be affected by the poor performance of a TOC’s major suppliers. In cases of poor performance by Railtrack, revenues are protected in part by the incentive arrangements described above, which give varying degrees of protection depending on the extent to which Railtrack does not meet its performance specifications. In the case of non-availability of rolling stock due to certain defaults, where no alternative rolling stock is provided by the ROSCO, rentals are abated.

Where a PTE specifies services and regulates fares, it is also responsible for providing support for such services. In these cases, support may be fixed or the PTE may take on the risk of fluctuations in passenger revenues.
Certain other financial risks which a franchisee would otherwise bear will be mitigated to some degree by risk sharing with the Franchising Director. In general, these will relate to areas which are outside a franchisee's control, such as the Regulator's access charging and moderation of competition reviews and Mandatory Modifications to rolling stock.

**Capital Requirements**

TOCs will own relatively few fixed assets at the start of the franchise and are generally expected to have modest capital requirements. The initial level of capital which the Franchising Director is minded to require will be specified in the individual TOC ITTs. It will be set having regard to the risks being transferred to the franchisee and the need to ensure that franchisees are committed to the performance of their obligations under the franchise agreement. The Franchising Director requires that a percentage of the initial capital subscribed by the successful franchisee into the TOC is used to fund a performance bond in favour of the Franchising Director. Alternatively, the Franchising Director may be willing to consider the provision of a performance bond secured on the covenant of the franchisee or a member of the franchisee's group.

In most cases the Franchising Director will require expected advance season ticket receipts to be fully protected by bonding or some other form of security.

**Regulation**

The industry operates against a background of regulation by the Regulator, who regulates access to track, stations and depots (including non-passenger depots) and grants licences for the operation of trains. The Regulator has extensive powers to regulate Railtrack as the monopoly supplier of the infrastructure. Two key areas of regulatory policy affecting TOCs, namely charges for access to infrastructure and the extent of new competition from new operators and other TOCs, have largely been settled until 2001 and 2002 respectively. For periods beyond these dates, franchisees are afforded some protection through the franchise agreement against regulatory changes in these two areas which adversely affect the financial position of their franchise operators.

Before being granted a licence and permitted to commence operation, a train operator must prepare and receive approval of a Safety Case. Existing Safety Cases may have to be revised and approved for a new franchisee.

The ROSCOs are not subject to regulation by the Regulator. Most TOCs lease rolling stock from at least two of the ROSCOs and the majority of Initial Leases should match or exceed the length of a normal seven year franchise.
The Franchising Programme

The main steps completed in the programme for franchising the 25 TOCs are shown in the table below:

<table>
<thead>
<tr>
<th>Train Operating Company</th>
<th>Pre-qualification Document</th>
<th>ITT &amp; Information Memorandum</th>
<th>Franchise Award</th>
<th>Franchise Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>South West Trains</td>
<td>December 94</td>
<td>May 95</td>
<td>December 95</td>
<td>4 February 96</td>
</tr>
<tr>
<td>Great Western</td>
<td>December 94</td>
<td>May 95</td>
<td>December 95</td>
<td>4 February 96</td>
</tr>
<tr>
<td>LTS Rail</td>
<td>December 94</td>
<td>May 95</td>
<td>May 96</td>
<td>26 May 96</td>
</tr>
<tr>
<td>East Coast</td>
<td>December 94</td>
<td>September 95</td>
<td>March 96</td>
<td>28 April 96</td>
</tr>
<tr>
<td>Gatwick Express</td>
<td>December 94</td>
<td>September 95</td>
<td>April 96</td>
<td>28 April 96</td>
</tr>
<tr>
<td>Midland Main Line</td>
<td>December 94</td>
<td>September 95</td>
<td>April 96</td>
<td>28 April 96</td>
</tr>
<tr>
<td>Network South Central</td>
<td>December 94</td>
<td>September 95</td>
<td>April 96</td>
<td>26 May 96</td>
</tr>
<tr>
<td>South Eastern</td>
<td>October 95</td>
<td>December 95</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chiltern Railway</td>
<td>October 95</td>
<td>January 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cardiff Valleys</td>
<td>January 96</td>
<td>March 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Wales and West</td>
<td>January 96</td>
<td>March 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thames Trains</td>
<td>February 96</td>
<td>April 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anglia Railways</td>
<td>February 96</td>
<td>June 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Isle of Wight</td>
<td>April 96</td>
<td>June 96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CrossCountry</td>
<td>April 96</td>
<td>June 96(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ScotRail</td>
<td>April 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Great Eastern</td>
<td>April 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merseyrail Electrics</td>
<td>April 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thameslink</td>
<td>April 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Anglia Great Northern</td>
<td>April 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central</td>
<td>June 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Coast</td>
<td>June 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North East</td>
<td>June 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North London Railways</td>
<td>June 96</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North West</td>
<td>June 96</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) see paragraph below

The ITTs and associated information memoranda for Anglia Railways and Isle of Wight are being issued concurrently with this Document. The information memorandum for CrossCountry is being issued concurrently with this Document and the associated ITT is expected to be issued shortly. By then the Franchising Director will have published invitations to pre-qualify for all 25 franchises, issued information memoranda for 15 with associated ITTs for 14, and awarded seven, all of which are in operation.

In line with his objective to award franchises as rapidly as practicable, the Franchising Director is now preparing ITTs and associated information memoranda for the remaining franchises, which he plans to issue in a rolling programme through the summer and into the autumn of 1996. The precise timetable will depend on the way in which the market continues to respond to franchising opportunities and on the requirements of the PTEs and will be reviewed and updated as the programme develops.

Franchise Awards

The seven franchises so far in operation have been awarded to six different franchisees. Three are for seven years and four for longer terms (subject to meeting certain commitments in the early years, without
which the franchise will revert to seven years). All show significant reductions in the annual support required from or increases in payments to be made to the Franchising Director over the life of the franchise, as illustrated by the amounts for years 1—7 given in the table below:

<table>
<thead>
<tr>
<th>Training Operating Company</th>
<th>Franchisee</th>
<th>Term Years</th>
<th>Payments from/to Franchising Director £ million</th>
<th>Annual Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>South West Trains</td>
<td>Stagecoach Holdings plc</td>
<td>7</td>
<td>54.7 40.3</td>
<td>49.0</td>
</tr>
<tr>
<td>Great Western</td>
<td>Great Western Holdings Limited</td>
<td>10</td>
<td>53.2 35.2</td>
<td>43.3</td>
</tr>
<tr>
<td>LTS Rail</td>
<td>Prism Rail PLC</td>
<td>15</td>
<td>29.5 18.6</td>
<td>23.2</td>
</tr>
<tr>
<td>East Coast</td>
<td>Great Northern Railway Company</td>
<td>7</td>
<td>64.6 Nil</td>
<td>23.7</td>
</tr>
<tr>
<td>Gatwick Express</td>
<td>National Express Group plc</td>
<td>15</td>
<td>(4.6) (11.7)</td>
<td>(8.8)</td>
</tr>
<tr>
<td>Midland Main Line</td>
<td>National Express Group plc</td>
<td>10</td>
<td>16.5 (4.4)</td>
<td>2.1</td>
</tr>
<tr>
<td>Network South Central</td>
<td>London &amp; South Coast Limited</td>
<td>7</td>
<td>85.3 34.6</td>
<td>51.4</td>
</tr>
</tbody>
</table>

Source: Franchise agreements

Note: In addition to the amounts shown above, payments from/to the Franchising Director will include reimbursement by the Franchising Director of supplements to track access charges and will also reflect movements in RPI.

All franchisees have undertaken to provide service levels in the early years at or close to those timetabled at the time of taking on the franchise, and, in many cases, to set passenger’s charter standards above current levels. In addition, they have made specific commitments to a variety of service improvements and enhancements.

Great Western was awarded to a management/employee buyout backed by FirstBus plc, 3i plc, Intermediate Capital Group and the Royal Bank of Scotland plc. The 10 year term is subject to agreeing with the Franchising Director an improvement and investment plan within two years. The franchisee has committed to operate at least the number of services in the timetable at the time it acquired the franchise, to reduce journey times, refurbish rolling stock and co-ordinate bus links with local operators.

The Improvement and Investment Plan will provide increased service frequencies, a more flexible rolling stock fleet, and a reduction in support required from the year 1999.

In the South West Trains franchise, Stagecoach Holdings plc is committed to a programme of station improvements, including passenger security measures and better customer information, and to providing dedicated bus links to selected stations.

For LTS Rail, Prism Rail PLC (“Prism”), a company formed specifically to pursue opportunities in passenger rail franchising has been awarded a 15 year franchise subject to ordering new rolling stock within 18 months of franchise commencement for delivery by 1999. Prism has undertaken to run the current train mileage in the first year and at least 95% of that mileage for the next three years, to invest at least £14 million in station improvements over the franchise term and to open a new station at West Ham providing an interchange with London Underground and North London Railways’ services subject to finalisation of construction costs.

In taking on the East Coast franchise, Great Northern Railway Company Limited, a subsidiary of Sea Containers Limited, has guaranteed to run the current train mileage for at least the next two years, operate higher frequencies than required by the PSR to key destinations for the franchise term, and invest over £17 million on refurbishing and improving the performance of rolling stock, on station improvements and on upgrading facilities for business class travellers.
The National Express Group plc ("NEG") was awarded a 15 year franchise for Gatwick Express, subject to ordering a completely new fleet of rolling stock for introduction by 1999; and a 10 year franchise for Midland Main Line, subject to the provision of additional rolling stock to provide a completely new weekday half-hourly stopping service between London and Leicester and allow improvements to fast intercity services. In addition, NEG will refurbish existing Midland Main Line rolling stock, undertake a programme of station improvements and pursue the development of an East Midlands Parkway station.

On Network SouthCentral, London & South Coast Limited, a subsidiary of the French-based Compagnie Generale des Eaux, has agreed to maintain established levels of service for the first year, to increase services in selected areas, and to invest £10 million in improvements to stations and trains during the first three years of the franchise.

Franchising in Progress

The Franchising Director has received final bids for the franchise for the Chiltern Railway and has announced that he has selected M40 Trains Limited, a management buyout team with backing from 3i plc and John Laing plc, as the preferred bidder. Final bids for South Eastern are due shortly. The Franchising Director has announced that South Eastern will be a 15 year franchise involving progressive replacement of all slam-door rolling stock.

In parallel, he is about to short-list tenderers for Cardiff Valleys and South Wales and West and is working with pre-qualifiers towards indicative bids for Thames Trains.
INVESTMENT CONSIDERATIONS

In evaluating an investment in a franchise and/or the shares of any TOC, prospective investors should consider carefully all information supplied to them in connection with such investment including all documentation made available and the general investment considerations set out below.

Lack of Track Record

Before 1 April 1994, each TOC operated as part of BRB which was a vertically integrated business. Consequently, much of the financial information relating to that period is not meaningful in understanding the operations of the TOCs as separate business units within the new industry environment. The disaggregation of British Rail and changes in management structure since 1 April 1994 also mean that the performance of parts of British Rail prior to that date may not be an accurate guide to the performance of the corresponding TOC.

It also follows that the management of the newly created subsidiary companies have only limited experience of operating within this structure and of running TOCs under the new contractual regime. In addition, the management of BRB owned TOCs have no experience of running TOCs as stand alone businesses outside the umbrella of BRB.

The performance regimes between Railtrack and the TOCs (set out in schedule 8 of the track access agreement) relating to train service reliability and punctuality have, for the most part, only been operational since 10 December 1995. Payments for the period 1 April 1995 to 9 December 1995 have been calculated retrospectively using data collected during that period, but with certain derogations. The incentive regime between the Franchising Director and commuter and regional TOCs is being implemented from 1 April 1996 in respect of relevant TOCs which have not yet been franchised, but is only now becoming fully operational. Calculations have been made to assess its effect had it operated during the last four accounting periods of the year ended 31 March 1996, but there have been no retrospective payments for those periods.

The Railtrack and OPRAF regimes depend on the same data sources for train running information. Both regimes require collection of data on train running and running times and the Railtrack regime also involves a process of attributing causes of delay between Railtrack and train operators. There were deficiencies in both processes in the year to March 1996, which are being progressively eliminated. Some train performance data has not been collected, some has been inaccurate, and the fault attribution has only been brought fully into effect since 10 December 1995. Payments so far calculated under the schemes are therefore not necessarily an accurate indicator of future payments. Inaccuracies in historical data may have led to benchmarks being incorrectly set. In addition, historical data will not necessarily give an indication of future performance since behaviour may alter as the financial consequences are more clearly understood by the parties. (For further details on performance regimes see section 4.2, "Access to Track—Track Access Conditions").

Many elements of the new contractual regime defining the TOCs’ rights and obligations will only have been operational for a short period prior to franchising. Accordingly, no assurances can be given that all elements of the contractual regime will operate as they are intended to. A number of the agreements which make up the contractual regime contain provisions which enable aspects of them to be revised in the future. Such revisions, which may not require the consent of all parties to the agreements, could affect the business or profitability of a TOC.

Such ongoing changes to the contractual regime under which TOCs operate, combined with the effects of industrial action during 1994 and 1995, mean that the track record of any TOC since 1 April 1994 should not be taken as a reliable guide to that TOC’s future financial or operational performance.
Impact of Performance Regimes

The combined operation of the Railtrack and OPRAF performance regimes can potentially create significant short-term volatility in the cash flow of a TOC.

Industry Characteristics

The characteristics of the industry are such that there are certain inherent risks in running a train operating business on a day to day basis. In particular, TOCs are heavily dependent on the reliability and integrity of rolling stock and the infrastructure on which trains run. Additionally, there may be a dependence on a single type of rolling stock in some cases. Other industry risks include the constraints imposed by the physical infrastructure, such as the lack of diversionary routes in many cases and the vulnerability of the system to the actions of third parties. Effective recovery from major incidents will depend on the strength and workability of contractual relationships which are as yet untested and, in extremis, on the contingencies available.

Over recent years the rail network has been a periodic target for terrorist activity. Consideration therefore needs to be given to the potential impact of such threats on the financial and operational robustness of the business.

Competition Considerations

Revenue Allocation

Many TOCs operate at least part of their service in parallel with one or more other TOCs. Where a particular flow is served by more than one TOC, the revenues from inter-available fares on that flow are allocated to the TOCs in accordance with ORCATS (unless the TOCs reach their own agreements on allocation). Under the Ticketing and Settlement Agreement, a TOC which believes that the existing allocation does not accurately reflect its entitlement to revenue from a particular flow, is able to seek to have the basis of revenue allocation changed by an arbitrator. Any change in the basis of allocation may result in each TOC serving the particular flow receiving a different proportion of the total revenue attributable to that flow. See section 5.2, "Ticketing and Settlement Agreement".

Inter-available Fares

It is a requirement that TOCs set inter-available fares on most flows, although the Franchising Director may disapply this requirement in certain circumstances. On flows where compulsory inter-availability applies, a lead operator's competitors on that flow remain free to set their own non-inter-available dedicated fares for all fare revenue available for allocation between operators. See section 5.2, "Ticketing and Settlement Agreement".

New Competition

TOCs may face new competition either from other TOCs or from open access operators. In his policy statement "Competition for Railway Services", issued in December 1994, the Regulator announced his intention to limit the opportunities for new competition until 31 March 2002. The Regulator has also stated that he expects any changes to the competition regime thereafter to be incremental in nature. See section 2.7, "Competition—Mechanism for Moderating Competition".

Fares Regulation and Fares Setting

The Franchising Director will regulate the prices of certain fares. In addition, the fares setting arrangements in the Ticketing and Settlement Agreement oblige franchise operators, in some cases, to honour fares set by other operators. Where inter-available fares are set by a TOC as lead operator, the price of those fares within another TOC's tariff basket will, in most cases, be affected by the performance of the lead operator. See section 3.5, "Regulation of the Price of Fares" and section 5.2, "Ticketing and Settlement Agreement".
Insolvency of a TOC

The settlement arrangements for revenue have the effect that in the event of one TOC becoming insolvent all other TOCs would be exposed to the extent that the insolvent TOC has outstanding financial liabilities to the RSP. See section 5.2, “Ticketing and Settlement Agreement”.

Travelcards

Many TOCs derive a portion of their revenue from income allocated to them from the London Travelcard. The London Travelcard enables holders to travel on services provided by London Underground rail services, LRT bus services and the Docklands Light Railway in the London area. Membership of the relevant ATOC Scheme is mandatory for all passenger operators. Should London Underground and/or any relevant bus operator introduce competing travelcards which do not include the option to travel on rail services provided by TOCs, this may have a detrimental effect on the revenue derived by certain TOCs from sales of the London Travelcard. Certain TOCs are in a similar position in relation to travelcards other than the London Travelcard. See section 5.3, “Other ATOC Schemes—London Transport”.

The Regulator

The Railways Act gives the Regulator wide-ranging powers and duties in relation to the restructured rail industry. The ways in which these powers may be used are circumscribed by the provisions of the Railways Act. In addition, the Regulator is required to take into account any guidance given to him by the Secretary of State until 31 December 1996. Nevertheless, within such limits the Regulator remains free to change or develop his policies as he believes circumstances require. The way in which the Regulator chooses to exercise his powers may affect the profitability of the TOCs.

VAT

The present transitional arrangements under EU legislation which allow the zero rating of public transport fares are due to come to an end in December 1996. No decision has yet been taken on legislation to replace the transitional arrangements. Any such legislation will be subject to unanimous agreement by the Member States.

If the rate of VAT is adjusted on passenger rail transport before 31 March 2003, adjustments may be made to franchise payments and/or to other provisions under the franchise agreement in order to ensure that, until that date, the franchise operator suffers no net gain or net loss as a result of the change.

Fuel Oil Duty

Diesel fuel is subject to a detailed structure of duty and rate reliefs. Red diesel fuel which is used mainly by the rail, agricultural and construction industries is taxed at a lower rate than diesel fuel for other industrial uses. Changes in the rate of duty applicable to diesel for rail use would affect the cost base of TOCs which use diesel powered trains.

Changes in Law, Safety and Environmental Issues

General

Legislation could be introduced which imposes or extends operational restrictions on TOCs for safety reasons. Such legislation could impose costs, both capital and revenue, and loss of revenue on TOCs, at least in any transitional period. Competing modes of transport in the UK are subject to similar risks. Station Access Conditions and Depot Access Conditions each contain provisions designed to allocate the costs resulting from certain changes in legislation or directions of certain authorities between the parties using the affected facility on a fair and equitable basis.
Safety

Inquiries into railway accidents, including incidents affecting other TOCs, may result in additional safety related recommendations which could impose costs, both capital and revenue.

A number of recommendations to improve train safety have been made by the HSE. Whilst many have been implemented in full, a number of dispensations have been given including time to implement the recommendations and exemptions of certain classes of older rolling stock.

In addition, non-InterCity slam-door fleets are not fitted with secondary door locks. It is possible that in the future wider application of secondary door locking may be required. HSE is also considering whether to require crashworthiness modifications to older Mark 1 vehicles.

Mandatory Modifications

In order to maintain an appropriate level of safety on the railways, some modifications to the rolling stock may be required by the relevant authorities. Under the Master Lease, the ROSCOs are responsible for financing and arranging for the Mandatory Modifications to be undertaken. However, for the period of the Initial Leases (excluding any extension of such period), the Secretary of State will underpin part of the ROSCO’s risk with respect to Mandatory Modifications. Under this arrangement the Secretary of State will contribute above a certain threshold to the ROSCO’s costs of implementing the Mandatory Modifications. An affected TOC will bear up to 10 per cent. of the implementation costs incurred by the relevant ROSCO(s) on that TOC’s rolling stock. Should a TOC’s contribution in respect of any such Initial Lease in any one year exceed five per cent. of the total of that TOC’s relevant rolling stock lease rental charges for that year, the Franchising Director will make a payment to the TOC in respect of the excess.

Environmental

TOCs are not generally liable under access agreements or station or depot leases for any pollution which exists on the railway facility at the time the relevant agreement or lease is entered into. In addition, BRB may be prepared, subject to contract and the approval of the Secretary of State, to indemnify franchisees in respect of any liabilities arising out of pollution which exists on any railway facility at the date that their respective franchise agreements come into effect. Any such indemnity (if agreed) will be subject to time limits, thresholds and caps. In any event, TOCs will be liable for the cost of restitution of pollution damage which they cause at any time after the relevant franchise agreement has come into effect. Legislative changes could increase the standard of environmental care imposed on TOCs.

Industrial Diseases and Injury

BRB and TOCs may have incurred liabilities in respect of industrial disease compensation, in particular arising from vibration white finger, asbestosis, mesothelioma and industrial deafness. BRB and TOCs may also have incurred certain liabilities in respect of industrial accidents resulting in personal injury. BRB may be prepared, subject to contract and obtaining the approval of the Secretary of State, to indemnify franchisees in respect of these liabilities to the extent the cause of action has arisen before the franchise agreement comes into effect and solely in respect of the claimant’s employment prior to that date. Any such indemnity (if agreed) will be subject to time limits, thresholds and caps.

Computer Systems

Many of the computer systems and much of the software which TOCs are dependent upon to run their businesses were designed for an integrated railway business. Several of these systems are being replaced or updated in order to enable TOCs to operate them in the private sector. Weaknesses in the current systems include lack of controls over the completeness and accuracy of the data input into some of the systems; lack of control over confidentiality of data on the systems; no function within many of the billing
procedures to account for VAT. No assurances can be given that such systems and software will be suitable for the TOCs as independent business units.

National Rail Enquiry Scheme

ATOC is implementing a plan to improve the TEB service. A description of the proposals, and a broad estimate of the cost of implementing them is set out in section 5.3, "Other ATOC Schemes — National Railway Enquiry Scheme".

Further Systems Investments

Until March 1996, BRB funded changes to computer systems necessary to implement the Ticketing and Settlement Agreement. Future systems development in this area will now be the responsibility of ATOC and the RSP.

Government Funding

Once franchise agreements are in full force and effect, relevant franchise operators will be contractually entitled to receive financial support from the Franchising Director and, where appropriate, the relevant PTEs, subject to the terms of the relevant franchise agreement. During any period in which some TOCs are not operating under franchise agreements, the level of financial support for such TOCs will remain at the discretion of HM Government. No assurance can be given as to the future levels of financial support for such non-franchised TOCs. Potential investors should be aware that any reduction in the level of financial support paid to non-franchised TOCs could affect the extent or quality of service supplied by them. This could have adverse implications for the businesses of the franchised TOCs.

At the time of the announcement of the Franchising Director's policy on the regulation of the price of fares, the then Secretary of State Dr Brian Mawhinney stated that:

"The Government remains firmly committed to the franchising process and to providing the subsidy needed to support passenger railway services, including the effects of the new policy on fares. As I have already made clear, subsidy will continue to maintain services on lines that are not going to be commercially viable broadly at the present level of service provision."

In April 1996, the current Secretary of State for Transport, Sir George Young, reaffirmed Government policy when he said that:

"The Government remains firmly committed to providing the subsidy needed to support socially necessary passenger railway services at broadly the present level of service provision. In my instructions to the Franchising Director I have made clear that when setting passenger service requirements for the first time, he should take as his starting point the services being provided by British Rail at the time. The passenger service requirements which will be incorporated in franchise agreements will set out the services which franchisees will be contractually committed to operate. The Government is committed to providing support for at least those levels of service."

PTE Franchises

Prior to issuing an ITT for the provision of any rail services within a PTE area under a franchise agreement, the Franchising Director is required to notify the PTE and the PTE may specify services to be included in the franchise agreement. Where the PTE makes such a specification, it will be a party to the franchise agreement. Discussions are currently under way as to the provisions relating to PTE services which are to be included in franchise agreements.

Opposition Policy

Both the Labour Party and the Liberal Democrats have stated that they will recognise contracts for the franchising of passenger services and allow them to continue. The Labour Party has stated that it will enforce the contracts rigorously.
The Labour Party has announced proposals, should it be elected as the Government at the next General Election, to change the regulation of Railtrack and the way in which public support for the railway is paid. Such changes could affect the existing contracts between the Franchising Director and franchisees and between franchise operators and Railtrack. See section 1.3, "Opposition Policy" and the Annex at the end of this Document.

Redundancy Costs upon Termination of a Franchise

If, on termination of a franchise, some or all of the franchise operator's employees are not transferred to a successor operator by the operation of TUPE, the costs of making any such employees redundant will be the responsibility of the outgoing franchise operator.

Employee Considerations

The level of trade union membership within the industry is high. Pay and terms and conditions of employment (which in many cases include job security guarantees and redundancy payment entitlements greater than the statutory minimum) for all employees other than senior managers, are regulated by collective bargaining arrangements with the trade unions and elected employee representatives. For some key groups, including train drivers, such joint arrangements extend to working practice matters as diverse as rostering, relief cover and training.

Whilst HM Government is challenging the powers of the EC to regulate working time, the application of an intended Directive (or amendment of an existing Directive) prescribing working time limits in the transport sector would be likely to affect some staffing costs. The Advocate General delivered an opinion to the European Court of Justice in March 1996 indicating that he considered that the Court should reject HM Government's challenge. The decision of the European Court is expected shortly.

Changing collective agreements (which are incorporated within individuals' contracts of employment) requires negotiation with the trade unions and/or elected employee representatives. Where complex changes are proposed, the process may be lengthy.

A commitment entered into during the course of the 1995 general pay negotiations (see section 6.4, "Pensions and Industrial Relations") will oblige operating companies to submit proposals by 31 August 1996 for restructuring working practices and terms and conditions of employment for train drivers and associated grades.

A similar commitment has been entered into in respect of engineering workshop staff with the CSEU requiring proposals to be submitted by 31 January 1997 (see section 6.4, "Pensions and Industrial Relations").

Changes have occurred to the collective bargaining arrangements relating to TOCs. These changes are described in section 6.4, "Pensions and Industrial Relations". The 1996 negotiations on the trade unions' claims for improvements to pay and conditions were the first occasion on which the management of BRB-owned TOCs gained experience of negotiating a general pay and conditions award.

Tendering considerations

Potential tenderers should be aware that there may be competition or policy implications if they have interests in other modes of transport, or submit tenders for more than one franchise or already hold one or more franchises. The Director General of Fair Trading may be concerned about weakening of competition between alternative modes of transport; the Regulator may be concerned about potential weakening of on-rail competition; and consideration of a tender by the Franchising Director will be influenced by the adequacy of the tenderer's financial standing or management resources to support all of the franchises in which he has or might have an interest. See section 2.7, "Competition — Tenders for more than one Franchise".
The British Railway Industry

INTRODUCTION

HM Government's aim in privatising the railway industry in Great Britain is a better railway system. As stated in the July 1992 White Paper "New Opportunities for the Railways", the Government is determined to see better use made of the railways in Great Britain, greater responsiveness to the customer, a higher quality of service and better value for money for the public who travel by rail. The Government recognises that the railways have important strengths: they offer an extensive network of city centre to city centre connections, can be energy efficient and can cause less environmental damage than road transport. The Government believes that by introducing competition and the innovation and flexibility of private sector management, a more efficient and reliable railway system offering higher quality services to users can be developed. The Government regards the introduction of competitive tendering for the right to provide passenger rail services together with the opportunity for service providers to compete on some routes as key to achieving these objectives.
1.1 BACKGROUND TO THE INDUSTRY

Historical Background

Although simple tramways for the transport of minerals had existed from medieval times, the first locomotive-hauled railway for the transport of passengers and goods was the Stockton & Darlington Railway, which opened in 1825. The Liverpool & Manchester Railway opened in 1830. The first trunk lines from London opened in the 1830s and the railway system developed rapidly thereafter. Originally the railways were operated by many separate companies, but consolidation occurred from the 1840s onwards, culminating in the Railways Act 1921 which amalgamated virtually all the railways in Great Britain into four companies, the Great Western Railway, the London Midland & Scottish Railway, the London & North Eastern Railway and the Southern Railway.

On 1 January 1948, these four railway companies were nationalised. They jointly became known as the Railway Executive, a part of the British Transport Commission ("BTC").

The Transport Act 1962 abolished the BTC and established BRB to provide railway services in Great Britain. Against a background of declining traffic levels and increasing payroll costs, losses were experienced which necessitated capital reconstructions in 1962 and 1968. These capital reconstructions took place against the background of the Beeching Reports which recommended closure of approximately one third of the existing route network and the development of improved services between major centres of population.

The Transport Act 1968 included provisions to separate social services that were not self-supporting from the commercial system and provided revenue support on an individual basis for certain of those unremunerative services.

The Railways Act 1974 established new methods of supporting BRB's passenger services. The individual grants for unremunerative services were replaced by the Public Service Obligation Grant. The Secretary of State for Transport also placed an obligation on BRB that it should continue to operate its passenger system so as to provide a public service broadly comparable with that then provided.

A major reorganisation of BRB was completed on 1 April 1992. This included transferring the responsibilities of the six geographically based Regions (Anglia, Eastern, London Midland, Scottish, Southern and Western) to a business management structure based on the type of rail service being provided. Accordingly, BRB's three passenger rail divisions, InterCity, Regional Railways and Network SouthEast, became responsible for all aspects of their services, including both infrastructure and rolling stock. Within the businesses, responsibility for performance was delegated to profit centres in order to bring management decision making closer to the customer.

Internal trading arrangements were established to enable these business units to trade with each other and with Central Services, a new internal service supply organisation, in relation to the provision of support services and the use of other resources.

The New Industry Structure

The Government published its formal proposals for the privatisation of British Rail in the 1992 White Paper. The paper contained the following key features for the privatisation of the railway industry, aimed at restructuring British Rail:

- British Rail's track and infrastructure would become the responsibility of Railtrack, a new track authority;
- passenger services would be managed and operated by the private sector through a system of franchising;
- rights of access to the railway would be available for private operators without a franchise;
- a Rail Regulator would be appointed to oversee access rights;
- rail freight and parcels operations would be transferred entirely to the private sector; and
- the private sector would have the right to purchase or lease stations.
The 1992 White Paper resulted from a lengthy review of the UK rail industry by the Government. Whilst that review was being conducted, the EU was also focusing upon the future of rail transport from a pan-European perspective.

In 1991, the European Community adopted Council Directive 91/440 on the development of the Community's railways with the aim of adapting them to the needs of the Single Market and increasing their efficiency. The Directive seeks to achieve these aims through establishing greater management and economic independence from Member State governments for railway undertakings; by requiring accounting separation of the management of railway infrastructure from the provision of railway transport services; by taking measures to help reduce the indebtedness of publicly owned or controlled railway undertakings to a level which does not impede sound financial management; and by ensuring access to and transit rights over the networks of Member States for international groupings of railway undertakings and for railway undertakings engaged in the international combined transport of goods.

The Directive was implemented by the UK by the Railway Regulations 1992 (as amended by the Railway Regulations 1994). The principles laid down in Directive 91/440 are developed further in two Directives on the licensing of railway undertakings and on the allocation of railway infrastructure capacity and the charging of infrastructure fees. These Directives apply only to undertakings and groupings operating international services within the scope of Directive 91/440.

The Railways Act was passed in November 1993. The passing of the Act promoted the creation of a large number of new industry participants and gave new roles to some existing parties. The principal current industry participants, together with BRB's ongoing role in the provision of railway services, are briefly described below.
Main Industry Participants

Main Industry Relationships of a Typical TOC

TOCs

In the restructured industry, most passenger railway services in Great Britain are operated by companies (TOCs) which are wholly owned subsidiaries of British Rail until they are franchised.

TOCs obtain the use of track by means of regulated access agreements with Railtrack. Except for the Independent Stations, TOCs operate virtually all the stations and depots which are used by them in the provision of passenger rail services and obtain the right to use stations and depots either by leasing such facilities from Railtrack (and so becoming the facility owner of those facilities) or by means of regulated access agreements with other TOCs which operate them or, in the case of Independent Stations, with Railtrack.

Railtrack

Railtrack operates the infrastructure core of the restructured railway system in Great Britain. It owns and operates the track and associated infrastructure, such as signalling. It also owns most of the stations and depots, which will normally be leased to and operated by one of the TOCs. However, 14 large mainline stations are designated as Independent Stations (also known as “Major Stations”) and are owned and operated by Railtrack. Railtrack also plans access to the network and manages the Working timetable
ensuring central co-ordination of all train movements, and is responsible for planning and securing investment in infrastructure. It is licensed as a network operator and as an operator of stations.

Railtrack is a commercial undertaking. It derives most of its revenue from charging for access to the infrastructure which it owns, particularly through charges for access to track and Independent Stations as well as lease rentals and access charges from other stations and lease rentals (including rent for plant and machinery) from depots. Railtrack was privatised in May 1996 with HM Government selling its shareholding in Railtrack Group PLC. Railtrack's shares are listed on the London Stock Exchange.

**ROSCOs**

The ROSCOs own or lease substantially all of the domestic passenger rolling stock previously owned or leased directly by British Rail.

Each ROSCO owns between 3,000 and 4,200 vehicles comprising a mixed portfolio of different types and ages of stock. They are responsible for securing their own finance for any new rolling stock and for commissioning Heavy Maintenance for their fleets. The three ROSCO companies became Government owned companies, independent of British Rail, in August 1995 and were sold to the private sector during the first two months of 1996.

**Other Passenger Service Operators**

Other operators of railway passenger services, such as Manchester Metrolink and the Docklands Light Railway, continue to operate their respective urban services and are, for the most part, only indirectly affected by rail privatisation. London Underground requires access to some of the track and signalling owned and operated by Railtrack and certain stations leased by TOCs from Railtrack. In certain instances London Underground owns and operates track and stations used by TOCs. LUL and BRB each derived rights to use certain track and stations belonging to the other by virtue of arrangements entered into pursuant to statute and predating the Railways Act. The rights of BRB have, where appropriate, been transferred to Railtrack and the TOCs. The Franchising Director is working to facilitate new agreements between LUL and the TOCs. These agreements will not be subject to the regulated access regime under the Railways Act but are intended to be compatible, so far as possible, with that regime. LUL is obliged to participate in through-ticketing arrangements approved by the regulator.

In addition, EPS operates rail services between London, Paris and Brussels in conjunction with Société Nationale des Chemins de Fer Français and Société Nationale des Chemins de Fer Belges. EPS was transferred by HM Government on 31 May 1996 to London & Continental Railways Limited, the winner of the competition to design, build and operate the new Channel Tunnel Rail Link.

**Other Industry Parties**

*Trainload Freight*, which specialises in the carriage of bulk raw materials, has been divided into three geographically based companies. These companies were sold to North and South Railways (now called English Welsh & Scottish Railways Limited), a consortium led by Wisconsin Central Transportation Corporation on 24 February 1996.

*Freightliner*, British Rail's domestic container business, which transports containers to and from UK ports and between other destinations within the UK mainland and was sold to Management Consortium Bid Limited, a management buy-out team on 25 May 1996.

*Railfreight Distribution*, British Rail's European intermodal and automotive freight business, is intended to be privatised. It was announced on 6 June 1996 that British Rail has been asked to draw up a detailed timetable for the sale.

*Red Star*, the express parcels service, was sold to a management buy-out team on 5 September 1995. Red Star has contracts with each of the TOCs which give Red Star the right to space on their train services.

*Rail Express Systems Limited*, whose principal business is the carriage of mail for the Post Office, was sold to Wisconsin Central Transportation Corporation on 9 December 1995.
British Rail's Infrastructure maintenance and track renewal units provide the majority of infrastructure maintenance and track renewal services to Railtrack. Twelve of the 13 companies have now been sold together with all seven design offices and related specialist engineering businesses. The remaining company, which is currently part of British Rail, is expected to be sold in the coming months.

Independent Depots carry out the majority of Heavy Maintenance of passenger rolling stock on behalf of the ROSCOs. The Independent Depots have now been sold to the private sector. TOCs carry out most of the Heavy Maintenance not performed by Independent Depots.

TESCOs, which were part of Central Services, provide certain engineering and technical services to the rail industry including the ROSCOs. These were sold in early 1996.

Central Services provides a number of services, such as information technology and projects, as well as provision of technical services used by rail businesses. A number of the businesses in Central Services have now been sold and the objective is to sell all support services by the end of 1996.

BRT, which operates and maintains the business telecommunications networks and maintains the retail and operational telecommunications networks used on the rail network, was sold to a subsidiary of RACAL Electronics Plc on 22 December 1995.

RCL, a company limited by guarantee, acts as an agent for various industry parties in dealing with third party claims against those parties. The purpose of establishing RCL was to enable third parties (such as passengers or employees) to address personal injury and property damage claims arising out of working in or travelling on the railway system to (and to sue) one party rather than a number of different parties. This avoids the claimant having to establish which person’s negligence caused the loss. Allocation of liability between industry parties is provided for under an agreement to which Railtrack and all licensed train operators are party (see section 6.2, "Dispute Resolution, Claims between Operators and Claims by Third Parties").

ATOC has been established to facilitate co-operation between train service operators and to establish, provide administrative support for and run industry-wide inter-operator Schemes. These Schemes (which are multi-party agreements) cover areas of interaction between train operators such as ticket retailing, through-ticketing, inter-availability of tickets, revenue allocation and settlement, staff travel, telephone enquiry bureaux, London Travelcard and the various railcard Schemes. For franchise operators participation in many of the ATOC Schemes will be either a licence condition and/or a requirement of the franchise agreement. Accordingly, for such operators and for most other operators holding passenger licences, membership of ATOC will, in effect, be compulsory. ATOC's remaining Schemes are open to operators on a voluntary basis. See section 5, "ATOC and ATOC Schemes".

Three companies have been set up in connection with ATOC and the ATOC Schemes.

RSP is owned by the participants in the Ticketing and Settlement Scheme. Its functions include the clearance and settlement of revenue relating to passenger rail tickets and other products and the provision of services to the passenger operators to facilitate the creation and retailing of rail products.

RSTL is owned by the participants in the Staff Travel Scheme. Its functions include procuring the provision of staff travel facilities for leisure and commuter use, pursuant to the Staff Travel Scheme.

ATOC Limited is owned by the members of ATOC and is responsible for providing certain administrative services to participants in the Schemes. It also employs the ATOC Executive.
Statutory Bodies

Two new statutory officers, namely the Franchising Director and the Regulator, have been established. The Franchising Director's principal responsibilities under the Act include negotiating and awarding passenger rail franchises on the basis of competitive tendering and monitoring their ongoing performance. His principal objectives are to secure that passenger rail services are provided under franchise agreements as soon as reasonably practicable and to secure an overall improvement in the quality of passenger rail and station services. The Franchising Director may receive payments from franchise operators on profitable franchises and is responsible for making payments under the franchise agreement to other franchise operators where necessary.

The Regulator's functions under the Railways Act fall into the following main categories: granting licences and enforcing compliance with their terms, regulating access to track, stations and depots and enforcing domestic competition law in relation to railway services.

Other statutory bodies such as the HSE, PTEs, local authorities and rail users' consultative committees also have important ongoing roles to play. A more detailed discussion of the powers and duties of all of these statutory bodies is set out in section 2, "The Operational Environment".

Continuing Involvement of British Rail

British Rail will operate passenger services and other supporting services prior to sale. See section 6.3, "The Franchising Director's Relationship with BRB".

British Rail is eligible to tender for franchises in competition with the private sector, although the Franchising Director may determine that it is not permitted to do so in certain circumstances. The Franchising Director concluded, after consultation with the Regulator and British Rail, that British Rail should be excluded from the tendering process in respect of the first 12 franchises to be offered. Tenders were permitted from management and employee buy-out teams. The British Railways Board have decided that they are no longer in a position to be able to seek to bid for any further franchises put forward for tender by the Franchising Director.

Whilst British Rail continues to provide certain business and administrative support services, the subsidiaries providing those services are planned for sale and TOCs will have to look to the new owners or the private sector for alternative suppliers for continuing service support. British Rail will retain non-operational land (which, where possible, will be offered for sale) and other property for which there is no market, such as listed non-operational buildings and structure.
1.2 TRENDS IN THE INDUSTRY

Importance of the Railway Network

Between 1954 and 1994 the total level of passenger travel (in passenger kilometres) per annum in Great Britain grew by approximately 200 per cent., principally reflecting a rise in kilometres travelled by car and van over this period.

Distance¹ travelled by the public in Great Britain

<table>
<thead>
<tr>
<th></th>
<th>Rail</th>
<th>Car and van</th>
<th>Bus &amp; Coach</th>
<th>Other</th>
<th>Total</th>
<th>Rail</th>
<th>Car and van</th>
<th>Bus &amp; Coach</th>
<th>Other</th>
<th>Total</th>
<th>per cent.</th>
<th>per cent.</th>
<th>per cent.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>33</td>
<td>72</td>
<td>27</td>
<td>17</td>
<td>230</td>
<td>195</td>
<td>71</td>
<td>9</td>
<td>8</td>
<td>191</td>
<td>83</td>
<td>2</td>
<td>1</td>
<td>230</td>
</tr>
<tr>
<td>1964</td>
<td>32</td>
<td>71</td>
<td>16</td>
<td>11</td>
<td>340</td>
<td>214</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>209</td>
<td>89</td>
<td>2</td>
<td>1</td>
<td>340</td>
</tr>
<tr>
<td>1974</td>
<td>31</td>
<td>333</td>
<td>9</td>
<td>8</td>
<td>441</td>
<td>214</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>209</td>
<td>89</td>
<td>2</td>
<td>1</td>
<td>441</td>
</tr>
<tr>
<td>1984</td>
<td>30</td>
<td>432</td>
<td>15</td>
<td>7</td>
<td>534</td>
<td>214</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>209</td>
<td>89</td>
<td>2</td>
<td>1</td>
<td>534</td>
</tr>
<tr>
<td>1994</td>
<td>29</td>
<td>596</td>
<td>10</td>
<td>5</td>
<td>689</td>
<td>214</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>209</td>
<td>89</td>
<td>2</td>
<td>1</td>
<td>689</td>
</tr>
</tbody>
</table>

1 Distances are rounded to the nearest billion passenger kilometres.
3 Road data for 1994 is provisional.


The number of passenger kilometres travelled on British Rail has remained broadly constant over this period compared to a reduction of 53 per cent. in travel by bus and coach over the same period. Passenger demand for British Rail services grew between 1983 and 1988/89 to a peak of 34 bpk. Between 1988/89 and 1994/95, however, the passenger kilometres travelled on British Rail services declined by around three per cent. per annum. British Rail believes this is primarily a result of the recession, a reduction in central London employment levels, the RMT dispute with Railtrack and the effect of increases in some fares above the level of inflation.

The Passenger Rail Network

The passenger rail network comprises 14,359 route kilometres open for traffic. Since the Second World War the network has been substantially rationalised. Over the last ten years, however, the extent of the network has remained relatively constant.

Route open for British Rail Passenger Traffic

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<tbody>
<tr>
<td></td>
<td>Provisional.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</table>

1 Provisional.

The nature of the network has changed during this period, with increased electrification of the lines, which now represent approximately one third of the total passenger and freight network.

Over the last ten years there has been a net increase of five per cent. in the number of British Rail stations open to the public.

British Rail Passenger Stations open

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>2,395¹</td>
<td>2,405¹</td>
<td>2,426¹</td>
<td>2,470</td>
<td>2,471</td>
<td>2,488</td>
<td>2,468²</td>
<td>2,482</td>
<td>2,493</td>
<td>2,506</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Including eight stations on narrow gauge line sold in 1989.
2 Sixteen stations transferred to Greater Manchester Merox Ltd.
Passenger train services have increased over the last decade from 309 million kilometres in 1984 to an estimated 341 million kilometres in 1994/95 — an increase of 10 per cent. despite the RMT dispute with Railtrack. A substantial part of this increase has been in the former Regional Railways division of British Rail where long loco-hauled trains have been replaced by diesel multiple units which can be operated to provide more frequent and cheaper services.

However, over the same period the number of passenger vehicles has decreased substantially. This is as a result of recent investment in modern rolling stock (which is used more intensively than the rolling stock it replaced) and as a result of scrapping old vehicles which were used in peak hours only on London commuter routes and certain provincial services.

Since 1989 the number of passenger vehicles owned by British Rail and used in the South East of England has decreased by approximately 20 per cent. as commuter travel decreased during the recession. The number of vehicles leased by the ROSCOs to the TOCs is about 3,000 fewer than the number of passenger vehicles operated by British Rail in March 1989.

The Passenger Rail Market

The 1992/94 National Travel Survey identified commuting as the most common reason for passenger journeys by rail, representing just over half in total. The next largest category was leisure, representing 20 per cent. of journeys, with the balance consisting mainly of journeys for education and personal business.

This breakdown is based on a national survey; the split of journey purposes for individual TOCs may vary.

The number of journeys made is not necessarily representative of revenue earned. For instance, business journeys may be longer and likely to be made using higher yield fares.

The table below illustrates the relatively constant level of passenger journeys over the 10 year period to 31 March 1995. It shows that season ticket holders have accounted for a growing share of total passenger receipts over the period, from around 26 per cent. in 1985/86 to around 28 per cent. in 1994/95.

<table>
<thead>
<tr>
<th>Year</th>
<th>Passenger receipts (£m — 1994/95 prices)</th>
<th>Passenger Journeys (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985/86</td>
<td>1,492.8</td>
<td>382.3</td>
</tr>
<tr>
<td>1986/87</td>
<td>1,548.2</td>
<td>380.2</td>
</tr>
<tr>
<td>1987/88</td>
<td>1,639.5</td>
<td>402.3</td>
</tr>
<tr>
<td>1988/89</td>
<td>1,698.4</td>
<td>398.5</td>
</tr>
<tr>
<td>1989/90</td>
<td>1,670.1</td>
<td>398.2</td>
</tr>
<tr>
<td>1990/91</td>
<td>1,171.8</td>
<td>397.5</td>
</tr>
<tr>
<td>1991/92</td>
<td>1,650.2</td>
<td>380.1</td>
</tr>
<tr>
<td>1992/93</td>
<td>1,626.6</td>
<td>383.2</td>
</tr>
<tr>
<td>1993/94</td>
<td>1,605.4</td>
<td>371.9</td>
</tr>
<tr>
<td>1994/95</td>
<td>1,559.5</td>
<td>375.3</td>
</tr>
</tbody>
</table>

Expressed in 1994/95 prices, overall passenger receipts increased between 1985/86 and 1988/89 by, on average, 5.4 per cent. per annum, from £2,026 million to £2,372 million and then declined by, on average, 1.5 per cent. per annum between 1988/89 and 1994/95 to £2,171 million. Figures for 1994/95 were affected by the RMT dispute with Railtrack resulting in an estimated loss of approximately £150 million in passenger receipts.

<table>
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<td>1,605.4</td>
</tr>
<tr>
<td>1994/95</td>
<td>1,559.5</td>
</tr>
</tbody>
</table>

Over the 10 years revenue receipts per passenger kilometre increased some 14 per cent. expressed in 1994/95 real prices, in part to accommodate reduced levels of financial support on operating account.
The following graph analyses passenger receipts over the same period for the three passenger businesses into which British Rail passenger services were then organised. These three businesses were Network SouthEast (the London commuter network plus local services in the south east of England), InterCity (high speed, inter-urban services) and Regional Railways (urban, rural and some cross country services outside the south east of England). For 1994/95, figures have been compiled, as far as possible, on the basis of the old passenger businesses.

![Graph showing passenger receipts](image)

1 As measured by the GDP market price deflator.
Source: Department of Transport.

British Rail believes that the decline in passenger receipts between 1990/91 and 1993/94 was primarily a reflection of the UK recession and the reduction in central London employment. In the case of InterCity, this decline particularly affected the number of passengers travelling first class.

Performance in 1994/95 was affected by the RMT dispute referred to above and this is estimated to have resulted in a loss of some £150 million in passenger receipts. However, British Rail’s unaudited management accounts show that for most of the four weekly reporting periods which were unaffected by the RMT dispute, passenger receipts in those periods were higher in real terms than in the corresponding periods of the previous year.

Provisional results of BRB and the franchised TOCs for 1995/96 suggest passenger receipts some seven per cent. above the level for 1993/94 and 10 per cent. above that reported for 1994/95. Performance has varied significantly from TOC to TOC, although all were affected during the year by an ASLEF dispute with BRB.

British Rail believes that the principal external factors likely to influence future trends in passenger revenue as a whole include the rate of economic growth in the UK economy, central London employment levels and the extent of fares regulation.

Development of the Railway Network

**Major Schemes**

A number of major infrastructure projects are in progress or planned which will improve the scope and quality of the current rail infrastructure:
(1) Thameslink 2000—a firm decision to proceed with the Thameslink 2000 project was announced by the Secretary of State on 27 February 1996 and aims to expand the current network to link stations such as Bedford, Peterborough, Cambridge and Kings Lynn in the north with East Grinstead, Horsham, Littlehampton and Brighton in the south, via central London. The planned benefits identified for the scheme should include a significant increase in the capacity of the existing link, a reduction in journey times, the provision of direct access to the City of London from a greater number of destinations both north and south of London, and an interchange with international and domestic services on the CTRL and with the services of five TOCs and six London Underground lines at St Pancras station and the provision of new, peak-hour services between Blackfriars and London Bridge stations. The works will involve the construction of a new low-level station beneath the existing station at St Pancras to connect with the CTRL terminus, a new cross-site link to the East Coast Main Line, changes to the track and platform layouts at Farringdon to make it accessible for longer trains and works to the existing station at Blackfriars across the river Thames to provide an additional entrance at Southwark. A number of works will be carried out south of the Thames to enable the enhanced services to operate.

Railtrack has agreed with the Franchising Director and the Secretary of State that it will carry out the Thameslink 2000 project and it expects to make an application under the Transport and Works Act 1992 in early 1997. If the application is successful, Railtrack expects works to commence, at the earliest, in 1998, with Thameslink 2000 operational by summer 2002, subject to the timetable for completion of underground works for the Thameslink 2000 station at St Pancras, as part of the Channel Tunnel Rail Link project. The agreement includes a procedure which enables changes to be made to those destinations served by the Thameslink 2000 project.

The Franchising Director has given an undertaking to Railtrack under section 54 of the Railways Act that he will procure the payment of access charges in relation to Thameslink 2000 train paths from the project’s completion until 14 years after the projected commissioning of the project. During this period, the increment in Railtrack’s access charges is expected to provide Railtrack with a premium rate of return on the agreed capital cost of the project. The access agreements which allow for these access charges are subject to approval by the Rail Regulator.

(2) West Coast main line renewal and upgrade — following extensive feasibility studies since 1993, Railtrack is in the process of developing a major programme of renewal of the core infrastructure of the West Coast main line in agreement with train operators. Proposed expenditure includes costs associated with the development, implementation and introduction of a transmission-based train control system which, assuming that such a system proves technically and economically feasible, is intended to replace existing lineside signalling. Contracts for design work on the transmission cab based signalling system (for which tenders were invited in July 1995) were entered into by Railtrack during March 1996. The Franchising Director is also discussing with Railtrack the possibility of agreeing enhancements to the West Coast main line infrastructure prior to franchising the InterCity West Coast TOC, possibly in the second half of 1996.

(3) Channel Tunnel Rail Link — the Secretary of State announced on 29 February 1996 that London & Continental Railways Limited had won the competition to design, build and operate the Channel Tunnel Rail Link. London & Continental Railways Limited has also taken over EPS, which operates rail services between London, Paris and Brussels in conjunction with Société Nationale des Chemins de Fer Français and Société Nationale des Chemins de Fer Belges.
(4) Heathrow Express — a high speed rail link between Heathrow Airport and London Paddington which is currently under construction.

(5) Central Railway — Central Railway plc has made application to the Secretary of State for a Transport and Works Act Order covering the construction of a 180 mile route of largely new or reinstated railway between the Channel Tunnel and the East Midlands (via Ashford, East Croydon, Streatham, Acton, High Wycombe and Rugby). The route is primarily for freight traffic but six passenger stations are planned.

Regulatory Policies

Where such infrastructure additions and improvements are owned and operated by Railtrack rights of access and charges for access will be regulated by the Regulator. The Regulator published a consultation document "Investment in the Enhancement of the Rail Network" in mid-March 1996. Key elements of this document are summarised as follows:

- The Regulator's general presumption is likely to be that ownership or operation of a railway facility should not be used to create a monopoly position for one or more train operators, and that capacity should be shared between all train operators wishing and able to use the facility by means of public interest criteria based on the Regulator's duties under Section 4 of the Railways Act. He also attaches great importance to financial transparency in the arrangements so that such capacity sharing is on a fair basis. He does not rule out the possibility that some degree of exclusive use might be agreed in order to enable an investment to be remunerated, or the possibility of vertical integration, provided that appropriate safeguards are in place.

- The Regulator expects that owners of railway facilities (such as Railtrack) will carry out enhancement investment if they receive an appropriate return through access charges. Such charges should be designed at least to cover avoidable costs (including an appropriate level of capital charges). Generally, facility owners should receive a share, arrived at through commercial negotiation, of the benefits from investment, depending on the relative risks being taken by the parties involved, and the source and level of the overall benefit. Charges will, in general, be subject to review at the time of any periodic review of charges contained in the relevant contracts, but the Regulator would be willing to consider giving guidance on whether he would be minded to approve special arrangements for identified major projects giving protection at future periodic reviews.

HM Government Financial Support

As in other European countries, operation of the British Rail network has for many years been reliant upon financial support from central government. Successive governments have required British Rail to maintain services at broadly the same level for the past 20 years and have provided financial support to reflect the non-commercial obligations that have thereby been imposed on the industry. However, from 1988 onwards this did not apply to InterCity services.

The restructuring of the rail industry in April 1994 changed the structure of financial flows within the industry. This has led to the introduction of explicit charges (in particular, charges paid by the TOC for track access and rolling stock) and the incorporation of a profit margin for services provided by the TOCs.

The restructuring of the rail industry has thus increased the level of charges paid by TOCs for rolling stock and track access. Total grants paid in 1995-96 are estimated to amount to £1,805 million, including support to passenger rail services paid by the Franchising Director and metropolitan railway grant, the latter includes approximately £70 million of grant paid by the Scottish Office in support of PTE services in Scotland.

HM Government support for franchised services (other than that paid by PTEs) will be paid to TOCs through the Franchising Director. The Franchising Director is responsible for setting a minimum specification for franchised services (other than those specified by PTEs). Under the revised Objectives Instructions and Guidance (referred to in Section 2.1, "The Franchising Director"), in setting the
minimum specifications for the first time the Franchising Director is required to take as his starting point the service being provided by BRB at the time when the specification is drawn up. Where the Franchising Director judges that services are essential but where they are unprofitable to run, he should set the minimum close to or at the existing level of service. Where service levels have been set by BRB on a commercial basis, as, for example, with most of the former InterCity routes, he should leave maximum flexibility for franchisees while safeguarding what he considers to be a reasonable core service level.

The level of support for each franchise will be determined in the competition for that franchise. It will be contractually committed for the duration of the franchise unless the Franchising Director requires the franchisee operator to accept a change in the PSR, and hence a change in the level of support, or otherwise varies the level of support in accordance with the terms of the franchise agreement. An indication of the committed levels of support for the first seven franchises to be awarded are set out in "Progress in Franchising—Franchise Awards".
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1.3 OPPOSITION POLICY

The Conservative Party has been in government since 1979. The next general election must be called no later than May 1997. The policies of the opposition parties are the responsibility of the party concerned.

The Labour Party has stated that it is committed to a publicly owned and publicly accountable railway. On coming to office Labour has stated that it will set in place a structured programme to return the railways to an integrated whole, building on what is left of British Rail. Labour will abolish OPRAF and give the powers of the franchising director to British Rail, who will supervise the franchises which have been let and resume control of these lines when the contracts expire.

Labour has also stated that it will legislate shortly after taking office to return to the Secretary of State the power to direct the Regulator to use the existing regulatory regime to secure higher levels of investment and more intensive use of the system. Labour plans to reorganise the subsidy regime, and will ask the Regulator to review the current arrangements.

The Liberal Democrats are also opposed to the privatisation of British Rail and have issued a document "Towards a Working Railway" setting out its own proposals for developing the national rail network. In March 1996 the Liberal Democrats issued a document entitled "Railtrack: A National Asset" which reaffirms the party's policy that the rail network should remain under public control within an integrated national transport system and proposed that fresh guidelines be given to the Regulator.

In connection with the flotation of Railtrack both the Labour Party and the Liberal Democrats issued statements indicating their current policies towards the privatisation of Railtrack and of the rail industry in general.

The Annex to this Document sets out the policy statements of both major opposition parties in greater detail.
1.4 PASSENGER RAIL FRANCHISING

Introduction

On 1 April 1994, British Rail's passenger railway operations were divided into 25 train operating units ("TOUs"). These TOUs have each been incorporated as TOCs, certain of which have been franchised or are proposed to be franchised. In due course, it is proposed that tenders will be invited for the right to secure the provision of all of the Passenger Services provided by the TOCs. See the table on page 22 for details of progress in the franchising programme.

Persons successfully tendering for a franchise will enter into a franchise agreement with the Franchising Director and will acquire the whole of the issued share capital of the relevant TOC. The TOC, which will continue to operate its Passenger Services, will already have in place its licences to operate railway assets and the key contracts which will govern its access to the railway system, its leases of rolling stock and its relationships with other industry participants. For this reason it will be the TOC and not the franchisee which will be the "franchise operator" (although it will be under the ownership and control of the franchisee).
The Business of the TOCs

The map below shows the current principal routes included in the passenger rail network in Great Britain.

Each TOC is engaged principally in the provision of the passenger rail services specified in its track access agreement. A general indication of those parts of the passenger rail network served by each of the 25 TOCs are shown in the map, set out in the Appendix at the back of this Document. Although the franchise agreement will set a minimum level of services to be operated by each franchise operator (in the form of its PSR), the initial services which can actually be operated under the track access agreement will normally exceed this minimum. To obtain access to the track for its passenger rail services, the TOC has entered into arrangements with Railtrack, the owner and operator of most of the track infrastructure in
Great Britain. These arrangements, which have been approved by the Regulator, generally include provisions for incentive and penalty payments designed to encourage improved performance by both parties. Each TOC has also entered into leasing arrangements, which may be either short or long term, with one or more of the ROSCOs for its rolling stock requirements.

In addition to its passenger rail services, the TOC may also be involved in other related activities such as the operation of stations and the provision of maintenance services for rolling stock.

Stations and depots are normally owned by Railtrack as freeholder and leased to a TOC. The TOC which is the leaseholder at each station or depot is known as the operator or facility owner of that facility.

The facility owner of a station is, in practice, responsible for the day to day management of the station, providing station services such as communication of passenger and train running information, operation or supervision of retail and car parking facilities and general station cleaning and maintenance.

Where two or more train operators use a station, the facility owner has entered into regulated access agreements with each of the other operators which set out the level of services to be provided and the charges for those services. Such other train operators have also entered into direct collateral agreements with Railtrack as the freeholder of the facility in order to give both the train operators and Railtrack the ability in certain circumstances to enforce directly the obligations of the other under other documents which incorporate the Station Access Conditions. The Station Access Conditions are a set of rules which are station specific and incorporated into each station lease, station access agreement and collateral agreement at a specific station. See section 4.3, "Access to Stations".

**Station Access Regime**
Fourteen of the large mainline stations on the network are owned and operated by Railtrack as Independent Stations. In some cases, day to day provision of certain services at Independent Stations is undertaken by a TOC. All TOCs using these stations require regulated access agreements with Railtrack. See section 4.4, "Access to Independent Stations".

A similar structure applies to depots, each of which is operated by a TOC which leases the facility from Railtrack and enters into regulated access agreements with all other train operators wishing to obtain Light Maintenance Services at that depot. See section 4.6, "Access to Depots".

**Depot Access Regime**

As with the track access agreements, the access agreements for stations and depots are either in place or will be in place before franchising takes place. Leases of stations and depots are either in place or will be put in place before franchising and will be replaced by new leases when franchising takes place. The new leases will be, in most cases, on terms similar to those being replaced and for a duration equal to that of the franchise term granted. The exceptions are where the franchise is to be granted for a period of more than seven years. The provisions of such longer term leases are presently being negotiated with Railtrack.

**The Franchise**

Following the franchise tendering process, the successful bidder will enter into a franchise agreement with the Franchising Director. Although aspects of each franchise agreement may differ (reflecting the differing circumstances of each TOC), elements which are expected to be common to all agreements include the following:
- Passenger service requirements — the franchise agreement will specify the core service pattern, or PSR, which the franchise operator will be required to provide (it may also choose to provide additional services within the area covered by the PSR). The PSR will typically include the minimum number of trains on each service, first and last train times, frequency and the maximum journey times. See section 3.3, “Passenger Service Requirement”.

On commuter services there may also be a requirement to plan to maintain peak train loadings below specified limits and this may necessitate the franchise operator providing additional capacity. On some services the Franchising Director intends to specify certain service requirements in order to facilitate smooth connections for passengers.

If the PSR is altered during the course of a franchise or if there is a need to provide additional capacity on commuter trains, there may be adjustments to the financial arrangements between the Franchising Director and the franchise operator.

- Prices — the prices which may be charged by TOCs for unrestricted standard class fares for short journeys, “Saver” fares on other journeys and certain standard class season ticket fares including all those for weekly season tickets, will be regulated by the Franchising Director. In the London, Edinburgh and Cardiff commuter markets, a more extensive approach will be taken to regulating the price of fares. This approach has been adopted in Greater Manchester as Greater Manchester PTE has ceased funding passenger rail services in its area from 1 April 1996 (see section 3.5, “Regulation of the Price of Fares”). PTEs will continue to have the power to determine the price of fares on services which they specify (see section 2.6, “Passenger Transport Executives”). Fares that are not regulated will normally be at the discretion of the franchise operator (see section 5, “ATOC and ATOC Schemes”).

- Financial regime — the level of support payments made by or payments to the Franchising Director will be determined as part of the competitive tendering process, as will the level of payments by PTEs.

Where commercial incentives are judged insufficient to motivate franchise operators to improve performance, provision may be made for incentive or penalty payments according to the quality of service provided (measured principally on the basis of punctuality and reliability).

- Continuity of service — the Franchising Director has a duty to ensure continuity of service when a franchise comes to an end unless he believes that there are adequate alternative services. In order to ensure such continuity he will designate as primary franchise assets certain key property, rights and liabilities. Such property, rights and liabilities will normally remain with the franchise and be transferred to any successor operator.

Examples of primary franchise assets are outstanding fares and rights in certain specialist equipment essential to the operation of a TOC’s business. Where there are contracts which are essential to the operation of the franchise, it is expected that the Franchising Director will enter into an agreement with the operator’s counterparty in order to ensure that the successor operator may continue to run services pending the negotiation of new contracts. Employment contracts, which cannot be designated franchise assets, may pass to the successor operator by operation of law, subject to the detailed arrangements for transfers. See section 3.8, “Termination of a Franchise”.

- Performance bonds — the franchise operator will, in most cases, be required to provide and maintain two bonds, a performance bond (which will count as part of the initial capital requirement) and a season ticket bond (see sections 3.1, “Summary of the Franchise Agreement — Season Ticket Bonds” and 3.6, “Capital Requirements”).

- Duration — tenders will generally be invited on the basis of a franchise duration of seven years, although franchises for periods of less than seven years may also be offered by the Franchising Director in appropriate circumstances. The Franchising Director is willing to consider awarding franchises for periods of more than seven years where a prospective franchisee is able to demonstrate that this is justified by additional benefits, which are likely to require significant
investment. The Franchising Director recognises that the franchisee may not be able to give an unconditional commitment to such investment at the time the franchise agreement is signed. It is therefore anticipated that where a franchise term of greater than seven years is conditional on a commitment to agree the terms of investment by a specified date, the franchise would revert to a seven year franchise if the investment is not committed by that date.

Arrangements will be put in place to ensure track access agreements, station leases and depot leases are available to the franchisee for a seven year franchise term.

In circumstances where a franchise for more than seven years is awarded the franchisee will need to decide whether, and if so when, to seek extension of access agreements, station leases, depot leases and rolling stock leases as these will not be automatically extended.

It is anticipated that the franchisee would negotiate the terms for extension of these agreements during a period which will be provided for in the franchise agreement for satisfaction of the conditions relating to the contractual commitment to investment. Where appropriate, the Franchising Director will support the negotiations the franchisee has with Railtrack and other industry parties, as well as support submissions to the Regulator in respect of extensions to existing agreements. In the event that the franchisee cannot reach agreement he will have the right under Section 17 of the Railways Act to apply to the Regulator for new access agreements with facility owners.

Inter-operator arrangements — the franchise agreement will require franchise operators to participate in a number of inter-operator arrangements designed to ensure that certain network wide benefits are preserved after franchising. These include arrangements for through and inter-available fares and Young Persons', Senior and Disabled Railcard Schemes. See section 5, “ATOC and ATOC Schemes”.

The franchise agreement is designed to represent a balance of interests. On the one hand, the Franchising Director is concerned to provide the franchisee with as much freedom of manoeuvre as is practicable in order to encourage investment and initiative. He is also prepared to share certain risks associated with the franchise, which might otherwise be too great for the franchisee in the context of a franchise with a limited term. On the other hand the Franchising Director has a principal objective of securing a general improvement in passenger services. Furthermore, if he fails to re-franchise a set of previously franchised services he must secure the provision of the relevant services, in the absence of adequate alternative railway passenger services, until such time as they are again the subject of a franchise agreement. Accordingly, he must ensure high standards and cannot therefore allow the franchisee or franchise operator to prejudice the re-tendering of the relevant franchise on the expiry of that franchisee’s term. See section 3, “Franchise Agreement”.

Support for New Investment

Section 54 of the Railways Act provides that the Franchising Director may give undertakings as to how he will exercise his franchising functions in order to encourage investment in the railways. However, it is Government policy that future investment in the railway industry should, as far as is practicable, be a matter for the private sector, with the private sector taking the investment decision, providing the finance and accepting the risks and rewards.

The Franchising Director will not, therefore, consider a section 54 undertaking unless necessary investment would not otherwise be made by any private sector companies and unless there is a substantial gain in value for money to be obtained in making such investment with the benefit of a section 54 undertaking.

Evidence will be required that both conditions have been met before any undertaking can be considered; for example, in addressing the value for money test, the Franchising Director will normally expect the markets, both for the provision of assets in question and for the provision of finance, to have been thoroughly tested competitively.
The Operational Environment

INTRODUCTION

The restructured rail industry is intended to introduce and allow as much freedom as practicable for commercial operators. However, an area of such strategic importance also requires regulation in order to safeguard a national resource, protect the safety and interests of passengers and moderate aspects of competition between operators.

Both the Franchising Director and the Regulator have to balance these, often conflicting, objectives in performing their duties. This section seeks to explain the roles which these officers play in the rail industry and the various objectives which have been set for them under the Railways Act. It is the need to meet these objectives which lies behind many of the policy decisions which manifest themselves in the commercial arrangements discussed in sections 3, 4 and 5.

This section also deals with other regulatory issues such as the licensing regime, the control of safety through the issue of Safety Cases and the role of the CRUCC and the RUCCs in representing the views of interested parties across a wide range of issues.
2.1 THE FRANCHISING DIRECTOR

Functions and Duties of the Franchising Director

The Franchising Director is appointed by the Secretary of State for a term of up to five years, and he may be reappointed. Roger Salmon was appointed as the first Franchising Director in November 1993. In December 1995 he told the Secretary of State that he would like to resign his office in October 1996 and the Secretary of State is in the process of selecting a successor. Roger Salmon has said he will remain in office until his successor is available. The Franchising Director's principal function is to administer and supervise the franchising of passenger rail services. He must do this in the manner he considers best calculated to fulfil the objectives given to him by the Secretary of State, acting in accordance with instructions and guidance from the Secretary of State and to ensure that payments made by him in respect of passenger services are such as he reasonably considers will economically and efficiently achieve the objectives given to him.

Principal Functions and Duties

The Franchising Director's principal functions and duties under the Act are as follows:

- To designate passenger services as eligible for franchising. The Franchising Director has designated as eligible all timetabled services provided by British Rail.
- To award the franchises, normally on the basis of competitive tendering to be conducted by him.
- To ensure that the initial franchise assets are vested in the franchise operator and that the franchise operator is a wholly owned subsidiary of the franchisee. He must also ensure that every franchise agreement provides, to the extent which he considers appropriate, for adequate preservation and maintenance of franchise assets and for the delivery at the end of the franchise of such of those assets as he may specify to himself or such other person as may be specified.
- To ensure that there is no disruption to services when a franchise agreement comes to an end. If no other franchisee is available to run the service immediately, the Franchising Director must secure the provision of those services unless satisfied that there are adequate alternative passenger rail services available.

Ancillary Functions, Duties and Powers

The Franchising Director has various duties in relation to fares. The franchise agreement must contain such provisions as he may consider necessary for ensuring that fares charged by a franchise operator are reasonable if it appears to him that the interests of persons who use or are likely to use franchised services so require. Franchise operators are also required to participate in approved discount schemes for the young, elderly and disabled.

The Franchising Director has a significant role in respect of proposed closures of both franchised and non-franchised passenger services. This relates principally to the receipt and giving of notice of proposals to discontinue those services but in some circumstances may involve the Franchising Director in securing the provision of services which would otherwise be discontinued.

The Franchising Director has the power to approve the designation of certain services as experimental passenger services (up to a maximum period of five years).

In order to facilitate the performance of his functions the Franchising Director is given powers to:

- sub-contract his duty to secure the provisions of railway services;
- enter into agreements with BRB for the provision by BRB of passenger rail services which are not provided under a franchise agreement;
- form and finance companies wholly owned by himself; and
- acquire or dispose of certain property, rights or liabilities.

In addition, he has a broad power to commit the future exercise of his functions for the purpose of encouraging railway investment.
The Franchising Director is also given an enforcement role, to secure compliance with the terms of franchise agreements. This allows him to make both final and provisional orders and, where appropriate, to impose financial penalties on franchise operators.

In appropriate circumstances, the Franchising Director is entitled, with the consent of the Secretary of State, to petition the court for a Railway Administration Order in respect of a licensed private sector train operating company. The circumstances are where the company is unable to pay its debts, winding-up would be just and equitable, a petition has been presented, or a resolution proposed, for the company’s winding-up, or an administration order applied for in respect of the company. The purpose of a Railway Administration Order is to transfer, as a going concern, to one or more other companies such of the company’s business as is necessary to ensure that its passenger services can be properly provided by that other company or companies and to continue providing those passenger services pending the transfer of the business.

The Franchising Director is given various administrative functions and powers. These include the duty to maintain a register containing franchise details and to submit annual reports to the Secretary of State. He may, after consultation with the Regulator, request the assistance of RUCCs to monitor attainment by TOCs of service standards set by the franchise agreement and may require (non-privileged) information from British Rail and its wholly owned subsidiary network or station licence holders.

Objectives, Instructions and Guidance given to the Franchising Director

The Act requires the Franchising Director to exercise his functions in the manner he considers best calculated to fulfil the objectives given to him by the Secretary of State, acting in accordance with instructions and guidance from the Secretary of State. Instructions and guidance may relate to the provision of services for the carriage of passengers by railway in Great Britain or the operation of networks, stations and depots under or by virtue of any franchise agreement, upon termination of a franchise or under the closure provisions of the Act. The instructions require specific action, whilst the guidance merely sets out principles to which the Franchising Director must have regard.

The principal objectives set by the Secretary of State are to ensure that railway passenger services are provided under franchise agreements as soon as reasonably practicable and to secure an overall improvement in the quality of passenger and station services. Other objectives are to encourage efficiency and economy in the provision of railway services, to promote the use and cost effective development of the railway network and to promote the award of franchise agreements to companies which have substantial participation by qualifying railway employees. In general the Franchising Director should ensure, within the resources available to him, that the franchise system provides good value for money, encourages competition in the railway industry and protects the interests of passengers. He is also required to develop criteria for the distribution of the support payments which he is empowered to make to franchisees. He should also leave maximum scope for the initiative of franchisees under franchise agreements imposing requirements no more burdensome than are required in his opinion to achieve his objectives, and he should act so far as possible to enable franchisees to plan the future of their businesses with a reasonable degree of assurance.

More specific provisions are then outlined, including effective liaison with other key bodies such as PTAs, PTEs and local authorities, and a requirement to formulate and submit to the Secretary of State a franchising programme.

There are certain requirements in relation to the contents of a franchise agreement. The Franchising Director is instructed that:

- the agreement must make provision for franchisees to participate in local concessionary fare schemes provided that no net expense falls on the franchisee or the Franchising Director’s budget;
- the agreement should also encourage co-operation between operators to ensure that through-ticketing opportunities are provided to passengers and the Franchising Director must require operators to provide inter-available tickets allowing travel with any operator if he considers that the
benefits of such tickets will outweigh the benefits of price competition and service diversity. The franchise agreement should also provide for participation in multi-modal travel schemes (including the Travelcard scheme in London), so long as he is satisfied that participation will result in no new cost falling on his budget. Different considerations may apply in circumstances where the funding of a multi-modal travel scheme is the responsibility of a PTE;

- the agreement must require franchisees to take reasonable steps to keep relevant local authorities informed of significant intended changes in the pattern of franchised services;
- each franchisee must be required to publish its own passenger's charter; and
- the agreement should specify minimum service levels based on that being provided by BR at the time when the specification is drawn up, taking seasonal variations into account.

The Franchising Director is given guidance to the effect that:

- the length of the agreement is to be determined on a case by case basis, after consultation with the Secretary of State. Its scope may also vary from franchise to franchise. The Franchising Director is not expected to negotiate completely uniform franchise agreements. Each TOC will be operating in its own particular circumstances and franchisees should have maximum flexibility to use their own initiative;
- service patterns should not be allowed to ossify and service specifications must leave maximum scope and flexibility for franchisees to tailor services to passenger demand; and
- performance standards should have the effect of maintaining or improving existing standards.

The Secretary of State's guidance also mentions the need to take into account certain factors in the light of British Rail's unique position in the market when evaluating bids for franchises from British Rail. The Franchising Director is instructed to avoid disruption to services at the end of a franchise, to consult the Secretary of State before entering into any significant commitments in relation to the development of a leasing market in rolling stock and to secure the Secretary of State's agreement before entering into any contingent liabilities which would have to be reported to Parliament.

On 15 January 1996, the Secretary of State revised the Objectives, Instructions and Guidance in certain respects. This followed judicial review of the Franchising Director's decisions in respect of the PSRs which had been issued in respect of seven TOCs. The application for judicial review had been jointly made by "Save Our Railways" (an unincorporated association responding to a steering group including the Association of Metropolitan Authorities, Transport 2000, the Railway Development Society and the RMT, ASLEF and TSSA trade unions) and certain individuals, and the proceedings were heard in December 1995. On 15 December 1995 the Court of Appeal ruled that certain of the PSRs set by the Franchising Director had not been drawn up in accordance with the published Objectives, Instructions and Guidance, which stated that PSRs should be "based on" the timetable operated by British Rail immediately prior to franchising. The approach of the Franchising Director in setting the PSRs in question had been approved by the Secretary of State. The instructions and guidance relating to the development of PSRs contained in the Objectives, Instructions and Guidance were, therefore, revised by the Secretary of State following the Court of Appeal decision with the aim of ensuring that they properly expressed the policy approach which the Franchising Director had adopted in developing the PSRs.
2.2 THE REGULATOR

Functions of the Regulator
Some of the Regulator's main functions under the Railways Act are to grant licences to operators of railway assets, to supervise the granting of rights of access to track, stations and depots, to undertake certain responsibilities under competition legislation and to act as a guardian of the users' and potential users' interests. The Regulator's functions in relation to access to railway facilities are described under "Overview of Access". His other functions are described below.

Promotion of Competition
The Railways Act confers on the Regulator the functions of the Director General of Fair Trading under the Fair Trading Act 1973 with respect to any monopoly situation relating to the supply of railway services. Also conferred on the Regulator are the Director General's functions under the Competition Act 1980 with respect to any anti-competitive practice relating to the supply of railway services. These functions are to be exercised by the Regulator concurrently with the Director General. The Regulator thus has extensive powers under UK competition law to prevent anti-competitive practices in the provision of railway services.

Closures
The Regulator is responsible (subject to reference by any aggrieved person to the Secretary of State) for deciding whether proposed closures of passenger services and railway facilities should be allowed to take effect.

Investigations and Enforcement
The Regulator is under a duty to investigate certain representations concerning contraventions of conditions attaching to licences and closure restrictions. The Railways Act lays down an enforcement procedure for the Regulator to use to secure compliance with conditions of licences and closure restrictions.

The Regulator has functions in relation to keeping under review the provision of railway services in Great Britain and elsewhere, the collecting of information in respect of such services and the giving of information, advice and assistance to the Secretary of State, the Director General of Fair Trading, the Monopolies and Mergers Commission and the Franchising Director. The Railways Act empowers the Regulator to publish information and advice to users or potential users of railway services.

Duties of the Regulator
Section 4 of the Act imposes on the Regulator a duty to exercise his functions in the manner he considers best calculated to:

- protect the interests of users of railway services, and in particular the interests of persons who are disabled;
- promote the use and development of the railway network, for passengers and goods, to the greatest extent that he considers economically practicable;
- promote efficiency, economy and competition in the provision of railway services;
- promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator (e.g. by the use of through-tickets);
- impose on operators the minimum restrictions consistent with the performance of his functions;
- enable persons providing railway services to plan their businesses with a reasonable degree of assurance;
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- protect the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator otherwise than under a franchise agreement, in respect of:
  (i) the prices charged for travel by means of those services; and
  (ii) the quality of the service provided,
  in cases where the circumstances appear to the Regulator to be such as to give rise, or be likely to give rise, to a monopoly situation in the passenger transport market; and
- protect the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of:
  (i) the prices charged for such use; and
  (ii) the quality of the service provided.

The Regulator must take into account the need to protect all persons from dangers arising from the operation of railways—in particular taking into account any advice given to him by the HSE—and have regard to the effect on the environment of activities connected with the provision of railway services. He must also until 31 December 1996 take into account any guidance given to him by the Secretary of State and must at all times act in a manner which he considers will not make it unduly difficult for holders of network licences to finance any activities or proposed activities of theirs and have regard to the financial position of the Franchising Director in discharging his functions. Details of the Secretary of State's guidance to the Regulator are set out in the section headed "The General Authority and Guidance" below.

The Channel Tunnel Rail Link Bill, which is at present before Parliament, would, if enacted in its present form, impose an overriding duty on the Regulator to exercise his regulatory functions in such a manner as not to impede the performance of any development agreement for the construction of the new Channel Tunnel Rail Link. It would also require him to have regard, in certain circumstances, to the financial position of the undertaker or undertakers appointed to construct, maintain, operate and use the new Link.

The General Authority and Guidance

The Act permits the Regulator to grant licences only with the consent of the Secretary of State or in accordance with a general authority. A general authority and a guidance document have been issued to the Regulator by the Secretary of State and these serve to define the Regulator's powers to grant licences.

The General Authority

The main provisions in the Secretary of State's General Authority to the Regulator are as follows:
- subject to the conditions set out in the General Authority, the Regulator is authorised to grant a licence to any person (with certain exceptions);
- the Regulator is not authorised to grant a licence that imposes a Public Service Obligation, or requires the licence holder to enter into a public service contract;
- subject to certain exceptions, the Regulator requires the Secretary of State's approval to grant a licence which includes a provision enabling any of its conditions to be modified or to cease to have effect;
- subject to certain exceptions, the Regulator is not authorised to grant, without the Secretary of State's approval, a licence containing a condition which relates to:
  - the level of fares for passenger services, or the level or quality of passenger or station services, provided under a franchise agreement, or an agreement under section 51 or 52 of the Act, or pursuant to directions under section 136(6) of the Act; or
  - anti-competitive agreements or practices;
subject to certain exceptions, any licence granted by the Regulator (other than a depot licence) must, unless the Secretary of State approves, provide that the Regulator may revoke the licence for a serious breach of the Railways (Safety Case) Regulations 1994. The licence must not, unless the Secretary of State approves, contain any other condition relating to safety;

- licences granted by the Regulator must, unless the Secretary of State approves, contain specified conditions on insurance and the environment;

- passenger licences granted by the Regulator must, unless the Secretary of State approves, contain conditions requiring the licence holder to supply timetabling information to Railtrack and to enter into an approved arrangement relating to through-tickets;

- all licences, except network licences, granted by the Regulator must, unless the Secretary of State approves, require the licence holder to enter into an approved agreement with the employer of the British Transport Police for the provision of core police services; and

- passenger and station licences granted by the Regulator must, unless the Secretary of State approves, contain a specified condition relating to the protection of the interests of disabled people.

Guidance for the Regulator

The main points in the Secretary of State's Guidance for the Regulator are as follows:

- the Regulator should exercise his functions so as to facilitate the privatisation of railway services;

- the Regulator should facilitate the objective of franchising passenger services as soon as reasonably practicable;

- the Regulator should discuss with the Franchising Director proposals put forward by him for the moderation of competition. He should also discuss with Railtrack, and consult the Franchising Director on, proposals put to him by Railtrack relating to access contracts negotiated with open access operators. He should, so far as he considers consistent with his other duties, exercise his powers relating to access agreements in accordance with such proposals;

- the terms of any access agreements required or approved by the Regulator should be based on the agreed templates. The Regulator should adopt the principles of the access charging structure established for 1994/5. Payments under access agreements should be sufficient for Railtrack to recover its reasonable costs and to meet its rate of return under the Government's financing regime;

- the Regulator should not require or approve any access agreements which may prejudice or significantly interfere with the franchising programme. Before approving access agreements for an open access operator, the Regulator should consult the Franchising Director and have regard to representations he makes as to the likely effect of the grant of such access on his franchising programme;

- the Regulator should not require or approve any access agreements relating to British Rail's freight-only depots in such a way as to prevent the transfer of those depots to the private sector or closure where there is insufficient market demand;

- the Regulator should exercise his functions in a way that does not prejudice or significantly interfere with Railtrack's achievement of its financial regime or any financial controls or targets set by the Government; and

- in granting licences, the Regulator should only depart from the models annexed to the Guidance where to do so would help him to conform to other parts of the Secretary of State's Guidance.
2.3 RAILWAY LICENCES

Licences to Operate Railway Assets

When a franchisee acquires the TOC which will operate its franchise, that TOC will already possess all of the licences required to provide the relevant passenger rail services. However, the change of ownership of the TOC will represent a "change of control" for licence purposes and the licence holder will need to go through a licence change of control procedure in order to satisfy the Regulator that the relevant licences should be allowed to remain in force.

The change of control requirements are discussed below. The licence continues automatically on a change of control unless the Regulator revokes the licence, which he may do, for example, upon a change of control or upon a serious breach of the Railways (Safety Case) Regulations, 1994. The franchisee will need to have obtained acceptance of its Safety Case (see section 2.11, "Safety Case") before the Regulator will be satisfied that the licence should not be revoked.

Under the Railways Act, licences are required for the operation of certain railway assets. All types of licence conform broadly to standard models contained in the Regulator's Guidance on Licensing of Operators of Railway Assets; however not all franchise operators will require all of the licences. There are four main types of licence: train operator's licence (which may be a passenger licence or a non-passenger licence), station licence, depot licence and network licence. The Regulator is authorised to grant all types of licences subject to the provisions set out in the General Authority.

Franchise operators will not normally require network licences. The other three types of licence conform broadly to standard models.

The three types of licence typically required by a TOC contain conditions relating to insurance, claims allocation and handling, compliance with Railway Group Standards, protection of the environment, use of the British Transport Police, provision of information to the Regulator, payment of fees and change of control.

Certain conditions are common to more than one type of licence. For example, the depot and station licences contain conditions relating to non-discrimination, emergency access and accounting separation. The station and passenger licences contain conditions relating to consumer protection (provision of services for the disabled, complaints handling and consultative committees). The passenger and non-passenger licences include conditions relating to inspecting officers and exclusionary behaviour. Other conditions are exclusive to one or other particular type of licence. For example, passenger licences contain conditions relating to the timetable, through-ticketing and network benefits and predatory fares.

Grant of a Licence

Applications for a licence are governed by the Railways (Licence Application) Regulations 1994. The Regulator has also published a guidance document for each type of licence except the network licence. These guidance documents were re-issued in a single document entitled "Guidance on Licensing of Operators of Railway Assets, 2nd Edition, dated September 1995". The guidance was not materially altered other than in relation to the guidance given in relation to third party liability and insurance. The procedure outlined below relates to an application for a passenger train operator's licence. The procedure is broadly similar for the other types of licence.

The Regulator's Guidance on Licensing of Operators of Railway Assets, referred to above, sets out the procedure for the grant of licences. The Guidance contains, as well as the model licences, the following enclosures, which are revised from time to time: Guidance on Insurance Against Third Party Liability; Contact Points for Industry Arrangements; Summary of Principles for Complaints Handling Procedures; Application for a Licence to Operate Railway Assets; Notification of Intention to Self-Insure Part of Third Party Liability; Schedule of Licence Fees; and Summary Checklist for Licence Applicants. An additional enclosure, Change of Control of Passenger Train Operators: Criteria and Procedures, was published by the Regulator in mid-March 1996.
In granting a licence, the Regulator must have regard to his general duties set out in section 4 of the Railways Act (see section 2.2, "The Regulator—Duties of the Regulator"). He will therefore wish to see evidence of the suitability of the applicant to operate railway assets. In relation to train and station licences a key piece of evidence will be the operator’s ability to obtain acceptance of its Safety Case. The Regulator will not normally grant a train or station licence until he has received confirmation from the HSE that the operator’s Safety Case has been accepted.

The minimum time between the initial submission of an application and the grant of a licence is likely to be 10 weeks. The period may be longer where the application is complex or contentious or where additional information is requested from the applicant.

There are a number of legally binding arrangements which passenger operators will be required to enter into as conditions of their licences and which are to have effect from the date the licence comes into force. The Regulator will wish to have confirmation that these “day one arrangements” are in place before that date. They are:

- third party liability insurance;
- approved claims allocation and handling arrangements;
- approved arrangements for through-ticketing and other network benefits;
- arrangements for handling complaints; and
- approved agreement providing for British Transport Police services.

In addition, there are two licence conditions which require policies to be established by the licence holder no later than six months after the licence comes into force:

- environmental policy; and
- disabled people’s protection policy.

The Railways (Licence Application) Regulations 1994 require certain core information to be supplied by the applicant. This comprises financial information and details of shareholdings and directors. The Regulations also set down a licence application fee of £250. The Regulator may ask for additional financial information and will require evidence of the competence and good repute of both the applicant and its senior management.

Licence holders are required by the terms of their licences to pay an annual fee to the Regulator. The Regulator uses the fees received to recoup the costs of his functions under the Railways Act. A single fee is charged in respect of all licensed activities taken together and is calculated by reference to a scale determined according to turnover. Applicants are therefore asked to provide an estimate of their gross turnover on licensed activities for the full financial year in which the application is made. The Regulator will publish the scale of fees.

Change of Control

As a TOC will already have all of its licences in place at the time that it vests, franchisees will not be required to obtain new licences. However, as change of control of the licence holder is one of the events that may lead to revocation of a licence, the Regulator will wish to be satisfied that the resulting change of control of the TOC will not adversely affect the ability of the licence holder to continue properly to discharge its licence obligations. Licences require the licence holder to notify the Regulator as soon as practicable if any person obtains control of the licence holder.

A change of control of a company which already holds a licence does not necessitate the award of a new licence. The Regulator will however expect to exercise his powers on a change of control in the same way as if the licence holder were in fact applying for a new licence. For example, the same financial information will need to be submitted, together with details of the franchisee’s management.

If the alteration in shareholdings would not, had a new licence been sought, have led the Regulator to make a decision on the award of the licence which was different from his original decision to grant it, the licence holder may expect the Regulator to approve the change of control.
The Regulator may however decide that the change of control alters the suitability of the licence holder to continue to be authorised to operate the relevant railway assets, or that the terms or conditions of the authorisation require amendment. The Regulator may also find that the licence holder's arrangements to comply with certain requirements of the licence require alteration. If the Regulator considers that it would be appropriate to revoke the licence, he may as an alternative consider, in consultation with the licence holder, what amendments to the licence would be appropriate in order to remedy the defects. It will be for the licence holder to decide whether it wishes to agree any such amendments as an alternative to revocation. Any agreed amendment will need to be made in accordance with section 12 of the Railways Act.

The Regulator's guidance documents advise licence holders to notify the Regulator of a planned or possible change of control at least eight weeks before it is expected to take effect. Where a licence holder is unable to give prior notification, the Regulator should be informed of a change of control as soon as practicable after the change has occurred.

Where a change of control would result from the award, by the Franchising Director, of a franchise, the Railways Act requires that the Regulator be consulted on the persons to whom an ITT will be issued. The Regulator will then make arrangements to satisfy himself, during the tendering process, of the suitability of such persons and the implications of their gaining control of the licence holder. The Regulator will not be able to make a formal decision until the identity of the formal bidder is known.

Any change of control may also be subject to review under UK or EC merger control rules.
2.4 INTERFACE BETWEEN THE FRANCHISING DIRECTOR AND THE REGULATOR

The Regulator and the Franchising Director have complementary functions in controlling the restructured railway industry. The Railways Act, the Regulator's General Authority and Guidance and the Franchising Director's Objectives, Instructions and Guidance from the Secretary of State define the respective roles of the Regulator and the Franchising Director. The following summarises certain significant points of interface between these two statutory offices:

- The Regulator and the Franchising Director both exercise enforcement powers. The Regulator has powers to ensure compliance with licence conditions and fulfilment of relevant duties by persons under closure restrictions; the Franchising Director's powers relate to compliance with franchise agreements.
- The Regulator must have regard to the financial position of the Franchising Director, who in turn must provide relevant financial information reasonably requested by the Regulator.
- The Regulator should exercise his functions so as to facilitate the achievement by the Franchising Director of his objective of securing that passenger rail services are provided under franchise agreements as soon as reasonably practicable.
- Proposals by the Franchising Director for the moderation of competition on particular routes are to be discussed with the Regulator who should allow moderation where necessary to facilitate the grant of franchises.
- The Franchising Director, but not the Regulator, has the power to impose Public Service Obligations and to require operators to enter into public service contracts.
- The Franchising Director must consult the Regulator on the inclusion of provisions requiring the charging of reasonable fares in a franchise agreement.
- The Regulator, when requested to do so by the Franchising Director or when he considers it appropriate, may give to the Franchising Director any information relevant to the Franchising Director's functions.
2.5 CONSULTATIVE COMMITTEES

Under the Act, two tiers of passenger committee have been established:

- A number of committees known as Rail Users' Consultative Committees: The RUCCs replace the former Area 'Transport Users' Consultative Committees and are divided into areas (up to a maximum of nine) covering the whole of Great Britain. Both Scotland and Wales are represented by individual RUCCs. Each RUCC consists of a chairman, appointed by the Secretary of State after consultation with the Regulator, and 10 to 20 members, appointed by the Regulator after consultation with the Secretary of State and with the Chairman. Their period of office is laid down in the instrument appointing them and they are eligible for reappointment.

- A Central Rail Users' Consultative Committee: The CRUCC replaces the former Central Transport Consultative Committee for Great Britain. It consists of a chairman, appointed by the Secretary of State after consultation with the Regulator, the chairman of each RUCC or London Regional Passengers' Committee and up to six other persons appointed by the Regulator after consultation with the Secretary of State and the chairman. Again, their period of office is laid down by the instrument appointing them and they are eligible for reappointment.

RUCCs and the CRUCC have similar roles, as follows:

- They are under a duty to investigate any matter which relates to the provision of certain passenger or station services, if that matter:
  - is brought to the committee's attention by a passenger (or potential passenger) and does not appear to the committee to be frivolous or vexatious; or
  - is referred to the committee by the Regulator or, in the case of RUCCs, by the CRUCC; or
  - is one which the committee feels it ought to investigate.

After investigating the matter, they have the power to make representations to the relevant train or station operator. If the committee feels that those representations have not resolved the matter and that the taking of further steps will represent value for money, it can refer it to the Regulator (who can then use his powers as he thinks most appropriate).

A committee also has the power to make a report on any matter which it investigates and to send it to the Secretary of State and the Regulator (in the case of the CRUCC), or to the CRUCC (in the case of a RUCC). Both types of committee may publish their reports, unless the matter in question was originally referred to it by the Regulator. The consultative committee must assist the Franchising Director (if he so requests, after consulting the Regulator) in ascertaining whether the service standards set for franchise operators are being met. Each of the committees must also make an annual report to the Regulator and, in the case of the CRUCC and the RUCCs for Scotland and for Wales, send a copy to the Secretary of State.

Every consultative committee whose area would be affected by a proposed closure has the right to be consulted and a duty to make submissions to the Regulator. The Franchising Director must send details of the proposed closure to every RUCC affected by it. The Regulator must send to the committee a copy of every objection which he has duly received in relation to the closure. The RUCC must then:

- consider what hardship (if any) the proposed closure will cause;
- identify any reasonable means of reducing any such hardship. The committee cannot conclude that those means are reasonable unless it feels that the expenditure involved would represent good value for money (unless the Franchising Director fails to supply information to the RUCC, in which case the RUCC may reply without assessing the financial value of the proposed change); and
- send a report of its conclusions to the Regulator and the CRUCC. It may also publish any such report.

In carrying out these functions a consultative committee has the power, after consultation with the Regulator, to hold public hearings. The ultimate decision on whether or not the closure should take effect rests with the Regulator. He must send a copy of his decision, and any variation of closure conditions, to the relevant consultative committees.
2.6 PASSENGER TRANSPORT EXECUTIVES

Introduction

PTEs are controlled by their respective PTAs which are responsible for drawing up local public transport policies for the seven metropolitan areas outside London (six in England and Strathclyde in Scotland). A new PTA for Strathclyde PTE was put in place in April 1996. Members of the PTAs in England are appointed by their constituent MDCs and the PTAs' policies are implemented by their respective PTEs. From 1 April 1996, members of Strathclyde PTA were appointed by the 12 new Unitary Authorities which were to be included in the new Designated Area from that date. It is the duty of a PTE for any passenger transport area to secure, within their area, the provision of such public passenger transport services as they consider appropriate in accordance with policies formulated by their PTA.

Funding

PTEs have a power to secure passenger rail services in their areas under section 20 of the Transport Act 1968 (as amended), enabling PTAs to enter into agreements with British Rail to support passenger rail services. The PTAs individually contract with British Rail for the provision of these services in their areas. Central government provides support for the net cost of such services, which is channelled through the RSG to the MDCs. The element of RSG providing this support is known as the "bolt-on". The PTAs levy their constituent MDCs for the funds they require. From these funds the PTEs pay for the passenger rail services for which they have contracted with British Rail. In Scotland, HM Government provides support for local authority current expenditure, including section 20 support for ScotRail, through the RSG element of Aggregate External Finance ("AEF"), which is settled annually.

Prior to the restructuring of the rail industry on 1 April 1994, central government funding for PTE-supported passenger rail services was provided solely through the RSG "bolt-on". PTEs were charged by British Rail generally on a marginal cost basis for the provision of passenger rail services under the section 20 agreements. Restructuring saw the introduction of a revised charging regime as a result of which sufficient information on the levels of access charges and rolling stock leasing charges could not be provided at an early enough stage in the calculations of RSG for 1994/95 and 1995/96. It was not, therefore, possible to identify fully the extra costs to the PTAs of British Rail's services. Consequently, in order to meet the extra costs facing PTAs, HM Government introduced MRG as a transitional measure in 1994/95 and 1995/96 to meet the funding gap between the RSG "bolt-on" and the extra costs of the revised charging regime. Similar arrangements applied to Strathclyde PTE whereby the Scottish Office made available a special grant for the same purpose. Calculation of MRG took as its starting point the services contracted for by PTEs for 1993/94. The amount of the grant represented the difference between the costs of providing those services under the old (pre 1 April 1994) and new (post 1 April 1994) charging systems. MRG was paid by the Department of Transport direct to the PTAs. Special grant payments to Strathclyde Regional Council as Strathclyde PTA were made via the Scottish Office. MRG in 1995/96 was broadly the same as in 1994/95 except that payments made by British Rail and Railtrack to the PTAs under deeds of assumption were netted off MRG. The deeds of assumption are repayments to the PTEs of capital grants made by them to British Rail for rolling stock and infrastructure projects under the pre April 1994 arrangements. The assets were transferred to the ROSCOs and Railtrack and the grants converted to loans upon railway restructuring.

MRG was a temporary arrangement. All support for English PTE rail services for 1996/97 is being channelled through an enhanced RSG "bolt on". The reversion to funding through RSG has been taken into account in the calculation of the notional base budgets against which the capping criteria for MDCs are applied. HM Government support for Strathclyde PTE is channelled through the Scottish Office to the relevant new Unitary Authorities.
HM Government has recently proposed revisions to the way in which the PTEs should be funded. In particular, it has suggested that, subject to Parliamentary approval and satisfactory progress on letting the franchises concerned, the PTEs should be funded by special grant from 1997/98 and that the fixed charges element of the costs of the services supported by PTEs should be borne by the Franchising Director.

Where a PTE gives notice of complete withdrawal of support, it is intended that responsibility for funding services for that area will pass to ORPRAF. The Franchising Director and British Rail have entered into a Section 52 agreement which provides that the Franchising Director will take responsibility for the funding of passenger rail services in a passenger transport area where a PTE ceases to fund all rail services in its passenger transport area. Greater Manchester PTE has withdrawn support from all rail services with effect from 1 April 1996 and the Franchising Director has taken responsibility for funding railway passenger services in the passenger transport area.

Relationship with Franchisees

Where passenger rail services are to be provided under a franchise agreement within an area for which a PTE has responsibility for securing the provision of public passenger transport services, the PTE may specify the passenger rail services which it considers appropriate to meet its obligations. Where a PTE has specified such services it will be party to the franchise agreement and will also be responsible for providing any financial support required for such services.

In relation to a franchise which includes services within the passenger transport area of a PTE, the Franchising Director is required, before issuing an ITT, to give notice to the PTE of his intention to include, in the franchise agreement, provisions relating to the operation of any additional railway assets wholly or partly within that PTE's passenger transport area and of his intention to issue the ITT. The PTE may respond to that notice within 60 days, by submitting a statement which specifies the passenger rail services which the relevant PTA considers it appropriate to secure to meet any public transport requirements within that area; the minimum level of quality of the services so specified; the requirements with respect to the fares to be charged; and the minimum level of quality of service with respect to the operation of any station.

When such a statement has been submitted by the PTE, the Franchising Director must ensure that the services and any minimum levels of quality or requirements with respect to the services, fares, or the operation of any stations, are included in the specification of the services in respect of which the ITT is issued.

Before entering into a franchise agreement, a PTE must obtain its PTA's approval of the proposed franchise agreement. The Franchising Director will specify any other services required for that franchise and provide any financial support required for such services in accordance with the terms of the franchise agreement.
2.7 COMPETITION

Introduction

The Regulator's policy for moderating the competition to be faced by franchised passenger services is set out in the document "Competition for Railway Passenger Services", published in December 1994 by the Office of the Rail Regulator. The main elements of the policy are set out below.

The document states that, although an increase in competition could provide benefits to both train operators and passengers, competition among passenger train operators should be restricted for an initial period. There are two reasons cited for this. First, the franchising process itself creates considerable potential for increased competition. Second, the railway industry was still at an early stage of fundamental restructuring: it is not yet possible to predict with confidence the effects of allowing unrestricted competition.

There will therefore be fairly tight controls over any new competition during the first generation of franchises. There will be no significant new competition permitted on any route before 31 March 1999, and substantial restrictions will remain until 31 March 2002 when a further review will have been conducted. The means for controlling competition will be the requirement for the Regulator's approval of the terms and conditions of the access agreements between Railtrack and train operators. The intention behind this approach is to give operators effective exclusivity for an initial period of four years and to impose significant restrictions on the extent of new entry for a further three years. As these agreements will already be in place for a TOC before it is franchised, the nomination of flows for the first stage of the moderation of competition process will be completed before the franchisee acquires its relevant franchise operator.

Mechanism for Moderating Competition

The protection given to franchisees will relate to the markets they serve. These are defined in terms of point-to-point flows, reflecting the origin and destination stations of passengers carried by the franchise operator.

The primary way in which new entry will be restricted is through contractual control over Railtrack's ability to sell access rights to any open access operator or to any other operator in excess of those contained within their initial access agreements.

The mechanism operates in two stages. The first will start at the time at which the last of British Rail's TOCs has its long-term track access agreement approved, and is intended to expire on 31 March 1999. The second stage will start at the expiry of the first stage and expire on 31 March 2002.

For the first stage, franchise operators will be able to nominate a list of point-to-point flows on which new entry for scheduled passenger services will not be permitted without the franchisee's agreement. As a general rule, a flow may be nominated if it accounts for more than 0.2 per cent. of the franchisee's total fare revenue in a given year and the franchisee serves both the origin and the destination points. Franchise operators may nominate additional flows, not conforming to this general rule, subject to the approval of the Regulator. The mechanism will allow passenger operators to gain additional rights where there would be no conflict with the protection given to other operators. The nominations made to give effect to the first stage will apply for the whole of the first stage, unless reviewed as a result of a change of control. The Regulator may impose conditions on any nomination which is approved.

The Regulator recognises that, for some operators, for example those whose business consists of a large number of relatively small flows, the 0.2 per cent. materiality threshold which applies at the first stage of the mechanism for moderating competition may not be adequate in terms of the percentage of total farebox revenue protected. Proposals may be made by operators for lowering of the materiality threshold.

In advance of the second stage, franchisees will be able to nominate a revised list of flows, subject to similar constraints, to be used as the basis for restrictions on new entry in the second stage. During the second stage, new entry will be permitted on nominated flows up to a threshold level, which the Regulator...
envisages will be 20 per cent, of those flows by revenue in a given year. Flows that face pre-existing competition will count towards the threshold, but there will be no restrictions on new entry for scheduled passenger services on such flows. New entry will be unrestricted, in both stages, on any unnominated flows.

The Regulator will be prepared to amend or supplement this mechanism in individual cases where its strict application would produce undesirable results.

The Regulator intends to review the competition regime in 2001 in parallel with his next review of access charges. He expects that any changes to the regime after the expiry of the second stage will be incremental in nature.

In determining whether or not to accept nominations made by TOCs, the Regulator has indicated that the Franchising Director’s representations will be an important consideration in assisting him in reaching his decision in each case. The Regulator will not be sympathetic to proposals for access rights which are primarily abstractive.

The Franchising Director’s policy is that existing operators with a significant share of a flow (generally 20 per cent, or more measured by ORCATS allocation, although the position will be considered on a case by case basis), should be free to bid for additional timetable slots to serve that flow, but that existing operators without significant share and new entrants should not be permitted to bid for such additional slots. This approach will allow operators to develop their existing core markets without significant constraints as a result of the application of the competition policy, whilst protecting their business from new entrants, or from significant expansion by operators with an existing low level of service on a particular flow.

The Regulator has published a final version of his paper on “Criteria and Procedures for the Approval of Moderation of Competition Proposals from Passenger Train Operating Companies”. This sets out in more detail the Regulator’s current view of the criteria and procedures he expects to adopt in the first stage when considering whether to approve moderation of competition proposals from TOCs. The paper covers the qualifying criteria for nominating flows for protection; the Regulator’s decision criteria; the consultation and approval process; and the timescales and process for submission of nominations of material and additional flows.

Public Procurement

The award of the vast majority of public contracts to suppliers domestic to each Member State has been a significant barrier to the achievement of genuine competition in the EU. In response a programme of legislative measures has been developed, regulating public procurement activities (i.e. purchases by government and other public bodies) so as to eliminate the tendency of national governments to discriminate in favour of domestic suppliers when awarding contracts.

Of particular importance to the rail sector and to transport generally is the Utilities Directive (Council Directive 93/38/EEC) which applies the Community’s policy on public procurement to utilities, including transport undertakings. The Directive is implemented in the UK in respect of works and supplies by the Utilities Supply and Works Contracts Regulations 1992 (SI 1992 No 3279). A regulation covering services has not yet been introduced, but the Directive may be directly effective in any event.

The Utilities Directive has the following main features:

- It applies to all public authorities and public undertakings and to bodies (even though private) granted special or exclusive rights and carrying out relevant activities. In the context of rail transport relevant activities means “the operation of networks providing a service to the public in the field of transport by railway”. TOCs are utilities for the purposes of the Directive while they are in the public sector. Whether they remain utilities after franchising will depend on whether they operate under special or exclusive rights.

- The Directive applies to contracts with a value exceeding ECU 400,000 (approximately £335,000) in the case of supplies and services and ECU 5 million (approximately £4.2 million) in the case of works.
The utility must publish notices of contracts it proposes to award and has awarded, and there are minimum periods of time for each stage of the tender process.

The Directive permits a utility to establish a prequalification system.

A successful tender will normally be either the cheapest or the "most economically advantageous", as measured by a variety of criteria.

Tenders for more than one Franchise

The Franchising Director is prepared to consider tenders for more than one franchise. The franchises included in such a tender may relate to contiguous or non-contiguous areas of the network. They may also cover overlapping routes. Where a person has been awarded a franchise in one franchising round, the Franchising Director will be prepared to consider tenders by the same person for other franchises in later rounds.

In certain cases where more than one franchise is granted to the same person, the Franchising Director may review the PSRs in the relevant franchise agreements to ensure that they remain effective.

The Franchising Director may reject a tender for more than one franchise, or a tender for another franchise by a person who is already a franchisee, where the award of the franchise or franchises in question would either materially affect competition on the network or give a franchisee a dominant position that inhibited the Franchising Director’s ability to grant other franchises.

If two franchises are under common ownership, the Franchising Director will normally expect to see separate franchise agreements for the two franchises and require separate accounts.

A tender for more than one franchise, or for an additional franchise, is likely to be closely scrutinised by the Director General of Fair Trading, in exercise of his merger control powers under the Fair Trading Act.

Such a tender is also likely to be closely scrutinised by the Regulator in exercise of his powers to approve or review the relevant regulated access agreements (in particular the provisions in track access agreements relating to moderation of competition) and to consider whether changes to the relevant operating licences are necessary on change of control of the licence holder. The paper entitled “Change of Control of Passenger Train Operators: Criteria and Procedures” (referred to in section 2.3, "Railway Licences") outlines the Regulator’s approach to change of control in situations where tenders are made for more than one franchise or by existing franchisees. Tenderers are encouraged to contact the Regulator at the earliest opportunity in order to discuss such proposals.

Tenderers are responsible for making contact with the Office of Fair Trading. They are encouraged to do so at the earliest opportunity to discuss any merger implications that may arise and to seek confidential guidance or make a non-confidential notification if appropriate.
2.8 MERGER CONTROL

The grant of franchises resulting in the transfer of the franchise operator from British Rail to the ownership of the franchisee is potentially subject to EC and UK Merger Control rules.

EC Merger Control

The EC Merger Regulation 4064/89 ("ECMR") applies to all concentrations with a Community dimension, i.e. concentrations where:

- the combined aggregate worldwide turnover of all of the undertakings concerned exceeds ECU 5 billion (approximately £4 billion); and
- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million (approximately £200 million); unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Undertakings concerned for turnover purposes are, in effect, the franchise operator and the franchisee (and related companies).

If the ECMR is applicable, the transaction must be notified to the Merger Task Force ("MTF")—part of the Commission's Competition Directorate-General—within one week of any agreement, announcement of a public bid or acquisition of a controlling interest. The concentration may be put into effect after the expiry of three weeks from notification, subject to the Commission having the power to prolong this period of suspension. The Commission has power to investigate and ultimately to block a transaction which is not compatible with the common market.

UK Merger Control

Under the Fair Trading Act 1973, as amended, a merger qualifies for a reference to the Monopolies and Mergers Commission ("MMC") for an investigation where two enterprises cease to be distinct and as a result either 25 per cent. or more of goods or services of any description supplied in the UK or a substantial part thereof are supplied to or by the same person, or the value of the assets taken over exceeds £70 million. Even quite small areas of the UK have been identified as a "substantial part" for these purposes. The Railways Act provides that for the purposes of the Fair Trading Act, where a person enters into a franchise agreement as franchisee, there is to be taken to be brought under his control an enterprise engaged in the supply of the railway services to which the agreement relates. This means that on the grant of a franchise two enterprises cease to be distinct within the meaning of the Fair Trading Act.

There is no statutory obligation to notify a "qualifying" merger, but a merger reference to the MMC may be made by the Secretary of State at any time up to six months from the completion thereof or when all material facts become known, whichever is the later. There are procedures which permit the parties to seek non-binding, confidential guidance on whether a merger reference might be made in advance of, and formal clearance after, a public announcement of a transaction. References to the MMC are made primarily on competition grounds.

In the case of mergers which involve the acquisition of a controlling interest, a fee is payable by the acquiring party—here the franchisee—when the Secretary of State's decision is announced. The fee ranges from £5,000 to £15,000, depending on the value of the gross assets acquired.

If in its investigation the MMC identifies effects which would be adverse to the public interest, the Secretary of State has wide order-making powers to deal with them, including power to block or unscramble mergers.

The Office of Fair Trading issued a note in January 1994 entitled "Railways: Guidance on Mergers". This explains the issues of jurisdiction, economic analysis and procedure that arise in applying the Fair Trading Act to the grant of a franchise.

A subsequent paper has been issued by the Office of Fair Trading explaining further the application of the merger provisions of the Fair Trading Act 1973 to the acquisition of one or more franchises.
2.9 RESTRICTIVE AGREEMENTS AND ANTI-COMPETITIVE BEHAVIOUR

Commercial agreements or arrangements to which an individual franchisee would be party are potentially subject to European Community and UK rules governing agreements and arrangements which are restrictive of competition or the parties' commercial freedom.

Article 85, EC Treaty

Article 85(1) prohibits agreements or concerted practices which may affect trade between European Community Member States and which have the object or effect of preventing, restricting or distorting competition within the common market. A prohibited agreement is void unless it is notified to the European Commission and is granted an exemption on the grounds that the economic benefits of the agreement outweigh its anti-competitive effects. Parties may also be liable to fines for infringements of Article 85(1).

Details of the commercial arrangements to which franchisees will be party (including access, rolling stock and inter-operator arrangements) have been provided, either by formal notification or informally, to the European Commission with a view to obtaining confirmation either that they do not infringe Article 85(1) or that exemptions would be applicable. The European Commission has issued comfort letters in respect of most of these arrangements; comfort letters relating to the remainder are expected in the near future.

Restrictive Trade Practices Act 1976 ("RTPA")

The RTPA requires agreements between two or more persons carrying on business in the UK, and in which relevant restrictions as to the supply of goods or services are accepted by two or more parties, to be registered at the Office of Fair Trading ("OFT"). Certain information agreements must also be registered. Failure to do so renders the restrictions void and unenforceable and the parties may be subject to third party actions for damages.

The RTPA and the Railways Act contain certain exemptions from the RTPA for certain types of agreement. Agreements need to be reviewed to see whether these exemptions are available. The OFT has clarified the precise scope of the exemptions and given guidance as to which arrangements will have to be registered.

Article 86, EC Treaty

Article 86 prohibits the abuse of a dominant position within the common market or a substantial part of it insofar as it affects trade between Member States. Parties infringing this prohibition may be required to alter their behaviour and may be subject to fines.

Fair Trading Act 1973 and Competition Act 1980

The Fair Trading Act subjects monopoly situations (which exist where a party has 25 per cent. or more of the supply of goods or services of any description or where a group of persons behaving anti-competitively together have such a market share) to investigation by the Director General of Fair Trading. The Director General can seek undertakings from any monopolist in lieu of a reference to the Monopolies and Mergers Commission for investigation or can make such a reference. The Competition Act subjects anti-competitive practices to similar controls. The MMC can recommend, and the Secretary of State has wide powers to ensure, that monopoly abuses or anti-competitive practices are brought to an end.

As noted above (see section 2.2, "The Regulator—Functions of the Regulator"), the Railways Act confers on the Regulator these functions of the Director General of Fair Trading and provides that they are to be exercised by the Regulator concurrently with the Director General.
2.10 SAFETY

Introduction

The prime responsibility for ensuring safety on the restructured railways rests with the party who is in control of the activity in question (e.g. operating the trains or stations). A potential new operator running a new service on the national infrastructure or operating a station will be held accountable for those aspects for which he has control. However, as that operator might be introducing risk into the railway environment which could affect the safety of infrastructure and other operators’ activities there must also be a responsibility upon the party who has control of the system itself to impose conditions on access (especially those related to safety) and monitor (by inspection, audit etc.) what is going on. For most of the network, this responsibility falls upon Railtrack, the national infrastructure controller. The HSE oversee the activities of Railtrack through its enforcement of the Health and Safety at Work etc. Act 1974 (the “1974 Act”) and the relevant statutory provisions (including the Railways (Safety Case) Regulations 1994).

The 1974 Act contains provision for securing the health, safety and welfare of persons at work and for protecting others against risks to health or safety in connection with the activities of persons at work. Regulations made under the 1974 Act aim to preserve existing standards of safety, and improve these where necessary, in the light of additional risks created by the liberalisation of access and privatisation.

These regulations, which apply to all railway undertakings in the absence of specific exemptions, are the Railways (Safety Critical Work) Regulations 1994, The Carriage of Dangerous Goods by Rail Regulations 1994 and the Railways (Safety Case) Regulations 1994. The latter introduce the need for train operators, station operators and infrastructure controllers to produce a Safety Case.

In addition to the 1974 Act, other health and safety legislation remains pertinent in respect of particular premises or operations. For example, depots (which are not required to be included in a Safety Case) are subject, amongst other things, to the Factories Act 1961.

Railway Group Standards

Introduction

Originally, the British Rail Standards Organisations were responsible for approximately 20,000 safety related standards and procedures. Responsibility for and stewardship of these standards now rests with the Safety and Standards Directorate of Railtrack (the “Directorate”).

Of the 20,000 standards, approximately 4,000 were identified as high level standards, or Railway Group Standards ("RGS"). These are defined as rules, regulations, instructions and procedures which are produced as mandatory operational and engineering standards, and which are intended to set up the minimum safety and safe interworking requirements in terms of what has to be achieved to comply with those requirements. In addition to the RGS, there are large numbers of lower level standards, known as business standards. These are developed by individual companies to which the RGS are to apply and set out the specific procedures to be adopted independently within those businesses to ensure compliance with the RGS, i.e. the means by which the businesses specify how the requirements of the RGS will be achieved. Variation of business standards are relevant only to the businesses applying them.

Change Procedures

Neither RGS nor business standards are intended to remain static. As part of its role in the stewardship of safety, the Directorate is required to monitor the efficacy or workability of current RGS. The Directorate is responsible for receiving proposals for changes to existing RGS. A change to a business standard that would affect the operator’s Safety Case will need to go through the procedures for changes to Safety Cases discussed below. On receipt of draft proposals, the Directorate must ensure each proposal is objectively assessed, taking into account the change in level of risk likely to be introduced to the industry as a result of comparison with industry objectives.

Defined procedures exist for the processing of new or revised RGS. These change procedures involve obtaining the opinion of relevant experts and consultation on an industry-wide basis. The change
procedures also set out a method of appeal where proposals have been rejected. Such appeals are made to the Regulator, who will consult with the HSE in reaching his decision.

Vehicle Acceptance

Where new rolling stock is contemplated the vehicles concerned must be accepted by Railtrack. The acceptance process currently has two parts, Engineering Acceptance and Route Acceptance. Engineering Acceptance ensures that the vehicle is constructed in accordance with the relevant RGS and can be carried out by a Vehicle Acceptance body recognised by the Directorate. Route Acceptance is also required when vehicles are to be used on a route for the first time. Route Acceptance is carried out by Railtrack Zones as the bodies responsible for operational infrastructure and requires the operator and/or train builder to produce a safety assessment for the vehicle to show that all the potential hazards associated with the introduction of new vehicles have been considered and satisfactorily addressed. Where a new vehicle is required to operate in more than one zone, Railtrack appoints a lead zone to manage the vehicle safety assessment acceptance. Where significant technical innovation or complexity is involved the Zone Safety Review Group may refer the vehicle safety assessment to one of Railtrack's National Safety Assessment Panels for the relevant functional area which will review its adequacy and recommend acceptance or further work if necessary. Railtrack is currently reviewing the process to make it simpler and easier to complete.

Counter-terrorist Security Requirements

Railtrack, British Rail and the TOCs have in place detailed procedures for the maintenance of security and for incident management designed to meet the requirements of the relevant RGS. These procedures are an integral part of the Safety Case. Compliance with RGS is a licence requirement.

The Railways Act empowers the Secretary of State for Transport to give instructions on counter-terrorist security matters and where necessary to enforce such measures on the railways. Similar powers exist for the aviation, maritime and Channel Tunnel operators.

Under the Act the Secretary of State can instruct franchise operators to meet required security standards. The Department of Transport will expect franchise operators to:

- provide certain information to the Department of Transport, including contact names and services operated, and to report security incidents;
- develop and maintain contingency plans for security incidents and ensure that training is provided to staff to enable them to implement these plans;
- comply with all other security-related RGS.

These requirements are outlined in more detail in the RGS.

The Act also allows the Secretary of State to issue instructions where the risk warrants the implementation of additional measures. As well as the areas mentioned above, the instructions could require franchise operators to restrict the entry of persons and goods to relevant assets; to conduct searches of people and/or property; to restrict the running of trains; to employ a specified number of suitably trained staff to prevent incidents; to meet certain construction requirements or to make modifications to relevant assets or equipment. It is not currently envisaged that such instructions would be issued unless circumstances, such as a heightened state of risk, dictated their use.

In the event of non-compliance with an instruction, the Secretary of State is able to serve an enforcement notice detailing required action. Failure to comply with an enforcement notice or an instruction is a criminal offence. Franchise operators need to take account of their obligation to provide appropriate security measures. Failure to meet that obligation could render them open to prosecution.

The Secretary of State has authorised certain Department of Transport staff to provide advice and guidance, carry out inspections and monitor compliance with security requirements on the railways.
2.11 SAFETY CASE

Introduction

The Safety Case regime is governed by the Railways (Safety Case) Regulations 1994 (the "Regulations") which apply, with limited exceptions, to "railway operators" (i.e. infrastructure controllers, train operators and station operators). Compliance with the Regulations is a pre-requisite to the coming into force of a licence granted by the Regulator to those operators. Failure to conform to the Safety Case may lead to the revocation of an operator's licence.

The acceptance role for Safety Cases is performed by the relevant infrastructure controller (for example, Railtrack or London Underground or, following completion of the Channel Tunnel Rail Link, the controller of the Channel Tunnel Rail Link infrastructure), or in certain circumstances the HSE. If the franchise operator runs trains over infrastructure owned by more than one infrastructure controller, Safety Cases must be accepted by all relevant infrastructure controllers.

If the franchise operator also controls the infrastructure (or part of it) over which its trains run, or where there is more than one infrastructure controller at a location (for example, a station served by Railtrack and LUL tracks) the HSE will be responsible for accepting the Safety Case.

A new franchisee will not be able to commence passenger rail operations until it has had the Safety Case of its franchise operator revised where necessary and the revisions accepted by the Safety and Standards Directorate of Railtrack (see "Revision of a Safety Case" below) and any other relevant Safety Case acceptor. Changes in those who ultimately control the franchise operator, its key management or employees, its rolling stock or its mode of operation are all likely to require a revision to the Safety Case.

However, in many cases Railtrack may be satisfied that the changes will only constitute minor revisions and that the franchise operator will be able to comply with the existing operator's appropriately amended Safety Case. In such situations, the Safety Case acceptor may be prepared to receive an undertaking in a prescribed form as evidence of the franchise operator's intention to comply with the existing Safety Case and the procedure for material revisions set out below will not be necessary.

Before submitting a tender, the potential franchisee should obtain a copy of Railtrack's Guidance on Railway Safety Cases for franchisees. This will be available to potential franchisees through TOC data rooms or can be obtained from Railtrack's Controller, Safety Assurance. The Guidance contains the steps the potential franchisee should take in relation to the Safety Case, both before and after submitting a formal tender. The HSE has also published its own official guidance on how to comply with the Regulations ("Railway Safety Cases"—ISBN 0-7176-0699-6), which is available from HSE Books (Telephone 01787 881165).

In certain circumstances detailed in the Regulations, a Safety Case will not be required. More specifically:

- the HSE may, by a certificate in writing, exempt an operator, or class of operator, from the need to prepare and have accepted a Safety Case, provided in doing so it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it;
- the Secretary of State for Defence may grant an exemption in the interests of national security; and
- goods and maintenance depots will not require a Safety Case.

The Safety Case serves two main purposes. It indicates that the operator has the ability, commitment and resources properly to assess and control risks to the health and safety of staff and the general public. It also provides a working document against which management, the HSE and also the party which accepts the Safety Case (see below), can check that the accepted risk control measures and safety management systems have been properly put into place and continue to operate in the intended manner.

Railtrack and LUL, as infrastructure controllers, have prepared and had accepted by the HSE a Safety Case covering amongst other things all significant health and safety implications of their activities and their
effect on other railway operators. The Safety Cases of Railtrack and LUL demonstrate how risks on the railway (so far as they are within their respective control) will be effectively managed.

Before being permitted to operate a train on any railway infrastructure, a train operator must prepare a Safety Case containing the particulars specified in Schedule 1 of the Regulations and have that Safety Case accepted. For franchise operators, the acceptance role is usually performed by Railtrack as infrastructure controller. Operations may not commence until 28 days after acceptance. Railtrack sends copies of the notification of acceptance and of the Safety Case itself to the HSE. During the 28 day period the HSE has the opportunity to examine a Safety Case and, if necessary, react to it. There is, however, no provision in the Regulations permitting the HSE to reverse Railtrack's decision although it may use its general powers to take any action needed to remedy what it considers to be an unsafe situation. Exemption powers in the Regulations permit the HSE to reduce the period of 28 days where appropriate. A similar process applies where LUL is the Safety Case acceptor.

Like a train operator, a station operator may not operate until its Safety Case has been accepted by the relevant safety body. The station operator's Safety Case would be sent to the infrastructure controller provided (i) the station operator is not also the infrastructure controller, (ii) all track serving that station is controlled by one infrastructure controller and (iii) the infrastructure controller owns the station freehold. If any one of these conditions is not satisfied, HSE will be the acceptor of the Safety Case. Where Railtrack accepts the Safety Case, there is a 28-day waiting period during which the HSE has the opportunity to examine the Safety Case, in the same way as for train operators.

A station operator has overall responsibility for health and safety at the station, except for matters which are contained wholly within separate premises within the station (e.g. retail units where there are no safety implications for the station as a whole). Even at a complex station, there should be only one station operator with overall responsibility for station operations and handling emergencies. Where a train operator also operates stations, then separate Safety Cases are not required, and matters relating to trains and stations may be included in the same Safety Case. Similarly the Safety Case may cover more than one train operation.

Content of a Safety Case

Schedule 1 to the Regulations lists those particulars to be included in an operator's Safety Case. In addition to general information regarding the operator and its undertaking, these include:

- particulars of technical specifications and procedures or arrangements for operations or maintenance insofar as these affect the health and safety of persons;
- a health and safety policy statement, and particulars to demonstrate there are adequate arrangements for implementing this;
- a statement of the significant findings of the risk assessment the operator has undertaken and the arrangements made in consequence of these findings;
- particulars to demonstrate the adequacy of the operator's safety management system;
- for station operators, particulars of procedures and arrangements established to prevent risks to the health and safety of persons arising from the movement or overcrowding of persons in a station and for evacuation of stations in emergencies;
- particulars to demonstrate adequate arrangements for audit and the production of audit reports; and
- particulars of arrangements established to enable co-operation with other operators.
Section 2 The Operational Environment

The format of a Safety Case is not prescribed by the Regulations, although guidance to the Regulations suggests how the material may be presented. Where appropriate, other company documentation may be referred to in the Safety Case. If necessary to verify certain aspects of the Safety Case, the acceptor may require sight of such documents. Where railway operators have a safety representative (appointed pursuant to the Safety Representatives and Safety Committees Regulations 1977) the operator must consult the representative in the course of preparing or revising the Safety Case.

Revision of a Safety Case

An operator which has prepared a Safety Case is required to revise it whenever appropriate (i.e. whenever any of its contents would otherwise become inaccurate or incomplete), for example as a result of the introduction of new activities, new equipment or advances in technology or as a result of a change due to applicable business standards. If such a revision renders the Safety Case "materially different" from the version accepted by the HSE or the infrastructure controller, the revision must be sent to the original acceptor. A material revision cannot be implemented until such revision has been accepted by that acceptor and (unless an exemption is granted by the HSE) 28 days have passed following acceptance unless HSE is the acceptor, in which case the revision may be implemented as soon as it has been accepted.

Guidance to the Regulations contains examples of what may constitute a "material revision". It is also possible that a number of minor revisions may, taken cumulatively, amount to a material revision. Operators should reach a broad understanding with the acceptor of the Safety Case as to what the parties regard as material in this context.

An operator is obliged by the Regulations to undertake a three-yearly review of the entire contents of its Safety Case. A report of this review should be sent to the acceptor of the Safety Case, indicating any changes identified as necessary as a consequence of the review.

Safety Roles of the HSE and Railtrack

The HSE

The HSE is the executive arm of the Health and Safety Commission. It carries out duties and tasks on behalf of the Commission and makes arrangements for enforcement of the relevant health and safety legislation under the 1974 Act.

HM Railway Inspectorate is an integral part of HSE and is the safety regulatory body for the railways. The work undertaken by it is varied but includes:

- routine and preventative inspection of premises and activities on the railway;
- investigations of accidents, dangerous occurrences, incidents and complaints;
- enforcement of the 1974 Act through the issuing of notices and prosecution;
- setting appropriate safety standards and making contributions to the development of safety-critical rules, procedures and standards by others, including participation in the consultation process for the preparation of new or revised Railway Group Standards; and
- consideration of proposals by railway undertakings and inspections leading to the approval of new and altered "works, plant and equipment" on the railway on behalf of the Secretary of State.
Railtrack

The overriding responsibility for safety of and safe inter-working on, most railway infrastructure in Great Britain is vested in Railtrack. Exceptions include the Isle of Wight and the London Underground networks.

Railtrack has a Safety and Standards Directorate which is independent of the operational and commercial management of Railtrack and all Directorate staff are required to maintain commercial confidentiality. The Directorate's role in the management of safety includes:

- acceptance of Safety Cases and monitoring and auditing compliance by operators with their Safety Cases;
- management of Railtrack's own Safety Case; and
- auditing to ensure the adequacy of its own management system to comply with its Railway Safety Case.
2.12 RECENT AND PROPOSED LEGISLATION

The Disability Discrimination Act 1995

The Disability Discrimination Act 1995 enables the Government to make regulations to ensure that all trains first brought into use after 31 December 1998 are accessible to disabled people, including those who use wheelchairs. These regulations would ensure that disabled people can get on and off public transport vehicles in safety and travel in them in safety and reasonable comfort.

Regulations may also cover the construction, use and maintenance of trains, including:

- the fitting, design and use of equipment carried by trains;
- toilet facilities;
- the location and floor area of wheelchair accommodation; and
- assistance to be given to disabled people.

The Act allows the Government to exempt trains from these requirements in some circumstances.

The Act will also make it unlawful for people who provide goods, facilities or services to the public to discriminate against disabled people. Railway stations are covered by this part of the Act. A service provider may have to make alterations to the way a service is provided. The Government has the authority to set a limit on the cost of fulfilling the duty to make alterations.

The Railway Heritage Bill

The Railway Heritage Bill is a Private Member's Bill supported by the Government which seeks to extend the Railway Heritage Committee's remit to cover railway records and artefacts in private sector ownership. The Committee currently has powers under section 125 of the Railways Act 1993 to designate railway artefacts and records of historical interest belonging to the British Railways Board, a wholly owned subsidiary of the Board or certain Government owned successors to the Board, and to direct the transfer of those items to museums or other collecting institutions at the end of their working life. The Bill would extend those powers to records and artefacts owned by franchisees; franchise operators; companies which were formerly subsidiaries of the British Railways Board; and companies which were formerly publicly owned railway companies.

The new heritage regime under the Bill would work as follows. The Committee would be obliged to notify every body to which the Bill applied of every designation they made. Owners of designated items, provided they had been so notified, would have to provide the Committee with any information they might reasonably require about those items. If an owner to which the Bill applied wished to transfer a designated artefact or record to a body to which the Bill did not apply and the Committee had notified him of its designation, he would be required to give the Committee notice of the disposal. The Committee would then be obliged either to consent to the disposal or to give a direction within six months of notification requiring the owner to offer the item to another person or prioritised list of persons, or on different terms, or both. The owner would be required to dispose of the item under the terms of an offer made in accordance with the direction if that offer were accepted within six months of being made. Any disposal in which the owner had failed to meet any of those requirements would be void.

The new regime should not impose a significant administrative or financial burden on the private sector. Owners in the private sector would have a right to market value compensation. The amount of such compensation would be determined by agreement with the offeree or by arbitration if agreement could not be reached. The requirement to provide the Committee with information would necessitate keeping track of the condition and whereabouts of designated items, but owners might well do that in any case for business reasons. Owners of designated items would not be able to convert them into cash quickly, but disposals of valuable items would generally be planned over a timescale comparable to that for the procedure set out in the Bill.
Franchise Agreement

INTRODUCTION

Successful bidders for the initial passenger rail franchises will acquire the share capital of the TOCs which currently operate the relevant passenger rail services.

This section provides a brief description of the form of a franchise agreement which will define the Franchising Director's requirements in relation to each franchise. The section also provides details of the Franchising Director's policy in areas such as PSRs, load factors and the regulation of the price of fares.
3.1 SUMMARY OF THE FRANCHISE AGREEMENT

This section describes the standard form seven year structure of the franchise agreement. Different or additional provisions may be included in certain franchise agreements particularly those which include services supported by PTEs. Additional details of some of the areas dealt with in the franchise agreement such as PSRs and fares regulation are contained in the separate sections on these topics below. The franchise agreement will govern the relationship between the Franchising Director, the franchisee and the franchise operator. If the franchise includes services which are to be specified and supported by one or more PTEs, then those PTEs will also be parties to the franchise agreement.

Under the franchise agreement, a franchisee undertakes to the Franchising Director to secure the provision of specified Passenger Services by the franchise operator for the term of the franchise. The draft franchise agreements will only be signed by the successful franchisee once the tender process has been completed. The Franchising Director reserves the right to make alterations to any such draft franchise agreement at any stage prior to its signature.

The successful bidder for a franchise will be asked to sign a franchise agreement with the Franchising Director as soon as possible after acceptance of its bid. The franchise agreement is subject to a number of conditions precedent and will not therefore come fully into effect until such conditions precedent are satisfied. Upon satisfaction of the conditions precedent, the share capital of the TOC, which has previously been operating the passenger services comprised in the franchise, will be transferred from British Rail to the franchisee and the franchise term under the franchise agreement will commence. It will be this TOC which, with its existing contractual relationships, will continue to provide the Passenger Services under the franchise, albeit in its new capacity as the franchise operator and a wholly owned subsidiary of the franchisee.

The franchise agreement will set out the rights and obligations of the franchisee and the franchise operator in connection with the operation of passenger rail services and the associated operation of station amenities and services, light maintenance services and other ancillary services.

The franchise agreement provides for certain payments to be made either by the Franchising Director to the franchise operator or vice versa. The level of payments will be fixed by the bidding process and will be determined for the franchise taken as a whole.

One of the objectives of the Franchising Director is to secure an improvement in the quality of passenger rail and station services. For those franchises where the Franchising Director considers that market forces will be insufficient to achieve this objective, it is intended that they will be supplemented by the establishment of a performance regime relating to the punctuality and reliability of the service provided by the franchise operator. Customer satisfaction surveys will provide a mechanism to monitor quality levels in all franchise operators.

The franchise agreement is divided into six principal parts and a series of related schedules. Part I deals with definitions in the agreement and the commencement of the franchise. Part II sets out operational requirements during the franchise term. Part III contains the financial arrangements between the Franchising Director and the franchise operator. Part IV specifies the term of the agreement and how it may be terminated before the expiry of the full term. Part V contains a series of obligations which are concerned with the preservation of the franchise business and the protection of successor operators and the Franchising Director. Part VI sets out a number of general provisions.

Part I — Commencement of the Franchise

The provisions of Parts I and VI of the franchise agreement take effect as soon as it is signed. The provisions of Parts II, III, IV and V will not take effect until the following conditions precedent have been satisfied or waived:

(a) The transfer of all the shares in the franchise operator from British Rail to the franchisee (see section 3.2, "Transfer from British Rail").
(b) Execution by the Franchising Director, the franchisee and the franchise operator of a deed binding the franchise operator to the terms of the franchise agreement.

(c) Receipt of a notice from the Regulator approving the change in control of the franchise operator for the purposes of its existing licences and confirming that any right of the franchise operator to a moderated competition regime under its track access agreement will not be altered as a result of such change in control.

(d) Receipt of a statement from Railtrack or where infrastructure is shared with or operated by LUL, the HSE or LUL confirming that the Safety Case of the franchise operator will not be required to be amended as a result of the change in control of the franchise operator or that appropriate arrangements have been made to take account of such change in control.

(e) Where the franchise is for seven years, the term of the existing track and Independent Station access agreements and any Independent Station leases of the franchise operator being extended for the franchise term.

(f) Where the franchise is for seven years, the franchise operator and Railtrack executing leases for the duration of the franchise term relating to each station and depot operated by the franchise operator.

(g) The franchise operator executing a power of attorney in respect of any licences or agreements which may require to be transferred at the end of the franchise.

(h) The Franchising Director having received any necessary season ticket bond or performance bond.

(i) The Franchising Director being satisfied that the required minimum level of capital specified in the franchise agreement has been complied with at the start of the franchise term.

(j) The Franchising Director being satisfied that the initial franchise assets will be vested in the franchise operator at the start of the franchise term.

(k) No event occurring before the commencement of the franchise which the franchisee has notified or ought to have notified to the Franchising Director, which, if known at the time of signature of the franchise agreement, would have resulted in the franchise agreement not being entered into, or being entered into by the Franchising Director on materially different terms.

(l) Payment by the franchisee to the reporting accountants of the appropriate proportion of their costs in respect of the accountants’ long form report or a waiver of liability by the franchisee in favour of the reporting accountants.

The conditions precedent will be required to be satisfied in a particular order set out in the franchise agreement and within a period agreed at the time the franchise agreement is signed. Because of the difficulties caused where completion accounts are drawn up on a date which does not coincide with the end of a reporting period, franchises will normally commence at the beginning of a reporting period. An escrow agreement will normally be used to ensure that relevant conditions precedent are all satisfied at the same time. During the period between signature of the franchise agreement and the commencement of the franchise term, the franchisee is required to notify the Franchising Director of any material changes to the information supplied to him as part of the pre-qualification and tendering process.

Part II — Operation of the Franchise

Passenger service requirement

Passenger services provided by the franchise operator must include at least those comprised in the PSR for that franchise. The PSR for all franchises will specify the broad pattern of the minimum services relevant to that franchise and, for certain franchised services, load factor standards or minimum capacity requirements. The franchise operator may need to operate services in addition to those otherwise required by the PSR to comply with load factor standards. The PSR is not a set timetable and leaves flexibility for franchise operators to decide how the services should be delivered. It may also include specified connections. The policy underlying PSRs, load factors and capacity requirements is discussed in section 3.3, “Passenger Service Requirement” and section 3.4, "Load Factors and Capacity Requirements".
The franchise operator is obliged to ensure that the PSR is met by its passenger timetable and related train plan, as amended from time to time during the franchise term. This means that it must bid with Railtrack for the train slots necessary to deliver the PSR under the timetable bidding procedures set out in the Track Access Conditions. This process is likely to occur twice a year. The franchise operator's obligation is subject to Railtrack not exercising its rights under the Track Access Conditions to modify or refuse such bids for train slots. If Railtrack does modify or refuse a bid for services comprised in the PSR, the franchise operator is required to exercise its own rights under the Track Access Conditions to object to such modification or refusal to the extent so requested by the Franchising Director or as may be reasonable in the circumstances.

Once the timetable and train plan have been established, the franchise operator must use all reasonable endeavours to provide its Passenger Services in accordance with them. The timetable includes for these purposes any additional services which the franchise operator has chosen to provide in addition to its PSR. Whilst a service is included in the timetable published by the franchise operator, it is obliged to provide it irrespective of whether it forms part of the PSR.

There will be specified limits on the number of total and partial cancellations. In addition, where load factor standards or minimum capacity requirements apply, there will also be a limit on the proportion of the capacity that must be provided. These limits will apply in any 28 day reporting period and will be set at the beginning of the franchise on the basis of the historical performance of the relevant TOC. In each case there will be three levels, a call-in level at which the Franchising Director would review the performance of the franchise operator, a second level at which the franchise operator would be in breach of the franchise agreement and a third level which would trigger an event of default under the agreement. Persistent performance below the call-in threshold relating to a particular limit may lead to a breach.

The franchise operator will be excused from these obligations in the event of a force majeure event occurring. Force majeure is defined to include Railtrack preventing the franchise operator from gaining access to the track for a period of more than 12 hours, the owner of any relevant station or depot preventing the franchise operator from gaining access to such facilities, design or endemic faults, mandatory modifications or damage beyond economic repair affecting more than a specified percentage of its rolling stock, and industrial disputes involving Railtrack's or the franchise operator's employees as well as a number of other events which are beyond the franchise operator's control. Force majeure might therefore include the collapse of a bridge or viaduct, severe weather which prevented Railtrack from allowing access to the network or an industrial dispute involving Railtrack's employees. It would not include short term disruption to access. The franchise operator is required to use all reasonable endeavours to mitigate the effects of any force majeure event.

Exclusionary behaviour
Where the franchise operator provides services which compete with other services supported by the Franchising Director, it will be restricted from conducting its business in a manner which is likely to exclude or limit competition between itself and the other operator to the long term detriment of passengers using such services.

Provision of capacity
Where services are subject to load factor regulation, the franchise operator will normally be required to carry out two passenger counts each year on the relevant services in a manner approved by the Franchising Director. Following any such count, the franchise operator must inform the Franchising Director of his expectations of demand and his general plans for peak period timetables and train plans which would enable the load factor requirements to be met on the basis of such estimated demand levels during the remainder of the franchise term.

Where significant changes would be required in order to meet load factor specifications or if so requested by the Franchising Director, the franchise operator may be required to prepare a feasibility study...
on the basis of which an implementation plan for such changes will be agreed. Once agreed, the franchise operator must implement the changes within an agreed timeframe. The preparation of the feasibility study and the procedure for agreement of the implementation plan are described below in "PSR changes".

Up to a specified initial limit of passenger demand, the franchise payments will not be varied to reflect variations in the amount of capacity required to meet the load factor specification. Between this initial limit and a second, higher limit, the Franchising Director will bear a specified percentage of the projected net costs, if any, of providing any necessary additional capacity. Above the higher limit, all projected net costs, if any, will be the responsibility of the Franchising Director. The obligation on the franchise operator to provide additional capacity is conditional upon the Franchising Director agreeing to fund his part of any projected net costs. If, once capacity has been increased above the initial limit, projected demand falls, the Franchising Director will share in any projected net savings in the same proportions.

Where the franchise operator provides services which are subject to load factor regulation, it will be restricted from taking any action which might reduce its projected passenger demand by transferring a material number of passengers from its services to those of another train operator (unless the affected operators agree).

In addition, the Franchising Director and franchise operator may agree to make alterations to timetables and train plans where changes in demand occur between counts.

To enable franchise operators to plan for their capacity requirements, the Franchising Director will provide to all relevant operators a list of the deemed capacity of each relevant class or configuration of rolling stock. The basis for such deemed capacity is discussed further in section 3.4, "Load Factors and Capacity Requirements". Franchise operators will be free to approach the Franchising Director if they are planning to invest in new rolling stock and wish to determine its deemed capacity for the purposes of compliance with load factor specifications.

Where neither load factor regulation nor capacity requirements apply, franchise operators will be subject to a general obligation to provide adequate capacity in running services. See section 3.4, "Load Factors and Capacity Requirements—General Provision".

**Timetable**

At each station which they operate, franchise operators will be required to publish timetables for, so far as practicable, all passenger trains calling at such stations. Information displays must be used to provide this information at all stations and, where stations are staffed, the information must also be made available in the form of one or more booklets. This obligation is subject to the franchise operator receiving any necessary timetable information from other passenger operators which call at its stations. The franchise operator must supply details of its timetable to the SFOs of all stations at which the franchise operator calls but does not operate.

Where services are modified or disrupted for any reason, franchise operators will be required to revise or add to such information displays in order to inform passengers, so far as possible, at least seven days before the services are affected. Where changes are made to the timetable itself, the relevant changes must be notified to passengers at least 28 days in advance.

PSRs may provide for certain connections to be maintained on franchise operators' services. Franchise operators must also generally ensure reasonable connections, where practicable, between their own services and the services of other operators which serve the same stations. Where other operators run trains over the same routes, the franchise operator will be obliged to co-operate with them to ensure passengers on the route are provided with a reasonable pattern of service.

Where a franchise operator proposes significant changes to the pattern of its services, it will be obliged to notify relevant RUCCs and local authorities of such proposals and to allow them sufficient time to respond so that it can take due account of such proposals before bidding for the relevant train slots under the timetable bidding procedures set out in the Track Access Conditions.
Passenger’s charter

TOCs currently operate Passenger’s Charters for their passenger services. As part of the tendering process potential franchisees will be asked to submit their own charters which include compensation arrangements for passengers in the event of poor performance which are at least as favourable as those currently required to be provided by British Rail’s Passenger’s Charter. The charter will then be annexed to the franchise agreement and franchise operators will be required to use reasonable endeavours to comply with it during the franchise term.

The franchise operator’s contractual obligation to the customer is contained in the national conditions of carriage. However, the Franchising Director expects charters to bring together the franchise operator’s obligations to the passenger, so that customers have a clear understanding of the services they can expect to receive. In particular, the Franchising Director expects franchise operators to provide a commitment to publish independently audited performance figures, comparing actual performance with agreed standards for punctuality and reliability and to explain what compensation is available if performance falls below an acceptable level. The Franchising Director would also expect the charter to give commitments in other areas such as:

- providing information on services, fares and facilities;
- displaying timetables at stations;
- meeting the special needs of travellers with disabilities;
- providing information in advance of non-emergency engineering works;
- providing information on delays;
- ticket office queuing times of no more than five minutes (three minutes off peak);
- provision of capacity (if appropriate);
- explaining how and where a complaint may be made; and
- listening to the views of customers.

Disruption to services

Where services are disrupted, franchise operators will be required to provide alternative transport arrangements for affected passengers, having regard to the feasibility and cost of such arrangements. In addition, franchise operators will be required to avoid, so far as practicable, cancellations, delays and short formed trains recurring on the same route so that the same group of passengers should not be affected on a regular basis.

Customer satisfaction surveys

TOCs will conduct approved customer satisfaction surveys on certain aspects of their performance either before the franchise commences or in the early months of the franchise. These surveys will be used to set customer satisfaction benchmarks.

The franchise operator will then be required to conduct similar surveys at least twice a year in a manner approved by the Franchising Director and to use all reasonable endeavours to secure an improvement in the overall level of customer satisfaction during the franchise term. If customer satisfaction levels fall below the relevant benchmarks, the franchise operator will be required to remedy the deterioration, taking into account the cost and practicalities of such exercise.

The Franchising Director may require other aspects of the franchise operator’s services to be surveyed and benchmarked during the franchise. The Franchising Director also has the power to publish the results of the surveys.

Fares

The policy and mechanism for the regulation of the price of fares is discussed in section 3.5, “Regulation of the Price of Fares”. In addition to such regulation, franchise operators will be required to
offer children at least the same discounts on fares as young persons will be entitled to under the Young Persons Railcard Scheme.

Franchise operators will also be expected to participate in local authority concessionary travel and multi-modal schemes. This could be achieved through local negotiation but if not, the Franchising Director may require participation through the franchise agreement, subject, in the case of concessionary travel schemes, to the operator being paid any net loss arising and, in the case of multi-modal schemes, to it being paid any new net loss arising which is additional to that which the franchise operator was making before it was franchised. The amount of any such loss will be determined on the same basis as the loss arising out of a PSR change (see "PSR changes" below).

The Franchising Director has the duty under section 28 of the Act to require franchise operators to participate in such discount fare Schemes as he may approve from time to time. If he introduces new discount fare Schemes during the course of a franchise, any loss or gain arising out of such change may be reflected in an adjustment to the franchise payments. If amendments which require the approval of the Franchising Director are made to any other Schemes, the Franchising Director may share in any projected net gain arising out of such amendments. The amount of any such loss or gain will be determined on the same basis as the loss or gain arising out of a PSR change (see "PSR changes" below).

**VAT on passenger rail services**

The present transitional arrangements under EU legislation which allow the zero rating of public transport fares are due to come to an end in December 1996. No decision has yet been taken on legislation to replace the transitional arrangements. Any such legislation will be subject to unanimous agreement by the Member States.

If the rate of VAT is adjusted on passenger rail transport before 31 March 2003, adjustments may be made to franchise payments and/or to other provisions under the franchise agreement in order to ensure that, until that date, the franchise operator suffers no net gain or net loss as a result of the change.

**Closures**

The Act provides that an operator proposing to close services, stations or depots must give the Franchising Director at least three months' notice of any such proposal. The Franchising Director has a duty to secure the continued operation of any such services, stations or depots from the intended date of closure unless and until consent to closure is given. A franchise operator may not initiate a closure without the Franchising Director's consent. Furthermore, a franchise operator which initiates a closure will be required to continue to operate the relevant facility or service at its own expense on the Franchising Director's behalf unless and until consent to closure is given. This will not prevent franchise operators securing the operation of such facilities or services by other persons.

**Station standards**

Franchise operators will be required to implement certain minimum standards at stations which they operate within a certain period of time after the commencement of the franchise (or immediately if a fully staffed station is subsequently fully or partially de-staffed by the franchise operator). These standards are set out in schedule 4 of the franchise agreement. Requirements relating to the provision and use of communication systems and waiting accommodation must be implemented within three years. Requirements relating to information displays, cleanliness and lighting must be implemented within 18 months. The Franchising Director may grant a derogation from such requirements where he considers the cost of compliance would significantly outweigh the benefit to passengers.

The Franchising Director will require the double arrow symbol to be used at each such station to indicate the location of the station.
Section 3 Franchise Agreement

PSR changes

Either party may propose a change to the PSR at any time during the course of the franchise.

The party proposing a PSR change will normally be required to draw up a feasibility study for the change. This will set out the details of the change, its proposed manner of implementation (and any reasonable alternatives), a statement of the steps required to implement it (including any additional track access rights or amendments to Safety Cases), the estimated timescale for completion and an estimate of the net loss or net gain to be suffered or made by the franchise operator as a result of it.

The parties will consider the feasibility study and endeavour to agree an implementation plan for the proposed change. The plan will set out details of the change, a timescale for its implementation, the projected net loss or net gain arising out of it and any consequential adjustments to franchise payments payable. Disputes in respect of the implementation plan may be resolved through the Railway Industry Dispute Resolution Rules.

The projected net loss or gain will be determined in accordance with the accounting rules set out in schedule 9 of the franchise agreement. These require analysis of any change in the profit (or loss) of the franchise operator by reference to certain specified revenues and costs between the date of implementation of the change and the end of the franchise term. Once agreed, adjustments will be made to franchise payments payable for the remainder of the franchise term.

The Franchising Director will be entitled to reject any PSR change proposed by a franchise operator which might result either in a reduced level of service or an increased level of franchise payments. The Franchising Director may impose a change on the franchise operator, subject to the change not requiring more than a specified percentage of additional train mileage or more than a specified amount of capital expenditure. These limits will be set out in the franchise agreement and are designed to protect franchisees from unreasonable changes to the scale or nature of the franchise.

In order to promote efficiency in the provision of passenger services, the Franchising Director will allow the franchise operator to retain a proportion of any projected net gain resulting from a change which is proposed by the latter. The proportion will be agreed at the time of the proposal and may depend, for example, on the benefits accruing to passengers as a result of the change. It is intended that precedents for such sharing arrangements be built up as the franchising programme progresses.

The parties may also adjust the franchise payments to reflect any other alteration in the terms of the franchise agreement during the course of the franchise term or any additional investment or improvement programme undertaken by the franchise operator.

Other industry arrangements

The franchise agreement will require participation in and compliance with the mandatory inter-operator arrangements which are described in section 5, "ATOC and ATOC Schemes". It will also require compliance with such brand licences, if any, as the Franchising Director or any company owned by him may grant to the franchise operator (such as the InterCity brand licence, where relevant). Franchise operators may not, without the Franchising Director's consent, amend the terms of their rolling stock leases. They will also be required to use their best endeavours to secure that the property damage insurance arrangements for rolling stock which are in place on franchising (which provide for waivers of subrogation rights by insurers against other TOCs) are continued on renewal.

The Franchising Director may enter into direct agreements with suppliers of key services to the franchise operator (see section 4.9, "Direct Agreements"). The franchise operator will be required to indemnify the Franchising Director for any loss suffered by him under a direct agreement as a result of a breach by the franchise operator of the terms of the key contract to which the direct agreement relates.

The franchise operator may also be required to assign or novate its licences, leases and access agreements in order to secure continuity of service. Franchise operators may also be required to ensure that any station sub-leases to other TOCs or their successors continue, on the same terms, for the duration of
the relevant station lease. Franchise operators will also be required to ensure that any sub-lease to an affiliate is terminable at the end of its franchise.

Requirements in respect of pensions are discussed in section 6.4, “Pensions and Industrial Relations”.

**Franchise plans**

Franchises may, as part of their bid for an individual franchise, offer to undertake specific obligations in addition to those contained in the draft franchise agreement sent to them with the relevant ITT. These could include providing additional passenger services or an investment programme. Such additional obligations will be included in “franchise plans” and made contractually binding under the franchise agreement.

**Capital requirements**

The franchise operator will be required to comply with certain minimum capital requirements and to provide a performance bond. See section 3.6, “Capital Requirements”.

**Season Ticket Bond**

The franchise operator will also be required to maintain a season ticket bond to cover outstanding season ticket liabilities unless those liabilities are small compared with the turnover of the TOC. The season ticket bond will be expected to be provided annually and will be for an amount equal to the forecast outstanding season ticket liabilities. Such a forecast will be agreed annually with the Franchising Director and may vary from reporting period to reporting period, or possibly from week to week.

**Specified personnel**

The Franchising Director is required under section 76 of the Act only to issue ITTs to persons with appropriate managerial competence. The selection of a successful franchisee will involve analysis of its proposed management team. As a result certain specified employees of the franchisee and/or franchise operator will be required to devote their normal working hours to the business of the franchise during its first three years unless the Franchising Director agrees otherwise. Such employees will be identified during the bidding process and agreed between the franchisee and the Franchising Director. Should they leave during the initial three year period, the franchisee and franchise operator will need to find acceptable replacements.

**Monitoring**

Franchise operators will be required to maintain four weekly management accounts which OPRAF will be able to access if required. These accounts should analyse revenue and costs by commercially identifiable segments of the franchise operator’s business and should also include an analysis of key operating ratios.

Audited annual accounts will be required to be provided by each franchise operator as well as unaudited four weekly profit and loss accounts, cashflow statements and balance sheets. The format for the four weekly accounts is specified in each franchise agreement and may be used by the Franchising Director to compare different franchise operators. The franchise operator’s own accounting policies will normally be used for such accounts, although the Franchising Director reserves the right to specify the policies to be used.

The franchise operator will also be required to maintain maintenance schedules and copies of all relevant manuals and licences relating to its key assets from time to time.

The franchise agreement will require notification to the Franchising Director of any changes in the registered details of the franchisee and franchise operator, any material changes to their business and any breaches of the agreement. It will enable the Franchising Director to request information, in addition to that which he may request under the Act, and to audit or inspect the books of the franchise operator in...
order to verify information provided to him. Where appropriate, he may require direct access to relevant information held by third parties.

Franchise operators will be required to keep and supply the majority of the information needed to permit monitoring in a form compatible with the Franchising Director’s electronic data systems.

The Franchising Director will wish to publish national passenger statistics periodically during the franchise and will be entitled to require passenger counts to be conducted for this purpose.

It is expected that there will be regular reviews of franchise operators’ performance. This and the Franchising Director’s approach to management of franchises generally is discussed in more detail in section 3.7, “Franchise Management”.

Part III — Financial Provisions

Fixed franchise payments

Franchise payments will consist of a number of elements. The principal element will be a fixed amount agreed between the Franchising Director and the franchisee as part of the bidding process. This will be described further in the invitation to tender for each franchise. A fixed amount will be agreed for each year during the franchise term and will be payable on a pro rata basis in arrears at the end of each reporting period. The fixed element will be subject to adjustment in accordance with the other terms of the franchise agreement.

Franchise reviews

Franchise reviews are intended to give franchisees protection against:

- the Regulator’s access charging review, planned in 2000 for implementation in 2001, and moderation of competition review, planned during 2000/2001 for implementation in 2002 (see section 4.1, “Overview of Access—Regulatory Approval” and section 2.7, “Competition”); and
- a change in the fare regulation regime by the Franchising Director.

They are intended to give the Franchising Director the ability to:

- reduce the uncertainty for franchisees of issues outside their control;
- require franchise operators to pass on any financial benefits which directly accrue from the Regulator’s access charging review; and
- re-negotiate franchise agreement terms if the financial viability of a franchise operator is threatened, as an alternative to re-tendering the franchise.

Materiality as used below will be defined by reference to 0.5 per cent. of the sum of the franchise operator’s passenger receipts and the franchise payments in their last audited accounts. Any call for a franchise review may have to be accompanied by a reasoned case, supported by a report prepared by an independent adviser of recognised standing.

Franchise review following the Regulator’s access charging review

- Franchise operator’s option: If the Regulator’s access charging review has, or could have, the effect of materially reducing the profitability of a franchise operator, the franchise operator will be able to request a franchise review with the objective of adjusting the franchise agreement terms to compensate for the financial effect of the review. The basis of the franchise review would be to leave the franchise operator no better or worse off financially than he would have been had the access charging regime not been changed.
- Franchising Director’s option: If the Regulator’s access charging review has, or could have, the effect of materially increasing the profitability of a franchise operator, the Franchising Director will be able to call for a franchise review with the objective of reducing the level of his support, or increasing the franchise operator’s payments as appropriate, by the value of the financial benefit to the franchise operator of the Regulator’s review.
- **Disputes:** Any dispute between the Franchising Director and the franchise operator will be resolved in accordance with the Railway Industry Dispute Resolution Rules.

**Franchise review following the Regulator's moderation of competition review**

- **Franchise operator option:** If the Regulator's moderation of the competition review has, or could have, the effect of materially reducing the profitability of a franchise operator, it will be able to request a franchise review with the objective of altering the terms of the franchise agreement to compensate for the financial effect of the Regulator's review.

  The franchise operator will have one opportunity to call for a franchise review at any time between publication by the Regulator of the results of the moderation of competition review and three years from the date of its implementation.

  The Franchising Director will negotiate with the franchise operator any alterations to the terms of the franchise agreement by reference to the terms on which he would expect an efficient operator, providing a high quality of service, to require to take on such a franchise.

- **Disputes:** If the franchise operator is unable to agree adjustment terms with the Franchising Director, he may call for the issue to be considered under the Railway Industry Dispute Resolution Rules. The Franchising Director shall not be bound by any ruling under the Railway Industry Dispute Resolution Rules. If he chooses to reject such ruling, the franchise operator shall have the ability to terminate the franchise agreement by giving 12 months’ notice, provided that such notice is given within two months of the Franchising Director’s decision to reject such ruling.

**Franchise review following changes by the Franchising Director of the fares regulation regime**

The Franchising Director has committed to a fares regulation formula until the end of 2002. In the event that this formula is amended at any time after this period either the franchise operator or the Franchising Director can call for a franchise review. The basis of the review would be to leave the franchise operator no better or worse off financially than he would have been had the fares regulation regime not been changed.

- **Disputes:** Any dispute between the Franchising Director and the franchise operator will be resolved in accordance with the Railway Industry Dispute Resolution Rules.

**Franchise review if the viability of a franchise is threatened**

If a franchise operator believes that his franchise is no longer financially viable, he may request a franchise review with the objective of obtaining an increased level of support from the Franchising Director.

If the Franchising Director is satisfied that the viability of the franchise operator is threatened he will consider:

- whether there is a financial case for increasing support to the franchise operator or otherwise altering the terms of the franchise agreement. In doing so, he will take into account the amount of support which an efficient operator would be likely to require if the franchise were relet and the costs of reletting;
- whether the franchise operator's difficulties were due to circumstances beyond his control and which he could not reasonably have been expected to counteract;
- whether it would be in the interests of passengers to provide additional support to the franchise operator, taking into account the quality of service provided by the franchise operator; and
- the continued motivation of the franchise operator.

If, having considered these factors, the Franchising Director concludes that there is a case for increasing support or otherwise adjusting the terms of the franchise agreement, he may do so to the extent necessary to give the franchise operator a reasonable prospect of completing its franchise term. Any revised support payments are likely to be less than an efficient new operator would be expected to seek for operating the franchise were it to be relet on the same terms.
Force majeure

In the event that a force majeure event occurs and a franchise operator makes a profit over the duration of the event, franchise payments may be adjusted to ensure that the franchise operator makes no more than half the profits that it would otherwise have made in the absence of the event. Any adjustment will be proportionate to the level of services affected by the force majeure event. Provisions may be included to enable the Franchising Director to recover payments made by Railtrack under schedules 4 and 8 of the track access agreement in the event that these are in excess of the franchise operator's losses.

Other adjustments

The payment provisions in track access agreements are contained in Schedule 7 to those agreements. This provides for adjustment to take account of changes in law which may result in increased costs for Railtrack (a proportion of which will be shared with the franchise operator). Schedule 7 also allows for the introduction of provisions for adjustments to take account of any profits that Railtrack may generate from property development. Similar provisions are included in the Station and Independent Station Access Conditions. The franchise agreement provides for automatic adjustments to be made to the level of franchise payments to reflect such adjustments to the extent that they are made (see section 4.2, "Access to Track—Schedule 7").

The franchise agreement also provides the mechanism for the level of franchise payments to be increased to compensate TOCs for a proportion of certain costs which they may incur as a result of Mandatory Modifications being required to be made to their rolling stock. See "Investment Considerations—Mandatory Modifications" and section 4.7, "Rolling Stock Arrangements—The Master Lease".

The incentive regime

Franchise agreements will include a performance incentive regime (the "OPRAF regime") where the Franchising Director believes the market is too weak to motivate the relevant franchise operator to respond adequately to customer demands for a punctual and reliable train service. It will apply specifically in the following instances:

(i) where in the medium term the train operator has monopoly power (for example London commuter services in peak periods); and

(ii) where the cost of providing Passenger Services is disproportionate to the passenger receipts which those services generate.

The OPRAF regime will not generally apply to InterCity operators.

Where it applies the OPRAF regime is intended to supplement the effect of market forces in motivating the operator and ensure the negotiation of effective supply contracts. Under the regime, subsidy is at risk if performance worsens but the franchise operator has the benefit of additional financial incentives for improvements.

The OPRAF regime will be based on a comparison of actual performance (in terms of minutes late measured against the applicable timetable) to a benchmark level of performance. This results in a payment to the franchise operator or to the Franchising Director depending on whether actual performance is above or below the benchmark. Payments will also be made by the franchise operator if the applicable passenger timetable is different from that advertised to passengers in advance (for instance as a result of short term alterations by either Railtrack or the franchise operator). There is no cap imposed on the amount payable by either party under the OPRAF regime.

The OPRAF regime is set out in Schedule 7 to the franchise agreement. It is a separate regime from the performance regime which will operate between the franchise operator and Railtrack under schedule 8 of the track access agreement (see section 4.2, "Access to Track—Schedule 8").

Payments payable under the regime will be computed on a four weekly basis for each service group of the franchise operator. Each service group will have a different performance benchmark. The benchmark
will be set for each service group on the basis of its average actual performance for a typical year, usually taken to be the more typical of 1993/94 or 1994/95, or the Passenger's Charter standard (as measured in March 1995), whichever is the higher. The benchmark will not vary during the franchise unless both parties agree.

Performance will be measured by reference to the average number of minutes late which trains are at specified monitoring points. If a train fails to pass a scheduled monitoring point (because of a total or partial cancellation), it will be deemed to have been a specified number of minutes late at that monitoring point. Monitoring points may be weighted according to their relative importance to passengers within a service group.

The amount payable will be determined in two stages: actual performance will be measured against the applicable timetable for each day (and compared against the benchmark) and that timetable will then be compared to the original passenger timetable (if different). If there are any differences an amount will be payable in respect of trains cancelled or delayed from the original timetable. The amount payable in each case will be calculated by reference to a fixed assumed number of passenger journeys per train in the service group, a financial value attributed to minutes late and the number of trains scheduled to pass each monitoring point in the relevant reporting period. A financial value will be attributed to passenger lateness and will be set at different levels for London commuter peak and other services. Such financial value will be adjusted in line with inflation each year.

Where franchise operators are subject to load factor regulation, then payments will also be made by the franchise operator if it fails to provide the capacity which it planned to provide under its train plan to meet its load factor requirements. The amount payable will be a proportion (which relates to the amount of capacity actually provided) of the payment which would have been made if the relevant train had been cancelled. If the trains are cancelled and are not covered by the performance regime described above, the amount payable will be the full amount.

The OPRAF regime will not generally take account of whether any relevant delays or cancellations have been caused by the franchise operator or by the actions of other persons, including Railtrack. However allowances may be made for trains which are delayed in order to await the arrival of specified connecting services and may be made in certain other specified circumstances, including where timetables are amended to reflect planned engineering work by Railtrack.

The OPRAF incentive regime depends on the same data source for train running information as the Railtrack performance regime. See section 4.2, "Access to Track-Track Access Conditions". There are currently deficiencies in the accuracy and completeness of such data.

Part IV — Term and Termination

Franchise term

The franchise term will be determined during the bidding process.

The franchise term may be extended by a period of between one and six months at the end of the franchise if the Franchising Director elects. This power is only likely to be invoked if a successor franchisee has not satisfied all of its conditions precedent before the end of its predecessor’s franchise term. If invoked, the franchise operator will have the option to elect for the franchise payments during such extension to be adjusted so that, on the basis of information available at the start of such extension, the franchise operator will make neither a profit nor a loss during such period.

The franchise operator and the Franchising Director may during a franchise also agree to extend the franchise for a further period of up to two years.

For certain franchises the Franchising Director may be prepared to consider awarding a franchise for longer than seven years in order to secure investment which would not otherwise be available. The making of such investment may be dependent on finalising arrangements with third parties such that the franchise operator may not be able to commit to it unequivocally at the time the franchise agreement is signed. In such cases the franchise agreement would specify a period within which the franchise operator must agree...
the details of the proposed investment with the Franchising Director and a period within which the franchise operator must confirm that he is able to make the investment. Should the franchise operator fail to do either within the specified period the franchise would revert to a seven year term.

Events of default

The franchise agreement specifies a number of events of default which would give the Franchising Director the right to terminate the agreement before its expiry. These include the following:

(a) the insolvency (or any other similar event) of the franchise operator, the franchisee or any other person who may have given any guarantee or performance bond in relation to the franchise (see "Performance bonds");
(b) a change in control of the franchisee, or the franchise operator ceasing to be a wholly owned subsidiary of the franchisee, without the consent of the Franchising Director;
(c) revocation of any licence held by the franchise operator;
(d) it becoming unlawful for the franchise operator to provide all or a material part of its passenger services, or to operate all or a material number of its stations and depots (which could occur if it acted in breach of its Safety Case and was forced to cease operations by HM Railway Inspectorate — see section 2.10, “Safety”);
(e) the franchise operator failing to include the PSR in its timetable;
(f) termination or suspension of the franchise operator’s membership of the mandatory inter-operator Schemes;
(g) the franchise operator ceasing to provide all or any of its passenger services or meet specified minimum targets of reliability or capacity, other than as a result of a force majeure event;
(h) any performance bond, season ticket bond or guarantee ceasing to be valid or the season ticket bond failing to be renewed;
(i) termination of any of the franchise operator’s key contracts except to the extent that it is no longer necessary for the franchise operator to be party to such arrangements or where it has made suitable alternative arrangements (see "Key contracts" below);
(j) non-compliance by the franchisee or franchise operator with any order made by the Franchising Director under section 55 of the Act (see section 3.7, “Franchise Management—Enforcement of Franchise Agreement”);
(k) termination of any other franchise held by the franchisee or its affiliates as a result of an event of default; and
(l) breach of any other obligation which is breached again after notice has been served on the franchise operator or franchisee requiring the breach to be remedied.

Part V — Change of Franchise Operator

Introduction

At the end of the franchise term, the franchise will, in the normal course, be let to a successor franchisee (who may be the incumbent franchisee). Assuming the successor franchisee is not the same person as the incumbent franchisee, it is not envisaged that the franchise operator will be transferred to the successor franchisee. Instead, it is envisaged there will be a transfer to the successor franchise operator of the property, rights and liabilities of the incumbent franchise operator which have been designated as primary franchise assets during the franchise term (see section 3.9, “Franchise Assets” and section 3.8, “Termination of a Franchise”).

This process would involve the transfer of the incumbent franchise operator’s business and, therefore, TUPE may apply to transfer the employees involved in such business to the successor franchise operator. Restrictions will therefore be placed on the franchise operator to ensure that it does not act in such a way as to prejudice either the successor franchise operator’s business or the continuity of service on transfer.
If there is no franchisee to continue the relevant services, then section 30 of the Act places the Franchising Director under a duty to secure the continuity of the relevant passenger services, unless he is of the opinion that there are adequate alternative passenger rail services being provided by other operators. In these circumstances, it is expected that the business would be transferred to the Franchising Director, a company wholly owned by him or another franchise operator to whom he would subcontract the provision of the services. The transfer would be on substantially similar terms to a transfer to a successor franchise operator.

The principal purpose of Part V of the franchise agreement is to protect the position of the successor operator. In general, the restrictions are imposed on a franchise operator in the last 12 months of a franchise or as soon as the Franchising Director becomes aware of the occurrence of an event of default under the franchise agreement and notifies the franchise operator.

**Maintenance as a going concern**

A franchise operator is required to manage its business on the basis that the franchise will be transferred as a going concern to a successor operator which will be able to continue the business without interruption and have access to all franchise assets and relevant employees. To such end, the franchise agreement prohibits any action which might prevent or frustrate such a transfer and requires the franchise operator to maintain two handover packages. The contents of these packages are described in schedule 12 of the franchise agreement and include key practical information designed to enable the successor operator to continue the business. Such packages are required to be kept up to date during the franchise and the franchise operator's auditors will be required to confirm each year that all specified information has been included in such packages.

The franchise operator will also be required to assist in the preparation of tender documentation for the next round of franchising. Such assistance may include permitting access to employees and records and assisting in the verification of information.

**Arrangements with affiliates**

The franchise operator, if it enters into arrangements with its affiliates, must do so on arm's length terms. If such arrangements are not on such terms and are designated as a key contract (as described below), the Franchising Director may require the arrangements to be terminated and new, arm's length, arrangements to be made in order to protect successor operators from uncommercial contracts. The Franchising Director also has the right to substitute values which would be derived from reasonable arm's length terms when calculating the franchise operator's profit or loss for the purposes of some of the other provisions in the franchise agreement.

**Restriction on activities**

The franchise being offered in first and subsequent rounds of franchising is a railway business. In certain franchises there may be scope to develop additional non-railway businesses. It is not currently intended that any such additional businesses will form part of the franchise to be offered to successors (although they may wish to acquire such businesses direct from the outgoing franchisee). Accordingly, the franchise operator will be restricted to running only certain specified railway activities which are listed in schedule 2 of the franchise agreement. This will simplify the retendering process in the next round of franchising and should ensure that any employees who are involved in non-railway activities are not transferred to a successor operator by TUPE.

No restriction is placed on the activities of a franchisee or a franchisee's affiliates.

**Key contracts**

The Franchising Director is concerned to ensure that a successor operator will have available to it not only the assets which it requires to continue the business but also the necessary contractual rights. In order
to do this he is entitled to designate any contracts or categories of contracts as key contracts. Generally, a franchise operator may not enter into any arrangement which is a key contract without there first being a direct agreement in place between the Franchising Director and the franchise operator's counterparty to that arrangement. This direct agreement will generally ensure that the benefit of such arrangement can be transferred to the successor operator or a railway administrator in the event of a railway administration order being granted.

The Franchising Director will designate as key contracts all those contracts which are essential to the operation of the franchise and which could not be replaced quickly in the event of premature termination of a franchise. Contracts relating to telecommunications, computer services, provision of spares, maintenance, rolling stock, access to track, stations and depots, track services, train crew lending and property leases are amongst those likely to be designated as key. The direct agreement between the Franchising Director and the ROSCOs in respect of the rolling stock leases and the direct agreements between the Franchising Director and Railtrack in respect of track, station, depot access and property leases are described in section 4.9, "Direct Agreements".

However, for some key contracts, a direct agreement will not be necessary; other arrangements will be put in place to achieve the same result. Where a franchise operator supplies another franchise operator under a key contract, for example in an agreement for the provision of train crew, the franchise agreement of the supplier operator requires him to ensure that the benefit of the key contract is made available to successor operators when the franchise of the operator whom he supplies comes to an end.

**Sub-contracting**

The franchise agreement prohibits the franchise operator from delegating the provision of more than five per cent. of its passenger rail services to other operators without the Franchising Director's consent. Where services are delegated, the franchise operator is required to retain control over the relevant services, for example, by ensuring that it retains the relevant track access rights. This ensures that if the franchise is relet, the successor operator will be able to run the relevant services and will not be dependent upon a third party to do so. The Franchising Director does not intend to withhold his consent so as to prevent sub-contracting or similar sharing of assets and rights by neighbouring operators where such sharing may be in both of their commercial interests.

**Employees**

TUPE may generally operate at the end of a franchise to transfer the employees of the franchise operator to any successor operator. For this reason the franchise operator may not, for example, increase salaries by more than a specified amount in the last year of the franchise, increase or decrease by more than five per cent. the aggregate number of employees during the same period, provide certain fringe benefits which a successor operator would be obliged to honour, or enter into employment contracts with long notice periods or favourable termination arrangements. Similar restrictions apply to new employees. Such restrictions may be waived by the Franchising Director where appropriate.

**Fares**

Restrictions are placed on franchise operators selling tickets which are valid for more than 13 months or reducing the prices of its tickets in the last 13 months of a franchise if those tickets would be valid for travel after the end of the franchise. This is intended to prevent incumbent franchise operators from selling tickets which remain valid during a substantial period of a successor franchise (and therefore restrict the successor operator's commercial opportunities). This is also intended to limit advance sales of discounted tickets which a successor operator may otherwise have been able to sell at their full price.
Inter-operator Schemes

Towards the end of the franchise, a franchise operator will be required to consult with the Franchising Director and/or the successor operator to ensure that it votes at Scheme council meetings in a manner appropriate to the franchise being treated as a continuing business rather than ending on a fixed date.

Franchise assets

Section 27 of the Act creates a regime which enables the Franchising Director to designate certain property, rights and liabilities of the franchise operator as franchise assets and thereby restrict dealings in respect of such assets. The Franchising Director intends to designate, subject to certain exceptions (such as Initial Leases for rolling stock or any cash on deposit with banks), all property, rights and liabilities of the franchise operator from time to time as franchise assets. There will be restrictions on the granting of security interests over such franchise assets. Within the class of franchise assets, a further class of primary franchise assets will be created under the franchise agreement to which there will be restrictions on transfer and discharge. For franchise assets which are not primary franchise assets, there will be no restrictions on transfer or discharge. Only primary franchise assets are expected to be transferred to the successor operator at the end of a franchise. See section 3.8, “Termination of a Franchise”.

Schedule 11 of the franchise agreement will list the initial primary franchise assets. Primary franchise assets will generally be those assets which are owned by the franchise operator, are considered essential to ensuring continuity of service and are not easily replaceable from another source. The Franchising Director may designate additional primary franchise assets during the franchise.

If further assets are acquired during the franchise which would have been designated as primary franchise assets if owned at the outset, these are likely to be designated as additional primary franchise assets on or shortly after their acquisition. There may also be certain assets which do not need to be subject to the primary franchise asset regime during the whole franchise, but are still essential for ensuring continuity and these are therefore likely to be designated as primary franchise assets towards the end of the franchise. An example might be the stock of spares held by the franchise operator. Spares which are designated may be used on rolling stock, but must be replaced. Franchise operators are also required to maintain an appropriate supply of spares or to have in place appropriate arrangements with a third party supplier.

The Franchising Director and the franchise operator may agree at any time that some or all assets should cease to be designated in this way. The Franchising Director is entitled to de-designate any primary franchise assets no later than one year before the expiry of the franchise term. Any disputes regarding the designation of primary franchise assets may be settled through the Railway Industry Dispute Resolution Rules, provided that, if there are any outstanding disputes at the end of the franchise, these will be deemed to be settled automatically so that the relevant asset remains designated as a primary franchise asset. There is an abbreviated procedure for challenging designations made during the last year of the franchise.

Franchise operators will be required to maintain primary franchise assets in good working order and to replace any which are lost or beyond repair. Where appropriate, schedules of condition may be required to be drawn up and agreed at the time of designation.

Intellectual property

It may not be appropriate for intellectual property which is developed by the franchise operator to be designated as a primary franchise asset, even if essential to ensure continuity of service. Designation would mean not only that the successor operator would have to pay the full market value of such assets but would also prevent the franchise operator from exploiting the intellectual property after the franchise. Accordingly, the franchise agreement provides for the franchise operator to grant a licence of such intellectual property for such period as may be necessary to secure continuity of service. Such licence would be royalty free for a period of less than one month, but, if longer, a reasonable royalty would be payable.
Franchise operators may brand assets which they use to provide their Passenger Services. This may occur in particular in relation to rolling stock. A successor operator may wish to rebrand the same stock and the Franchising Director is concerned to ensure that the actions of one operator will not impose undue cost on the successor operator. Accordingly, where a franchise operator has applied brands which are not distinctive to it (and could therefore be used by a successor operator) it may license the use of such brands to the successor operator. Where the brand is too distinctive or no such licence is given and the brands remain at the end of the franchise, the franchise operator will be required to pay the successor operator the lower of the cost of removing the brands or the cost to the successor operator of putting on its own brands. It will also be required to license the use of such brands for a period long enough to enable the successor operator to rebrand. Franchise operators may need to take into account the cost of debranding their rolling stock and other assets at the end of their franchise.

Part VI — General Provisions

Confidentiality

Restrictions will be placed on the release of confidential information by all parties. However, the Franchising Director, as a non-ministerial government department, will have the right to disclose information to other government departments and otherwise for the purpose of facilitating the performance of his functions. The franchise agreement also allows general disclosure of certain specified categories of information and provides for certain information to be provided to the Regulator by the Franchising Director.

Disputes

The franchise agreement provides for certain disputes to be resolved through the Railway Industry Dispute Resolution Rules. Such disputes will generally involve questions of judgment or determination which cannot be agreed at the outset of the franchise, such as the projected amount of net loss or net gain resulting from a PSR change.

Disputes which involve any breach of the franchise agreement by the franchise operator will be dealt with under section 55 of the Act (see section 3.7, “Franchise Management—Enforcement of Franchise Agreement”). Breaches of the franchise agreement by the Franchising Director will be dealt with through the courts.

General

Part VI contains several other provisions of general application including restrictions on assignment, exclusion of liability and provisions for the serving of notices.
3.2 TRANSFER FROM BRITISH RAIL.

This section describes the standard form share purchase agreement to be entered into between BR and a Franchisee pursuant to which the whole of issued share capital of the TOC will be transferred from BR to the Franchisee.

The successful bidder for a franchise will be asked to sign a share purchase agreement with BR simultaneously with the franchise agreement as soon as possible after acceptance of its bid. The share purchase agreement may be terminated by the Franchising Director if he terminates the franchise agreement in circumstances where the conditions precedent of the franchise agreement are not satisfied.

The share purchase agreement, which is entered into by BR pursuant to a direction from the Secretary of State, contains the detailed provisions for the preparation and audit of a completion balance sheet, as well as the detailed accounting policies to be applied in the preparation of the balance sheet (which are based on the existing BRB accounting policies) together with any proposed adjustments. The purpose of the proposed adjustments is to adjust the revenue reserves of the TOC to be as close as possible to zero and to settle the inter-company loan balances between the TOC and BRB so that the net worth of the TOC at completion is as close as possible to zero.

The share purchase agreement also contains provisions which have been agreed between the Franchising Director and BRB for the operation of the TOC between the date on which the share purchase agreement is entered into and the date upon which it is completed.

The share purchase agreement contains certain warranties to be given by BRB to the franchisee with respect to the TOC, subject to the provisions of a disclosure letter. The share purchase agreement may also contain provision for a deed of indemnity relating to industrial diseases, injuries and third party liability and in certain circumstances a deed of indemnity relating to environmental liabilities to be provided by BRB to the franchisee.

Under the franchise agreement and share purchase agreement, the transfer of shares in the TOC takes place immediately before the franchise agreement becomes unconditional.
3.3 PASSENGER SERVICE REQUIREMENT

The franchise operator is obliged to include in its timetable certain minimum passenger rail services which are set out in the franchise agreement. More services may be provided at its option subject to timetable constraints and, for certain franchises, load factor standards which may require additional services to be provided. The purpose of the PSR is to ensure the provision of a minimum level of services, without restricting more than is absolutely necessary the freedom of the franchise operator to adjust its timetable to respond to passenger requirements and improve efficiency. Accordingly, the PSR for each TOC avoids specifying detailed timetables for each route and instead sets out parameters within which the TOC must design a timetable compliant with the PSR. The PSR for each TOC is set out route by route and is broadly based on the current timetable. It specifies service characteristics which are important for passengers, including:

- frequency of trains;
- stations to be served;
- maximum journey times;
- first and last trains;
- weekend services;
- through services; and
- load factors and/or peak train capacity, where appropriate.

The franchise operator determines how its PSR is to be met by its timetable within these specifications, although the exact timing of services must be agreed with Railtrack, which retains overall responsibility for the timetables of all TOCs and the interaction between them.
Load Factors

For certain peak commuter services franchise operators will be required to plan to provide sufficient capacity to keep train loadings in standard class accommodation below specified limits. This will allow franchise operators to adjust the amount of capacity they plan to provide in line with variations in demand.

For journeys of more than 20 minutes the nominal capacity of a train will be equal to the number of standard class seats. For journeys of 20 minutes or less it will generally be based on:

• for slam door stock 110 per cent. of the number of standard class seats; and
• for most sliding door stock the number of standard class seats plus the number of people who can stand at a density of 0.55 m² per passenger.

(If an operator proposes to use rolling stock whose internal layout is radically different from that of existing vehicles, the figure of 0.55 m² may not be appropriate. In such cases, the Franchising Director will indicate what alternative criterion he would intend to apply.)

In practice it is not always possible to keep loadings within these capacities:

• because loadings vary considerably from day to day and TOCs currently operate a walk-on service with no boarding restrictions; and
• because demand within the peak periods peaks strongly at certain times.

Accordingly, in regulating load factors the Franchising Director will allow load factor standards to be exceeded by a factor known as PIXC (or passengers in excess of capacity).

PIXC is a measure of the degree to which load factor standards are exceeded in practice. The definition is best illustrated by an example:

• train 1 capacity 800 actual load 750 passengers in excess 50 (not 0)
• train 2 capacity 800 actual load 850 passengers in excess 50
• both trains capacity 1,600 actual load 1,600 passengers in excess 50 (not 0).

The measure is always used in connection with groups of trains (e.g. routes, TOCs, etc) and is normally taken at defined count points. It is then expressed as a percentage (the total number of passengers in excess of capacity on the trains being considered, divided by the total number of passengers on the trains). Thus in the example above, PIXC is 50 divided by 1,600 or 3.1 per cent. Because the morning peak is more concentrated than the evening peak, and because of peaking within the peak, PIXC is not uniform.

It is conventional to measure PIXC for services operating as planned (i.e. no cancellations, minimal delays and all trains formed of the correct stock). This separates issues about the adequacy of the plan from issues about its delivery.

The maximum acceptable level of PIXC will be three per cent. over the morning and evening peak together, and 4.5 per cent. for either peak considered alone. Crowding within the three per cent. limit may not be unduly concentrated on any routes or services.

Capacity Requirements

In certain cases where load factor regulation may not be appropriate, the PSR may specify the number of seats to be provided on certain services.

General Provision

Where neither load factor regulation nor capacity requirements apply, the franchise operator will be required to use reasonable endeavours to provide sufficient capacity to avoid excessive overcrowding. This obligation includes, if necessary, a duty to have up to a specified number of passenger vehicles in operation. This number will reflect the number of vehicles diagrammed to operate services prior to the start of the franchise.
3.5 REGULATION OF THE PRICE OF FARES

Under the Railways Act, if the Franchising Director considers that the interests of persons using franchised services so require, he must include in the relevant franchise agreement a provision for securing that the prices of fares are reasonable.

The Franchising Director has concluded that this duty should be exercised by constraining unrestricted standard class return fares and certain single fares for short distance journeys, "Saver" fares (which do not include "Super Saver" fares) on other journeys and certain standard class season ticket fares including all those for weekly season tickets.

For flows subject to the compulsory inter-availability requirement, only inter-available prices will be controlled and the lead operator will be obliged to create fares of the specified type(s). If there is no compulsory inter-availability for any flow, and therefore no lead operator, the Franchising Director will impose equivalent obligations on one or more of any TOCs which provide direct train services on the flow in question.

For journeys of over about 50 miles, except those wholly within the south-east, British Rail currently offers a saver fare. For each flow where such a saver fare existed as at June 1995, the Franchising Director will require a return fare with the following characteristics to be available at a price which will be capped by reference to the price of the saver fare as at June 1995:

- valid for at least one month;
- valid on any day of the week;
- valid at any time of day, except that it need not be valid before 1030 (Mondays–Fridays) or for journeys leaving Greater London and certain major stations near London between 1500–1900 (Mondays–Fridays).

For other journeys, the Franchising Director will require a return fare which is valid at all times of the day to be available, at a price which will be capped by reference to the price of the unrestricted open (or one-day) return fare as at June 1995.

For those journeys where British Rail offered a standard class seven day season ticket as at June 1995, the Franchising Director will require an equivalent fare to be available at a price which will be capped by reference to the price of the seven day season ticket as at June 1995; this will apply to both the adult and child prices.

Fares regulation will extend to through journeys which may involve interchange between London stations by underground and to London Travelcard season tickets, but not to other journeys involving the use of services other than those of BRB or franchise operators. It will also exclude fares for journeys where a PTE is entitled to set prices.

For the three years from 1 January 1996, increases in capped fares will not be permitted to be more than the RPI from the 1995 base price. For the four years from 1 January 1999, the price cap for such fares will be RPI minus one. Unless the Franchising Director decides otherwise, the price cap from 1 January 2003 will continue to be RPI minus one.

There will be some limited scope for individual fares to exceed the cap where these are balanced by other controlled fares being held below cap levels.

In the London, Edinburgh, Cardiff and Greater Manchester commuter markets, an extended approach will be taken to regulating the prices of fares. Regulation will apply to an extended range of fares including all standard class season tickets and, within defined areas, unrestricted single and return standard class fares. Price control will be exercised by reference to tariff baskets containing all relevant fares, weighted broadly according to the income which a franchise operator derives from each. The overall weighted average of the prices of fares in tariff baskets will be capped as for the individual fare controls described above.

The Franchising Director wishes to ensure that passengers are both compensated for poor performance and pay for improved performance through fares. In consequence, for operators subject to the OPRAF
performance regime, the caps on the price of fares in the London area tariff baskets will generally be adjusted to reflect the quality of the franchise operator’s performance. Quality of performance will be determined under the OPRAF performance regime.

Improvements or deterioration in performance may lead under this regime to the cap being adjusted by up to two per cent. up or down. The first adjustments will generally apply in 1998 on the basis of a benchmark which will normally be set at the higher of recent performance or passenger’s charter standards. Franchise payments will be adjusted with the intention that the franchise operator will not be permitted to benefit from both a fare increase and OPRAF incentive payments for the same quality improvement. The converse will apply if performance deteriorates.

Within tariff baskets, the prices of individual fares may be increased above their June 1995 level by up to two per cent. per annum above the increase in the RPI.

A franchise operator wishing to invest to improve service quality will be able to request additional increases in regulated prices, which the Franchising Director will consider at the time.

Fares for children under 16 (whether the price is otherwise regulated or not) must be available on terms which are no less favourable than would apply to the holder of a Young Person’s Railcard.

Various provisions will be included in the franchise agreement which are designed to ensure compliance with these fare controls. British Rail has agreed that TOCs which remain in its ownership will be subject to the same regulatory constraints in relation to the prices of their fares.
3.6 CAPITAL REQUIREMENTS

The initial level of capital which the Franchising Director is minded to require, and which will be specified in individual ITTs, will be set having regard to the level of risk being transferred to the franchisee and the need to ensure that franchisees are committed to the performance of their obligations under the franchise agreement.

The initial capital requirement should be satisfied by way of fully paid up ordinary share capital. The Franchising Director may accept other forms of capital such as preference shares or subordinated loan stock to the extent that prospective franchisees can demonstrate that such financial instruments exhibit the characteristics of equity. Such initial capital subscribed should remain in the franchise operator and be used for the business of providing and operating the franchise services, with any excess cash on deposit with an authorised bank. The Franchising Director may also accept a proportion of the initial capital requirement to be in the form of uncalled equity share capital, to the extent that prospective franchisees can provide appropriate guarantees in respect of the uncalled element. Such guarantees should ensure that the uncalled equity share capital will be forthcoming unconditionally should the Franchising Director so require.

The Franchising Director may, at his discretion, agree to the redemption of some or all of the initial capital subscribed, for example through the redemption of preference shares or repayment of loan stock, at any stage during the term of the franchise if the franchise operator so requests. In such situation, the Franchising Director will require the franchisee to demonstrate that the remaining capital and reserves committed to the franchise for its whole term are equal to or in excess of the initial capital requirements.

The Franchising Director requires that a percentage of the initial capital subscribed is used to fund a performance bond to the Franchising Director from an appropriate bank or financial institution. The performance bond, which should be in the form of an unconditional and irrevocable undertaking to the Franchising Director, will be used to contribute to any additional costs or liabilities which the Franchising Director or a successor operator may incur (or, in the case of railway administration, the Secretary of State may incur) if (i) the franchise is terminated prematurely; (ii) the franchise operator does not discharge his obligations fully at the end of the franchise; or (iii) a railway administration order has been made in relation to the franchise operator.

The Franchising Director is willing, in principle, for the performance bond to count towards the capital requirement. In this case, the person providing the performance bond will be required to subordinate any claims it may have against the franchise operator and the franchise operator will be restricted from assuming any liability or indemnifying any other person in connection with the performance bond.

The Franchising Director may, at his discretion, agree to release some or all of the performance bond at any stage during the term of the franchise, if the franchise operator so requests. In a situation where the franchise operator is in financial difficulty, the Franchising Director will require the franchisee to demonstrate that all the other elements of the initial capital requirements have been called upon. In other situations, the Franchising Director will require the franchisee to demonstrate that the remaining capital committed to the franchise for its whole term is equal to or in excess of the initial capital requirements.
3.7 FRANCHISE MANAGEMENT

Introduction
According to the instructions and guidance provided to the Franchising Director by the Secretary of State, the Franchising Director has, in seeking to secure his principal objectives, to ensure, within the resources available to him, that the franchise system provides good value for money, encourages competition in the railway industry and protects the interests of passengers.

Objectives
In order to achieve this aim, the Franchising Director will, in managing and monitoring franchises, seek:
- to ensure compliance with the franchise agreement both in terms of service and in other aspects of the agreement;
- to encourage improvement in the quality of service provision;
- to ensure that arrangements are in place which safeguard continuity of the service irrespective of when the franchise ends;
- to treat all franchisees in a consistent way and to act with integrity to ensure continued confidence among actual and potential franchisees;
- to develop the market for franchises;
- to review regularly whether subsidy is being well directed;
- to ensure that he will be in a good position to achieve value for money when letting franchises; and
- to promote the long-term development of the railways.

Relationship with the Franchise Operator
The Franchising Director intends to develop a constructive and collaborative relationship with each franchise operator (and other industry bodies, such as ATOC). The Franchising Director intends to found this relationship on the following general principles:
- the Franchising Director intends to manage the achievement of his objectives, not the activities of the franchise operator;
- the Franchising Director intends to require the franchise operator to provide information only if this is required in relation to one of the objectives set out above; and
- the Franchising Director wishes to minimise the burden placed on the franchise operator.

Compliance with the Franchise Agreement
The franchise agreement places obligations on the franchise operator which will facilitate effective performance monitoring. The Franchising Director will monitor compliance with some of these obligations actively, by requesting the franchise operator to provide certain base information and by extracting other information directly from central systems. By these means, the Franchising Director expects to obtain sufficient information to assess the franchise operator’s overall standard of operational and financial performance.

The Franchising Director will monitor compliance with some obligations passively, by requesting the franchise operator to retain information capable of providing evidence of compliance. The Franchising Director has the right of access to this information, and will exercise this right at his discretion. The Franchising Director will review compliance with these obligations during the performance reviews which are expected to take place quarterly or more frequently if circumstances so require. The Franchising Director may also wish to check compliance directly on an occasional basis.

Some of the information required by the Franchising Director will be provided directly by the franchise operator. The Franchising Director may expect the franchise operator to validate and review this information before submission to him. The Franchising Director will also expect the franchise operator to provide a commentary on the information provided, explaining important trends and other features which...
the Franchising Director should be aware of and understand as part of his review process. This commentary should also include other matters which the franchise operator wishes to bring to the Franchising Director’s attention.

The Franchising Director intends that, as far as possible, the information he requests from the franchise operator will be information produced by the franchise operator as part of its own management processes. This is intended to avoid requiring the franchise operator to produce information specifically for the Franchising Director, and should also assist the franchise operator in reviewing and commenting on the information provided.

Other information required by the Franchising Director will be extracted from central systems operated by Railtrack and other industry bodies, for which purpose the Franchising Director will make arrangements directly. The collection of data from central systems is intended to provide a more efficient data collection process and to reduce the burden placed by the Franchising Director on the franchise operator.

The Franchising Director intends to assess his review processes periodically in order to improve their effectiveness and efficiency. For this reason a certain degree of experimentation is desirable, and the Franchising Director expects the franchise operator to assist in this process.

Enforcement of Franchise Agreement

Section 55 of the Act imposes a duty on the Franchising Director to act to prevent or rectify any breach or likely breach of the franchise agreement by the franchisee or franchise operator. The Franchising Director achieves this by issuing under the Act either a provisional or final order which specifies the action required to prevent or rectify the breach and which, in the case of a final order, may impose a financial penalty.

Provisional orders do not require any notice period and expire within three months of their being made unless confirmed during that period. Before a provisional order can be confirmed or a final order issued, the Franchising Director must publish it and must consider any representations or objections which are made. At least 28 days must elapse between publication and confirmation or issue of such orders. He must not make a final order or confirm a provisional order if the franchise operator is taking appropriate steps to remedy the breach, if the breach is trivial or if to do so would conflict with his duties to ensure the provision of passenger rail services in accordance with the Secretary of State’s objectives, instructions and guidance or otherwise to comply with his duties under section 5 of the Act. If no order is made for such reasons, the Franchising Director is required to notify the person concerned and publish such notification as he considers appropriate.

Orders may be appealed against within 42 days of their being served on the grounds that the Franchising Director did not have the power to make the relevant order or that the procedural requirements were not complied with. Non-compliance with orders is actionable by any person who may suffer loss or damage as a result of non-compliance.

The Franchising Director has the statutory right to require information to be provided to him in connection with any contravention of the franchise agreement. Section 55 of the Act also gives the Regulator parallel enforcement powers in relation to contraventions of the franchise operator’s licences.
3.8 TERMINATION OF A FRANCHISE

In the initial round of franchising, the franchisee will acquire from British Rail the issued share capital of the franchise operator which will already own the assets necessary to operate its business. A different mechanism will apply for subsequent rounds of franchising when it is expected that the successor operator will not acquire a company but only certain assets and liabilities of the outgoing franchise operator. These may include, by virtue of TUPE, the contracts of employment of those employees of the outgoing franchise operator engaged in running the relevant services and activities that the successor operator takes over. Special rules apply to pension rights.

A franchisee in the second round of franchising may therefore use its own subsidiary as a franchise operator or be a franchise operator in its own right but is not expected to operate its franchise through the existing franchise operator. Although incoming and outgoing operators will be free to agree to transfer other assets and liabilities between themselves without the involvement of the Franchising Director, the Franchising Director will have designated during the first franchise certain key assets and liabilities of the first franchise operator as primary franchise assets and these will normally remain with the franchise and be transferred to the relevant successor operator. There may be more than one successor operator if the franchise map is altered in subsequent franchising rounds and, if the Franchising Director is unable to relet the relevant franchise before the termination of the first franchise, the successor operator may be the Franchising Director or a company wholly owned by him who will operate the relevant services under section 30 of the Act.
3.9 FRANCHISE ASSETS

The Act creates a special protected regime for property, rights and liabilities which are designated as franchise assets. A franchise operator is not permitted to transfer or create any security over franchise assets which consist of contractual rights or other property, nor to discharge or transfer any franchise assets which are liabilities. Any transaction in contravention of such requirements is void under the Act, unless the Franchising Director's consent has been obtained. Similarly, no execution or other legal process may be enforced against franchise assets. The franchise agreement will define within the class of designated franchise assets a further class of primary franchise assets. Only the primary franchise assets are intended to transfer to successor operators and the Franchising Director will consent in the franchise agreement to the transfer or discharge of franchise assets which are not primary franchise assets. He will only consent to the granting of a security interest over franchise assets, whether primary or not, on terms that such security interests may not be enforced until the end of the franchise and on terms that, to the extent that if such assets are designated (or subsequently designated) as primary franchise assets and transferred to a successor operator by transfer scheme, such security interests will be released. The same will apply to franchise assets transferring by any other means to a successor operator at the request of the Franchising Director under the franchise agreement. This is to prevent floating charges over the assets of a franchise operator taking priority over the franchise asset regime. This does not, however, prevent the franchise operator from agreeing with its lending banks to charge the benefit of any money which it may receive in respect of any primary franchise assets so transferred.

At the end of the franchise, the franchise operator and Franchising Director will each have an option to require any or all primary franchise assets to be transferred under a transfer scheme made by the Franchising Director under section 86 of the Act. Accordingly not all franchise assets may be transferred. Transfer will be effected by transfer scheme which will also require the franchise operator and the transferee to enter into a supplemental agreement, the provisions of which are described below at section 3.10, “Terms of transfer to successor operator”. The franchise agreement provides for the payment, at the end of the franchise, of an estimate (as determined by the Franchising Director) of the value of amongst other things the primary franchise assets transferring to the successor operator. This may be an amount payable by either the outgoing franchise operator or the successor. At the end of the franchise, the franchise operator is required to grant immediate access to any franchise assets so transferred so that the incoming franchise operator may take over the relevant operations as soon as possible.

The franchise asset regime provides for the transfer of property, rights and liabilities. These may include rights and liabilities under contracts. The Franchising Director needs however to ensure that such rights will not terminate at the end of the franchise and thereby prevent him from securing continuity of service. The franchise agreement accordingly requires that for each contract which the franchise operator may be party to and which the Franchising Director may have designated as key, there be a direct agreement between the Franchising Director and the relevant counterparty to deal with such circumstances. See section 4.9, “Direct Agreements”.
3.10 TERMS OF TRANSFER TO SUCCESSOR OPERATOR

The franchise assets to be transferred to the successor operator will be transferred by transfer scheme made by the Franchising Director under section 86 of the Act. The scheme will provide for the transfer of the relevant primary franchise assets, the transfer, where relevant, of certain related statutory functions and also for the outgoing franchise operator and the next operator to enter into an agreement supplemental to that scheme which provides principally for payment of the value of such franchise assets and other rights and liabilities transferring at the same time.

Season ticket fares which transfer as primary franchise assets are expected to be valued by reference to their outstanding period of validity (less any commission payable on sale). Because of the difficulty of determining whether other fares have been used or not (such as return journeys which are valid for three months), other fares will not normally be valued. Contracts will generally be valued at nil, subject to provisions for any prepayments or accruals.

For other primary franchise assets and other rights and liabilities, the supplemental agreement will provide principally for the valuation under UK generally accepted accounting principles. It will not affect the transfer of any other assets or liabilities which the outgoing operator and the successor operator may have agreed to transfer between themselves and will be subject to such other arrangements as such persons might make at the time.

No value will be ascribed to the goodwill of the outgoing franchise operator, taken as a whole.

The supplemental agreement will provide for completion accounts to be drawn up and agreed following which any difference from the estimate originally paid at the end of the franchise will become payable. It is expected that the principal part of the value of the primary franchise assets will be the value of any tangible assets less the value of any season ticket liabilities which are designated as primary franchise assets.

TUPE is likely to apply on the making of the scheme so as to transfer the contracts of employment of the franchise operator to the successor. The supplemental agreement will provide for an apportionment of liabilities arising in respect of such employees.
3.11 RAILWAY ADMINISTRATION ORDERS

General

The Railways Act imposes a special regime of railway administration which cross-references to the administration regime set out by the Insolvency Act 1986 (the "Insolvency Act"). However, there are differences between the two Acts which mean that case law developed under the Insolvency Act cannot be viewed as any more than guidance with respect to interpretation of the Railways Act.

Purpose

Under the Railways Act the purposes of a railway administration order in relation to any company are:

(a) to transfer to another company, or (in respect of different parts of its undertaking) to two or more different companies, as a going concern, so much of the company’s undertaking as it is necessary to transfer in order to ensure that the “relevant activities” (as defined below) may be properly carried on; and

(b) to carry on those relevant activities pending the making of the transfer.

In addition, a railway administration order will direct that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the court, for the achievement of the purposes of such order and in a manner which protects the respective interests of the members and creditors of the company.

A railway administration order may only be made in relation to a “protected railway company”; that is a company which is both a private sector operator and holds a passenger licence, a network licence, a station licence or a depot licence. Therefore, upon its being franchised, a TOC will be a protected railway company because it holds, inter alia, a passenger licence. The “relevant activities” of a protected railway company are, in the case of a TOC, the carriage of passengers by railway. If the TOC also has a licence to operate a depot, the definition of relevant activities includes those described in that licence.

The transfer of the company’s undertaking by the Railway Administrator will occur by means of a transfer scheme if another company is to carry out the relevant activities. The use of a transfer scheme avoids the need to obtain third party consents to transfer. If the franchise agreement is still in force at the date of the transfer scheme, the agreement may be transferred under the scheme so that the transferee will become the franchise operator until expiry of the agreement, when the Franchising Director would relet the franchise. Alternatively, a tendering process may occur before the end of the period of administration so that the Railway Administrator can make a transfer to the new franchisee selected by the Franchising Director.

Petition and Making of Order

A petition for a railway administration order may be presented by the Secretary of State or, if the petition relates to a passenger carrier, by the Franchising Director, with the consent of the Secretary of State.

A Court may only make a railway administration order if it is satisfied that the company is or is likely to be unable to pay its debts as they fall due and/or, in a case where the Secretary of State has certified that it would be appropriate for him to petition for the winding-up of the company under section 124A of the Insolvency Act, that it would be just and equitable for the company to be wound up.

Moratorium

As is the case with the administration regime under the Insolvency Act, the presentation of a petition for, and the granting of, an administration order under the Railways Act imposes a moratorium which restricts, inter alia, the ability of creditors to wind up the relevant company, take steps to enforce security over assets of the company, repossess goods in the company’s possession under certain agreements (which
would include rolling stock in the possession of a TOC pursuant to a Master Lease) or commence or continue other legal process against the relevant company.

It should be noted that under the railway administration regime on presentation of a petition for a railway administration order, section 10 of the Insolvency Act as applied by section 60(5) of the Railways Act means that leave of the Court will be required for the appointment of an administrative receiver of the relevant company.

It should be noted that in addition to the railway administration regime there are general restrictions contained in section 62 of the Railways Act including a provision (section 62(7)) to the effect that no step shall be taken by any person to enforce any security over a protected railway company's property except where that person has served 14 days' notice of his intention to take that step on the Secretary of State and, in the case of a passenger carrier, the Franchising Director.

**Differences between Purposes of the Administration Regimes**

The main difference between the regimes under the Insolvency Act and the Railways Act is that the only purposes that a railway administration order can have are those referred to in the paragraph “Purpose” above while the purposes of an administration order can be, broadly, any of:

(a) the survival of the company or the whole or any part of its undertaking as a going concern;
(b) the approval of a voluntary arrangement;
(c) the sanctioning of a compromise or arrangement between the company and its creditors and/or members under section 425 of the Companies Act 1985 (as amended); and
(d) a more advantageous realisation of the company's assets than would be effected on a winding up.

A further difference is that funding may be available to the company in railway administration from the Government pursuant to section 63 of the Railways Act. The Secretary of State may, with Treasury consent, make grants or loans or give guarantees for the repayment of financial obligations of the company.

In addition, in contrast to the Insolvency Act, a railway administrator will be directed to manage the affairs, business and property of the relevant company in a manner which respects the interests of that company's members and creditors.

As yet, it is not known whether decisions on the administration regime under the Insolvency Act will apply equally to the railway administration regime under the Railways Act.
INTRODUCTION

The TOC which a successful bidder will acquire will have in place a wide range of contracts enabling it to deliver the passenger rail services specified in the franchise agreement.

This section provides a brief description of some of the most important of these agreements which govern the access and rolling stock regimes. The section also deals with agreements covering the provision of Heavy Maintenance by certain TOCs to the ROSCOs.
4.1 OVERVIEW OF ACCESS

Introduction
A railway facility is any part of the rail network or any station or depot. The right to gain access to and to use railway facilities is in most circumstances regulated by the Regulator pursuant to the Railways Act and a person wishing to obtain access to a railway facility generally requires a regulated access agreement.

Regulatory Approval
Under the Act regulated access agreements entered into after 1 April 1994 are subject to the prior approval of the Regulator, without which they are void.

Regulated access agreements are, with certain exceptions:
- track access agreements;
- station access agreements; and
- depot access agreements.

Approval Process
Where a facility owner submits an agreed form of regulated access agreement to the Regulator for his approval under the Act, the Regulator may approve its terms and issue directions to the facility owner requiring him to enter into the proposed agreement within a certain specified period (but releasing him from the duty to do so if the other party fails to enter into the agreement within the specified period). Alternatively, if the Regulator considers it appropriate to approve the terms of the agreement only with modification (or to reject it), he may, after consultation with the facility owner and the other party, issue directions to the facility owner approving the terms of the proposed agreement subject to certain modifications and requiring the facility owner to enter into it as so modified (but releasing him from the duty to do so if he gives the Regulator a notice of objection within 14 days or if the other party fails to enter into the proposed agreement, as modified, before a specified date).

Special provisions apply in relation to applications for directions under the Act by a person who fails to agree the terms of a proposed regulated access agreement with the facility owner. After receiving such an application for directions, the Regulator consults the applicant, the facility owner and all “interested persons” (who must be named by the facility owner). Every person consulted is given the opportunity to make written representations, copies of which are seen by the facility owner and applicant. While an application is being considered, the Regulator may request further information from the applicant or the facility owner. Following this consultation process the Regulator may issue directions to the facility owner stating the terms of the regulated access agreement, the date by which the parties are to enter into it, and the amount of any compensation payable by the applicant or the facility owner to any interested person. Those directions are binding on the facility owner, notwithstanding any obligation or duty he may owe to an interested person.

Model Clauses
The Regulator may (following consultation if he considers it appropriate) prepare and publish model clauses for inclusion in regulated access agreements. Different model clauses may be prepared and published in relation to different classes or descriptions of railway facility. The Regulator must encourage, and may require, the use of his model clauses in regulated access agreements where he considers it appropriate. He may revise his model clauses from time to time and may publish such revised clauses. No model clauses have been published yet, although the Regulator has produced draft model clauses to give effect to his announced policies on track access charging and moderation of competition.
Limits on Scope of Regulation

The Regulator cannot require a facility owner to enter into a regulated access agreement with an applicant if and to the extent that the relevant railway facility is exempt from the regulated access regime, if performance of the proposed regulated access agreement would necessarily cause the facility owner to breach a regulated access agreement or if, as a result of an obligation or duty owed by the facility owner which arose before 2 April 1994, the consent of some other person is needed before the facility owner can enter into such an agreement.

Amendments to Regulated Access Agreements

Any amendment, or purported amendment, of a regulated access agreement is void unless it has been approved by the Regulator. The Regulator may give general approval to certain types of amendment to a particular agreement. Such approval cannot later be revoked. The Regulator may also give general approval to certain types of amendments to all regulated access agreements or only certain types of agreements. Such approval can be revoked, but the revocation cannot have retrospective effect. The Regulator has no power to require amendment of an access agreement which he has approved. Such an agreement may contain provisions for its terms to be modified by the Regulator, but such modification would not constitute an amendment of the agreement.

The Regulator has issued three general approvals in relation to track access agreements, depot access agreements and station access agreements respectively. These are very narrow in scope and permit the amendment of the contact details for service of a notice and, in the case of station access agreements, the location of the station register. The Regulator is proposing to issue more detailed general approvals in relation to such agreements in due course. He has consulted with industry parties on the form of further general approvals in relation to depot access agreements and is currently considering the responses he has received.

Exemptions

On application by a facility owner, the Regulator may exempt a railway facility from the regulated access regime, including one which is being constructed or proposed for construction. Exemption may be granted subject to compliance with conditions.

Regulator’s Criteria for the Approval of Passenger Track Access Agreements

The second edition of the Regulator’s policy statement entitled “Criteria for the Approval of Passenger Track Access Agreements” was published in March 1995. It sets out the Regulator’s then current view of the principles he expects to adopt in approving track access agreements under section 18 of the Act. Those principles are also expected to be applied by the Regulator in considering applications for directions under section 17 of the Act and in approving amendments under section 22 of the Act.

The following is a brief summary of the main points in the Regulator’s policy statement. This summary is qualified in its entirety by the full policy statement, which is available from the Office of the Rail Regulator.

(a) General: The Regulator will want to be satisfied that a proposed track access agreement does not unduly limit competition or create undue discrimination between train operators. He will also expect to be satisfied that it does not conflict with an existing access agreement, although his approval does not constitute a guarantee that there is existing capacity on the network.

A proposed agreement should set out clearly defined rights and obligations between Railtrack and the train operator. It should contain appropriate flexibility for the day to day operation of the railway so that there does not have to be continual resort to the Regulator for approval of amendments under section 22. However, such flexibility should not seek to bypass the process of regulatory approval and any material changes should be subject to approval.

Documents incorporated by reference into a track access agreement will also need to be
submitted to the Regulator for approval. The Regulator has suggested, therefore, that the parties should seek to minimise the number of documents so incorporated. If an agreement incorporates specific rights and obligations from unregulated arrangements, the Regulator will probably want to see any relevant documentation and be satisfied that the arrangements are justifiable. A track access agreement with Railtrack must incorporate the Track Access Conditions (see "Track Access Conditions" below). The Regulator is likely to be concerned, however, if an attempt is made to incorporate other multilateral provisions in what is a bilateral agreement.

The Regulator recognises that there are certain rights and obligations in a track access agreement which are so central to a train operator's business or its ability to meet its PSR that the train operator will wish to have them identified as "protected rights" or "protected obligations" (which terms have specific meanings under the Track Access Conditions). The Regulator's ability to make modifications to the Track Access Conditions is restricted to the extent that any such modification materially inhibits a protected right or materially increases a protected obligation. Accordingly, the Regulator will wish to see that protected rights and obligations are drawn as narrowly as possible in a track access agreement and, as far as possible, do not place an undue constraint on his power to amend the Track Access Conditions.

The Regulator expects track access agreements to be coterminous with the train operator's franchise agreement. However, in the case of franchises for longer than 10 years, the term of the track access agreement will depend upon the particular circumstances.

(b) **Timetable rights:** The Regulator will require that a balance is struck in relation to timetable rights between the train operator's key commercial requirements and the general need to ensure flexibility so that Railtrack can meet the needs of other train operators and its own requirements. This balance must be consistent with the Regulator's duties under section 4 of the Act. He will also wish to be satisfied that timetable rights are clearly and unambiguously defined, are not so inflexible as to require continual proposals for amendment under section 22, are not so flexible as to constrain unduly the grant to or exercise by other train operators of track access rights and are flexible at the train operator's discretion only to the extent necessary for public interest reasons.

The criteria document sets out the types of timetable rights that may be granted and the manner in which the Regulator will expect them to be expressed. It identifies the following specific areas of major concern to the Regulator:

- whether the proposed rights contain in-built provisions which unduly reduce the capacity available on the network;
- whether the proposed rights unambiguously define the effect of the track access agreement on available capacity;
- the cumulative effect of restrictions on Railtrack's ability to vary timetable bids by the train operator on the access rights Railtrack can grant to other train operators; and
- the impact of rights to additional train slots on the capacity available for other train operators, and on Railtrack's ability to carry out its obligations to maintain the network.

(c) **Charging arrangements:** The Regulator will wish to be satisfied that the provisions relating to charges are based on and consistent with his policy statements on the structure and level of track access charges. To date, he has issued two such statements (see below).

(d) **Performance standards:** These should be specified to ensure that the train operator's key business requirements are met, and to reflect the fact that track access charges are based on the assumption that the network will be maintained so as to sustain the present national timetable. Performance standards will normally be output based and focused on key commercial and franchise agreement requirements of the train operator.

(e) **Performance incentives:** The Regulator will welcome arrangements which shift the risk associated with poor network performance to Railtrack, and which generally incentivise and reward improved network performance. Railtrack and the train operator should therefore seek to agree a customised
other commercial arrangements giving an appropriate balance of risk and reward (see summary below of schedule 8 to a typical track access agreement). The Regulator will wish to be satisfied that the performance regime does not create undue discrimination between train operators and is consistent with his duties under section 4 of the Act. He will also wish to be satisfied that the regime does not lead to undue constraints on the network or prevent new train operators from competing.

(f) Moderation of competition: A track access agreement should be consistent with the Regulator's policy objectives relating to competition in the provision of passenger rail services (see section 2.7, "Competition"). In particular, the agreement should reflect the two-stage mechanism set out in those policy objectives.

(g) Maintenance, renewal and development requirements and the Applicable Rules of the Route/Applicable Rules of the Plan: The Regulator anticipates that train operators will be compensated for restrictions on access to the network to enable Railtrack to maintain, renew and develop the network over and above an agreed threshold (see summary below of schedule 4 to a typical track access agreement).

(h) Operational disruption and contingency plans: The Regulator may wish to be assured that train operators have effective contingency plans in place to deal with operational disruption.

(i) Applicable systems interfaces: The Regulator may wish to be satisfied that any applicable systems interfaces do not create long-term commitments to inflexible, inappropriate and expensive computer systems and do not create unduly onerous burdens on the train operator or restrict competition.

Regulator's Policy Statements on Passenger Track Access Charges

The Regulator has issued two policy statements relating to Railtrack's track access charges for franchised passenger services. The main points in those documents are briefly summarised below. The summaries are qualified in their entirety by the full policy statements, which are available from the Office of the Rail Regulator.

(a) Structure of track access charges for franchised services: In November 1994, the Regulator published a policy statement entitled "Railtrack's Track Access Charges for Franchised Passenger Services: Developing the Structure of Charges". The Regulator recognised and addressed the following three key concerns in that document:
   - that there was a need for greater transparency of charges;
   - that train operators face significant risks of reduced profits if revenues fall, since they will not be able to escape charges by reducing services, and that consequently there should be a mechanism for sharing that risk with Railtrack; and
   - that it was desirable to achieve greater variability in charges.

Since publishing that policy statement, the Regulator has published draft model clauses on charging which reflect the conclusions set out in it (see summary below of schedule 7 to a typical track access agreement).

(b) Level of track access charges for franchised services: In January 1995, the Regulator published a policy statement entitled "Railtrack's Access Charges for Franchised Passenger Services: The Future Level of Charges". The main conclusions set out in that document were that:
   - charges should be rebased in 1995/6, with an overall reduction in access charges of 8 per cent. in real terms compared with 1994/5;
   - individual track access charges should fall by 2 per cent. a year in real terms from 1996/7 onwards, broadly in line with the reduction in Railtrack's overall costs;
   - Railtrack should be incentivised to develop property assets for the benefit of both shareholders and rail users, and should therefore be regulated on a "single till" basis. Variations in net income from the levels in Railtrack's projections should be shared between Railtrack and the train operators; and
• there should be a further review of charges in 2000, with the conclusions to be reflected in all track access agreements from 1 April 2001.

Some of these conclusions are reflected in the Regulator's draft model clauses on charging and have, in turn, been reflected in the charging provisions of schedule 7 to each track access agreement that has been approved by the Regulator. The Regulator will wish to be satisfied that charges in track access agreements submitted for approval reflect the conclusions set out above.

The Regulator will generally wish to see objective justification for any additional charges that are provided for in a track access agreement, and will wish to be reassured that charges are related to costs and that there are proper arrangements to encourage economy and efficiency.

Other Policy Statements to be Issued by the Regulator

It is expected that the Regulator will issue a policy statement on his approach to the approval of depot access agreements in the late autumn. He is currently consulting industry parties on accounting separation for stations and depots.

The Regulator may, in due course, issue policy documents setting out his criteria for the approval of passenger station access agreements.

Charter Services

The terms of access to track, stations and depots for charter services (including related access charges) will normally be determined by negotiation between the relevant charter train operator and Railtrack or other relevant facility owner. Where the parties cannot agree terms, however, the Regulator may determine the terms and conditions of access by giving directions under section 17 of the Act, as in any other case where the terms of a regulated access agreement cannot be agreed between the parties.

For other services which may be required by a charter train operator, such as the provision of locomotives, rolling stock, train crew and haulage, the charter promoters or train operator will need to agree terms with the relevant train operator or other service provider. Although the Regulator's approval is not required in relation to the entry into agreements concerning these matters, he does have powers under relevant competition laws and the licences issued to individual train operators which may be used to investigate and deal with competition issues in this area.

Amendments have been made to each track access agreement to ensure that charter services are not operated as though they formed part of normal scheduled services. The Regulator set up a task force to carry out a review of certain complaints he received from charter train operators (including in relation to the provision of train crew, haulage and other services). In December 1995, he published a document entitled "Charter Train Services. A Consultation Document" which set out the conclusions of that review and his proposed approach to charter services. The summary of that document set out below is qualified in its entirety by the full document which is available from the Office of the Rail Regulator.

The Regulator's main findings were that:

(a) most of the difficulties experienced by independent charter promoters since the restructuring of the railway industry in 1994 reflect inexperience and uncertainty on the part of train operators about the methods of providing different elements of the overall package required to run a charter service and the terms on which those services are offered, rather than any deliberate attempt to frustrate charter train operators; and

(b) the lack of competition in the provision of services for charter operators which currently exists has sometimes resulted in the prices quoted for services to charter operators being significantly higher than the avoidable cost of providing those services. This has, in part, been the result of inappropriate cost allocations.

In light of those findings, the Regulator asked BRB to prepare a code of practice relating to the provision of services by its subsidiaries to charter operators, setting out the way in which charges will be calculated and applied. The document published by the Regulator set out the items he indicated to BRB...
that should be included in such a code. He also asked the new owners of Rail express systems Limited to consider preparing their own version of such a code. Both BRB and the new owners of Rail express systems Limited have now prepared drafts of such codes.

Whilst accepting that services to charter promoters need to be provided on a commercial basis, the Regulator considers that train operators and facility owners should set prices for charter services on the basis of the avoidable costs incurred in providing the service, plus an appropriate share of the likely net benefits of the service. The document published by the Regulator sets out criteria which he has subsequently indicated he will apply in his assessment of track, depot and station access charges for charter train services. Those criteria are:

(a) that charges should be greater than or equal to a reasonable estimate of the avoidable costs likely to be incurred by the facility owner as a direct result of granting access to the charter train service in question;

(b) that charges should not be higher or lower than those for other operators or users (after allowing for specific factors relevant to each case) to such an extent that they risk significantly distorting competition between train operators or charter promoters;

(c) that the structure of charges should broadly reflect the value to users of access to the rail network, and should enable facility owners to recover the total costs associated with providing access to charter trains plus any reasonably expected contribution to common costs; and

(d) that any share of net benefits included in the access charge should reflect the extent of the facility owner's involvement in providing a service and the relative risk being borne by the facility owner and other parties.

In the long term, the Regulator considers that the interests of charter promoters will be best protected where they have a number of alternative suppliers and there is genuine competition between those suppliers. He recognises, however, that there will be some cases where charter promoters will have little, if any, choice of supplier and in those cases it is essential that the basis of charges is fair and is clearly understood by charter promoters.

Emergency Access Code

Access to facilities in an emergency is governed by an emergency access code to which Railtrack and each train operator is a party, and which is a regulated access agreement. The code does not, however, cover facilities which are exempt from the regulated access regime unless the facility owner agrees. It expands upon the obligation contained in each network, station and light maintenance depot licence held by a train operator to grant permission to use the facility to any person requesting such permission during an emergency. No such right is provided in the Railtrack network licence, which is another reason why the code is necessary. The provisions of the code are summarised below.

Each facility owner must grant each train operator (referred to as a "beneficiary") permission to use its railway facilities in the event of an emergency for the duration of the emergency and for as long after the emergency has ended as is necessary to enable vehicles and people to be removed from the facility. The facility owner and beneficiary are under a general obligation to act reasonably and in good faith in order to alleviate the emergency as soon as reasonably practicable and to ensure the safety and security of people and property. The beneficiary is required to comply with the facility owner's directions in relation to the movement and stabling of its vehicles within the relevant facility. The beneficiary must also comply with any reasonable request made by the facility owner in relation to any aspect of the beneficiary's operations which impacts on the performance of the facility owner's health and safety duties.

Subject to these general obligations, if the beneficiary is already a party to another access agreement with the facility owner in respect of the relevant facility, emergency access will be granted on the terms of the existing access agreement (subject to the exclusion of certain specified terms such as those relating to charging). In relation to stations, depots and networks other than Railtrack's network, where the beneficiary is not already a party to an access agreement in respect of the relevant facility then emergency
access will be granted on the terms of the access agreement most recently entered into by the facility owner in relation to the facility (again subject to certain specified exclusions). In extreme circumstances where the facility owner has not entered into an access agreement in respect of the facility, permission to use shall be on such terms and conditions as are reasonable. In relation to Railtrack's network, access is granted subject to the Track Access Conditions (which are incorporated into the code). If the beneficiary is a party to an existing track access agreement with Railtrack but that agreement does not relate to the part of the network over which emergency access is required, the terms of the existing agreement shall apply to any access (subject to the exclusion of certain specified terms, such as those relating to charging).

The code provides that both the facility owner and the beneficiary may recover any additional costs and expenses they incur as a result of emergency access being required from the party to the code who owns the railway facility or other rail asset, the failure or condition of which results in such access being required (referred to as the "liable person"). The facility owner may, in certain circumstances, recover stabilising charges directly from the beneficiary who may in turn recover that charge as an additional cost from the liable person.

Parties to the code are liable for breaches of the code to any other party to the code. There is no threshold for liability under the code but there is a fixed cap of £5 million in respect of each breach. There is no liability for loss of profit, loss of revenue, loss of contract or loss of goodwill or for indirect or consequential loss.

Access to Shared Facilities

Under its network licence, Railtrack is under an obligation to avoid discriminatory behaviour. In order to assist it to comply with this obligation in relation to the use by train operators of control rooms and signal boxes which it operates, Railtrack has developed, along with other industry parties, a code of practice governing the arrangements at such facilities.

The code acknowledges that train operators may continue to enjoy such rights of access to and to use equipment located at such facilities as they enjoyed at 1 January 1996. No charge is payable in respect of such rights.

Railtrack or a train operator may propose variations to the train operator's rights, the relocation of a facility, the introduction of a new facility or of new items of equipment at a facility or, in the case of a train operator which did not previously have rights of access, the granting of such rights to the train operator. Any such proposal must be discussed with other affected parties and, if agreement cannot be reached, referred to arbitration.

Railtrack is required to maintain employers' liability insurance and insurance against personal injury to persons or loss of or damage to property in relation to each facility. Each train operator is under an identical obligation in relation to those facilities it uses. Liability under the code is excluded for loss of profit, revenue, contract or goodwill and for indirect or consequential loss. In addition, liability is subject to the limitations provided for in the Claims Allocation and Handling Agreement.

The code takes the form of a multilateral contract between Railtrack and each train operator which currently uses facilities operated by Railtrack. It is not subject to the Regulator's approval. Any proposed change to the code must be consulted on with all parties to the code and, in the absence of agreement, referred to arbitration.
4.2 ACCESS TO TRACK

Introduction
The Act defines "track" as land or other property comprising the permanent way of a railway, whether or not also used for other purposes. It includes level crossings, bridges, viaducts, tunnels, culverts, retaining walls, and other track related structures. It also includes walls, fences or other structures bounding the railway and any adjacent or adjoining property.

Track Access Agreements
A track access agreement is typically a bilateral agreement between Railtrack and the train operator. As noted above, it incorporates (in respect of track operated by Railtrack) the Track Access Conditions. These are a set of standard rules which govern Railtrack's operation of the network and detail certain matters of common concern (see "Track Access Conditions" below).

The following is a summary of the material features of a typical track access agreement, including both the body of the agreement and its schedules. Particular track access agreements may contain other or different features and the following description should be regarded as being only generally indicative of the nature of a track access agreement.

Body of the Agreement
A track access agreement contains a number of conditions precedent which need to be fulfilled before it becomes fully effective (such as Railtrack and the train operator obtaining the necessary licences under the Act).

Under the terms of the agreement, Railtrack grants the train operator permission to use specified routes on the network. The agreement sets out the rolling stock which may be operated on those routes and the train movements which may be made using that rolling stock. Permission to use the routes is subject to a number of restrictions, including those contained in the Track Access Conditions, the Applicable Rules of the Route and the Applicable Rules of the Plan.

The agreement prescribes certain minimum operational standards to which the parties must adhere. These are mostly expressed in general terms. For instance, Railtrack is required to ensure that the network is maintained and operated to a standard which permits the provision by the train operator of specified services using the rolling stock specified in the agreement and in accordance with the working timetable.

The agreement also contains more specific obligations, such as Railtrack's obligation to provide the train operator annually with a rolling five year statement of its plans for the carrying out of material maintenance, repair, renewal or modification work on any relevant part of the network.

There are mutual indemnity provisions under which each party agrees to indemnify the other against losses arising out of a failure to comply with health and safety laws or out of any environmental or property damage for which it is responsible. The indemnities do not cover loss of revenue or other indirect loss, and are subject to any limitations provided for in the Claims Allocation and Handling Agreement (see Section 6.2, "Dispute Resolution, Claims Between Operators and Claims by Third Parties"). The rights and obligations of the parties under Schedule 4 and Schedule 8 provide the parties' sole entitlement as between themselves to compensation for cancellations, interruptions and delays to trains save those caused by certain circumstances off the network (e.g. at depots, where a separate performance regime applies).

The agreement is generally for a fixed term of up to seven years. Where the train operator's services are subject to a franchise agreement, however, the track access agreement has been amended to be made coterminous with a standard seven year franchise term. Where the franchise is for longer than the standard seven year term, the franchisee will have to negotiate a further extension to the term of the track access agreement directly with Railtrack. The agreement specifies a number of events of default which give the parties certain rights to suspend and/or terminate it. These include defined insolvency events, material breaches of the agreement and material breaches of named collateral contracts. The party seeking to
suspend and/or terminate is generally required to give the defaulting party a reasonable opportunity to rectify the default.

The agreement refers to the Access Dispute Resolution Rules and specifies which type of dispute resolution mechanism in those Rules is to apply to which type of dispute. The Access Dispute Resolution Rules are set out in an annex to the Track Access Conditions.

Neither party may assign or otherwise transfer its rights and obligations under the agreement without the other party’s prior written consent, which may not be unreasonably withheld or delayed, and the Regulator’s approval. The agreement includes provisions designed to safeguard the Franchising Director’s obligations under the Act to secure continuity of services (see section 3.1, “Franchise Agreement—Part V—Change of Franchise Operator”).

Schedule 1—Contract particulars
This schedule sets out information such as the addresses of the parties for service of notices, the default interest rate (which will apply to certain overdue payments) and the commencement and expiry date of the agreement.

Schedule 2—Routes
This schedule lists the routes which the train operator has permission to use for the purpose of operating its services.

Schedule 3—Collateral contracts
This schedule lists the contracts which are collateral to the track access agreement. These typically include the access agreements covering the train operator’s access to Independent Stations, an agreement under which the train operator agrees to become a party to the industry-wide Claims Allocation and Handling Agreement and the franchise agreement relating to the train operator’s services. Entry into such contracts (except the franchise agreement which, typically, had not been entered into at the date the track access agreements were entered into) is treated as a condition precedent to the track access agreement and breach of a collateral contract may constitute an event of default under the track access agreement (depending on the severity and consequences of the breach).

Schedule 4—Possessions
The following description of schedule 4 relates to the template of that schedule. Schedule 4 was incorporated into the track access agreements for the majority of the train operators on the basis of interim approvals from the Regulator with effect from 10 December 1995 and retrospectively applied from 1 April 1995. Further approvals have been issued by the Regulator for the full term of the agreements.

Schedule 4 describes the compensation which is payable to a train operator by Railtrack when it imposes restrictions on that train operator’s use of the network in order to discharge its own obligations to maintain the network so that it can continue to manage the timetable.

The first purpose of schedule 4 is to define the level of possessions which Railtrack can take in accordance with the Applicable Rules of the Route without the payment of compensation to a train operator (the possessions allowance). Possessions include any restriction of use of any part of the routes, notified at the direction of Railtrack, for the purpose of inspection, maintenance, repair or enhancement of the network (for example, line blockages during periods of track renewal and subsequent temporary speed restrictions).

The possessions allowance contained in schedule 4 is set out in a look-up table and will last for the full duration of the track access agreement. It is calculated on the basis of the average level of possessions taken over the last three years (except where these are unrepresentative), but excluding any associated with repairs following any major incidents, major projects and short-term reductions in activity. As a consequence, the level of possessions in the possessions allowance may be lower than the possessions...
which Railtrack anticipates that it will need to take over the life of the agreement in order to allow it to meet its obligations to maintain, repair or renew the network and to implement major projects.

The second purpose of schedule 4 is to define the terms on which a train operator is eligible for compensation if Railtrack takes possessions outside its possessions allowance.

The general principle is that the train operator is eligible for compensation at a rate which broadly reflects the impact which a particular possession would have on its train services. The specific effect of each possession on the train operator's services is measured by identifying the amendments made, as a result of the possession, to the timetable for the day on which the possession is taken. In this way, compensation will vary depending upon the location and duration of the possession and other factors which may affect the impact of that possession upon the train operator's services (for example, time of day and season). Compensation is reduced the longer the notice of the possession given to the train operator.

Payment of compensation is by four-week period, one period in arrear following the date of the relevant possession.

The general performance regime in schedule 8 provides for Railtrack to pay compensation to a train operator in certain circumstances when Railtrack is responsible for timetabled services being delayed or cancelled. Overruns of possessions are compensated under schedule 8.

Schedule 4 imports into the track access agreement the Applicable Rules of the Route and the Applicable Rules of the Plan. The third purpose of schedule 4 is to constrain Railtrack's ability to alter these rules to the detriment of key journey times. Schedule 4 requires Railtrack to accept at least one bid made by the train operator for at least one of each of the key journeys specified in the schedule in respect of each weekday and with a journey time no longer than the fastest journey time currently achieved. In addition, the train operator is able to specify a maximum key journey time (no greater than five per cent. higher than the current timetabled maximum) which Railtrack may not extend pursuant to its flexing rights (described under schedule 5 below). Schedule 4 includes provisions which enable the Regulator to require the parties to negotiate amendments to the maximum key journey times specified in schedule 4. It is anticipated that the Regulator would require this where, due to reduced capacity on the relevant parts of the network, Railtrack would find it difficult to not extend maximum key journey times beyond those currently provided for. If the parties are unable to agree the relevant amendments the matter would be referred to expert determination. Any amendments to the maximum journey times will be subject to regulatory approval.

The potential cost and risk to Railtrack of the compensation arrangements in schedule 4 was not taken into account by the Regulator in originally approving the level of track charges. Accordingly, schedule 4 provides for the payment of an access charge supplement by the train operator to Railtrack which reflects this potential cost and risk.

For the year ending 31 March 1997, the aggregate access charge supplement payable to Railtrack will be adjusted in line with the change in RPI but in subsequent years the access charge supplement will reduce by varying amounts, becoming zero for the year ending 31 March 2001. The access charge supplement is apportioned between TOCs in proportion to fixed access charges. The level of track access supplement payable by a particular TOC in any year may be higher or lower than the level of any payments received by such TOC under its performance regime with Railtrack.

Schedule 5—The services and the specified equipment

The main purpose of this schedule is to identify the scope of the services which the train operator is permitted to operate under the track access agreement (including any rights to make ancillary movements, such as movements to depots and movements to stabling locations) and to identify the particular types of rolling stock which may be used to operate those services. The schedule sets out the number, frequency and other characteristics of the train operator's services in what is referred to as the service specification. The service specification will encompass, but normally be in excess of, the train operator's PSR. It is
subject to the Track Access Conditions, the Applicable Rules of the Route and the Applicable Rules of the Plan.

The service characteristics may be expressed by reference to a range of features, including departure times, interval and stopping patterns, journey times and station platform calling requirements. Each of these characteristics may be specified with a greater or lesser degree of precision, depending on the nature of the services and the importance of the particular characteristic to the service in question.

The service specification sets out certain parameters within which a train operator may bid for slots in the working timetable and dictates the degree of freedom that Railtrack has to vary such bids. This so-called flexing right allows Railtrack to optimise the utilisation of capacity on the network by fine tuning train operators' timetable aspirations and attempting to reconcile conflicting bids for slots in the working timetable.

The service specification also lists all classes of rolling stock which are expected to be used by the train operator in the normal course of its business, as well as any alternative rolling stock which the train operator may use when its normal trains are not available. This is required principally to ensure compatibility with Railtrack's signalling and available power supply.

In some cases, schedule 5 specifies performance standards for track quality and appropriate incentives for Railtrack to ensure compliance with such standards. In other cases, this is dealt with as part of the schedule 8 general performance regime.

Schedule 6—Applicable Systems Interfaces

This schedule has been deleted from track access agreements and replaced by obligations in the body of the agreement to use Railway Code Systems, as defined in the Systems Code, for dealings between Railtrack and train operators. See section 6.3, “Intellectual Property—Computing and Software Documentation”.

Schedule 7—Charging

This schedule is based on draft model clauses issued by the Regulator. It gives effect to his announced policy on the levels and structure of Railtrack's track charges (see "Regulator's policy statements on track access charges"). The principal formula for the calculation of track charges contains as its constituent elements:

(a) a fixed annual charge;
(b) a variable track usage charge based on the number of vehicle miles travelled;
(c) a variable traction electricity charge (where electric traction is used) based on train miles or gross tonne miles and intended to reflect an estimate of the cost of traction current used;
(d) an adjustment to reflect additional costs incurred and savings made by Railtrack as a result of a change of law; and
(e) an adjustment to reflect the financial consequences for Railtrack of managing or dealing in property.

The fixed charge was set for 1995/6 as a single lump sum. The variable charge elements in paragraphs (b) and (c) were also set for 1995/6 and contained in price lists, which identify the variable charges per vehicle mile, train mile or gross tonne mile for different classes of rolling stock. Under the formula, the fixed and variable charge elements in paragraphs (a) and (b) will reduce in real terms by two per cent. per annum from the base set in 1995/6. Traction electricity charges are based on modelled consumption rates and will move in line with changes in the Index of Industrial Electricity Costs. The schedule provides for adjusting payments to be made if actual electricity consumption by all franchised passenger services is different from the total modelled consumption for such services.

The change of law element in paragraph (d) allows Railtrack to pass through to train operators the positive and negative financial effects of certain changes of law, including directions by competent authorities. Not all changes of law count for this purpose. For instance, actions taken by the Regulator
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would generally not count. The parties will in most cases negotiate the amount to be passed through, if they fail to agree, one or both may take the matter in dispute through the relevant dispute resolution procedures. The test to be applied by the dispute resolution body will be whether the amount is reasonable and whether, in incurring the additional costs, Railtrack behaved with due efficiency and economy. The Regulator has power in certain circumstances to "call in" the determination of the amount to be passed through.

The Regulator is expected to implement imminently arrangements for the sharing with train operators of property profits made by Railtrack. The key features of those arrangements are that, where Railtrack's total annual property income (net of associated costs) exceeds the amount assumed by the Regulator in reaching his decisions on future access charges, 25 per cent. of such excess net income will be passed through to franchised passenger train operators through a rebate of the fixed annual charge. No adjustment will be made to the Long Term Charge for stations, but train operators will benefit from targeted compensation payments in the context of individual station development projects, as already provided for in the Station Access Conditions. The franchise agreement contains provisions for adjustments to be made to the level of franchise payments to reflect such compensation payments (see section 3.1, "Summary of the Franchise Agreement").

Schedule 7 also contains provisions which:

(a) list the additional charges which Railtrack is, subject to the consent of the Regulator, entitled to make on the train operator, including the supplemental charge in respect of compensation payable by Railtrack under the possessions allowance (see discussion of schedule 4 above) and the premium in respect of the operation of the performance regime (see discussion of schedule 8 below);

(b) provide for the Regulator to be able to review the level of track charges by 31 July 2000, and to require the parties to submit proposed amendments to him which give effect to the results of that review; and

(c) provide for the train operator to be able to surrender and/or adjust its existing access rights, and to engage in "what if" analyses with Railtrack in relation to any such proposed surrender and/or adjustment. These provisions give the train operator the right to receive certain information from Railtrack as to the estimated financial and other effects of a surrender or adjustment, thereby enabling the train operator to make an informed decision on the matter. A response from Railtrack may include confidential information relating to another train operator who is affected by the proposal, and there are complex confidentiality provisions which are designed to ensure that the interests of such train operators are appropriately protected. There is provision for arbitration in the event that the train operator is dissatisfied with any response from Railtrack. The arbitrator (who must have regard to criteria issued by the Regulator) can determine whether the train operator is entitled to make the proposed surrender and/or adjustment. The surrender and/or adjustment is then subject to the approval of the Regulator.

The track access agreement also includes provisions governing the use of default data relating to train movements as the basis for variable charges in situations where the computer systems used by Railtrack are unable to record the actual data.

Railtrack has statutory obligations to provide and maintain level crossings on the network. Its costs in meeting those obligations were historically funded partially through track charges and partially through government funding. With effect from 1 April 1996, all such costs are recovered through track charges. The resultant overall increase in Railtrack's track charges has been allocated between the 24 passenger train operators which have track access agreements and reflected in an increased fixed annual charge for each such train operator from 1996/97 onwards.
Schedule 8—Performance regime

The following description of schedule 8 relates to the template of that schedule. Schedule 8 was incorporated in the track access agreements for the majority of train operators on the basis of interim approvals from the Regulator with effect from 10 December 1995 and retrospectively applied from 1 April 1995, subject to certain derogations. Further approvals have been issued by the Regulator for the full term of the agreements.

Schedule 8 sets out the track access performance regime and provides incentives to encourage the punctuality and reliability of passenger trains and compensation for the effects of poor performance.

The primary measure of performance in schedule 8 is lateness; punctuality is measured in terms of actual lateness, whereas reliability is measured in terms of “deemed lateness”. Lateness is judged by comparing actual performance on any day against scheduled passenger train movements in the passenger timetable.

Actual lateness is measured for each passenger train by taking measurements of minutes late as against the passenger timetable at set monitoring points for that train. The monitoring points are selected so as to capture significant passenger flows. Different weightings are applied to lateness at each monitoring point relative to the significance of that monitoring point in terms of passenger flows.

In order to provide incentives to encourage punctuality, it is necessary to identify whether Railtrack or the train operator is responsible for the lateness of each train. It is difficult accurately to assess the extent to which different incidents have caused a train’s lateness. Instead, therefore, schedule 8 attributes responsibility for lateness between the parties for each service group on a daily basis in proportion to the parties’ responsibility for “delays” caused to the train operator’s passenger trains within that service group on that day. Railtrack is required to measure delays and to allocate responsibility between the parties for incidents causing delays and schedule 8 provides the train operator with a daily review mechanism.

Measurements of minutes’ delay are taken at several recording points along the route for each passenger train. Delay is calculated by comparing the actual journey time between successive recording points with the interval time scheduled in the working timetable for the planned journey between those recording points. Certain adjustments are made to the calculation in order to take account of recovery time in the timetable and to ensure that the delay measured at a recording point does not exceed the train’s lateness there. Any incident causing delay between successive recording points of less than three minutes is ignored and the maximum delay per incident for any passenger train is capped. The daily calculation of responsibility for delays and lateness is conducted on a service group-by-service group basis, so as to reflect the different impact of lateness upon passengers of different services run by the train operator.

Responsibility will be allocated for each incident causing a delay which is not reflected by recovery time in the timetable either to the train operator or to Railtrack or to both parties jointly.

The train operator is responsible for an incident causing a delay if that incident is wholly or mainly caused by: breach by the train operator of any of its obligations under the track access agreement; circumstances within the control of the train operator in its capacity as an operator of passenger trains (whether or not the train operator is at fault); or the railway vehicles operated by the train operator or any act or omission in connection with those railway vehicles (whether or not the train operator is at fault).

Railtrack is responsible for an incident causing a delay if that incident is wholly or mainly caused by: breach by Railtrack of any of its obligations under the track access agreement; circumstances within the control of Railtrack in its capacity as network operator (whether or not Railtrack is at fault); or the network or any act or omission in connection with the network (whether or not Railtrack is at fault). This includes any incident caused by the actions of other train operators. Railtrack has covered its vicarious responsibility for other train operators’ defaults by including corresponding performance regimes in their respective track access agreements.

If Railtrack is unable to identify the incident which caused a particular delay, that delay will be unallocated. All unallocated delays are attributed on a daily basis. One-half of all such minutes’ delay are then attributed to Railtrack and the train operator in proportion to their respective responsibilities for
delays which have been allocated on that day. The remaining one-half of the unallocated minutes’ delay will be allocated to Railtrack. This is intended to incentivise Railtrack to identify the relevant incidents which cause delays. During the period from 1 April 1995 to 10 December 1995 in respect of which the regime was retrospectively applied, fault attribution was not subjected to the same degree of scrutiny as has applied since the regime became operational.

For the purpose of incentivising reliability, deemed lateness will accrue in the event that a train fails to stop at a monitoring point, for example as a result of a cancellation or part-cancellation. Identifying the particular incident which leads to a train missing a monitoring point is likely to be far easier than accurately assessing the extent to which different incidents have caused a train’s lateness. Allocation of responsibility for missed monitoring points can therefore be effected on a case-by-case basis.

If Railtrack is responsible for a train failing to stop at any or all of its monitoring points, then that will be treated as giving rise to deemed lateness for that train. That deemed lateness will be a number of minutes equal to the cancellation minutes for the train (broadly the average service interval between trains). If the train operator is responsible for a train failing to stop at any or all of its monitoring points, then the same calculation will be made unless the train operator notified Railtrack of the cancellation of the train prior to 10 pm on the day before.

The lateness of a train at each monitoring point is its actual lateness at that monitoring point (i.e. punctuality), which is capped, or deemed lateness as a result of missing that monitoring point (i.e. reliability). Lateness for which Railtrack is responsible is aggregated at each monitoring point and averaged across the number of trains scheduled to stop at that monitoring point. Average lateness is then calculated across each service group of the train operator.

Railtrack will be required to make a payment if the resulting average lateness per train over the four week period exceeds the Railtrack benchmark for the service group. The benchmark is set separately for each service group at a level of performance which represents the higher of current performance and 1994/95 Passenger’s Charter targets.

There are three rates of payment for the Railtrack performance regime (lower, central and higher) applicable to each service group. Which rate is applicable depends upon the amount of lateness for which Railtrack is responsible. The central rate applies to a central band of Railtrack performance. Performance in this band is expected to have, on average, a 60 per cent. probability of occurring. The lower rate applies to a better level of performance by Railtrack and is expected to have, on average, a 20 per cent. probability of occurring. The higher rate applies to a worse level of performance by Railtrack and is also expected to have, on average, a 20 per cent. probability of occurring. Expectations of future performance for the purpose of the 20/60/20 split have been derived from performance levels for the relevant Railtrack zonal division in the recent past.

The Railtrack central rate for each service group is based on the estimated average value placed by passengers within that service group on one minute’s lateness and, in cases where the train operator is obliged to pay the Franchising Director’s performance-related amounts for late services, is boosted by the value which the franchise agreement performance regime places on an equivalent minute’s lateness. The Railtrack lower rate for each service group is set on a similar basis to the Railtrack central rate, but at a level that discounts by 50 per cent. the estimated average value placed by passengers on one minute’s lateness.

The Railtrack higher rate for each service group is set to be the highest of the following:
(a) the Railtrack central rate for that service group;
(b) the equated revenue per train minute (i.e. total estimated revenue per period for the relevant service group, divided by the number of train minutes (based on cancellation minutes) per period for that service group); and
(c) the estimated access charge per train minute (i.e. total estimated access charge per period for the relevant service group, divided by the number of train minutes (based on cancellation minutes) per period for that service group).
For each minute by which the average train lateness for which Railtrack is responsible over the four week period exceeds both the Railtrack benchmark and the Railtrack higher rate threshold, payments will be at the Railtrack higher rate. For each average minute late for which Railtrack is responsible above the Railtrack benchmark but below the Railtrack higher rate threshold, payment will be at the Railtrack central rate or Railtrack lower rate, as the case may be.

If, on the other hand, the Railtrack benchmark for a service group exceeds the average train lateness in that service group for which Railtrack is responsible over the four week period, the train operator will make a performance payment to Railtrack in respect of such excess. Such payment will be made at the Railtrack lower rate to the extent that average train lateness is less than both the Railtrack benchmark and the Railtrack lower rate threshold. For each average minute late below the Railtrack benchmark but above the Railtrack lower rate threshold, payments will be made at the Railtrack central rate or Railtrack higher rate, as the case may be.

A service group will suffer a severely disrupted day if the average lateness on that day for which Railtrack is responsible exceeds the severe disruption threshold for that service group. This threshold is set at a level such that there are likely to be on average between 15 and 20 days in each year when this occurs. Average train lateness in excess of the agreed threshold is compensated at the Railtrack higher rate.

The train operator performance regime is based on the lateness of that train operator’s passenger trains for which the train operator is itself responsible. No measurement is made of disruption caused to other train operators’ passenger trains as a result of such lateness. The train operator performance regime is, however, intended to incentivise the train operator to reduce its own lateness (and hence reduce the likelihood of such disruption).

Train operator performance payments are calculated by reference to the average lateness per train within the service group over each four week period for which the train operator is responsible. As with the Railtrack performance regime, there is a benchmark and three rates of payment and the liability to make payments is calculated in the same way (except that there is no concept of severely disrupted days for which the train operator is responsible).

The benchmark is set separately for each service group at a level of performance which represents the higher of current performance and 1994/95 Passenger’s Charter targets. Which payment rate is applicable depends upon the amount of lateness for which the train operator is responsible (the payment bands being set on a 20/60/20 probability of occurring). The aggregate of all the performance payments made to Railtrack nationally relates to the aggregate of performance payments which it is expected that Railtrack will need to make as a consequence of disruption caused by a train operator to other train operators and other network users under their respective performance regimes.

For each train operator, its performance payment rates will reflect the likelihood of its actions affecting other train operators and network users.

There are additional circumstances which can give rise to compensation under schedule 8 in respect of the reliability of trains. These circumstances are:

- missed stations, for example, where a train fails to call at a station at which it was scheduled to call, where that station is not a monitoring point;
- deviations, where a train is diverted from its scheduled route;
- cancellation of late-running trains, where the deemed lateness arising from a cancellation would be less than the actual lateness of the train when cancelled; and
- planned disruption to services which is reflected in amendments to the timetable.

As with missed monitoring points, identifying the particular incident which leads to a train missing a station or being diverted or which leads to the introduction of an amended timetable is likely to be far easier than accurately assessing the extent to which different incidents have caused the train’s lateness. Allocation of responsibility for missed stations, diversions and amended timetables can therefore be effected on a case-by-case basis.
If a train operator is responsible for a train failing to call at a station which is not a monitoring point, then no deemed lateness arises. This is on the basis that missed station stops do not ordinarily cause disruption to other train operators' passenger trains (thus requiring payments to be made by Railtrack to those train operators under their performance regimes). If, however, Railtrack is responsible for a train failing to call at a station which is not a monitoring point, compensation will be payable to the train operator for each station missed at a fixed sum. This fixed sum represents a payment of Railtrack central rate for each deemed minute late arising from a missed station stop (deemed lateness being calculated by dividing the number of train minutes (based on cancellation minutes) by the number of station stops on an average day).

If Railtrack is responsible for a train deviating from its scheduled route, compensation may be payable if, as a result of such deviation, the train misses a monitoring point or a station. Otherwise, the only implication of such deviation will be if it causes actual lateness of that train. If, on the other hand, the train operator is responsible for the deviation, it will be required to pay additional compensation to Railtrack specifically for that deviation. This is on the basis that deviation onto routes normally run by other train operators may cause disruption to those other train operators' passenger trains (thus requiring payments to be made by Railtrack to those train operators under their performance regimes). The compensation will be payable to Railtrack for each mile run off the scheduled route at a fixed sum. This fixed sum represents a payment at the train operator central rate for each deemed minute late arising from a diversion (deemed lateness being calculated by dividing the number of train minutes (based on cancellation minutes) by the number of train miles on an average day).

If Railtrack is responsible for the cancellation of a late-running train, Railtrack may be liable to pay additional compensation above the amount which is ordinarily payable for a cancellation. Compensation will be payable if the amount of actual lateness which would have accrued from the continued late-running of the train exceeds the amount of deemed lateness which accrues from the cancellation. The purpose of this additional compensation is to remove any incentive from Railtrack to cancel late-running trains in order to limit its liability under schedule 8. There are no equivalent provisions in schedule 8 for the train operator's cancellation of late-running trains, since such cancellations do not cause any additional disruption to other train operators over and above the cancellation of a punctual train.

Finally, compensation in respect of planned disruption which is reflected in amendments to the timetable is payable by the party which was responsible for such disruption. A comparison is made to establish the amendments made to the timetable on each day as a result of incidents for which Railtrack and the train operator respectively are responsible. Railtrack is then liable to make payments calculated by reference to cancellations, extended journey times and missed stations for which it is responsible, as reflected in the amendments to the timetable. The train operator is liable to make payments by reference to the deviations it has caused to its own trains, as reflected in the amendments to the timetable.

Payment of compensation under the above provisions is by four-week period, one period in arrears. All the performance payment rates under schedule 8 are linked to changes in the RPI.

Schedule 8 also contains special provisions regarding compensation payable under the train operator's passenger's charter. Railtrack will indemnify the train operator for revenue actually lost by the train operator as a result of season ticket extensions or season ticket discounts given under the train operator's passenger's charter provided that the train operator would have been required to offer such extensions or discounts under the Passenger's Charter in force at 2 April 1995. To the extent that payments are required solely as a result of stricter passenger's charter targets coming into force after 2 April 1995, Railtrack will not indemnify the train operator.

For season ticket extensions, liability is borne by Railtrack to the extent that the incident which gave rise to the entitlement to such an extension was the responsibility of Railtrack. For season ticket discounts arising as a result of poor punctuality or reliability, liability is borne by Railtrack in proportion to its responsibility respectively for delays to or cancellations of the train operator's trains in the previous 13 four weekly periods.
Schedule 8 deals with reliability and punctuality solely of passenger trains, subject to one exception. If an ancillary movement of a train operator's train to a depot is cancelled or delayed due to an incident which is the responsibility of Railtrack in its capacity as network operator, Railtrack is required to indemnify the train operator for any liability incurred to the DFO as a result of that cancellation or delay up to a maximum sum of £500 for each ancillary movement (subject to a minimum of £100). If an ancillary movement of a train operator's train from a depot is cancelled or delayed due to an incident which is the responsibility of Railtrack in its capacity as network operator, no compensation will be payable by Railtrack under schedule 8 except to the extent that such cancellation or delay causes disruption to the train operator's passenger trains.

The potential cost and risk to Railtrack of operating performance regimes was not taken into account by the Regulator in originally approving the level of track charges. Accordingly, schedule 8 provides for the payment of an access charge supplement by the train operator to Railtrack which reflects this potential cost and risk.

For the year ending 31 March 1997, the aggregate access charge supplement payable by Railtrack will be adjusted in line with the change in RPI but in subsequent years the access charge supplement will reduce by varying amounts, becoming zero for the year ending 31 March 2001. The access charge supplement is apportioned between TOCs in proportion to fixed access charges. The level of track access supplement payable by a particular TOC in any year may be higher or lower than the level of any payments received by such TOC under its performance regime with Railtrack.

Schedule 9—Variations to the agreement

This schedule required the parties to seek changes to specified provisions in the agreement (which varied according to the train operator).

Schedule 10—Moderation of competition

This schedule is based on draft model clauses published by the Regulator to give effect to his announced policy on moderation of competition in respect of railway passenger services (see section 2.7, "Competition" above).

The basic concept in the schedule is that of a passenger service between a point of origin and destination which is referred to as a point-to-point flow. Competition is moderated in two distinct stages. The first stage is due to commence shortly and is expected to expire on 31 March 1999. The second stage will start at that time and expire on 31 March 2002, although its start depends on the issue of an initiation notice by the Regulator. Such notice is intended to be given on or before 31 March 1998.

During the first stage, the train operator could nominate a list of point-to-point flows to the Regulator and Railtrack, which then had to be approved by the Regulator. When giving his approval to a nomination, the Regulator was entitled to impose conditions on that approval. New entry for scheduled passenger services on approved flows will only be permitted with the train operator's consent. As a general rule, a flow could be nominated if it accounted for more than 0.2 per cent. of the train operator's total fare revenue in (normally) the year ended 31 March 1994 and the train operator served both the point of origin and destination of the flow. Other flows could be nominated, but needed to be justified as eligible for protection by reference to criteria published by the Regulator. Nominations made during the first stage automatically terminate when the stage ends.

As with the first stage, there is a nomination procedure for protecting flows during the second stage. The train operator may obtain more limited protection against competition, in that new entry on nominated flows will be permitted as long as the total revenue from new and existing competing flows does not exceed a specified proportion (which is expected to be 20 per cent.) of the train operator's revenue from its nominated flows. However, there will be no restrictions on new entry for scheduled passenger services on those flows where there is pre-existing competition. The train operator must provide...
information in relation to the revenue from each flow nominated. The relevant revenue is that received by
the train operator in the financial period specified by the Regulator in the second stage initiation notice.

Schedule 10 also contains provisions relating to a change of control of the train operator. Change of
control is deemed to occur where a person acquires 30 per cent. or more of the train operator. The train
operator must notify the Regulator when a change of control occurs. The Regulator may then serve
notice on the train operator and Railtrack terminating any restrictions on Railtrack granting access rights
and specifying how the train operator may reapply for protection.

Track Access Conditions

The following is a summary of certain features of the Track Access Conditions.

Organisation of the Access Conditions and Definitions (Part A)

Part A sets out certain definitions and rules of interpretation which apply generally to the Track Access
Conditions.

Performance Monitoring (Part B)

Part B sets out minimum standards for the operation by Railtrack of a system to monitor plant
performance generally and, in particular, to identify train delays and cancellations and the causes of and
responsibility for those delays and cancellations. The system establishes a basis for the performance
regimes in individual track access agreements. Railtrack is obliged to notify the relevant train operator of
any delay or cancellation identified by Railtrack and the responsibility, if any, attributed by Railtrack to
that train operator for that delay or cancellation. Railtrack's analysis is deemed to be accepted unless the
train operator objects. The train operator can require Railtrack to investigate the system if it believes that
the system is not meeting the requirements set out in Part B. If such a claim is found to be justified,
appropriate adjustments will be made to the results obtained from the system. Both Railtrack and the train
operator may inspect and audit the system.

Part B requires that information relating to train performance is recorded accurately by Railtrack. Data
is recorded in systems operated by Railtrack which rely on either manual or automated recording. The key
data recorded are train running times and fault attribution of delay. The train running data, but not the
fault attribution data, is also required for the OPRAF incentive regime (see section 3.1, "Summary of the
Franchise Agreement"). The train running times, which are captured at monitoring points, are subject to a
number of areas of inaccuracy which may affect the levels of payment to/from a train operator. In
recording fault attribution there is potential for error because attribution of fault is not always made
currently or the attribution itself may be incorrect.

Part B accordingly provides that the obligation to record accurately will be construed in accordance
with an industry-wide Performance Data Accuracy Code. Broadly, this Code provides that Railtrack will
be deemed to have recorded information accurately where it meets specified standards of completeness
and accuracy. These standards were initially set by reference to, amongst other things, the levels of
completeness and accuracy currently achieved, although the Code provides for improved standards to
apply as of 1 April 1999. The Code further provides for Railtrack to carry out an annual review of the
standards of measurement and recording achieved in the performance monitoring system and to formulate
proposals for improving standards as part of that review. It must consult on those proposals with train
operators.

Modification of Access Conditions (Part C)

Part C sets out the process by which the Track Access Conditions may be changed. Four interest groups
(or classes) are identified, namely Railtrack, non-franchised passenger train operators, franchised passenger
train operators, and non-passenger train operators. The franchised passenger and non-passenger classes are
in turn subdivided into bands. Proposals for changes to the Track Access Conditions are considered by the
class representative committee. This committee comprises two class representatives appointed by Railtrack, one class representative appointed by the members of the non-franchised passenger class and one class representative appointed by the members of each of the bands of the franchised passenger class and the non-passenger class. Class representatives are elected annually.

A proposal for change may be made by any train operator, any person who holds an access option (i.e. an option to obtain permission to use track) or the Regulator by sending the proposal to Railtrack. A proposal may also be made by Railtrack. Railtrack must consult with all train operators and access option holders, the HSE, the Regulator and the Franchising Director. Once that consultation process has taken place, Railtrack must convene a meeting of the class representative committee to consider and, if thought fit, approve the proposal. Railtrack or any two class representatives of the franchised passenger class may veto a proposal if it is likely to have a material and adverse effect on their interests. If that right of veto is exercised, however, any class representative can appeal against the exercise of the veto to the Regulator. Any proposal which is approved by the class representative committee must be notified by Railtrack to the Regulator for his approval. Once the Regulator's approval has been obtained, Railtrack must notify the change to all interested parties and the change takes effect on the expiry of 21 days from the date of that notification.

Railtrack co-ordinates the convening and holding of class meetings and band meetings, the election of class representatives, and the convening and holding of meetings of the class representative committee.

In addition to the process described above, the Regulator is entitled to make changes to the Track Access Conditions if he is satisfied that the change is required to promote or achieve the objectives in section 4 of the Act, or that the interests of any relevant person would otherwise be unfairly prejudiced and that the need to avoid or remedy that prejudice outweighs the prejudice to any other relevant person that would be caused by the change. If he seeks to exercise that right, the Regulator must first consult with the Franchising Director, the HSE, the Secretary of State, the class representative committee and all class members. Where a change would, if made, prevent a train operator or access option holder (an "affected holder") from exercising or receiving the benefit of a protected right under a track access agreement to a material extent or would materially increase any of its protected obligations under a track access agreement, the affected holder may challenge the change in question. Any such challenge shall, failing agreement between the Regulator and the affected holder, be determined by an arbitrator in accordance with the Access Dispute Resolution Rules.

Timetable Change (Part D)

Part D sets out the procedures by which the working timetable, the Applicable Rules of the Route and the Applicable Rules of the Plan may be changed. These procedures have not been fully implemented and temporary timetable development procedures have been approved by the Regulator for the development of each timetable (up to and including) the Summer 1997 timetable. Under these temporary procedures, changes will only be made to the Working Timetable twice a year. In addition, whilst the overall structure of the procedure leading to each such change remains as described below, the number of bidding cycles has been reduced from three to two and changes have been made to the duration of the various periods comprised within the procedure.

Part D currently provides for changes to be made to the working timetable six times per annum, generally at eight week intervals. Significant changes will only be made twice a year, however, when the summer and winter passenger timetables come into effect. Changes to the Applicable Rules of the Route and the Applicable Rules of the Plan will usually be made twice a year when the summer and winter passenger timetables come into effect, although procedures will be established under which changes can be made more frequently.

Railtrack has the role of managing the working timetable. In so doing, it must in certain circumstances have regard to specified decision criteria. These decision criteria cover a wide range of matters. They are
broadly consistent, in the context of the development of the working timetable, with the Regulator’s duties under section 4 of the Act.

Train operators, access option holders and any other person who proposes to enter into a track access agreement or access option and who has agreed to be bound by the procedures in Part D (collectively “bidders”) are entitled to bid for slots in the working timetable. Bids should be consistent with the bidder’s rights under its track access agreement, the Applicable Rules of the Route and the Applicable Rules of the Plan. Bidding is conducted during a sequence of bidding cycles, each comprising a bidding period followed by a further period during which Railtrack will seek to reconcile and accommodate bids. Part D sets out an order of priority for accepting bids. Railtrack must first accommodate any bids which reflect firm contractual rights which the bidder or it may have under a track access agreement or under an access option. Firm contractual rights are, in the case of a bidder, rights relating to the timing, quantum or other characteristics of a train movement (as specified in Schedule 5 of the bidder’s track access agreement) and, in the case of Railtrack, rights under the Applicable Rules of the Route and the Applicable Rules of the Plan. Railtrack must then endeavour to satisfy bids which reflect other rights it or the bidder has under a track access agreement or access option, having regard to the decision criteria.

Railtrack must give notice of its acceptance or rejection of a bid received on or before a specified priority date by no later than the end of the bidding cycle in which that priority date falls. It must notify its decision in respect of a bid received after the priority date by no later than the end of the bidding cycle in which the bid is made.

Separate provision is made for bids which are made either during the period of operation of the working timetable to which they relate or in the 10 weeks immediately prior to that period. These are referred to as spot bids. Spot bids must be dealt with by Railtrack having regard to the order they are received. Furthermore, Railtrack must notify the bidder promptly following receipt of a spot bid whether it accepts or rejects the bid and, in the case of a rejection, give a concise explanation of its decision.

Railtrack has certain rights to (and, in certain circumstances must) vary a bid in a way that is within and consistent with the bidder’s firm contractual rights. These rights are referred to as flexing rights.

A bidder has 14 days to notify Railtrack if it accepts or disputes a rejection of a bid or the exercise of a flexing right by Railtrack. If it fails so to notify Railtrack, it is deemed to have accepted the relevant decision. Railtrack may, in certain specified circumstances, vary an accepted bid. Following acceptance or deemed acceptance of a bid, Railtrack will enter the relevant train slot into the working timetable.

If a train operator is dissatisfied with a decision by Railtrack on a timetabling issue, it may, as a general rule, appeal in respect of that issue. The train operator cannot appeal, however, in respect of a decision by Railtrack to reject a bid or exercise a flexing right once it has accepted, or is deemed to have accepted, that decision. Appeal is, in the first instance, to the timetabling committee (a sub-committee of the Access Dispute Resolution Committee). If either Railtrack or the train operator is dissatisfied with the decision of that committee, it may in turn appeal to the Regulator (although he can refuse to act in certain circumstances).

Part D sets out separate procedures in respect of major engineering, maintenance or renewal projects which Railtrack wishes to carry out in respect of the network. Railtrack must give details of any such project to and consult with all affected train operators. Having completed that consultation process, Railtrack may then implement the project. A dissatisfied train operator can, however, refer the matter to the Access Dispute Resolution Committee.

As part of the development of the working timetable, Railtrack must review the Applicable Rules of the Route and the Applicable Rules of the Plan and consider whether any amendment should be made to them. It must notify each bidder as to the changes it proposes to make and consult with bidders as to those proposals. Having done so, Railtrack may then implement such changes as it considers ought to be made to the Applicable Rules of the Route and Applicable Rules of the Plan. Save in certain specified circumstances, a bidder who is dissatisfied with Railtrack’s decision can appeal to the timetabling committee.
Railtrack must also consult with affected train operators to establish a procedure under which the Applicable Rules of the Route and the Applicable Rules of the Plan can be amended more often than twice a year and with all train operators to establish a procedure whereby accepted bids may be revised to permit Railtrack to take possessions in order to carry out works included in the Applicable Rules of the Route. If either procedure has not been agreed after a reasonable period, Railtrack can decide upon the procedure. Any affected train operator can refer any aspect of the procedure proposed by Railtrack to the timetabling committee, failing which the procedure proposed by Railtrack will be deemed to be accepted.

Railtrack has recently made a number of proposals for change to Part D of the Track Access Conditions, following consultation with other industry parties. The key features of those proposals are:

(a) the working timetable would only be published twice a year when the summer and winter passenger timetables come into effect. Supplements to the working timetable would be published at eight week intervals, however, reflecting any amendments made to the current working timetable as a result of spot bids;

(b) the number of bidding cycles would be permanently reduced from three to two (with each cycle comprising a bidding period of four weeks followed by an eight week period during which Railtrack would seek to reconcile and accommodate bids);

(c) the working timetable for each bank holiday would be developed independently of the rest of the working timetable over a twelve week period ending twelve weeks before the relevant bank holiday;

(d) a process would be incorporated into Part D under which the working timetable could be amended to reflect engineering works notified by Railtrack after the working timetable has been published;

(e) a process would be incorporated into Part D specifying how Railtrack will deal with spot bids which are received too late to be reflected in a working timetable or in a supplement to a working timetable, and which do not relate to bank holidays or which are not made to reflect engineering works notified by Railtrack after the working timetable has been published; and

(f) significant amendments would only be made to the Applicable Rules of the Route and the Applicable Rules of the Plan once a year when the summer passenger timetable comes into effect. Minor amendments could also be made, however, when the winter passenger timetable comes into effect.

These proposals are to be considered imminently by the class representative committee in accordance with Part C of the Track Access Conditions.

Environmental Protection (Part E)

Part E is concerned with the prevention, mitigation and remedy of environmental damage. Railtrack must notify each train operator promptly of any circumstances which it is reasonably foreseeable are likely to lead to environmental damage affecting that train operator's activities. Each train operator must notify Railtrack in the same circumstances and, in addition, when the environmental damage arises as a result of its activities. Furthermore, each train operator must supply to Railtrack from time to time and at Railtrack's request details of any hazardous materials it proposes to transport and copies of any authority or licence required to do so.

On becoming aware of the occurrence of environmental damage or an event likely to result in environmental damage, or upon receiving a direction from a competent authority to do so, Railtrack must make an assessment as to the action necessary to prevent, mitigate or remedy such damage and whether Railtrack or the train operator is best placed to take such action. Railtrack must notify any relevant train operator of its assessment. The train operator may appeal against Railtrack's assessment to the Access Dispute Resolution Committee. Otherwise, it is required to carry out (at its own cost) the action for which it has been allocated responsibility. If the train operator fails to act reasonably quickly or satisfactorily or if Railtrack believes it is a case of urgency, Railtrack may take the necessary action itself and claim reimbursement from the train operator for a fair proportion of the costs of doing so.
Vehicle Change (Part F)

Part F sets out the procedure by which a train operator may instigate certain changes to the types and characteristics of rolling stock it is permitted to use under the terms of its track access agreement. The procedure applies if the changes are likely to affect materially the maintenance or operation of the network or the operation of trains on the network.

A train operator wishing to make such a change must submit a proposal to Railtrack. Railtrack must then consult both with the train operator that has submitted the proposal and any other operator who is likely to be materially affected by the change. If requested by a train operator that submits a proposal, Railtrack must give an initial response, giving reasons if the response is negative. Railtrack can require a train operator which has proposed a change to pay compensation to Railtrack or any other train operator in respect of any costs, losses or expenses which they can reasonably be expected to incur as a result of the change.

Railtrack may reject a proposed change if it considers that the change would result in Railtrack breaching an access agreement with another train operator, that the train operator has failed to comply in a material respect with the procedural requirements for submission of the proposal (having had an opportunity to remedy such failure) or that the change would have a material adverse effect on the maintenance or operation of the network or on the operation of trains on the network which cannot be adequately compensated. Equally, Railtrack can reject a proposal if another train operator has notified Railtrack that it considers that any of the criteria set out above are met.

A train operator who is dissatisfied with any matter relating to the procedure in Part F can appeal. Appeal is, in the first instance, to the network and vehicle change committee (a sub-committee of the Access Dispute Resolution Committee). If either Railtrack or the relevant train operator is dissatisfied with the decision of that committee, it may refer the matter to the Regulator for determination, although the Regulator can decline to act in certain circumstances.

Unless the train operator receives a notice of rejection from Railtrack or has failed to comply with any requirement to pay compensation as referred to above (without having referred the matter to arbitration) it may implement a change.

If a train operator is required to make a vehicle change as a result of a change of law or a direction from a competent authority (other than the Regulator) the above procedures (other than the requirements to submit the proposal to Railtrack and for Railtrack to consult with interested parties) do not apply and Railtrack must take such steps as are reasonably necessary to accommodate the change. Each party bears its own costs in relation to such changes.

Network Change (Part G)

Part G sets out the procedure by which changes to the network may be agreed. It is very similar to the procedure by which vehicle changes may be agreed. Network changes are defined to include, in relation to a train operator, any change to any part of the network which is likely to affect materially the operation of the network or of trains operated by that train operator and any change to the operation of the network or series of such changes which has lasted for more than six months and which is likely to affect materially the operation of trains by that train operator. Initially, Part G included any change to any computer system or computer system interface owned or used by Railtrack or a train operator, but these are now dealt with on a stand-alone basis under the Systems Code.

Proposals for a network change may be initiated by Railtrack or by a train operator. If Railtrack wishes to propose a change, it must give details of the change to and consult with each train operator and PTE that may be affected by the change, the Franchising Director, the HSE and the Regulator. If a train operator wishes to propose a change, it must submit its proposal to Railtrack who must then consult with both the train operator which submits the proposal and with all other operators of railway assets which are likely to be materially affected by the change.
Railtrack or the train operator (as the case may be) must, if requested by the proposer of a change, provide an initial response, giving reasons if the response is negative. The proposer of a change can be required to pay compensation in respect of any costs, losses or expenses which can reasonably be expected to be incurred as a result of the change by Railtrack or the train operator. In addition, if a train operator has proposed a change, it can be required to pay compensation to any other train operator on the same basis.

Railtrack may reject a proposal if it considers that the change would result in the breach of an access agreement by Railtrack (other than an access agreement to which the train operator which proposed the change is a party). It may also reject a proposal if the train operator has failed to comply with any procedural requirements for submission of the proposal (having had an opportunity to remedy such failure) or if it considers that the change would result in a material adverse effect on the maintenance or operation of the network or the operation of any train on the network which cannot be adequately compensated. Equally, it can reject a proposal if another train operator has notified it that it considers that any of the criteria set out above are met.

A train operator may reject a proposal if it considers that the change would result in the breach of an access agreement to which it is a party, that Railtrack has failed to provide sufficient details of the proposed change to it or that the change would result in a material deterioration in the performance of its trains which cannot be adequately compensated.

As with vehicle changes, provision is made enabling the proposer of a change to refer any matter it is dissatisfied with to the network and vehicle change committee and for the decision of that committee to be referred to the Regulator. Again, the Regulator can decline to act in certain circumstances.

Unless the proposer of a change receives a notice rejecting the change or has failed to comply with any requirement to pay compensation as referred to above (without having referred the matter to arbitration) it may implement the change.

If Railtrack is required to make a network change as a result of a change of law or a direction from a competent authority other than the Regulator, similar provisions apply to those relating to vehicle changes which a train operator is required to make in such circumstances. Furthermore, if Railtrack is required to make a network change for safety reasons, it is not required to follow the procedure set out in Part C until the change has lasted for at least three months.

**Operational Disruption (Part H)**

Part H sets out procedures and plans for minimising the effects of operational disruption. It categorises operational disruption into disruptive events and cases of minor disruption. A disruptive event is an event that materially prevents or disrupts the operation of trains on the network in accordance with the working timetable. Each party to a track access agreement is required to give the other party notice of any disruptive event which they believe is likely to occur. Furthermore, each train operator is required to notify Railtrack upon becoming aware of a disruptive event and, similarly, Railtrack must notify each train operator likely to be affected by a disruptive event upon becoming aware of that event.

Following the occurrence of a disruptive event, Railtrack must decide on the most appropriate course of remedial action, taking into account the "contingency objective" and any applicable codes of practice or contingency plans. The "contingency objective" is the minimisation of the inconvenience of passengers having regard to the interests of operators of non-passenger trains. Provision is made for the development and implementation of codes of practice and contingency plans. If a disruptive event is likely to be of sufficient duration to make it practicable to adopt a revised working timetable, Railtrack must seek to agree amendments to the working timetable with affected train operators. Where amendments are agreed, Railtrack must produce a revised working timetable and, in so doing, comply with the procedures for timetable changes in Part D and have due regard to the decision criteria referred to in that Part.

Train failures are specifically dealt with and a train operator must notify Railtrack of the failure of one of its trains. Railtrack is then required to consult with that train operator. Subject to that consultation having taken place, the train operator is required to comply with Railtrack’s reasonable instructions to
ensure the removal of the failed train from the track. Any train operator can be commissioned by Railtrack to assist with the removal of a failed train operated by another train operator (although its consent is required and it is entitled to compensation in return for providing such assistance which will ultimately be borne by the operator of the failed train).

If a disruptive event arises from adverse weather conditions or track obstructions, a train operator must, if requested by Railtrack, provide Railtrack with such assistance and equipment as it may reasonably require.

Railtrack is required to restore the working timetable as soon as practicable after the end of a disruptive event or extended period of disruption. However, if Railtrack has reasonable grounds to believe that it is not reasonably practicable to do so, it must give notice to that effect to all train operators who are likely to be affected and reconsider the amended working timetable in light of the fact that it will be in operation for a longer period than was originally anticipated.

Railtrack must establish and comply with "train regulation statements" to deal with cases of minor disruption. These statements describe the procedures to be followed having regard to specified objectives. There will be statements for each discrete part of the network and they will be developed in consultation with affected train operators. Each train regulation statement shall have effect for a period of one year. If a train operator is dissatisfied with a statement it can refer the matter to the timetabling committee. If it is dissatisfied with the decision of that committee, it can in turn refer the matter to the Regulator, where the matter concerns whether the statement achieves the specified objectives, or to arbitration under the Access Dispute Resolution Rules in other cases. As with references relating to timetable changes, vehicle changes and network changes, the Regulator can refuse to act in certain circumstances.

**Network Letters**

Railtrack has entered into a "network letter" with each passenger train operator which identifies those schemes relating to changes to vehicles and to works and other changes in connection with the network which were approved by BBR prior to 1 April 1994 and, consequently, do not constitute vehicle change or network change for the purposes of Parts F and G of the Track Access Conditions.

In addition, each letter lists those schemes which had been initiated since 1 April 1994. Railtrack and train operators had not complied with the procedural requirements set out in Parts F and G of the Track Access Conditions in relation to a number of those schemes. Under each letter Railtrack and the relevant train operator waived their rights in respect of any failure to comply with those procedural requirements. Furthermore, to the extent that a scheme had been completed by the date of the letter, Railtrack and the train operator waived their rights to compensation under Parts F and G in respect of disruption and loss of facility caused by the scheme in return for a one-off payment. To the extent that a scheme had not been completed by the date of the letter, however, compensation is payable in respect of disruption and loss of facility arising after the date of the letter in accordance with the principles set out in Parts F and G.
4.3 ACCESS TO STATIONS

Introduction
A station is broadly any premises used as a passenger railway station and includes associated land such as the approaches, forecourts and car parks.

Railtrack is the freeholder of nearly all stations in Great Britain. With the exception of the Independent (or “Major”) Stations, virtually all of Railtrack’s stations are leased to one of the TOCs. They, in turn, may grant access to other train operators which wish to use the stations. The TOC to which Railtrack leases a particular station will usually be the one which has the greatest current use of that station. At Independent Stations, Railtrack grants access to train operators which wish to use them.

Agreements for access to stations are regulated. The lease of a station is not regulated but, by incorporating a set of rules (currently the National Station Access Conditions 1996) known as the “Station Access Conditions” (which are also incorporated in station access agreements and approved by the Regulator), it includes provisions which are subject to regulation.

The descriptions of arrangements for access to stations in this section relate to passenger operators (other than open access operators) unless otherwise stated.

Stations Leased by Railtrack
A TOC which leases a station from Railtrack becomes what is known as the facility owner or SFO of the relevant station. The SFO may be required to enter into station access agreements with other train operators wishing to gain access to the relevant station (“Users”). Such Users may include both passenger and non-passenger train operators.

Each station access agreement grants access to a particular train operator and incorporates a set of rules known as the “Station Access Conditions”. The station lease also incorporates the Station Access Conditions.

Each User is, as a condition of its station access agreement, required to enter into a collateral agreement with Railtrack. Railtrack is also obliged, under a provision in the station lease, to enter into a collateral agreement with each User. This agreement provides a direct contractual relationship between Railtrack and each User, enabling each User to enforce Railtrack’s obligations in the Station Access Conditions and (where failure to perform would operate to the detriment of the User) in the lease and Railtrack to enforce each User’s obligations under the Station Access Conditions and (where failure to perform would operate to the detriment of Railtrack) in the station access agreement. The collateral agreement also incorporates the Station Access Conditions.

The Station Access Conditions set out certain rights and obligations of each of Railtrack (as landlord of the Station), the SFO (as tenant) and the Users. Generally, the SFO is responsible for operating the station, for routine maintenance and certain repairs and for providing relevant station services to Users. Broadly, Railtrack is responsible for repairs to the structure of the station and some maintenance and other typical landlord’s obligations such as buildings insurance. If there is a conflict between the Station Access Conditions and the document incorporating them, the Station Access Conditions prevail. See below under “Station Access Conditions”.

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Structure of Station Charges

Users pay all of their station access charges to the SFO. For passenger operators these include charges for common services and common amenities provided to all passenger operators and for exclusive services provided to some but not all Users. Details of the calculation of these charges are set out below. Passenger operators also pay to the SFO their respective share of the “Long Term Charge”. The Long Term Charge is a contribution towards Railtrack’s costs of repairing and maintaining the structure of stations and provides a return on the modern equivalent asset value of the relevant station.

The SFO pays rent to Railtrack under the station lease. This includes both its own share of the Long Term Charge and each passenger operator’s share of the Long Term Charge paid to the SFO as part of that passenger operator’s access charge. The credit risk in relation to the Long Term Charge is borne entirely by Railtrack. Therefore, failure by a passenger operator to pay its share of the Long Term Charge to the SFO results in a corresponding reduction in the rent payable by the SFO to Railtrack under the station lease. Railtrack is entitled to pursue the defaulting passenger operator for such non-payment and ultimately to require the SFO to terminate the defaulting passenger operator’s station access agreement. The rent payable to Railtrack by the SFO also includes two further elements described below.

Station Access Agreements

The station access agreement is a bilateral contract between the SFO and a User and incorporates the Station Access Conditions. In general, passenger operators will have a separate station access agreement for each of the stations which they use. Non-passenger operators will generally have one station access agreement.
agreement with each TOC which will grant access to all of the stations for which that TOC is SFO. These arrangements are described in more detail below.

A station access agreement contains a number of conditions precedent which need to be fulfilled before it becomes fully effective.

Under the station access agreement, the SFO grants the User and its associates permission to use the station and the right to receive certain station services at the station. The various amenities and services available to the User at a station are those specified in the station access agreement or in the Station Access Conditions. These are categorised as "common" services and amenities (which are used by the SFO and all passenger operators (and, in some cases, all Users)) and "exclusive" services (which are provided to one or more Users but not to all). Common services and amenities are specified in Annex I to the Station Access Conditions. Exclusive services, if any, are detailed in a schedule to the station access agreement for the relevant User.

A station access agreement is generally for a fixed term of up to seven years. A station access agreement specifies a number of events of default in respect of which the parties are given rights to suspend and/or terminate the agreement. The events of default include defined insolvency events, material breaches of the station access agreement and termination of the User's track access agreement. The innocent party is generally required to give the defaulting party a reasonable opportunity to rectify the default.

A station access agreement provides for the charges payable for access to the station. For passenger operators, these are comprised of a share of the Long Term Charge and charges for common services and amenities and exclusive services. Charges for common services and amenities and the Long Term Charge are calculated in accordance with the Station Access Conditions and are discussed below under "Station Access Conditions". Charges for exclusive services are negotiated between the SFO and the Users who wish to receive them.

The station access agreement contains restrictions on the SFO against disposing of any interest in the station such that it would or might cease to be the facility owner. Also, it may not create any security over its interest in the station except on terms approved by the Regulator.

Station Leases

Most existing station leases are for a term of about seven years. They are replaced on the franchising of the SFO's business by a new lease, in most cases for a duration equal to the franchise term granted but otherwise on similar terms to the existing station lease. The exceptions are where the franchise is to be granted for a period of more than seven years. The provisions of longer term leases, to coincide with a longer term franchise, are presently being negotiated with Railtrack. Where such longer term leases are entered into, a number of provisions will be adjusted to reflect the longer term being granted. New station leases will generally not confer security of tenure under Part II of the Landlord and Tenant Act 1954 or the Tenancy of Shops (Scotland) Act 1949, by virtue of section 31 of the Railways Act. In the case of stations in England and Wales, in those exceptional cases where section 31 may not apply, the lease will be expressly "contracted out" of Part II of the Landlord and Tenant Act 1954.

Each station lease incorporates the Station Access Conditions:

- The rent payable by the SFO under a station lease has three components:
  - the Long Term Charge, which is subject to an adjustment formula;
  - property rent (calculated on the basis of a proportion of the income derived from lettings at the station during 1994/95 and a proportion of income from car parks at the station during 1993/94), indexed by reference to the implied gross domestic product deflator at market prices published by the Central Statistical Office; and
  - 50 per cent. of actual rents and other payments to the SFO for car boot sales, markets and fairs in the station car park(s) held under agreements and arrangements (whether or not formally documented) which existed before 1 April 1994.

Each of these components is payable at different intervals—four-weekly in arrear, quarterly in advance and quarterly in arrear respectively.
Railtrack's right to distrain for unpaid rent does not arise until after giving notice of the rent arrears, in respect of any assets of the SFO which are necessary for the provision of station services.

Railtrack consents in advance to alterations or additions to the station for which a proposal for change is accepted under Part C of the Station Access Conditions, or which are approved, or deemed to have been approved, in other specified ways (for example, where Railtrack has approved particular works under the Station Access Conditions).

Railtrack’s consent is required for all other alterations or additions (except alterations to an internal part of the station not affecting structure). Such consent may not be unreasonably withheld or delayed.

The SFO may not transfer the station lease, or deal with it in other ways (including the grant of any security interest over the station lease) except to the extent that the station lease provides that it may do so. In particular, it may underlet certain core facilities to Users without consent, as long as the underlease excludes business security of tenure and subject to certain other conditions. It may also grant access agreements.

Granting of underleases of parts of a station at market rent may be permitted subject to certain conditions, including Railtrack's consent which may not unreasonably be withheld or delayed.

The SFO may create a security interest over the station lease with Railtrack’s consent (which may not be unreasonably withheld or delayed) provided it is not in contravention of sections 27(3) and (4) of the Act.

Railtrack may terminate the station lease if rents are in arrears for more than 21 days, or if the SFO is in substantial or material breach of its obligations in the station lease (including the Station Access Conditions) or the SFO or any guarantor of the SFO’s obligations in the station lease becomes insolvent. The station lease may also be terminated in other circumstances, such as the loss by the SFO of its station licence, track access agreement or franchise agreement. Railtrack’s termination rights in these circumstances are subject to certain restrictions imposed on all landlords by common law and by statute. Railtrack has agreed to defer the exercise of this right of termination for up to three months or, at the request of the Franchising Director, for up to six months. This longer deferral period is provided for in the direct agreement entered into between the Franchising Director and Railtrack which is designed to secure (amongst other things) the continuation of services in the event of unexpected termination of the station lease (see section 4.9, “Direct Agreements”).

The station lease may be terminated by the SFO upon 14 days’ notice if the station is damaged or destroyed by any cause, so as to become wholly or substantially unfit for the use permitted by the Station Access Conditions and Railtrack has failed to reinstate within three years after such damage or destruction. Either party may terminate the station lease upon 14 days’ notice if Railtrack is unable to obtain the necessary consents to reinstate the station following such destruction or damage.

In the event that certain changes are accepted in accordance with Part C of the Station Access Conditions, there are provisions for the termination of underleases and other arrangements. In those circumstances the station lease itself may be terminated under Part C of the Station Access Conditions.

Railtrack may also terminate the station lease for the purpose of carrying out works necessary for the operation of its railway undertaking where such works are the subject of a “Proposal for Change” under the Station Access Conditions or are not capable of forming the subject matter of such a proposal. This right may be exercised only in relation to parts of the station which have been identified for this purpose in the station lease. Railtrack must give at least six months’ notice of termination unless the works are urgent, when it must give at least 28 days’ notice.

In certain circumstances the SFO agrees to surrender its station lease to Railtrack. The first is the completion of a lease of the station to a franchisee or its wholly owned subsidiary or a franchise operator, and is intended to operate to terminate the TOC’s lease upon the grant of the first franchise. The second is the expiration of any period of experimental operation of the station or its related passenger services. Either party may require a surrender to take place in these circumstances upon three months’ notice. The other circumstances are if the SFO ceases to use or operate the station for more than three months except
in circumstances beyond the SFO's control and if the SFO is unable to use or operate the station, Railtrack may require a surrender of the station, other than for reasons beyond Railtrack's control. Railtrack must account to the SFO for the proportion allocated by the contract to that station or (if the contract does not allocate such a proportion) a fair and reasonable proportion, attributable to the station, of the total income arising from that contract. A similar arrangement applies to certain telephone contracts but in those cases, the SFO's proportion of the income is 25 per cent. of the sum attributable to the station (less Railtrack's specified, or fair and reasonable, management fee).

Collateral Agreements

The collateral agreement is a bilateral contract between Railtrack and a User and incorporates the Station Access Conditions. This agreement creates a direct contractual relationship between Railtrack and each User, enabling the User to enforce Railtrack's obligations in the Station Access Conditions and (where failure to perform would act to the detriment of the User) in its station lease. It also allows Railtrack to enforce the User's obligations under the Station Access Conditions and (where failure to perform would act to the detriment of Railtrack) in its station access agreement. The collateral agreement becomes fully effective, and terminates, at the same times as the station access agreement.

Station Access Conditions

The Station Access Conditions are a set of rules which are incorporated in the same form into the station lease, each station access agreement and each collateral agreement at any particular station. These may vary from station to station. They contain relevant rights and obligations which apply to all Users, the SFO and/or Railtrack at that particular station.

The Station Access Conditions for each station are made up of two distinct sections: Parts A to Q and the Annexes.

Parts A to Q of the Station Access Conditions contain the rights and obligations of the parties. Part A contains definitions and rules of interpretation. A summary of Parts B to Q is set out below. The order in which the Parts are arranged is not intended to be indicative of their relative importance. The Parts are not self-contained and should be read together as a whole.

The Station Access Conditions are divided into the following Parts:
- Part A - Organisation of the Access Conditions and Definitions
- Part B - Modifications to the Station Access Conditions
- Part C - Changes to Common Station Amenities and Common Station Services
- Part D - Works, Repairs and Maintenance
- Part E - Insurance
- Part F - Access Charging
- Part G - Existing Agreements and Third Party Rights
- Part H - Litigation and Disputes
- Part I - Station Register
- Part J - Rights Granted Over Adjacent Property
- Part K - Rights Reserved by Railtrack
- Part L - Remedies
- Part M - Environmental Protection
- Part N - Other Positive Obligations
- Part O - Other Negative Obligations
- Part P - Attribution of Costs
- Part Q - General
The Annexes to the Station Access Conditions include factual details relating to the station, attributes of responsibility and specific descriptions of the areas to which the obligations in Parts A to Q relate. They also include the text of the collateral agreement. The Annexes will be customised for each station.

The following is a summary of certain features of a typical set of Station Access Conditions.

**Modifications to the Station Access Conditions (Part B)**

Part B provides two procedures by which the Station Access Conditions may be changed. The first is a democratic procedure and the second is a procedure under which the Regulator may himself require changes to be made.

Under the democratic procedure, any of Railtrack, the SFO and any User may propose changes to the Station Access Conditions. All such proposals must go through a consultation process with all affected operators, the HSE and the Franchising Director.

The SFO and passenger operators may vote through changes to the Station Access Conditions. The percentage of votes required to approve a proposal is specified in the Station Access Conditions and may vary from station to station, according to what may be appropriate in the circumstances. The percentage may be changed by the Regulator in certain circumstances. The number of votes which may be cast by the SFO and each passenger operator is based on the proportion that the number of each operator's passenger vehicle departures from the station bears to the number of all passenger vehicle departures from the station. Non-passenger operators have no vote. However, they and minority passenger operators enjoy regulatory protection (if appropriate) because changes which are voted through need the Regulator's approval before they become effective.

Railtrack does not have a vote on a change proposal. However, if it objects to a change and can establish that such change is likely to have a material adverse effect on its interest in the station, that change may not go ahead. If Railtrack exercises its right of objection in relation to a change, the SFO or any User may appeal to the Regulator against that objection.

In addition to the voting process described above, the Regulator is given certain rights to require changes to the Station Access Conditions. These rights take the form of a short term right, which will normally expire within six months of the Station Access Conditions first being incorporated in a document, and a long term right which will be effective thereafter. The short term right may be exercised by the Regulator if he believes its exercise is necessary or expedient. The long term right may only be exercised if he is satisfied on reasonable grounds that the change is, or is likely to be, reasonably required to promote or achieve the Regulator's objectives as set out in section 4 of the Act, or to avoid or remedy unfair prejudice to any person where the need to avoid such unfair prejudice outweighs the prejudice which will, or is likely to be, sustained by any other relevant person if the change is made. Any such changes may be made only after due consultation with all affected parties and with other relevant statutory bodies such as the Franchising Director. A change will have effect not earlier than 30 days from the date on which notice of such change is given by the Regulator in the case of the short term right and not earlier than 180 days from the date of the Regulator's notice in the case of the long term right.

**Changes to Common Station Amenities and Common Station Services (Part C)**

The SFO is under an obligation to each User to provide the common amenities and common services listed in Annex 1. Part C provides a procedure by which changes may be made to the station, or the common services provided at the station, and the creation or amendment of certain agreements affecting the Users' use of the station may be approved. This is intended to enable the station and the quality or quantity of services at the station to develop to meet the needs of train operators.

The SFO and any User may make a proposal for change. Generally, Railtrack may make such a proposal only for the redevelopment or reconstruction of the station. A proposal may take various different forms, depending on the materiality and nature of the change in question and the identity of the person making
the proposal. More stringent requirements apply, and additional protections are included for Users, in respect of most Railtrack proposals than for other types of proposal for change.

All proposals for change must go through a consultation process with all affected train operators and, in the case of more significant proposals, the HSE and the Franchising Director. This is co-ordinated by the SFO. The consultation process allows for a relatively quick initial evaluation and response, at no cost to the sponsor of the proposal. It allows for a more detailed evaluation after the initial response for more significant proposals. The sponsor must pay 75 per cent. of the consultees' costs of this detailed evaluation (in the case of proposals sponsored by relevant operators) or all of their costs (in the case of redevelopment proposals sponsored by Railtrack). Certain minor changes should be able to by-pass the full change procedure and some steps in the procedure may be truncated with all parties' agreement.

Railtrack also has an ability to obtain "agreement in principle" to its redevelopment proposals, thus simplifying the initial stages of the consultation process. Once agreement in principle has been achieved, the usual consultation and approval process will follow.

A proposal may be voted through by the SFO and passenger operators unless Railtrack (which does not have a vote) notifies the SFO within a set period that it objects to it and can establish that the change is likely to have a material and adverse effect on its interest in the station. If Railtrack exercises this right in relation to a proposal, the SFO or any User may displace an objection if it can establish (through the disputes mechanism) that implementation of the change in question would not have a material and adverse effect on Railtrack's interest in the station.

Certain proposals may be approved by a specified percentage of votes cast by the passenger operators. The percentage required to approve such proposals is the same as the percentage referred to in Part B. Station redevelopment proposals put forward by Railtrack require approval by all train operators using the station (passenger and non-passenger) and the Station Access Conditions may specify other matters (e.g. changing the opening hours of the station) which also require unanimous approval.

If a proposal is not voted through, it may still go ahead if Railtrack and/or any number of train operators provide appropriate financial undertakings to the others. Where the SFO or Railtrack is required to make a change to the station due to a change of law, the attribution of the costs between Railtrack, the SFO and the Users is determined on a fair and equitable basis in accordance with Part P.

If implementation of a change would require consequential amendments to the station access agreement or would materially diminish the number of passengers or trains that are able to use the station for more than 28 days, the Regulator's approval is required before the proposed change may take effect or be implemented.

Part C contains provision for an appeal by Railtrack or any train operator against the approval or rejection of a proposal for change on the grounds that it is unfairly prejudicial to that person where such unfair prejudice outweighs the prejudice which any other relevant person would otherwise sustain or be likely to sustain. Any such appeal is made in accordance with the Access Dispute Resolution Rules. No change may be put into effect pending the result of an appeal.

A station redevelopment proposal by Railtrack may result in termination of the relevant station lease in whole or in part.

Works, Repairs and Maintenance (Part D)

Part D includes the SFO's rights to restrict permission to use a station, thereby limiting the access rights of Users, in order to carry out certain types of works or in emergencies. The SFO may also be required by Railtrack to restrict such permission in similar circumstances. Normally, the SFO must provide reasonable notice of any intended restrictions and must supply details of a reasonable programme for the carrying out of the works. It must also use its reasonable endeavours to consult with each User, must, so far as reasonably practicable, minimise the extent and period of any restriction and must make reasonable alternative arrangements so as to enable each train operator and its associates to use the station with minimum disruption, difficulty or inconvenience.
Part D also sets out Railtrack's and the SFO's respective maintenance and repair obligations at the station. These obligations relate to the station itself and also equipment at the station. Broadly, the SFO is responsible for routine maintenance and certain repairs, and Railtrack is responsible for structural repairs and some maintenance. Part D includes self-help remedies for both the SFO and Railtrack in the event that the other fails to comply with its maintenance and repair obligations. The defaulting party will bear the cost of any self-help by another.

Insurance (Part E)

Part E contains provisions for the insurance of the station and the application of insurance proceeds. Railtrack has undertaken the responsibility for effecting property insurance for all stations since 4 February 1996, the date on which the first franchises commenced operation in the private sector. The SFO is responsible for arranging insurance against third party liability and certain other risks. The costs of Railtrack's insurance policy will be payable by the SFO which will recover part from other train operators through the access charges. Railtrack's insurance policy will be subject to an excess for each SFO. This excess is, in general, currently 0.15 per cent of the SFO's total annual turnover less certain deductions (with a minimum excess of £5,000 and a maximum of £175,000 for each loss). In the event of any damage, the amount of the excess will be payable by the SFO and recovered in appropriate proportions from other train operators through the access charges. If an insured risk occurs and affects more than one station or depot operated by a TOC, the excess will be payable only once in relation to that occurrence.

Railtrack must apply any insurance monies received by it (including money received by the SFO and passed to Railtrack) in the repair of any damage to, or reinstatement of, the station. There is a requirement for Railtrack to rebuild buildings to a modern equivalent standard and not necessarily their original form.

None of the parties bound by the Station Access Conditions may do anything which would invalidate any relevant insurance policy or increase the premium payable under that policy.

Access Charging (Part F)

The access charge payable by a TOC User comprises a charge for the common services and common amenities, the Long Term Charge and a charge for any exclusive services provided to that TOC. Part F is concerned with the calculation and payment of charges for common services and common amenities and the Long Term Charge. Charges for exclusive services are dealt with in the relevant station access agreement, as described above.

In the absence of an offer to the contrary from the SFO, the charges for common amenities and common services are calculated on the basis of the actual costs incurred in providing such amenities and services (the "variable charge"). However, passenger operators may elect, if the SFO offers them the option, to pay for some or all of the common services or common amenities by way of a quoted fixed charge rather than by way of the variable charge. Such election will normally take place annually. To the extent that a passenger operator has elected to pay fixed charges for an amenity or service, it is not liable for any variable charge attributable to that amenity or service.

Variable charges are based on the costs of operating the station, together with a management fee (together referred to as the "qualifying expenditure"). This is apportioned between passenger operators on the basis of the proportion that each operator's passenger vehicle departures from the station bear to all passenger vehicle departures. The SFO must use all reasonable endeavours to minimize station operating costs (see Part N).

Variable charges are paid on account during the year on the basis of the SFO's best estimate of the qualifying expenditure for that year. Any difference between the amount charged on that basis and the amount actually incurred (as certified by the SFO) is then paid or refunded.

The SFO's and each passenger operator's share of the qualifying expenditure is recalculated annually or more frequently where there has been a material change in the relative vehicle departures of train operators. Fixed charges are unaffected by a recalculation during the course of a year.
The Long Term Charge for 1995/96 is set out in Annex 9 to the Station Access Conditions. The Long Term Charge will be subject to an RPI minus X control (where X is 2) from the 1995/96 base and will also take account of any additional costs arising due to a change of law or any financial benefit to Railtrack of dealing in or managing property.

The Long Term Charge is apportioned between the SFO and passenger operators on the basis of vehicle departures in the same way as is qualifying expenditure. The SFO's and each passenger operators' share of the Long Term Charge is recalculated on a change in the number of passenger operators using the station, or a significant change in the relative vehicle departures of passenger operators. This limitation on recalculation is intended to prevent marginal reductions in services at a station by an operator in order to reduce that operator's share of the Long Term Charge.

Part F contains mechanisms for the review of the access charge. Up until 31 March 1996, the Regulator was entitled to alter the charging provisions in respect of the Long Term Charge. He did not in fact exercise that power.

The Regulator may modify the Station Access Conditions by notice to provide a formula to enable the parties to calculate the appropriate financial benefit to Railtrack of dealing in or managing property which is to be shared with the SFO and Users.

Part F also provides for the Regulator to be able to review the amount, allocation or method of payment of the Long Term Charge by 31 July 2000 (which date the Regulator may extend by up to 90 days) and require the parties to submit proposed amendments to him which give effect to the results of that review.

The SFO and the Users must, on notice from any one of them, review the amounts, the manner of payment and the allocation of the access charge and must negotiate with a view to agreeing any changes. In the absence of agreement after a set period of time, the dispute may be referred by the SFO or any User to arbitration.

Each User is entitled to inspect the books, records and accounts of the SFO in so far as they relate to common services, common amenities or other services supplied to that User.

In notifying passenger operators of the charges for common amenities and services prior to the commencement of each financial year, the SFO must provide a detailed breakdown of the proposed charges together with comparative figures for the previous year. After the end of each 28 day period, the SFO must supply each passenger operator with a comparison of its then best estimate of the total charge for the financial year and its initial estimate of that charge given before the commencement of that year.

The Regulator has recently issued his preliminary conclusions on the criteria he shall adopt for the approval of station management fees.

**Existing Agreements and Third Party Rights (Part G)**

Part G deals with the effects of certain types of pre-existing agreements with third parties or existing rights of third parties on the SFO's or a User's use of the station. Such agreements include agreements with utilities, agreements in respect of retailing at the station and in relation to station advertising and agreements with railway businesses (for example, BRT). Railtrack and/or the SFO may take certain actions in respect of certain specified agreements (such as implementing or amending them) without the necessity to comply with the procedure by which such changes would otherwise need to be approved under Part C of the Station Access Conditions.

Part G contains certain warranties and indemnities by Railtrack and the SFO, which are intended both to ensure disclosure of any relevant restrictions affecting the use of the station and to allocate liability for non-disclosure. Users' permissions to use a station are subject to all existing agreements identified specifically or generally in the Station Access Conditions.
Litigation and Disputes (Part H)

Part H provides that Railtrack, the SFO and each User will notify each other of any relevant disputes, claims or litigation affecting the station. The SFO has the authority to carry out litigation affecting the station on behalf of all Users in certain circumstances and below certain financial thresholds.

Most disputes between any of Railtrack and the relevant operators must be referred initially to the Industry Committee established under the Access Dispute Resolution Rules.

Station Register (Part I)

Part I provides for the SFO to create and maintain a central register of certain agreements, rights, works and documents affecting the station. The register serves mainly to ensure disclosure to existing and would-be Users, and is open for inspection by interested persons. It is intended to inform them of all material events or agreements which may have an adverse impact on the station or its operation.

Given the size of the task of assembling certain parts of the station register, particularly that containing the existing agreements, the Regulator has agreed to a grace period for full compliance expiring on 31 October 1999.

Rights Granted Over Adjacent Property (Part J)

Part J sets out rights granted by Railtrack to the SFO over property which belongs to Railtrack and is adjacent to the station. Where such rights are necessary for the use of a station by Users, they are granted to Users by the SFO as part of the permission to use the station.

Rights Reserved by Railtrack (Part K)

Part K sets out rights which Railtrack may exercise over the station. The exercise of those rights must, so far as they relate to the common amenities or common services and involve works or disruption to the station, be approved in accordance with Part C or be carried out in accordance with Part D. Railtrack must ensure its rights under Part K are exercised in such a way as not to prejudice the use of the station by the SFO or Users.

Remedies (Part L)

Part L provides for specific remedies between Railtrack, the SFO and Users. It can be dispensed in whole or in part if the parties to a particular station access agreement so desire.

A User may abate its access charge, at the rates specified in Annex 6 or 7, if the SFO fails to open the station or provide specified common amenities or common services at the station. Abatement is not allowed if, and to the extent that, the failure arises from the action of a third party who is unconnected with the station.

The SFO may claim damages from a User or an abatement of rent payable to Railtrack if and to the extent that the User's or Railtrack's activities have led to the SFO not being able to open the station or provide the specified amenities or services.

The SFO must determine who was at fault for the station not being open or the specified amenities or services not being available. The person at fault must make good all amounts abated by the SFO at the rate specified in Annex 6 or 7 or pay such lesser rate as any station access agreement specifies.

A User may also, on notice, carry out repair, maintenance and certain services itself if the SFO or Railtrack is not performing those services or is not performing them to the agreed standard. The cost of a User performing such services itself may be deducted from its access charge.

Railtrack, the SFO and each User must indemnify each other party to an agreement against any losses that party may incur as a result of a breach by them of their obligations under that agreement. Claims under the indemnity may be made only if they exceed certain specified thresholds and are made within a specified time limit.

Claims are limited to direct costs and claims for revenue loss are specifically excluded.
No person is to be held responsible for any failure to carry out its obligations under the station access agreement, station lease or collateral agreement if such obligations cannot be carried out as a result of certain events which are out of the reasonable control of the party in breach of its obligations.

The remedies regime for failure to provide services and amenities may be subject to amendment.

**Environmental Protection (Part M)**

Part M is concerned with the notification and remedy of environmental damage to the station or of circumstances likely to give rise to such environmental damage.

Each User must promptly notify the SFO, and the SFO must notify Railtrack, of the occurrence of environmental damage or any circumstances likely to give rise to environmental damage. Depending on the circumstances, the SFO may be entitled to remedy such circumstances or damage at the expense of Railtrack.

Railtrack may require remedial action to be taken by the SFO or a User where environmental damage or circumstances likely to give rise to environmental damage results from the activities of that train operator. Railtrack may take such action itself in an emergency or where the responsible train operator fails to do so.

The SFO and each User must indemnify Railtrack against any costs and expenses incurred by Railtrack as a result of any environmental damage or circumstances likely to give rise to environmental damage caused by it. Railtrack must indemnify the SFO and each User against any costs or expenses incurred by the SFO or that User as a result of environmental damage arising before the earlier of the date of Railtrack's privatisation or the date of commencement of the relevant SFO's franchise.

**Other Obligations (Parts N and O)**

Parts N and O set out miscellaneous obligations of Railtrack, the SFO and any User.

Significant obligations on the SFO include the obligation to minimise costs in operating the station, the obligation to open the station at set times and the obligation not materially to change the common amenities or common services otherwise than in accordance with the Station Access Conditions.

Obligations on the SFO and Users include obligations not to use the station otherwise than for specific purposes, not to alter the station and not to cause a breach of the Station Access Conditions by any other person.

Railtrack is obliged to collect and dispose of track litter within the vicinity of the station. The costs will be borne by Railtrack (25 per cent.) and all passenger operators which use the station (75 per cent.).

**Attribution of Costs (Part P)**

Part P deals with the attribution of certain costs between Railtrack, the SFO and each User. It does not deal with the attribution between passenger operators of any costs forming part of the qualifying expenditure referred to in Part F.

Costs incurred by any person in respect of the supply of electricity, gas etc. to the station, safety requirements as a result of the direction of any competent authority or change of law or in relation to both common station amenities or services and any other amenities or services provided in respect of the station will be attributed on a fair and equitable basis between Railtrack, the SFO and each User.

**General (Part Q)**

Part Q contains provisions in respect of confidentiality, payments of charges and other general provisions.
Miscellaneous Issues

Exclusive Amenities

Access to parts of a station which are used by only one User ("Exclusive Amenities"), is not granted through the station access agreement. Access is to be granted to the User by the SFO by means of a sub-lease at a market rent.

Station Underletting

As well as underletting Exclusive Amenities, the SFO may underlet other parts of a station. Certain areas of stations may be leased back to Railtrack, as landlord, in order to enable it to operate the infrastructure. Areas of the station may also be leased to other railway businesses or as retail or other commercial units. As discussed above, part of the historic income from the leased retail units will be paid to Railtrack by way of rent. To the extent that the SFO increases retail use of the station above the indexed historic level it will retain all such income. These underleases will, to the extent they affect the rest of a station and already exist, be Existing Agreements (see above).

User-to-User Supply of Services

In certain circumstances a User may provide services at a station to another User. Any contract to this effect is not subject to regulatory approval but is subject to the consent of the SFO.

Red Star Occupation at Stations

Red Star has permission to use certain stations and some facilities (such as lifts and station vehicle charging points). It also enjoys certain rights (such as pedestrian access from parcel points to trains and vehicular access along certain designated routes). At some stations, the SFO will be obliged to provide services to Red Star and grant (or take subject to) a lease in favour of Red Star of certain premises used in connection with its business. In return, the SFO will receive a service charge (based on Red Star's turnover at the station) and, in respect of leased premises, an agreed rent (subject to three-yearly reviews on an open market basis).

Interface with London Underground

London Underground enjoys rights to use certain stations and some of their facilities by virtue of arrangements between BRB and LRT entered into pursuant to statute and predating the Railways Act. British Rail and certain TOCs enjoy similar rights in respect of certain stations owned by London Underground.

The Franchising Director is working to facilitate new agreements between the TOCs and London Underground. These agreements, while not subject to regulation, are intended to be compatible (so far as possible) with the regulated access regime.

It is also intended that London Underground's contributions to the Long Term Charge and qualifying expenditure will be calculated on, broadly, the basis of relative train departures rather than relative vehicle (as defined in the Station Access Conditions) departures.
4.4 ACCESS TO INDEPENDENT STATIONS

Railtrack is the freeholder and, because it does not lease such stations to a TOC, also the facility owner of Independent (or "Major") Stations. Railtrack grants access to those train operators which wish to use the station under station access agreements. Such agreements are regulated. There is no lease or collateral agreement required.

Independent Station Access Agreements

Each station access agreement for access to an Independent Station is in broadly the same form as that granted by a SFO at other stations. Each agreement incorporates the Railtrack Independent Station Access Conditions (the "Independent Station Access Conditions"). There will usually be several Users at an Independent Station, each of whom will require their own independent station access agreement.

Access Structure at Independent Stations

![Diagram]

*Incorporates by reference the Independent Station Access Conditions

Independent Station Access Conditions

The Independent Station Access Conditions are structured in a similar way and have the same general functions as the Station Access Conditions.

They are comprised of Parts, which are in broadly the same form for all Independent Stations, and Annexes which are customised on a station by station basis. They set out the rights and obligations of Railtrack (as SFO) and each User.

The Independent Station Access Conditions differ from the Station Access Conditions in a number of respects. As a general matter, similar rights and obligations are expressed in different ways as the document only anticipates two types of party: Railtrack (as SFO) and Users. Certain rights and obligations have been amended and new rights and obligations added to reflect the different commercial relationships created by this structure. In particular, the commercial balance is different as Railtrack, because it does not operate any trains, does not bear any of the costs of common services and amenities, although it controls them. This means that issues such as cost minimisation and market testing are given a different treatment.

The following is a summary of certain differences between a typical set of Independent Station Access Conditions and the typical set of Station Access Conditions discussed above.

Changes to Common Station Amenities and Common Station Services (Part 3)

Railtrack may make any proposal for change. However, if it makes a proposal for material works at a station, the dominant and substantial purpose of which is not to improve an existing or create a new common amenity in connection with railway services, then such a proposal is subject to more stringent requirements than other types of proposal for change.
Station Facility Owner's Property Rights (Part 11)

As there is no lease there is no equivalent to Part K of the Station Access Conditions ("Rights reserved by Railtrack").

Other Obligations (Parts 14 and 15)

In a similar way to Parts N and O of the Station Access Conditions, these Parts set out miscellaneous obligations.

Railtrack does not share in the costs of operating the station and therefore does not have a natural incentive to minimise costs. As a consequence, the obligation to minimise costs and the tendering requirements which are considered sufficient in the Station Access Conditions have been enhanced in the Independent Station Access Conditions.

For example, Part 14 places an obligation on Railtrack to carry out market testing by seeking tenders for certain services on request by a proportion of Users. Once tenders have been received, a new contract must be awarded or Railtrack must provide the services at the cost of the lowest bid. Such requests may be made not more than once in any period of 12 months.

Annex 12 to the Independent Station Access Conditions provided for a formal review of the incentives on Railtrack to reduce costs and perform its obligations under the Independent Station Access Conditions. That review has now taken place and has been both agreed and approved by the Regulator. This gives TOCs the right to elect that prices for any station facility, amenity or service be quoted on both a "fixed price" and a "cost plus" basis. Should the TOC agree a "fixed price" basis with Railtrack, any savings or overspend would be shared between the parties (75 per cent. to Railtrack: 25 per cent. to the TOC).

Miscellaneous Issues

Exclusive Amenities, Leasing etc

Access to Exclusive Amenities at Independent Stations (where access is to be by a single User) will be granted by leases at a peppercorn rent for amenities essential to the provision of railway passenger services ("Core Facilities") and at market rent for non-core facilities. For amenities to which access is to be available by more than one User, the appropriate documentation is currently under discussion with the Regulator.

Retail areas and areas used by Rail express systems Limited and the Post Office are also leased by Railtrack. Railtrack retains all rental income from such leases.

Independent Stations Services Sub-contracts

Railtrack is entitled to sub-contract the provision of certain station services to one or more third parties at Independent Stations while remaining the facility owner and operator of the station. Such sub-contracts are usually, or are likely to be, with those train operators who use the station most. Sub-contracts are not subject to regulation. Other Users will be able to enforce their rights against Railtrack in accordance with their station access agreements, irrespective of sub-contracting.
4.5 NON-TOC ACCESS TO STATIONS

Train operators which are not operators of franchised passenger services will enter into station access agreements in broadly the same form as those discussed above. Such agreements will generally relate to a number of stations and be of a shorter duration than agreements with franchised passenger operators. As an exception, Rail express systems Limited has an unregulated agreement to use nine of the Independent Stations for 11 years for Royal Mail activities.

Given the limited use of stations by such operators, they will not be entitled to vote on proposals to amend the Station Access Conditions and they will only be entitled to vote on proposals to change the station in certain circumstances. They will have a right of appeal if their interests would be unfairly prejudiced in respect of a proposal to change the station.

Train operators which are not operators of franchised passenger services will not generally be subject to the same charging regime as is applied to franchised passenger operators (as set out in Part F of the Station Access Conditions or Part 6 of the Independent Station Access Conditions). For example, freight operators will generally pay a standard charge per visit to the station based on an assumed number of visits. Increased visits above the assumed level may give rise to an additional charge.
4.6 ACCESS TO DEPOTS

Introduction

Railtrack is the freeholder of most depots which are leased to the TOCs. They, in turn, may grant access to other passenger and non-passenger train operators wishing to obtain services at the depot ("Users") under depot access agreements. In some limited circumstances TOCs may obtain services at non-passenger depots, for example, for fueling. The agreements under which these services are provided will be regulated access agreements if they include Light Maintenance Services.

The Regulator has exempted certain depots from the regulated access regime until 31 October 1996. This exemption applies to those depots which have not yet had formal approval from the Regulator for their depot access agreements. The Regulator may revoke the facility exemption where a private sector operator applies for access to an exempted depot.

Where a DFO has granted a User access to its depot, this does not mean that such User can then carry out its own Light Maintenance Services at the depot. Such services will normally be provided by the DFO. In certain exceptional circumstances a DFO may, subject to the Regulator's approval, sub-contract a User to perform Light Maintenance Services on the User's vehicles.

Franchise operators will be acquired by franchisees with all of their depot access agreements already in place. The initial depot access agreements will cover substantially all of the various services which the DFO will provide to Users at the depots which it operates. The initial depot access agreements will provide for both Light Maintenance Services (the provision of which is regulated) and other services such as wheel re-profiling and interior cleaning (which are unregulated). These services collectively, together with Stabling and certain related services which are also dealt with under the initial depot access agreements, are referred to as "Depot Services".

The Regulator has agreed to consider for approval depot access agreements which combine the provision of both regulated and unregulated services. Incorporating unregulated services into a depot access agreement which has been approved by the Regulator provides those services with a degree of protection. Other than in certain limited circumstances, the Regulator is thereby prevented from giving directions to a DFO requiring it to enter into another regulated access agreement which results in the DFO breaching its obligations (including the provision of services which otherwise would have been unregulated) in a regulated access agreement. However, the Regulator may require the DFO to stop providing certain services which have been increased by agreement in the preceding three years if the result of the increase would be to leave insufficient capacity to provide Light Maintenance Services to a new User, unless the existing User has satisfied the Regulator that this was not the purpose of the original increase.

Subject to complying with the notice provisions in a depot access agreement, a DFO and any User may terminate the existing arrangement and replace it with new agreements. Such new agreements will be regulated access agreements if they provide for services which include Light Maintenance Services.

Each depot access agreement grants access to a depot to a particular User and includes by reference a set of rules known as the "Depot Access Conditions". The Depot Access Conditions are in two parts: the conditions themselves, which are described as the "National Depot Access Conditions", which will apply to all light maintenance depots owned by Railtrack; and the "Annexes", which are specific to the depot in question. They set out certain rights and obligations of each of Railtrack (as landlord of the depot), the DFO (as tenant) and the Users. Non-TOC Users will also include the Depot Access Conditions in their depot access agreements although certain parts of the Depot Access Conditions may be inapplicable to such Users. Certain features of the Depot Access Conditions which are generally common to each depot are discussed below.

Generally, the DFO is responsible for operating the depot, for routine maintenance and certain repairs to both the depot and its equipment, for providing Depot Services to Users and for maintaining its own trains. Railtrack is responsible for repairs to the structure of the depot and certain equipment and some
maintenance and for other typical landlord’s obligations such as buildings insurance. By virtue of the collateral agreement, Railtrack’s repair, renewal and maintenance responsibilities are also owed directly to Users, as well as to the DFO. Railtrack is obliged, under a provision in the depot lease, to enter into a collateral agreement with each User. The collateral agreement also incorporates the Depot Access Conditions.

At Depots where there are no Users there is no collateral agreement, only a depot lease to the DFO. All depot leases also incorporate the Depot Access Conditions.

Each DFO will also enter into a connection agreement with Railtrack (except in those circumstances where its depot connects only to another depot and not to the Railtrack network, in which case it will enter into a connection agreement with the relevant DFO) which will place an obligation on both parties not to sever or impede the connection between the depot and the Railtrack network (or other depot) except in the circumstances provided for in the agreement. Each party agrees to indemnify the other in respect of any expenses incurred (above certain thresholds and up to specified limits) as a result of any breach of that obligation. Recovery may be made under the indemnity for direct costs, but there is no recovery for revenue loss. The connection agreements, together with any amendments to them, will be subject to the approval of the Regulator.
Structure of Depot Charges

The DFO pays rent to Railtrack under the depot lease. Users pay all of their charges for access to the depot to the DFO. The depot access charges are the aggregate of:

(i) a charge in return for an agreed minimum level of Depot Services ("Minimum Charge");
(ii) a charge in return for any Depot Services which are in excess of the agreed minimum level but which do not exceed an agreed maximum level ("Variable Charges"); and
(iii) a charge in return for Depot Services of a type for which no minimum level has been specified ("Contingent Charges").

Depot Access Agreements

The depot access agreement is a bilateral contract between the DFO and a User. It sets out each of the Depot Services which the DFO has agreed to provide to the User together with, where applicable, the levels of those services and the prices to be charged for them. It incorporates the Depot Access Conditions, which set out most of the respective rights and obligations of the DFO and the User. At depots used by more than one User there will be a separate depot access agreement between each User and the DFO. The description of the depot access agreement and Depot Access Conditions in this Document is of the template forms of these documents. The actual agreements or Conditions applicable to each TOC may vary in a number of respects from this description.

The depot access agreement contains a number of conditions precedent which must be fulfilled before it becomes fully effective.

Any changes to the depot access agreement, including changes to the level of Depot Services to be provided, must be approved by the Regulator, or come within a general approval given by the Regulator under section 22 of the Act. The Regulator has consulted with industry parties on the form of general approvals and consents to be given by him and is currently considering the responses he has received. These general approvals and consents will enable the parties to make specified amendments to depot access agreements more efficiently and quickly. The depot access agreement may be terminated by either party on six months' notice, although such notice may not be served earlier than 12 months after a franchise agreement entered into by either the DFO or the relevant User becomes effective, whichever is the sooner. Unless terminated, the depot access agreement will continue in force indefinitely.

There are two contract review mechanisms. The first provides that during the first 12 months of the agreement the parties will conduct regular reviews of the operation of the agreement, in consultation with the Franchising Director. If either party's passenger rail services are franchised during this period, the duration of the applicable period for this review mechanism will be extended to a date which is 12 months from the date on which such a franchise commences.

The second contract review mechanism allows the Regulator to modify the depot access agreement as a consequence of any amendments he may require to be made to the Depot Access Conditions. Such modification must not have effect earlier than 60 days after the Regulator has given notice of it or later than 180 days after the depot access agreement becomes effective.

The depot access agreement specifies circumstances in which it may be suspended or terminated by either party. Suspension of rights must generally be proportionate to the breach complained of. Suspension and termination notices must each provide a reasonable grace period to provide the party in default an opportunity to rectify the default before suspension or termination takes effect.

The depot access agreement provides for remedies between the DFO and the User. Where the DFO is in default of its obligations and such default leads to a train being delayed beyond its scheduled departure time, the DFO may be obliged to pay compensation to the User on the basis set out in the depot access agreement. The DFO is similarly entitled to compensation from each User for certain delays where such User is in default of its obligations.
It is intended that compensation payments are made only in respect of delays which are above a specified threshold and up to an agreed limit.

The depot access agreement also provides for performance incentives in respect of matters other than delays. If the DFO or any User fails to meet stated performance criteria the other party is entitled to payment of specified amounts. Railtrack is not a party to this performance regime, so that if the DFO fails to perform within the performance criteria as a result of Railtrack breaching its obligations, the DFO will be liable to the User, but will not be entitled to compensation or an indemnity from Railtrack.

The DFO indemnifies each User for any expenses, above certain thresholds and up to specified limits, incurred as a result of a breach of any obligation by the DFO. Each User similarly indemnifies the DFO for any breaches of any obligations owed by such User.

The depot access agreement contains restrictions on the DFO against disposing of any interest in the depot such that it would or might cease to be the facility owner. Also, it may not create any security over its interest in the depot except on terms approved by the Regulator.

**Depot Leases**

Most existing depot leases are for a term of about seven years. They are due to be replaced on the franchising of the DFO’s business by a new lease with, in most cases, similar terms but for a duration equal to the franchise term granted. The exceptions are where the franchise is to be granted for a period of more than seven years. The provisions of longer term leases, to coincide with a longer term franchise, are presently being negotiated with Railtrack. Where such longer term leases are entered into, a number of provisions will be adjusted to reflect the longer term being granted. For depots in England and Wales these new depot leases will not confer security of tenure under Part II of the Landlord and Tenant Act 1954 by agreement between the parties.

Each depot lease incorporates the Depot Access Conditions. Where there is a conflict between the two documents, the Depot Access Conditions prevail. The depot lease may require the obligations of the DFO to be guaranteed.

The rent payable by the DFO under the depot lease has two components:
- a rent for the depot land and buildings; and
- a rent for the plant and equipment at the depot (including track).

Both of these components are payable by four-weekly instalments in arrears and are fixed for the term of the lease, unless part of the depot is closed.

Railtrack’s right to distrain for unpaid rent does not arise until after giving notice of the rent arrears in respect of any assets of the DFO which are necessary for the provision of Depot Services.

Where a depot is affected by an advertising contract or other concession which also affects one or more other depots, Railtrack must account to the DFO for the proportion allocated by the contract or concession to the depot or (if the contract or concession does not allocate a proportion) a fair and reasonable proportion, attributable to the depot, of the total income arising from that agreement.

Railtrack consents in advance to alterations or additions to the depot which are accepted under Part C of the Depot Access Conditions, or which are approved, or deemed to have been approved, in other specified ways.

Railtrack’s consent is required for all other alterations and additions (except alterations to a part of the depot which do not affect its structure). Such consent may not be unreasonably withheld or delayed.

The DFO may not transfer the depot lease or deal with it in other ways (including the grant of any security interest over the depot lease) except to the extent that the depot lease provides that it may do so.

The depot lease permits assignments and underlettings of the depot as a whole, subject to certain specified conditions, including Railtrack’s consent, which may not be unreasonably withheld or delayed. The DFO may also grant access agreements.

Granting of underleases of parts of a depot at market rent may be permitted subject to certain conditions, including Railtrack’s consent which may not be unreasonably withheld or delayed.
The DFO may create a security interest over the lease with Railtrack's consent (which may not be unreasonably withheld or delayed) provided it is not in contravention of sections 27(3) and (4) of the Act. The DFO may terminate the depot lease in two circumstances:

- by giving Railtrack at least 12 months' notice at any time during the first two years of the depot lease term. The two-year period will be repeated in the franchise lease. Upon vacating the depot, the DFO must pay to Railtrack an additional sum equal to six months' rent unless it has closed the whole depot under the closure procedure in the Railways Act; or
- by giving Railtrack at least one month's notice at any time during the depot lease term after it has closed the whole depot under the closure procedure in the Railways Act. In this case there is no requirement to make any additional payment to Railtrack upon vacating the depot.

Railtrack may terminate the depot lease if the rent is in arrears for more than 21 days, or if the DFO is in substantial or material breach of its obligations in the depot lease or the DFO or any guarantor of the DFO's obligations in the depot lease becomes insolvent. The depot lease may also be terminated in other circumstances such as the loss by the DFO of its depot licence, track access agreement or franchise agreement. Railtrack's termination rights in these circumstances are subject to certain restrictions imposed on all landlords by common law and by statute. Railtrack has agreed to defer the exercise of this right of termination for up to six months, at the request of the Franchising Director. This provision reflects the terms of the direct agreement between the Franchising Director and Railtrack which is designed to secure (amongst other things) the continuation of services in the event of unexpected termination of the depot lease. (See section 4.9, "Direct Agreements").

In addition to the options to terminate described above, the depot lease may be terminated by the DFO upon 14 days' notice if the depot is damaged or destroyed by any cause, so as to become wholly or substantially unfit for the use permitted by the Depot Access Conditions or if Railtrack has failed to reinstate the depot by the time the loss of rent insurance has expired. Either party may terminate the depot lease upon 14 days' notice if Railtrack is unable to obtain the necessary consents to reinstate the depot following destruction or damage by an insured risk.

In the event that certain changes are accepted in accordance with Part C of the Depot Access Conditions, there are provisions for the termination of underleases and other arrangements. In those circumstances the depot lease itself may be terminated under Part C of the Depot Access Conditions.

Railtrack may also terminate the depot lease for the purpose of carrying out works necessary for the operation of its railway undertaking where such works are the subject of a "Railtrack Change Proposal" under the Depot Access Conditions or are not capable of forming the subject matter of such a proposal. This right may be exercised only in relation to parts of the depot which have been identified for this purpose in the depot lease. Railtrack must give at least six months' notice of termination unless the works are urgent, when it must give at least 28 days' notice.

In certain circumstances the DFO agrees to surrender its depot lease to Railtrack. The first is the completion of a lease of the depot to a franchisee or its wholly owned subsidiary or a franchise operator. Either party may require a surrender to take place in these circumstances upon three months' notice. The other circumstances are if the DFO ceases to use or operate the depot for more than three months except in circumstances beyond the DFO's control and if the DFO is unable to use or operate the depot for a similar period other than for reasons beyond Railtrack's control. Railtrack may require a surrender in the former case and the DFO may do so in the latter case, in each case upon 20 business days' notice.

If the DFO wishes to close part only of the depot under the closure procedure in the Railways Act it must first consult with Railtrack and have regard to Railtrack's representations. If the closure procedure is successfully completed, it is proposed that the lease provisions will be altered in two ways:

- subject to certain thresholds being met, the land and buildings rent will be adjusted to take account of the closure. This may result in the rent increasing or decreasing, depending on the circumstances at the depot. The plant and equipment rent will be reduced by deducting from it the rent attributable to the plant and equipment which has become redundant by virtue of the closure; and
• Railtrack may remove any plant and equipment which has become redundant but is not obliged to do so. If Railtrack chooses not to do so, then the parties' obligations to repair and maintain such redundant plant and equipment under Part D of the Depot Access Conditions will cease upon the closure taking effect.

Collateral Agreements

The collateral agreement is a bilateral contract between Railtrack and a User and incorporates the Depot Access Conditions. This agreement creates a direct contractual relationship between Railtrack and each User, enabling the User to enforce Railtrack's obligations in the Depot Access Conditions and (where failure to perform would act to the detriment of the User) in the depot lease. It also allows Railtrack to enforce the User's obligations under the Depot Access Conditions and (where failure to perform would act to the detriment of Railtrack) in its depot access agreement. The collateral agreement also contains cross-indemnities between Railtrack and the User, subject to certain exceptions, thresholds and limits. It becomes fully effective at the same time as the depot access agreement.

Depot Access Conditions

The Depot Access Conditions are divided into the following Parts:

- Part A — Organisation of the Access Conditions and Definitions
- Part B — Modifications to the Depot Access Conditions
- Part C — Changes to the Depot
- Part D — Works, Repairs and Maintenance
- Part E — Insurance
- Part F — Access Charging
- Part G — Existing Agreements and Third Party Rights
- Part H — Litigation and Disputes
- Part I — Depot Register
- Part J — Rights Granted Over Adjacent Property
- Part K — Rights Reserved by Railtrack
- Part L — Remedies
- Part M — Environmental Protection
- Part N — Other Positive Obligations
- Part O — Other Negative Obligations
- Part P — Attribution of Costs
- Part Q — General
- Part R — Decision Criteria, Unregulated Contracts and Defeasible Rights
- Part S — Depot Work Plan

The Annexes to the Depot Access Conditions include factual details relating to the depot, attributions of responsibility and specific descriptions of the areas to which the obligations in Parts A to S relate. They also include the text of the collateral agreement. The Annexes will be customised for each depot.

The following is a summary of certain features of the National Depot Access Conditions.

Modifications to the Depot Access Conditions (Part B)

Part B provides two procedures by which the Depot Access Conditions may be changed. The first is a democratic procedure and the second is a procedure under which the Regulator may himself require changes to be made.

Under the democratic procedure, any of the DFO, any User and Railtrack may propose changes to the Depot Access Conditions ("Conditions Change Proposal"). All such proposals must go through a consultation process with the DFO, each User, Railtrack and the Franchising Director.
The DFO provides a secretariat function in relation to the consultation process, the convening and holding of depot meetings to consider any Conditions Change Proposal and the notification to interested parties of the status of such proposals.

The DFO and Users may vote through changes to the Depot Access Conditions. The percentage of votes required to approve a proposal is specified in the Depot Access Conditions and may vary from depot to depot according to what may be appropriate in the circumstances. This percentage may also be varied by the Regulator in certain circumstances. The number of votes which may be cast by the DFO and each passenger operator is based on the proportion that the number of each operator’s train departures from the depot bears to the number of all train departures from the depot during the preceding six accounting periods. Changes to the Depot Access Conditions which are voted through require the Regulator’s approval before they become effective.

If a Conditions Change Proposal seeks to alter the levels of services which the DFO provides on its rolling stock at the depot, and the proposal is not approved, the DFO is entitled to refer the matter for expert determination under the Access Dispute Resolution Rules. If either the DFO or any User is dissatisfied with the determination of the expert the matter may be referred to the Regulator on the grounds that the decision of the expert is so unreasonable that no reasonable expert could have made it.

Railtrack does not have a vote on a Conditions Change Proposal. However, if it objects to a change which is likely to have a material and adverse effect on its interest in the depot, or any other land over which the DFO has an interest under the depot lease, that change may be vetoed by Railtrack. If Railtrack exercises its right of veto in relation to a Conditions Change Proposal, the DFO or any User may appeal to the Regulator against the exercise of that veto.

In addition to the voting process described above, the Regulator is given certain rights to require changes to the Depot Access Conditions. These rights take the form of a short term right, which will normally expire within 150 days of the Depot Access Conditions first being incorporated in a document, and a long term right, which will be effective thereafter. The short term right may be exercised by the Regulator if he believes its exercise is necessary or expedient. The long term right may only be exercised if he is satisfied on reasonable grounds that the change is, or is likely to be, reasonably required to promote or achieve the Regulator’s long term objectives or to avoid or remedy unfair prejudice to any person where the need to avoid such unfair prejudice outweighs the prejudice which will, or is likely to be, sustained by any other relevant person if the change is made. Any such changes may be made only after due consultation with all affected parties, including any persons whom the Regulator considers should be consulted and with other relevant bodies such as the Franchising Director. A change will have effect not earlier than 30 days from the date on which notice of such change is given by the Regulator in the case of the short term right and not earlier than 180 days from the date of the Regulator’s notice in the case of the long term right.

Changes to the Depot (Part C)

Any of the DFO, a User or Railtrack may make a proposal for change to the depot including the services provided at the depot or the creation or amendment of certain agreements affecting the Users’ use of the depot. This is intended to enable the depot and the quality or quantity of services at the depot to develop to meet the needs of train operators. The mechanism for proposing changes is, in the case of the DFO, a User and in certain limited circumstances Railtrack, a “Proposal for Change” and in the case of Railtrack a “Railtrack Change Proposal”. Generally, Railtrack may only make such a proposal for the redevelopment or reconstruction of the depot. A proposal may take various different forms, depending on the materiality and nature of the change in question and the identity of the person making the proposal.

All Proposals for Change and Railtrack Change Proposals must go through a consultation process with the DFO, each User, Railtrack and the Franchising Director. This is co-ordinated by the DFO. The consultation process allows for a relatively quick initial evaluation and response, at no cost to the party
proposing the change (the “sponsor”). If the sponsor wishes the consultation group to participate in more
detailed evaluation after receiving their initial response to the proposal, then it must cover their costs.

A Proposal for Change or Railtrack Change Proposal requires the unanimous consent of the DFO, each
User and Railtrack and must be approved by the Regulator before it becomes effective.

A Proposal for Change or Railtrack Change Proposal will be accepted unless the DFO, a User or
Railtrack notifies the DFO within a set period that it objects to it and can establish that the change is likely
to have a material and adverse effect on its use or interest in the depot. If this right is exercised in
relation to any proposal, any party may displace such veto if it can establish (in proceedings under the
Access Dispute Resolution Rules) that implementation of the change in question would not have the
material and adverse effect which is claimed.

If a proposal is not accepted, it may still go ahead if Railtrack and/or any of the Users or the DFO
provide appropriate financial undertakings to the others.

On acceptance of a Proposal for Change or Railtrack Change Proposal the DFO must submit the
proposed amendments to the Regulator for approval. Part C contains provision for an appeal by any
aggrieved party against the approval or rejection of a Proposal for Change or Railtrack Change Proposal on
the grounds that it is unfairly prejudicial to that person, where such unfair prejudice outweighs the
prejudice which any other relevant person would otherwise sustain or would be likely to sustain. Any such
appeal is made in accordance with the Access Dispute Resolution Rules. No change may be implemented
pending the result of an appeal.

A Railtrack Change Proposal may result in termination of the relevant depot lease in whole or in part.

Works, Repairs and Maintenance (Part D)

Part D includes various provisions relating to the carrying out of works, repairs and maintenance at the
depot. The DFO may restrict, or be required by Railtrack to restrict, permission to use the depot, thereby
limiting the rights of access of Users, either to carry out certain types of works, or if there is an emergency.

Normally, the DFO must provide reasonable notice of any intended restrictions and must supply
details of a reasonable programme for the carrying out of the works. It must also use its reasonable
efforts to consult with each User, and, in so far as it is reasonably practicable, must minimise the
extent and period of any restriction and make reasonable alternative arrangements so as to enable each
User and its associates to use the depot with the minimum of disruption, difficulty or inconvenience.

Part D also sets out Railtrack’s and the DFO’s respective maintenance and repair obligations at the
depot, both in relation to the depot and to certain equipment. This obligation extends to ensuring that
the equipment is used properly. Broadly, the DFO is responsible for routine maintenance and certain
repairs and Railtrack is responsible for structural repairs and some maintenance and, in certain
circumstances, for renewal. Part D includes self-help remedies for both the DFO and Railtrack in the event
that the other fails to comply with its maintenance and repair obligations.

Part D also contains provisions which allocate excess maintenance costs between Railtrack and the
DFO. This provides that when the DFO’s maintenance costs in any accounting year for certain specified
pieces of equipment and elements of the depot exceed certain thresholds, the excess costs above such
thresholds will be borne 80 per cent. by Railtrack and as to the remainder by the DFO. The items of
equipment and elements of the depot which are covered by this regime are those which are specified in
the Depot Access Conditions as being “critical” to the operation of the depot.

Part D also provides that Railtrack may charge to the DFO the reasonable cost of maintenance of the
permanent way between the depot boundary and the point where the first rail joint occurs. Where a depot
has continuous weld track, it has been agreed that the template may be customised for that depot to
provide that Railtrack may charge reasonable costs of maintenance of the permanent way between the
depot boundary and the point 18 metres inside the depot boundary.
Insurance (Part E)

Part E contains provisions for the insurance of the depot and the application of relevant insurance proceeds.

Railtrack has undertaken the responsibility for effecting property insurance for all depots since 4 February 1996 (the "Effective Date", being the date on which the first franchises commenced operation in the private sector). The DFO is responsible for arranging insurance against third party liability and certain other risks. The costs of Railtrack's insurance policy are payable by the DFO. Railtrack's property insurance policy is subject to an excess for each DFO. This excess is, in general, currently 0.15 per cent. of the DFO's total annual turnover less certain deductions (with a minimum excess of £5,000 and a maximum of £175,000 for each loss). In the event of any damage, the amount of the excess will be payable by the DFO. If an insured risk occurs and affects more than one depot or station operated by a TOC, the excess will be payable only once in relation to that occurrence.

Railtrack must apply any insurance monies received by it (including money received by the DFO and passed to Railtrack) in the repair of any damage to or reinstatement of the depot. It must consult with the DFO and each User on any such rebuilding. There is a requirement to rebuild buildings to a modern equivalent standard and not their original form, unless required to do otherwise by Railtrack's landlord (if any) or due to the building being listed. The DFO and Users may elect to rebuild to the original form prior to the Effective Date.

None of the parties bound by the Depot Access Conditions may do anything which would invalidate any relevant insurance policy or increase the premium payable under that policy, unless it has paid the amount of any such increase.

Access Charging (Part F)

The access charges payable by a User consist of the Minimum Charge, the Variable Charges and the Contingent Charges discussed above.

The DFO is obliged to maintain financial records in respect of the Depot Services provided to each User.

Existing Agreements and Third Party Rights (Part G)

Part G deals with the effects of certain types of pre-existing agreements with third parties or existing rights of third parties on the DFO's or a User's use of the depot. Part G contains certain warranties and indemnities given by both Railtrack and the DFO, which are intended to ensure disclosure of any relevant restrictions and to allocate liability for any non-disclosure. Users' permissions to use a depot are subject to any existing agreements identified specifically or generally in the Depot Access Conditions.

By virtue of provisions in Part G, Railtrack and/or the DFO may take certain actions in respect of certain specified agreements (such as implementing or amending them) without the necessity to comply with the procedure by which such changes would otherwise need to be approved under Part C of the Depot Access Conditions.

Litigation and Disputes (Part H)

Part H provides that the DFO, each User and Railtrack will notify each other of any relevant disputes, claims or litigation affecting the depot. These provisions are subject to the provisions regarding claims for environmental liability which are handled separately in accordance with the provisions of Part M of the Depot Access Conditions. The DFO has the authority to carry on litigation affecting the depot on behalf of all Users in certain circumstances and below specified financial thresholds.

Most disputes between any of the DFO, any Users or Railtrack must be referred initially to the Access Dispute Resolution Committee established under the Access Dispute Resolution Rules.
**Depot Register (Part I)**

Part I provides for the DFO to create and maintain a central register ("Depot Register") of certain agreements, rights, works and documents (including records of environmental incidents) affecting the depot. The Depot Register serves mainly as a disclosure mechanism for Users, and is also open for inspection by persons whom the Regulator considers should be entitled to gain access to it. It is intended to inform them of all material events or agreements which may have an impact on the depot or its operation.

Given the size of the task of assembling certain parts of the Depot Register, particularly that containing the existing agreements, the Regulator has agreed to a grace period for full compliance expiring on 31 October 1999.

**Rights Granted over Adjacent Property (Part J)**

Part J sets out rights granted by Railtrack to the DFO over certain property which belongs to Railtrack and is adjacent to the depot. Where such rights are necessary for the use of a depot by Users, they are granted to Users by the DFO as part of the permission to use the depot.

**Rights Reserved by Railtrack (Part K)**

Part K sets out all rights which Railtrack may exercise over the depot. The exercise of those rights must, so far as they involve works or disruption to the depot, be approved in accordance with Part C or be carried out in accordance with Part D. Railtrack must ensure its rights under Part K are exercised in such a way as not to prejudice the use of the depot by the DFO or Users.

**Remedies (Part L)**

Part L provides for remedies between Railtrack and the DFO. Where Railtrack is in default of its obligations and such default leads to a train which is ready to leave the depot being delayed beyond its scheduled departure time, Railtrack may be obliged to compensate the DFO on the basis set out in the Depot Access Conditions.

It is intended that compensation payments are made only in respect of periods of delay above a specified threshold and up to an agreed limit.

Railtrack indemnifies the DFO for any expenses incurred (subject to certain exceptions, above certain thresholds and up to specified limits) as a result of any breach of obligation by Railtrack. The DFO similarly indemnifies Railtrack for any breaches of the DFO’s obligations. Recovery may be made for direct costs, but there is no recovery under the indemnities for revenue loss.

There are separate remedies provisions in the depot access agreement and the collateral agreement.

No person is to be held responsible for any failure to carry out its obligations under the depot access agreement, depot lease or collateral agreement if such obligations cannot be carried out as a result of certain events which are beyond the reasonable control of the party in breach of its obligations.

**Environmental Protection (Part M)**

Part M is concerned with responsibility for certain environmental damage at the depot or for circumstances likely to give rise to such environmental damage, defined as an "Environmental Condition".

Railtrack indemnifies the DFO against loss resulting from any Environmental Condition unless it can show that the loss arose as a result of a breach by the DFO or any User of its obligations under the depot lease or its depot access agreement (as appropriate) or of any "Legal Requirement", or any act of the DFO or any User which has resulted in a claim by a third party in respect of environmental damage. The DFO indemnifies Railtrack against any loss which Railtrack can demonstrate arose as a result of such defaults by the DFO or any User.
Each User undertakes to ensure that it does nothing to give rise to the DFO being liable to Railtrack and indemnifies the DFO against liability for Environmental Conditions arising from a breach of its obligations.

Each User must promptly notify the DFO, and the DFO must notify Railtrack, of the occurrence of any circumstances likely to give rise to an Environmental Condition. Depending on the circumstances the DFO may be entitled to remedy the Environmental Condition at the expense of Railtrack.

Part M makes provision for which party is responsible for carrying out remedial work and for the conduct of litigation. The DFO is primarily responsible for remediing Environmental Conditions which it has caused. If, in Railtrack's reasonable opinion, urgent action is necessary to prevent, mitigate or remedy any Environmental Condition and it is not practicable for the DFO to take such urgent action, then Railtrack may take reasonable steps itself. The costs of remedial action are allocated in accordance with the indemnities described above.

Other Obligations (Parts N and O)

Parts N and O set out miscellaneous obligations of Railtrack, the DFO and any User.

For example, the DFO has an obligation to provide Depot Services in a workmanlike manner, with reasonable skill and care, and to meet and maintain recognised industry standards. Obligations of the DFO and Users include obligations not to alter or to carry out unauthorised works to the depot, not to use the depot otherwise than for specified purposes and not to permit a breach of the Depot Access Conditions by any other person.

The DFO is not restricted to using the depot for the provision of Depot Services and the maintenance of its own rolling stock. It may also use the depot for Heavy Maintenance and other services of an engineering nature which are compatible with these uses. It may also, with the consent of Railtrack (which may not be unreasonably withheld), use the depot for any other purpose which is not incompatible with these uses or the operation of the network.

Attribution of Costs (Part P)

Part P deals with the attribution of certain costs between Railtrack, the DFO and each User. Any attribution of costs incurred by Railtrack, the DFO or any User in complying with their obligations under the Conditions or imposed by a change in the law is determined on a fair and equitable basis.

Costs relating to Proposals for Change or a Railtrack Change Proposal or costs such as maintenance or repair are covered by the relevant sections of the Depot Access Conditions.

Railtrack and the DFO are both obliged to secure the lowest price reasonably obtainable for any items for which they intend to recoup the costs from another party.

General (Part Q)

Part Q contains general provisions in respect of confidentiality, payments of charges and other legal provisions.

Decision Criteria, Unregulated Contracts and Defeasible Rights (Part R)

Part R provides that when determining its use of capacity of the depot, the DFO should have due regard to the necessity or desirability of certain considerations (the "Decision Criteria"). The Decision Criteria are designed to ensure appropriate priority is given to contracts for the provision of railway services but that due weight is also given to consideration of non-rail agreements.

Any unregulated agreement which is entered into after the Depot Access Conditions first become effective must contain provisions which entitle the DFO not to perform the services under that agreement, to the extent that the DFO determines it is necessary having due regard to the Decision Criteria. An unregulated agreement need not contain such provisions if the facilities of the depot have
been increased wholly or mainly for the purpose of performing the unregulated agreement, or if all the Users consent.

Part R also qualifies the rights of Users and the DFO to agree to increase the existing level of services provided. If the result of the increase would be to leave insufficient capacity to provide Light Maintenance Services to a new User the Regulator may require the DFO to stop providing the increased services if that increase in services was sought in the three years before an application by a new User for a regulated access agreement. The Regulator may not make such a requirement if he is satisfied that the increase was made for a purpose other than the exclusion of the new Users.

**Depot Work Plan (Part S)**

Part S requires the DFO to draw up a Depot Work Plan which specifies the scheduling, method of resourcing and the utilisation of maintenance facilities at the depot.

The Depot Work Plan must show the different categories of Depot Services which are provided to each User, the maintenance services which the DFO provides to itself and services which are provided to other persons which affect the ability of the DFO to provide services at the depot. The DFO must comply with the Depot Work Plan in all material respects in carrying out work at the depot.

In certain circumstances the Depot Work Plan must be revised or confirmed by the DFO. In either case the DFO is obliged to consult with each User and to take into account any representations they may make.

The Depot Work Plan will include an allowance for the DFO’s and each User’s “Work Arising”. In the case of each User this is defined in the User’s depot access agreement and in the case of the DFO, in the Depot Access Conditions. Any User which considers that its allowance for Work Arising is insufficient may challenge the Depot Work Plan. The User may refer the matter to the determination of an expert and such User or the DFO may appeal to the Regulator against the expert’s decision.

Any User is also entitled to object to any other aspects of the Depot Work Plan on the basis that its commercial interests are affected materially and adversely. The User may refer the matter to the determination of an expert and such User or the DFO may appeal to the Regulator against the expert’s decision.
4.7 ROLLING STOCK ARRANGEMENTS

The Rolling Stock Fleet

The three ROSCOs—Angel Train Contracts Limited, Eversholt Leasing Limited and Porterbrook Leasing Company Limited—together own or lease around 11,000 vehicles, approximately 10,400 of which are leased to TOCs to run current British Rail or franchised passenger services. Each ROSCO has inherited from British Rail a mixed portfolio of passenger rolling stock of different types and ages. Each ROSCO is responsible for securing its own finance for any new rolling stock and for procuring heavy maintenance for their fleets. Most TOCs lease rolling stock from at least two of the ROSCOs and have negotiated short term leases for a portion of their rolling stock, an arrangement which gives some flexibility to franchise operators to adjust the size of their fleet without financial penalty. The TOCs are free to obtain additional rolling stock from other sources if they wish and certain TOCs have done so.


There are small amounts of rolling stock owned by rolling stock suppliers other than the ROSCOs. Certain TOCs have entered into leases of rolling stock which is not yet in service. In such cases, the lease terms differ from those described below.

Pursuant to the terms of franchise agreements, certain TOCs may enter into leases in respect of rolling stock which is not yet in service. These leases need not necessarily be with a ROSCO. In such cases, the lease terms may differ from those described below.

The Master Lease

Each of the ROSCOs has entered into a Master Lease with those TOCs which are its customers. The Master Lease contains standard terms and conditions for the leasing of rolling stock to TOCs and is drafted as an operating (rather than finance) lease. In conjunction with the Master Lease, the ROSCOs and TOCs have entered into Lease Supplements for each fleet of vehicles on lease. These set out the particular terms of individual leasing transactions, such as rentals and lease length.

Certain TOCs have taken rolling stock on lease from the ROSCOs under different terms to those described below due to special circumstances.

The summary below provides an overview of some of the provisions of the Master Lease.

Summary of Obligations

The principal obligations of a TOC under a Master Lease include:

(a) payment of rent to the ROSCO;
(b) performance of Running Maintenance and Repairs;
(c) use of the rolling stock in accordance with the criteria specified in the Lease Supplement;
(d) insurance of the rolling stock against third party liabilities and repayment to the ROSCO of premiums paid by the ROSCO in respect of property damage insurance;
(e) indemnification of the ROSCO against certain losses relating to the leasing, use and operation of rolling stock in certain circumstances;
(f) return of the rolling stock to the ROSCO at the end of the lease period in the condition specified in the Lease Supplement; and
(g) rectification, or contributing to the cost of rectifying, certain faults on the rolling stock.

The principal obligations of a ROSCO under a Master Lease include:

(a) delivery of the rolling stock to the TOC in an agreed condition;
(b) allowing the TOC quiet enjoyment of the rolling stock;
(c) procurement of Heavy Maintenance and Heavy Repairs;
(d) effecting and paying for any Mandatory Modifications. During the term of the Initial Leases, however, HM Government has agreed to share in the cost of Mandatory Modifications above a threshold with up to 10 per cent. of the cost being payable by affected TOCs (such liability being
capped by the Franchising Director at five per cent. of the total of the affected TOC's relevant lease rental charges for the relevant year); and

(e) procurement of property damage insurance of rolling stock (although responsibility for damage (save in respect of Heavy Repairs) and payment of an agreed value (as specified in the relevant lease) in the event of a total loss remains with the TOC).

Rentals

The "equivalent cost pricing" method was used to set rentals for the Initial Leases. Under this pricing method, when the franchise operator analyses its overall costs of running rolling stock— including the lease rentals—it should be, in theory, indifferent as to the age of any rolling stock which it leases for a particular application.

The Initial Lease rentals are made up of a capital element, which is fixed for the whole of the Initial Lease period; and a non-capital element which is adjusted each year during the Initial Lease period by the change in the Producer Prices Index less three per cent. per annum. The non-capital element comprises a heavy maintenance charge, to recover evenly the maintenance costs expected to be incurred by the ROSCO over the economic life of the stock and a charge to recover overheads and certain other costs. In the Initial Lease periods, rentals are not adjusted to take account of changes in tax or interest rates.

The level of rental may increase or decrease if the assumed mileage (specified in the Lease Supplement) is exceeded or not attained or if the use of the rolling stock is different from the permitted use specified in the Lease Supplement and, in either case, this results in an increase or decrease in maintenance costs.

In respect of certain newly introduced vehicles, the rental payable by the TOC will be stepped up to its full contractual amount over a period of time as availability improves.

Rental payments by the TOCs are of equal amounts (subject to the adjustment of the non-capital element) and are to be made monthly in advance. The Master Lease adopts the principle that, in the event that the TOC is deprived of the use of a vehicle due to circumstances for which the ROSCO is responsible, the ROSCO is required to rebate the "daily rate" (equivalent to the rental which the TOC continues to pay) for the relevant period.

Permitted Use

Permitted use is specified in each Lease Supplement by reference to the specific routes on which the TOC may operate the rolling stock. There are additional usage restrictions on any rolling stock which was funded by a PTE.

The TOC must not use rolling stock in any manner contrary to, or inconsistent with, its permitted use. A TOC may change the permitted use of rolling stock with the ROSCO's consent, which may only be withheld if the relevant rolling stock is technically incompatible with the proposed new permitted use or the relevant track access agreement does not permit the proposed new permitted use. If a ROSCO agrees to a change in the permitted use it may impose reasonable conditions including an increased rental to reflect any additional costs incurred by it as a result of such change in Permitted Use.

Running Maintenance and Repairs

The TOC has responsibility for day-to-day operation and safety of the rolling stock.

Except as affected by Heavy Maintenance, the TOC must keep each item of rolling stock in as good repair during the term of the lease (fair wear and tear excepted) as its condition on delivery and must carry out Running Maintenance and Repairs on the basis set out in the Lease Supplement. Changes to the requirements for Running Maintenance may be made with the consent of the ROSCOs or, without consent, in certain circumstances set out in the Master Lease.

The TOC is also responsible for repairing all "accepted faults" (which are listed in the Lease Supplement) to the extent required to ensure that the relevant vehicle is capable of use in revenue-earning
service without accelerating the otherwise expected depreciation in value; and for repairing any accidental damage (unless the rolling stock is in the ROSCO’s control at the time the accident occurs or is to be otherwise repaired by the ROSCO pursuant to the Master Lease).

Heavy Maintenance

General

The ROSCO must perform or procure Heavy Maintenance on rolling stock in accordance with the “heavy maintenance programme” set out in the relevant Lease Supplement. The heavy maintenance programme may be amended with the consent of the TOC or, without consent, in certain circumstances set out in the Master Lease. The rolling stock must meet the performance criteria specified in the relevant Lease Supplement when it comes out of Heavy Maintenance, to the extent that these are affected by the work done.

Heavy Maintenance will be carried out by the Heavy Maintenance performer specified in the relevant Lease Supplement. The identity or location of the Heavy Maintenance performer may only be changed with the consent of the relevant TOC.

The ROSCO is responsible for movements of rolling stock to and from the location where Heavy Maintenance is performed, where this is outside the TOC’s area of operations. If rolling stock is not re-delivered to the TOC within the agreed time for performance of the Heavy Maintenance (as set out in the Lease Supplement), the ROSCO must rebate to the TOC (which continues to pay rentals) the daily rate until the rolling stock is returned unless, amongst other things, there is a notice of default outstanding or (if agreed in the relevant Lease Supplement) delay is due to certain events of force majeure. Similarly, if the TOC is late delivering rolling stock to the ROSCO for Heavy Maintenance, the TOC must pay the daily rate to the ROSCO to compensate for late delivery.

Defective Heavy Maintenance

Subject as set out below, if rolling stock becomes damaged, unserviceable or otherwise unfit for use because of defective Heavy Maintenance or otherwise whilst it is in the possession of the ROSCO, the ROSCO must arrange and pay for repair of the rolling stock unless the damage arose as a result of acts or omissions of a TOC or the depot which performed Running Maintenance and Repairs on the TOC’s behalf.

In addition, the ROSCOs provide warranties in the Master Lease in respect of the performance of Heavy Maintenance. The ROSCOs are responsible for making good any defect relating to workmanship or installed parts, for the “warranty period” of 12 months from redelivery to the TOC of the rolling stock after Heavy Maintenance or Heavy Repairs. The ROSCOs are also responsible for making good defects in respect of installed parts supplied with warranties in excess of the 12 month warranty period.

If the cost of repair (other than in respect of warranty work) is less than or equal to the “heavy repair threshold” specified in the relevant Lease Supplement, the TOC is responsible for carrying out the work (provided it has the necessary facilities and technical ability) and the TOC will bear the cost. If the TOC carries out the repairs and the cost exceeds the threshold, then the ROSCO will bear the whole cost of those repairs. If the repairs are not carried out by or on behalf of the TOC, the ROSCO will bear the whole cost of those repairs (whether above or below the threshold). The heavy repair threshold was agreed to avoid small invoices passing between a TOC and a ROSCO.

The full cost of any warranty work is to be borne by the ROSCO, except that the TOC pays for the labour costs involved in removing and refitting defective parts during an extended warranty period.

Warranty work and Heavy Repairs costing more than the heavy repair threshold will be carried out by the Heavy Maintenance performer specified in the Lease Supplement.

Save in specified circumstances, if a TOC is deprived of all operational use of rolling stock because it is damaged, unserviceable or unfit for use (or does not meet its performance criteria) as a direct consequence
of defective Heavy Maintenance or Heavy Repairs, the ROSCO must, on notification from the TOC, either:
(a) rebate rentals to the TOC (which continues to pay rentals) at the daily rate for the number of days elapsed until the return to the TOC of the rolling stock; or
(b) provide the TOC with alternative, operationally-comparable rolling stock.

The provisions of the Master Lease relating to defective Heavy Maintenance do not apply in relation to Heavy Maintenance performed by a TOC on rolling stock leased by that TOC from a ROSCO for so long as the TOC has a Heavy Maintenance contract in force with the ROSCO.

Modifications

Mandatory Modifications: Under the Master Lease, the ROSCO is responsible for arranging and for paying a minimum of 90 per cent. of the cost of any Mandatory Modifications. Subject to the cap by the Franchising Director (described below), a TOC will be required to meet a maximum of ten per cent. of the cost of a Mandatory Modification. Under the terms of the Master Lease, a TOC will be required to meet only a proportionate amount of ten per cent. of the cost of a Mandatory Modification where the remaining expected life of the rolling stock is greater than the remaining term of the lease of that rolling stock.

These costs will be partly underpinned by HM Government and the Franchising Director.

Under these arrangements the Secretary of State will contribute to the ROSCOs’ costs of implementing Mandatory Modifications over a certain threshold. The European Commission has confirmed that this support to the ROSCOs above this threshold does not constitute state aid. The underpinning provided by HM Government to the ROSCOs only applies for the unextended initial lease periods of the Initial Leases specified in the underpinning agreements.

Should a TOC’s contribution in respect of Initial Leases in any one year exceed five per cent. of the total of that TOC’s relevant rolling stock lease rental charges for that year, the Franchising Director will make a payment to the TOC in respect of the excess under the terms of the franchise agreement. The cap by the Franchising Director of a TOC’s contribution to Mandatory Modifications will apply for each Lease Supplement as extended in accordance with its terms.

If a ROSCO reasonably determines that the cost of any Mandatory Modification would be uneconomic, it will consult with the TOC to decide what action should be taken, which may result in termination of the lease with respect to the relevant rolling stock. If the ROSCO and a TOC are unable to agree within 28 days, then the ROSCO may terminate the lease of those vehicles affected by the Mandatory Modification and the parties must use all reasonable endeavours to enter into a lease of substitute rolling stock. Following any such termination, the TOC may purchase the rolling stock at open market value.

Save in specified circumstances, if a Mandatory Modification is required to be carried out on rolling stock and, as a result, such rolling stock is not able to be in revenue-earning service when it would otherwise have been, the ROSCO must, on notification from the TOC, either:
(a) rebate rentals to the TOC (which continues to pay rentals) at the daily rate for the number of days elapsed until the return to the TOC of the rolling stock; or
(b) provide the TOC with alternative, operationally-comparable rolling stock.

The TOC has an obligation to take reasonable steps to ensure that the rolling stock which is being modified is not required to be in revenue earning service during the relevant period.

Events which are very similar to the definition of Mandatory Modifications contained in the Master Lease in certain circumstances constitute force majeure in the franchise agreement.

Other modifications: The TOC may modify the rolling stock only with the consent of the ROSCO, unless the modification does not diminish the value, utility, performance or condition of the rolling stock and details of such modifications are notified by the TOC to the ROSCO prior to the modifications being made.
Unless otherwise agreed, such modifications will be paid for by the TOC and must be removed before re-delivery of the rolling stock to the ROSCO, save to the extent of the ROSCO's obligations in respect of Mandatory Modifications.

Safety
The TOC must use the rolling stock only in accordance with:
(a) HM Government, HSE or Railtrack recommended use; and
(b) Railway Group Standards and operating practices published or approved by Railtrack.

The TOC is responsible for performing and the cost of performing changes to Running Maintenance and Repairs required under the safety arrangements specified in the Master Lease. The ROSCO is responsible for performing and the cost of performing changes to Heavy Maintenance required under the safety arrangements specified in the Master Lease and for arranging any Mandatory Modifications (as described above).

Design or Endemic Faults
The ROSCO must rectify "design or endemic faults", which are defects in the design, construction or materials and in the manufacture or modification of the rolling stock which (a) render or will render in the "relevant period" (as specified in the Lease Supplement) the rolling stock either unfit for its permitted use or unable to meet its performance criteria; (b) affect in the relevant period a specified percentage of rolling stock in the "relevant class" (as specified in the Lease Supplement); and (c) cost more than the "design or endemic No. 1 threshold" (set out in the Lease Supplement) per vehicle to rectify. The threshold may be met where the fault affects a number of the same components on the vehicle.

"Design or endemic faults" exclude, amongst other things, accepted faults (which are listed in the Lease Supplement); faults caused by an accident or because the TOC does not comply with its obligations under the Master Lease; and faults scheduled to be dealt with through either the running or the heavy maintenance programmes.

The design or endemic No. 1 thresholds in respect of the year commencing 1 April 1994 were as follows:

(a) Locomotives and HST power cars £12,000
(b) Other powered vehicles £8,000
(c) Hauled stock £5,000

For subsequent years, these thresholds are adjusted to reflect changes in the Producer Prices Index.

The total cost of rectifying a design or endemic fault up to the design or endemic No. 1 threshold is paid by the TOC. Subject to the provision described below, the costs above the threshold are divided, with the ROSCO bearing 90 per cent. and the TOC bearing ten per cent.

In any one financial year, the TOC's liability is capped at an amount equivalent to two per cent. of the annual rental paid by the TOC to that ROSCO in respect of the relevant class affected by any design or endemic faults.

Save in specified circumstances, if rolling stock affected by a design or endemic fault is not able to be in revenue-earning service when it would otherwise have been, the ROSCO must, on notification from the TOC, either:
(a) rebate rentals to the TOC (which continues to pay rentals) at the daily rate for the number of days elapsed until the return to the TOC of the rolling stock; or
(b) provide the TOC with alternative, operationally-comparable rolling stock.

The TOC has an obligation to take reasonable steps to ensure that the rolling stock which is being rectified is not required to be in revenue-earning service in the relevant period.

If the ROSCO reasonably determines that the cost of rectifying a design or endemic fault would be uneconomic, it will consult with the TOC to decide what action should be taken, which may involve termination of the lease with respect to the affected rolling stock. If the TOC and the ROSCO are unable
to agree within 28 days, the ROSCO may terminate the lease with respect to the affected rolling stock and the parties must use all reasonable endeavours to enter into a lease of substitute rolling stock. Following any such termination, the TOC may purchase the relevant rolling stock at open market value.

Events described as “endemic faults”, in certain circumstances constitute **force majeure** in the franchise agreement. The definition is similar but contains no threshold.

**Major Faults**

The ROSCO must rectify major faults, being faults which render the rolling stock either unfit for its permitted use or unable to meet its performance criteria and cost more than £20,000 per vehicle to rectify. Major faults exclude accepted faults, design or endemic faults, faults which are scheduled to be dealt with through either the running or heavy maintenance programmes and faults caused by an accident or the TOC not complying with its obligations under the Master Lease.

The first £20,000 of the total cost of rectifying a major fault will be borne by the TOC and above £20,000 the costs will be divided. The ROSCO bears 90 per cent. and the TOC bears 10 per cent. of the excess. The above threshold is subject to adjustment to reflect changes in the Producer Prices Index.

If the ROSCO reasonably determines that the cost of rectifying a major fault would be uneconomic, it will consult with the TOC to decide what action should be taken, which may involve termination of the lease with respect to the affected rolling stock. If the TOC and the ROSCO are unable to agree within 28 days, the **ROSCO may terminate the lease with respect to the affected rolling stock and the parties must use all reasonable endeavours to enter into a lease of substitute rolling stock.** Following any such termination, the TOC may purchase the relevant rolling stock at open market value.

Save in specified circumstances, if rolling stock affected by a major fault is not able to be in revenue-earning service when it would otherwise have been, the ROSCO must, on notification from the TOC, either:

(a) rebate rentals to the TOC (which continues to pay rentals) at the daily rate for the number of days elapsed until the return to the TOC of the rolling stock; or
(b) provide the TOC with alternative, operationally-comparable rolling stock.

The TOC has an obligation to take reasonable steps to ensure that the rolling stock which is being rectified is not required to be in revenue-earning service in the relevant period.

To the extent that the performance criteria are affected by the rectification of a major fault these must be met when the vehicle is re-delivered.

If it subsequently transpires that a major fault is a design or endemic fault, the ROSCO must pay the TOC an amount to put the TOC in the position it would have been in if the fault had always been treated as a design or endemic fault. This only applies to rolling stock rectified after notice of such fault has been served on the ROSCO. For rolling stock rectified prior to notification to the ROSCO, such amount will only be payable in respect of one vehicle.

**Sub-leasing**

The Master Lease permits a TOC, in principle, to sub-lease rolling stock on at least equivalent terms (other than as to rent) as the Master Lease either (a) without the consent of the ROSCO to a licensed operator for up to 30 days per vehicle in any one year or (b) with the ROSCO’s consent, which will be granted in the case of a sub-lease to another franchisee or franchise operator for up to the balance of the lease term.

The TOC remains primarily liable under the Master Lease despite the existence of a sub-lease. The ROSCO may require a sub-lease with a term longer than six months to be assigned by way of security to it.

**Insurance and Events of Loss**

The Master Lease sets out details of property damage and third party liability insurance required to be taken out in respect of the rolling stock and its operation.
The ROSCOs are responsible for arranging for property damage insurance to be available in respect of the rolling stock which they own.

The premiums paid by the ROSCOs are recharged to the TOCs. Under the Master Lease, the ROSCO is responsible for ensuring that the property insurance continues to be maintained unless it is agreed that the TOC will effect it.

The TOC is responsible for the procurement of all third party liability insurance, under which the ROSCO must be named as an additional insured.

Each party has a right to approve the identity of the insurers or reinsurers in the case of insurance to be provided by the other party. If a TOC fails to maintain any insurance for which it is responsible, then the ROSCO has a right to procure that such insurance is put in place and to reclaim the premiums from the TOC. If the ROSCO fails to maintain insurance for which it is responsible then the TOC will have the right to put the insurance in place and to reclaim premiums it has paid from the ROSCO.

In the case of an actual or constructive loss of rolling stock, the TOC is required to ensure that there is paid to the ROSCO, within 120 days of the relevant event (or, if earlier, on receipt of the insurance proceeds), the agreed value of such rolling stock (generally being the amount in respect of which property damage insurance will have been taken out).

The Master Lease has been reviewed (and amended as necessary) to reflect the final form of the property damage insurance policy (see section 6.1, "Insurance").

**Delivery and Re-delivery**

For the Initial Leases only, the TOCs are deemed to have taken delivery of the rolling stock on an "as is, where is" basis.

The TOCs are required to re-deliver the rolling stock on expiry of the leases in a condition consistent with the position at that time of the relevant rolling stock in its heavy and running maintenance programmes and subject to any specific return conditions specified in the relevant Lease Supplement.

**Events of Default**

The Master Lease contains various events of default which may entitle the ROSCO to terminate one or more of the rolling stock leases with the relevant TOC.

These include failure to pay rent or breach of other provisions of the lease, a default on other financial indebtedness by the TOC or the franchisee, the insolvency of the TOC or the franchisee and the termination of the TOC's franchise agreement, licences or any relevant track access agreement.

Depending on the event of default, the ROSCO may be obliged to give the TOC a period to remedy the default before it can terminate the lease. The ROSCO must always serve a notice of default informing the TOC that it is in default and, if capable of remedy, requiring the immediate remedy of the same before it is able to terminate the lease of any rolling stock.

If the lease is terminated due to an event of default, the TOC must pay the ROSCO a termination sum calculated by reference to the present value of the rentals due over the remainder of the lease period with credit being given for the net economic return to the ROSCO from any lease or other disposition of the rolling stock entered into within three months of the date of termination.

**Quiet Enjoyment**

Provided the TOC is not in default of its obligations under the lease, the ROSCO must not interfere with the TOC's use, possession and enjoyment of the rolling stock.

The ROSCO must also procure a quiet enjoyment covenant from any provider of finance to it which has an ownership or security interest in the rolling stock or the lease, together with an undertaking that such financier will perform the ROSCO's obligations under the Master Lease in the event that the financier wishes to enforce its rights over the rolling stock or the lease.
**Voluntary Termination by the TOC**

The TOC may terminate the lease before the end of the relevant lease period by six months’ notice to the ROSCO and upon payment of a termination sum calculated by reference to the present value of rentals due over the remainder of the lease period with credit being given for the net economic return to the ROSCO from any lease or other disposition of the rolling stock entered into within three months of the date of termination.

The TOC may decide not to terminate after it receives notice of the amount it would have to pay for voluntary termination from the ROSCO.

**ROSCO Insolvency**

If certain specified insolvency events occur to a ROSCO and either it fails to perform its Heavy Maintenance obligations or the TOC can demonstrate that the ROSCO will not be able to perform its Heavy Maintenance obligations, the TOC may withhold the non-capital element from each future rent payment.

**General Indemnity**

The Master Lease contains an indemnity from the TOC in favour of the ROSCO and any financier against all losses specified in the Master Lease suffered in connection with the leasing, use or operation of rolling stock. The indemnity covers a financier only insofar as it relates to claims by third parties. The indemnity does not apply in certain circumstances, such as where the losses incurred arise as a result of the ROSCO’s or the financier’s misconduct, gross negligence or recklessness, or where losses arise out of the termination of any funding, hedging or similar financing arrangements or as a result of the loss of anticipated income, profit or gain.

**Provision of Financial Information**

Under the terms of the Master Lease the ROSCO will receive annual audited accounts and quarterly, unaudited management accounts in respect of the TOC.

**Disputes Resolution Procedure**

Any dispute arising under the Master Lease is to be dealt with by mediation followed, if necessary, by arbitration. The procedures for mediation and arbitration are subject to the version of The Railway Industry Dispute Resolution Rules which has been initialed by all TOCs and ROSCOs. Further details of The Railway Industry Dispute Resolution Rules are described in section 6.2, “Dispute Resolution, Claims between Operators and Claims by Third Parties”.

**Lease Periods**

**Long-term Leases**

The Initial Leases for stock other than that which is near life-expired or on short-term lease, were generally intended to match the timing and length of the first franchise period as this was expected to be at the time the leases were entered into. Most of the rolling stock leased to the nine TOCs which were the subject of the pre-qualification document issued in December 1994 (the “initial TOCs”) has been leased on leases of eight years from 1 April 1994. Most of the rolling stock leased to the remaining 16 TOCs is leased on leases of ten years from 1 April 1994.

All these eight or ten year leases may be extended to match the shorter of the length of a TOC’s franchise and the expected remaining life of the rolling stock as specified in the relevant Lease Supplements (“expected life”), subject to a maximum extension of 15 years from the effective date of the extension notice. No option to extend may be exercised so as to take effect after the date falling 28 days after the commencement of the TOC’s franchise (or, if earlier, 31 March 1999). An extension notice must be irrevocable, and given so that its effective date is the first day of a month, and the notice must be given not less than 14 days prior to its effective date. In the case of such extension, the rental for the initial eight
(or 10) years of the lease will remain as originally agreed. The rental over the remaining period of the lease will be determined according to the terms of Clause 4.3 of the relevant Lease Supplements. There are certain rights of dispute in accordance with the Dispute Resolution Rules (as defined in the Master Lease) over rental calculations contained within this Clause.

**Short-term Leases**

Most TOCs have taken a proportion of their rolling stock with an expected life of more than eight years on short-term lease for four years from 1 April 1994 (for the initial TOCs) or only six years from 1 April 1994 (for other TOCs). The TOC has the option (exercisable on 12 months' notice) to extend the term of these leases for two further periods of two years (i.e. making a total lease length of eight or ten years respectively). There is a premium included in the rental for these leases.

**Near Life-expired Rolling Stock**

Where rolling stock has an expected life of less than eight years from 1 April 1994, different arrangements generally apply.

Where such rolling stock is initially leased for the remainder of its expected life, the TOC generally has an option to extend the lease (exercisable on 18 months' notice) for a minimum further period of two years. The rental payable during the extension period is 70 per cent. of the rent payable at the end of the initial period (subject to the right of the ROSCO to charge a rental which is sufficient to cover its cost of performing its continuing Heavy Maintenance obligations plus a margin of 10 per cent. of such cost).

Where rolling stock has an expected life of between six and eight years from 1 April 1994 and has been taken on an initial lease of at least four years, the TOC generally has the option (exercisable on 18 months' notice) to extend the term of the lease by a further period of at least two years (or until the expiry of the expected life if sooner). If the initial extension expires at the end of the expected life of the rolling stock, the TOC has a further option to extend (exercisable on 18 months' notice) for a further period of two years. The rental payable for each of the extension periods is 70 per cent. of the rental payable at the end of the initial lease period (subject to the right of the ROSCO to charge a rental which is sufficient to cover its cost of performing its continuing Heavy Maintenance obligations plus a margin of ten per cent. of such cost).

**Property damage claims**

Section 6.2, "Dispute Resolution, Claims Between Operators and Claims by Third Parties", refers to a proposed amendment to the Master Lease regarding property damage claims.
4.8 HEAVY MAINTENANCE AND SPARE PARTS

Introduction

Some TOCs are the facility owners of depots which can provide Heavy Maintenance as well as Depot Services. As the ROSCOs do not operate their own depots but are responsible for Heavy Maintenance on their rolling stock, they contract either with Independent Depots or with the TOCs whose depots have the capability to carry out Heavy Maintenance for nearly all of these services. Revenue from the provision of Heavy Maintenance to the ROSCOs forms a significant part of the income of some TOCs.

This section describes the terms of the TOCs’ contracts with the ROSCOs for the provision of Heavy Maintenance and with Railpart for the supply of spare parts which TOCs may require for both Heavy Maintenance and Depot Services. ROSCOs are free to contract with other maintenance suppliers.

Heavy Maintenance Contracts with TOCs

The contract is basically one whereby a TOC agrees to carry out repairs and Heavy Maintenance on rolling stock for a ROSCO. The main body of each contract is in a standard form but the schedules which cover the work done and the procedures for managing the process are customised for each ROSCO and TOC.

The contracts can be split into two categories:
- two party contracts between a ROSCO and a TOC, under which the TOC carries out, on behalf of a ROSCO, Heavy Maintenance on rolling stock which it leases from that ROSCO under a Master Lease and as a result of which certain provisions in relation to Heavy Maintenance under the Master Lease are disapplied for the term of the contracts in respect of the rolling stock covered by them; and
- third party contracts between a ROSCO and a TOC, under which the TOC carries out, on behalf of a ROSCO, Heavy Maintenance on specified rolling stock leased by that ROSCO to another TOC.

The Heavy Maintenance contracts became effective in Spring 1995, with the exception of their provisions as to insurance. These became effective, without further modification, when the ROSCOs became Government-owned companies on 13 August 1995. It was agreed at the time the contracts were signed that the warranty provisions would be made retrospective to 1 April 1994, with the consequence that TOCs may have incurred some liabilities to ROSCOs in respect of Heavy Maintenance work done between 1 April 1994 and Spring 1995. At the time the contracts were signed, it was intended that most contracts would expire on 31 March 1998. Certain shorter term contracts expired on 31 March 1996, and negotiations about their potential renewal are still under way. The one exception to the foregoing description in this paragraph is the contract between South West Trains Limited and Porterbrook Leasing Company Limited which contains no retrospective warranty provisions.

Contracted Work

The workload under the contracts can be divided into four categories:
(a) "Core Work", which is routine Heavy Maintenance carried out to a pre-arranged schedule and specification;
(b) "Additional Authorised Work", which is other maintenance the need for which is detected during Core Work and which is authorised by the relevant ROSCO before it is undertaken;
(c) "Additional Services", which is unscheduled maintenance requested by a ROSCO on an ad hoc basis; and
(d) "Warranty Work", which is work required to make good any defect relating to any of the three previous categories or to a part installed during that work which, in each case, is covered by an applicable warranty.
The specifications for the Core Work to be carried out under each contract are set out in that contract. Most of the contracts guarantee each TOC a specified percentage (typically, 100 per cent. in 1995/96, 80 per cent. in 1996/97 and 60 per cent. in 1997/98) of the ROSCO's actual requirements for Core Work on the relevant rolling stock in each contract year (i.e. 1 April to 31 March or earlier termination).

By 30 November in each year, the ROSCOS must provide the TOCs with an indicative programme of Core Work for the forthcoming contract year which has to meet these guaranteed percentages. The parties are then required to negotiate in good faith with a view to agreeing the actual programme of Core Work for that contract year by 31 December. The agreed programme of Core Work is to be reviewed throughout the year in accordance with a procedure set out in each contract. The contracts also provide for a verification process at the end of each contract year to ensure that the guaranteed percentage of work has been placed with the relevant TOC.

All work performed under the contract must comply with a "Quality Plan" agreed between each TOC and ROSCO. The TOCs must also comply with all applicable safety standards, laws and regulations and must indemnify the ROSCOS against all losses arising from their failure to do so.

The ROSCOS must inform the TOCs if any hazardous material or equipment is fitted to any vehicle and must indemnify the TOCs against any extra costs incurred by their failure to do so. The TOCs may decline to accept any vehicle to which hazardous material or equipment is fitted.

Pricing
The prices for Core Work and Additional Authorised Work are set out in each contract. The prices for Additional Services are those agreed between a ROSCO and a TOC at the time. If in any contract year the aggregate invoiced cost of Additional Authorised Work (other than on bogies and power units) and of Core Work carried out by a TOC falls below a specified percentage (typically the guaranteed percentage for that year) of the relevant ROSCO's total invoiced cost for that work and similar work carried out by the ROSCO's other contractors, the ROSCO will in certain cases be required to make a compensatory payment to the TOC as set out in each contract. If such TOC's invoiced cost exceeds such specified percentage the TOC will in certain cases be required to make a compensatory payment to the ROSCO.

Warranties
The TOCs are responsible for making good at their own expense any defect occurring on a vehicle during the 12 months following re-delivery of the vehicle ("the warranty period") and attributable to the defective workmanship of, or parts installed by, the TOC. In addition, the TOCs are responsible for rectifying or replacing at their own expense any part supplied by a manufacturer, supplier or repairer with a warranty period in excess of the warranty period which is installed on a vehicle and which becomes defective during such excess warranty period. A similar responsibility will then attach to such remedial work and to any part so repaired or replaced.

Following final re-delivery of a vehicle, the ROSCO can require the TOC to assign to it or its nominee the benefit of any unexpired supplier's or manufacturer's warranty relating to any part on a vehicle to the extent that such benefit can be so assigned.

Compensation
(a) Two party contract: Following termination of the contract the TOC may be required to pay the ROSCO £500 for each day or part day that the ROSCO or other operator is deprived of all operational use of a vehicle due to a defect in the work performed by the TOC which occurs during any remaining warranty period.

(b) Third party contract: In the following four situations liquidated damages of £500 per vehicle may be imposed on the party in default:
• if the ROSCO fails to deliver a vehicle or an agreed substitute to the TOC at the agreed time and place (other than by reason of default by the TOC), for each day or part day after the date on which delivery was scheduled until the time of delivery (here, compensation will be imposed);

• if the TOC fails to re-deliver a vehicle to the ROSCO following completion of the work on the agreed date (other than by reason of default by the ROSCO or its agents), for each day or part day after the date on which delivery was scheduled until the day of delivery;

• if any defect occurs during the warranty period which relates to the TOC’s workmanship on that vehicle, for each day until the vehicle is re-delivered with the defect rectified. Such compensation will not affect any claims under the warranty provisions; and

• if, following termination of the contract, the ROSCO or other operator is deprived of all operational use of a vehicle due to a defect in the work performed by the TOC which occurs during any warranty period which continues after termination, for each day or part day that the ROSCO or other operator is deprived of all operational use.

(c) Neither the TOCs nor the ROSCOs are liable:

• for any failure to perform their obligations under the contract which is caused by force majeure (generally events beyond the parties’ control); or

• for any consequential loss.

Early Termination of the Contract

A ROSCO will be entitled to terminate the contract if the TOC fails to carry out any work in accordance with the contract or is otherwise in material breach of its obligations and fails to take any applicable remedial steps within a month of being requested to do so by the ROSCO, except where such failure or breach is an event of force majeure or attributable to the ROSCO or its agents.

Either party may terminate the contract if the other becomes insolvent or suffers analogous proceedings.

The TOC will indemnify the ROSCO against any reasonable additional costs incurred in completing the work as a result of exercising its rights to terminate the contract, subject to the ROSCO’s obligation to mitigate such costs, and against any other losses reasonably incurred as a result of such exercise.

A two party contract may also terminate if no rolling stock remains leased under the relevant Master Lease.

Insurance

The TOCs are liable for, and must indemnify the ROSCOs against all losses arising from, the damage, deterioration (unless caused by effluxion of time), theft, loss or destruction of any vehicle which occurs while the vehicle is at the TOC’s premises or under the TOC’s control save to the extent that it is caused by the ROSCO or its agent. Each TOC must therefore effect appropriate insurance with regard to its business and must maintain liability insurance with respect to the vehicles and, if required by a ROSCO, insurance against physical loss or damage to the vehicles in each case satisfactory to the ROSCOs. Such insurance has to comply with the detailed provisions of the contract and must be on such terms, in such form, with such insurers and through such brokers as the ROSCOs may approve. If a TOC fails to maintain the requisite insurances, the ROSCO may do so and may recoup the cost from the TOC.

Assignment, Transfer and Sub-contracting

The ROSCOs and the TOCs each need the prior consent of the other before assigning, novating or otherwise transferring the contract or any of the rights, benefits or obligations in it. The TOCs must also obtain the prior written consent of the ROSCOs to sub-contract any of the work under the contract, except where such sub-contracting is to the manufacturer or supplier of a part which has warranted it.

Schedule

This includes detailed procedures for managing the contracts.
Spare Parts
The arrangements for spares are principally as follows:

(a) ownership of a pool of scarce repairable spares and freight vehicle spares has been vested in Sparesco, a company jointly owned by the ROSCOs;

(b) the ROSCOs, freight companies and other owners of rolling stock have the right to withdraw scarce spares from the Sparesco pool subject to certain constraints and, prior to 31 March 1998, in most cases only with Railpart’s consent (such consent not to be unreasonably withheld). Each of the ROSCOs has undertaken to the Franchising Director that, in the event that it withdraws scarce spares from the Sparesco pool in circumstances where Railpart’s consent is not required, it will use all reasonable endeavours to put in place arrangements under which those spares are made available to Railpart’s customers on terms not materially less favourable than those on which such spares were being made available prior to their withdrawal from the pool;

(c) ownership of most consumable and non-scarce repairable spares has been vested in Railpart;

(d) Railpart and Sparesco have entered into a contract, under which Railpart has access to the scarce repairable spares for an initial term of three years from 1 April 1995, subject to specified terms and conditions including criteria governing Railpart’s pricing and allocation structure;

(e) Railpart has entered into contracts with most of the TOCs, Independent Depots and freight companies under which it is responsible for the supply of specified spares to those entities; and

(f) the Franchising Director has entered into arrangements with the ROSCOs and Sparesco aimed at assuring, as far as reasonably practicable, the continuation of arrangements equivalent in effect to those in the contracts referred to in (d) and (e) above.

These contractual arrangements have been established with a view to providing effective procedures so that:

- spares will be allocated on the basis of non-discriminatory rules, and at prices which are reasonably related to the cost of supply.
- adequate stocks of spares will be maintained to ensure, as far as is reasonably practicable, vehicles can be kept in revenue earning service for as long as they are on lease.

Railpart is presently a wholly owned subsidiary of British Rail and is currently being offered for sale. One of its functions is to provide consumable and repairable spares to TOCs undertaking maintenance services on rolling stock. Through the direction of BRB, Railpart is also currently the supplier of those spares for which a high level of quality assurance is required to ensure their integrity.

Spares Part Supply Contracts
Railpart has entered into contracts with the majority of the TOCs to supply them with spare parts (the "spare part supply contract"). The main body of each contract is in standard form but the schedules which cover requirements for spare parts to be supplied (Schedules 1-3), delivery dates (Schedule 5) and the TOC’s specifications in respect of (a) commitments, (b) discounts, (c) service levels and (d) Railpart’s liability regime (Schedule 4) have been negotiated individually with each TOC.

The agreement sets out five different service types to be provided.

Planned requirements
Railpart and the TOC have agreed specific quantities and delivery dates for planned spares ("planned spares").

Contingency requirements
Railpart and the TOC have agreed an amount of contingency spares which Railpart is to retain in order to ensure that a particular stock level is maintained for the TOC ("contingency spares").
Railpart is bound to stock up to a specified level of contingency spares but the TOC is not obliged to purchase these unless it terminates the relevant arrangement or notifies Railpart that they are no longer required and Railpart cannot sell them to anyone else within six months.

Unplanned requirements

The TOC and Railpart have agreed the spares the TOC expects to require on an unplanned basis. The TOC is not obliged to buy any of these, but Railpart is obliged to supply them when ordered, subject to a negotiated service level which specifies the overall proportion of such spares which Railpart must supply to the TOC on its next scheduled delivery (or in the case of scarce spares on the agreed delivery date).

Ad hoc requirements

The TOC may order additional spares not covered by these arrangements on an ad hoc basis at list price less the agreed rate of discount.

Emergency requirements

The TOC may request emergency delivery of such spares as Railpart has in stock ("emergency spares"). Emergency spares will be charged at list price. The TOC will be responsible for delivery costs of such spares if they are delivered on the date ordered and a delivery is not already scheduled for that date.

The agreement requires Railpart to use the specifications in BRB's parts and drawings system ("PADS") unless an alternative specification is agreed. Railpart does not assume any liability for errors in the specifications in PADS.

Railpart warrants that all spares supplied will be to specification and that repairable spares will not fail in service. Repairable planned spares are generally supplied with a 12 month service warranty running from the date of delivery of that spare to the TOC. Repairable spares that are not planned spares are supplied with a 12 month service warranty running from the date of overhaul of that spare. Furthermore, Railpart is obliged to use reasonable endeavours to supply repairable spares with any unexpired period of warranty given by Railpart’s contractors or suppliers. Consumable spares will generally not be supplied with a service warranty. A TOC may require Railpart to seek to negotiate better warranty terms from its suppliers and pass these on to the TOC at the appropriate price.

If a spare does not comply with its specification and a defect ought to be apparent on reasonable inspection, the TOC has 14 days from delivery to reject any spare. In any other case the spare must be rejected within 14 days of its being fitted.

Railpart is obliged to resolve rejection and warranty claims within six weeks. If a claim is deemed valid or is not resolved within this time, Railpart must credit the TOC with the full invoiced price of the spare. A disputes resolution process is provided in the agreement.

Title to consumable spares passes from Railpart on the earlier of fitting to a vehicle or payment. Title to repairable spares remains with Sparesco or Railpart unless and until such spares are fitted to a vehicle at which time title will pass to the owner of that vehicle. Title to failed repairable spares shall pass to Sparesco or Railpart upon their permanent removal from a vehicle.

A reference price list is attached as an appendix to the agreement. The full price is charged for spares ordered on an emergency basis. Fixed discounts of up to three per cent. are applied for scarce spares ordered on a non-emergency basis. Discounts for other spares have been negotiated individually with each TOC. A TOC has the right, on giving six months’ notice to Railpart, to source spares from other suppliers up to ten per cent. of the estimated value of spares to be purchased in any year (as set out in Schedule 4), without any reduction in the negotiated discount percentage.

List prices will change year on year by 80 per cent. of the change in the Producer Price Index over the previous year although this will not affect the level of negotiated discounts.
Since estimates of usage and most ordering are, for the most part, driven through the interface between the TOC and Railpart systems (IMACS and SLIMSTOCK), the agreement puts both parties under an obligation to maintain the systems in full operational order, and not to implement changes which affect the compatibility of the systems.

Late delivery of specific planned, contingency, unplanned and ad hoc spares will attract damages on terms set out in the service level and liability regimes negotiated individually with each TOC.

Where a vehicle is out of service as a consequence of a spare supplied by Railpart which is not to specification, Railpart will pay liquidated damages of £500 per day capped at £1,000. Where physical damage is caused because of a spare supplied by Railpart which is not to specification, Railpart will be liable for such damage up to five million pounds to the extent of its proven negligence. Where appropriate a TOC may require Railpart to use its reasonable endeavours to enforce the remedy provisions in Railpart’s contract with the part manufacturer or overhauler and to pass the benefit to the TOC.

The contract has a term of up to three years commencing on 1 April 1995.

Franchise operators which carry out maintenance should be aware that they may incur liabilities in relation to such maintenance or in respect of parts or components used in such maintenance without having the benefit of matching obligations from the suppliers of such parts or components.
4.9 DIRECT AGREEMENTS

Introduction
The draft franchise agreement provides that in most cases the franchise operator may only enter into a key contract provided that the counterparty to that contract has entered into a direct agreement with the Franchising Director on terms acceptable to the Franchising Director (see “The Franchise Agreement”,—“Key Contracts”). The primary purpose of direct agreements is to ensure that, in the event of premature termination of a franchise agreement or the granting of a railway administration order, all contracts which are critical can effectively be extended until new arrangements have been put in place.

The direct agreement also has a secondary purpose. The nature of a contract designated as key means that its unexpected termination during the life of a franchise could jeopardise the ability of the franchise operator to run services and thus lead to the termination of a franchise agreement for default. The terms of the direct agreement may therefore require the counterparty, if he intends to terminate the contract for default, to give the franchise operator the opportunity to cure the default within a specified period and may also enable the Franchising Director to secure continuation of services under the contract in the event that the counterparty does so terminate.

Direct agreements are intended to minimise the risk of disruption to passenger services both during the life of a franchise and in the event of sudden termination or railway administration. The precise terms of the direct agreements have not yet been negotiated, except in the case of the ROSCOs, Railtrack, BRT and various infrastructure maintenance companies. Brief summaries of the agreements which have been entered into with the ROSCOs, Railtrack and BRT are provided below. Other direct agreements with key counterparties are intended to be entered into by the Franchising Director in due course.

Rolling Stock Direct Agreements
The Franchising Director entered into an agreement with each ROSCO in relation to all rolling stock acquired by the ROSCOs from BRB under transfer schemes on 1 April 1994 (as amended) which was still owned by the ROSCOs at the time that the agreements came into effect. Each ROSCO direct agreement came into effect on the date on which the relevant ROSCO ceased to be owned by HM Government (the last sale being completed on 2 February 1996).

If any of the rolling stock to which the agreement relates is subsequently sold from one ROSCO to a second ROSCO, it will remain subject to the ROSCO direct agreement in the hands of the second ROSCO. The principal terms of the agreements with the ROSCOs are as follows:

(i) Purchase options: in certain circumstances the Franchising Director has a right to tender (on the same terms as other parties) to acquire rolling stock which the ROSCO is proposing to sell. In addition, unless the ROSCO intends to use the rolling stock for spares, it must, before scrapping it, give the Franchising Director the option to acquire the rolling stock at its current open market value for scrap;

(ii) Early termination: in the event of a proposed termination by the ROSCO of a rolling stock lease for default by the TOC, the ROSCO will give the Franchising Director advance warning of its intention and will, if the Franchising Director elects, delay termination for an agreed period. The Franchising Director will effectively compensate the ROSCO for any liability arising or accruing during the period of delay. If the lease is terminated by the ROSCO for default by the TOC, the Franchising Director has an option to take a new lease on the same terms for all of the rolling stock. Such new lease will last until the earlier of the date of termination of the terminated lease or the next timetable change which falls at least 12 months after the date of termination. The Franchising Director, in the latter case, has the right to extend the lease (on six months’ notice) in relation to all or part only of the rolling stock so that its term corresponds to that of the terminated lease.
If the Franchising Director terminates the franchise agreement but the ROSCO has not terminated its leases with the relevant franchise operator, the Franchising Director has an option to require the ROSCO to terminate such leases. The Franchising Director will have to indemnify the ROSCO for any claim made against the ROSCO by the TOC in respect of such termination. If the Franchising Director requires the ROSCO to terminate, the Franchising Director must lease the relevant rolling stock on similar terms to those which would apply were the Franchising Director entering into such lease as a result of a termination by the ROSCO due to a TOC's default;

(iii) Franchise bidding procedure: the ROSCO agrees to make available to the Franchising Director certain confidential information to facilitate the franchise bidding process now and in the future; and

(iv) Livery: in order to avoid unnecessary re-branding costs, particularly at the end of a franchise, the ROSCOs will accept re-delivery in a livery acceptable to the Franchising Director if the stock is to be used by, amongst others, a successor franchise operator provided that no additional cost is incurred by the ROSCO.

The ROSCO direct agreements also contain provisions for the transfer of the obligations and rights under such agreements in circumstances where the ROSCO sells or grants security over the rolling stock or related leases. The ROSCOs have agreed to inform the Franchising Director if they propose to change any of the insurance requirements agreed at the inception of a rolling stock lease.

The ROSCO direct agreement will apply for future leases of the rolling stock which was transferred from BRB by the transfer schemes of 1 April 1994 (as amended). The provision of rolling stock to a franchise operator or a franchisee will be regarded as a key contract. As such the franchise operator may only enter into such a contract provided that the counterparty has entered into a direct agreement with the Franchising Director on terms acceptable to the Franchising Director. A direct agreement will therefore be needed between the counterparty and the Franchising Director for rolling stock which is not covered by the ROSCO direct agreements (including new stock) unless this requirement is waived by the Franchising Director. The Franchising Director envisages that these direct agreements will be agreed on a franchise by franchise basis.

Railtrack Direct Agreements

Railtrack has agreed, in respect of any franchises entered into on or prior to 31 March 1999 (other than in relation to railway passenger services in the Isle of Wight). That it will enter into leases in an agreed form in respect of the franchisees' relevant stations and light maintenance depots as well as leases in respect of areas of exclusive occupation (including core facilities) at Independent Stations ("exclusive areas"). Railtrack has also agreed to give the Franchising Director due notice of any intention to forfeit any lease of a station, light maintenance depot or exclusive area which it enters into with the relevant franchise operator or of any intention to issue a suspension or termination notice under any track or Independent Station access agreement. In consideration for this, the Franchising Director has agreed to guarantee for certain limited periods the payment of the rent and/or the relevant access charges. At the Franchising Director's request, Railtrack will consent to the assignment of a lease, or the grant of a new lease, of any station, light maintenance depot or exclusive area in respect of which Railtrack has given notice of an intention to forfeit. Railtrack will also procure that any purchaser, assignee or lessee (other than a passenger service operator which is a franchise operator or is a subsidiary of British Rail) of a station, depot or exclusive area which is leased or agreed to be leased to a passenger service operator which is either a franchise operator or a subsidiary of British Rail, or of a common station amenity at an Independent Station, will enter into an agreement with the Franchising Director in the same form as the agreement between the Franchising Director and Railtrack.

Railtrack has also agreed with the Franchising Director that, in respect of any new franchises entered into on or prior to 31 March 1999, it will enter into an agreement with the relevant franchise operator to ensure that any track or Independent Station access agreements between Railtrack and such franchise
operator are coterminous with the franchise agreement provided that this period is no more than seven years and eight months from the date of commencement of such franchise. Railtrack has also agreed (other than in relation to railway passenger services in the Isle of Wight) not to grant any access agreements for track or Independent Stations which would interfere with or prevent Railtrack entering into such agreements with a franchise operator. At the Franchising Director's request, Railtrack will novate the rights and obligations of a franchise operator to the extent necessary to enable the Franchising Director to exercise his duties and powers under Sections 30 and 51 of the Railways Act. Railtrack will also procure that any purchaser, assignee or lessee of any part of an Independent Station which is a common station amenity (other than a passenger service operator which is a franchise operator or a subsidiary of British Rail) is subject to the burden of any relevant access agreement and that it will enter into an agreement with the Franchising Director in the same form as the agreement between the Franchising Director and Railtrack.

BRT Direct Agreements

The Franchising Director has entered into direct agreements with BRT to deal with the contracts between BRT and TOCs under which BRT provides business telecommunications services and retail telecommunications maintenance services. Under the direct agreements, BRT will give the Franchising Director early warning of early termination of these contracts and, for certain essential services, the Franchising Director may require BRT to delay termination and/or enter into a new contract, either with the Franchising Director or his nominee.

Other Direct Agreements

The Franchising Director has entered into direct agreements with the majority of the former British Rail infrastructure maintenance companies which have now been sold. These direct agreements deal with the contracts between infrastructure maintenance companies and TOCs for the provision of engineering services.

The terms of proposed direct agreements with Business Systems, Railpart and OBS have yet to be finalised.
4.10 MISCELLANEOUS

Catering Supplies Contract

Certain TOCs (including all the former InterCity TOCs) have entered into catering supply contracts under which OBS is appointed as the exclusive supplier of food, drink and catering equipment for the provision of on-board catering services. OBS employees do not provide service staff on the trains of these TOCs. The contract prohibits a TOC from procuring food, drink or catering equipment for sale or use on trains from any party other than OBS except to the extent that OBS is unable or unwilling to supply such goods or in respect of short term promotional offers. If OBS incurs any additional costs as a result of any negligent or wrongful act of the TOC or its employees or representatives OBS is entitled to make a reasonable additional charge.

Either party may terminate the agreement by giving six months’ written notice, 30 months after the first date on which services under that contract are provided or six months after the customer ceases to be a wholly owned subsidiary of BRB, whichever occurs first. If the customer wishes to obtain similar services from a third party then OBS must be invited to bid.

Intellectual property (other than trade or service marks or brand names owned by the customer or third parties) in work which OBS develops for the non-exclusive use of the customer is vested in OBS. There is a licence in favour of OBS for intellectual property rights (excluding trade or service marks or brand names owned by the customer or third parties) which OBS develops exclusively for the customer, on reasonable terms and conditions.

The catering supplies contract provides for a TUPE indemnity given by OBS in the event that a franchise operator suffers any liability for the redundancy costs of OBS employees as a result of the franchise operator appointing a third party to provide replacement on-board catering services after asking OBS to bid for the right to provide such replacement services. This indemnity only applies to employment contracts which transfer from OBS to the TOC. OBS is obliged to use reasonable efforts to redeploy such employees. There is an indemnity from the customer to OBS for OBS redundancy costs where the customer takes over performance of the services itself or does not invite OBS to bid.

Under separate contracts with a number of TOCs other than the former InterCity TOCs, OBS provides food, drink, catering equipment and service staff on the TOCs’ trains.

Occupational Health Services

Occupational Health Services Limited ("OHS"), a former subsidiary of British Rail which is now a subsidiary of Occupational Healthcare plc, supplies medical assessment, screening, testing and other medical services to TOCs. OHS has an exclusive contract for such services until 30 November 1997. During that term OHS is required to maintain a national network of health centres. Each TOC is obliged to take up the telephone advisory service for employees provided under this contract at a rate of three pounds per employee per annum. All medical records in existence until the date of franchising will be owned by British Rail. Medical records created after that time will belong to a TOC. However, during the term of this agreement, OHS shall have sole custody of those medical records and will hand them over to any appropriately qualified successor.

Provision of Train Crew

Many TOCs currently rely on agreements with other TOCs for the supply of train crew for the operation of some of their train services. A TOC may supply train crew to other TOCs as well as buying in train crew services from other TOCs. Train crew may be supplied to the freight operators and to Rail Express Systems Limited, and in the future may also be bought in from these organisations. There are several reasons why it may be beneficial for a TOC to buy in train crew. These are driven by the geographical distribution of train services operated by the TOC and the location of train crew depots as well as the safety conditions relating to the work. Drivers are limited in the hours they can work in a shift,
the minimum rest periods between shifts and the total hours they can work in a week. Due to the broad spread of train services operated by many TOCs, the locations of train crew depots, the need for supervision of safety critical staff and the requirement that train crew be trained in appropriate types of traction and have a predetermined level of "route knowledge", it may not be economically or operationally practical for the TOCs to employ directly train crew to operate all of their train services. Train crew owned by another TOC may be better placed to take on the work relating to some of the train services operated, in whole or in part. Termination of such agreements could be costly in terms of time as it would require training of new staff and possibly existing staff, and may also require arrangements to be made to manage and supervise the staff operating from locations outside the geographical boundaries of the core of the TOC.

The provision of train crew is governed by bilateral agreements between the supplier and the customer which contain the conditions which apply to many Central Services contracts together with the necessary adaptations of these conditions for the provision of train crew, which have been agreed centrally. There are two separate agreements: one for use where the customer is a passenger operator, the other for use where the customer is a freight operator. They contain, for the most part, the same provisions. This description covers both agreements but some specific differences are mentioned. The TOCs have included the relevant service specifications in each agreement (including details of grades of crew required, service standards and routes) and have independently negotiated the charges. The agreement specifies certain scheduled train services for which the supplier will provide train crew and provides that ad hoc services will be provided on request in certain circumstances, subject to availability. Where a supplier is providing train crew for freight operators, there is also provision for the customer to require train crew to be reserved for certain services during specified periods. A charge is levied for reservations whether or not the train crew is actually used. The supplier provides the train crew with all the necessary route, diversionary route and traction knowledge.

The term of the agreement varies, but many agreements have a term of one year, renewable for 12 month periods. Variation by the customer of his requirements for train crew may only be made on certain dates and is subject to specified notice periods.

Under the terms of the agreement, the customer is liable for all acts or omissions of the train crew members during the performance of the task for which they were supplied except those which arise from a failure to comply with industry standards for booking-on procedures, where this is the supplier's responsibility, or those which result from a failure of the supplier to provide properly qualified and competent train crew. The agreement permits the parties to vary this position for particular services.

If the supplier fails to provide train crew in accordance with the terms of the agreement, he is required to indemnify the customer against all costs or liabilities (in the case of passenger services, the indemnity is limited to costs or liabilities relating to passenger charter refunds or payments to Railtrack directly incurred by the customer as a result of the failure).

The customer is required to indemnify the supplier against any payment the supplier is obliged to make by law in respect of the termination of the employment by reason of redundancy of any train crew provided by the supplier. To the extent that the redundancy results from a reduction in requirements of two or more customers of the supplier, each customer shall pay the proportion of the indemnity corresponding to the reduction in services he required. The customer may be obliged by law to employ the redundant staff and to meet any undischarged liabilities. The supplier is obliged to use his reasonable endeavours to minimise such costs and to re-deploy such staff.
Section 5

ATOC and ATOC Schemes

INTRODUCTION

Each passenger operator has entered into a number of arrangements with other passenger operators and third parties which relate, broadly, to ticketing and settlement, Discount Cards, TEBs and staff travel. These agreements (subject to certain transitional arrangements) have been put in place for three basic reasons. First, they enable passenger operators to offer network-wide products to passengers. This is to the commercial advantage of the railway industry as a whole in relation to other modes of transport. Second, some of these arrangements are required as a licence condition and/or by the franchise agreement so that the interests of passengers can be safeguarded. Third, to a large extent these arrangements reflect the former method of operation of the network which, with the disaggregation of the passenger rail industry, has been documented in formal contracts.
These agreements are administered through ATOC. As multiparty agreements they have similar provisions for amending the agreements and for voting as between passenger operators. These procedures are designed to establish a balance between the competing interests of passenger operators and provide protection from unfair prejudice against a minority. ATOC, an unincorporated association open to all train operators holding passenger licences, performs two roles. First, it is the forum for the operation of these contractual arrangements. Second, it is also the trade association of the passenger operators.

These multiparty arrangements are known as ATOC Schemes. The ATOC Schemes between them cover a number of areas:

- The offering by passenger operators individually and collectively of new and existing fare types, Discount Cards and reservations and, in addition, goods and services provided by third parties, including travel on LRT's services. Fares may be for travel only on the trains of a single passenger operator or may be inter-available and/or through fares.
- The honouring of fares, Discount Cards and reservations by carriers and the carriage of passengers subject to national conditions of carriage.
- The retailing of these products by passenger operators and third parties, including travel agents and providers of other modes of transport.
- The provision of passenger information by TEBs through the operation of the National Rail Enquiry Scheme (previously known as the TEB Scheme).
- The provision of staff travel facilities, comprising reciprocal rights between the passenger operators themselves and with certain third parties as well as non-reciprocal rights with some third parties.
- The allocation of revenues between carrying passenger operators and the payment of commission to both retailing passenger operators and third parties.
- The settlement of sums due between passenger operators and to and from some third parties through the mechanism of the RSP.

The ATOC Schemes are represented diagrammatically as follows:

Each Scheme is described in further detail below. They provide for certain arrangements with third party service providers which are also explained below. The Schemes commenced operation in 1995; in most cases on 23 July.

The documentation which is summarised in this Section is subject to certain transitional provisions. Some of the more significant transitional arrangements are explained below in relation to each Scheme.

Condition 7 of the passenger licence requires the licensee to be a party to and comply with such arrangements relating to through ticketing, ticket selling, TEBs, settlement and conditions of carriage as shall have been approved by the Regulator. The Ticketing and Settlement Scheme, the London Transport Scheme, the LRT Agreements and the National Rail Enquiry Scheme have been approved for this purpose. See section 5.2, “Ticketing and Settlement Agreement” and section 5.3, “Other ATOC Schemes”.

Introduction
5.1 ATOC

ATOC is an unincorporated association. Its principal objects, which are set out in its constitution, are to facilitate the development and operation of commercial arrangements between passenger operators and to promote the use of the railway network (including, in particular, the making of journeys which involve the services of more than one operator).

ATOC's main objects and its ancillary functions are achieved through a number of ATOC-administered Schemes, essentially a series of multiparty commercial contracts between operators. These Schemes serve two purposes. They provide a contractual framework to enable operators to fulfil certain licence and/or franchise agreement obligations. They also preserve a number of commercial arrangements and facilities which the Franchising Director believes that passengers value or that operators will wish to maintain, at least until the new industry framework is more mature.

Franchise operators initially participate in all the ATOC Schemes. As far as the following Schemes are concerned, continuing participation will be mandatory under the terms of their licences and/or franchise agreements unless and until such time as alternative arrangements are approved by the Regulator and/or the Franchising Director:

- the Ticketing and Settlement Scheme (although operators, after an initial three year period, will be able to terminate the joint arrangements relating to warrants with the vote of a substantial minority);
- the London Transport Scheme (Travelcard and other joint arrangements);
- the Railcard Schemes which relate to Young Persons', Disabled and Elderly Persons' Railcards;
- the Staff Travel Scheme; and
- the National Rail Enquiry Scheme.

Other Schemes, which are not mandatory, include those covering appointment of travel agents and a number of domestic and international discount and network pass cards, including the existing Network Card and the BritRail Passes. Passenger operators will be obliged to participate in most of these voluntary Schemes for an initial period (which varies by Scheme, but does not exceed three years from 23 July 1995). However, such voluntary Schemes may be ended following the expiry of the initial period, by which time the passenger operators should have compiled the data necessary to assess whether or not continued joint industry arrangements for these activities or products are beneficial to them. The voluntary Schemes may be terminated with the vote of a substantial minority (which varies between Schemes).

ATOC also promotes joint marketing activities, disseminates information relevant to the activities of members, monitors the development of legislation liable to affect members and deals, on their behalf, with the Government and other public authorities (whether domestic or international).

Membership of ATOC is open to all holders of passenger licences and to any other person approved by the ATOC Council, which is ATOC's governing body. It is also anticipated that membership will be attractive to open access operators as a cost-effective and convenient method of complying with the network benefit obligations contained in their licences. The ATOC Membership Committee is responsible for all matters relating to applications for membership, disciplinary procedures and termination of membership. The Membership Committee may terminate membership of ATOC with immediate effect in certain specified circumstances, for example where a member of ATOC becomes insolvent or is no longer licensed to operate passenger trains. A participant's membership of mandatory and voluntary Schemes may be terminated or suspended if the relevant Scheme Council determines that a participant is in material breach of its Scheme obligations. There are various safeguards, including a right for the participant to have the matter referred to an arbitrator under the ATOC Dispute Resolution Rules, in which case the termination or suspension will only take effect if the arbitrator so orders. A membership fee is levied to support a secretariat providing administrative and lobbying services to members of ATOC. This
secretariat (the ATOC Executive) is located in London and currently has a staff of 50, of whom 33 are permanent staff and 11 of whom are engaged in duties related to the RSP.

The ATOC Council governs the Association according to its Constitution. It has the power to establish Schemes for the delivery of collective activity to the mutual benefit of the passenger rail industry and its customers. It may set up and participate in companies if in the Council's opinion to do so is the most efficient and convenient means of carrying out any aspect of the functions of the Association. ATOC Ltd. is one such company, set up to employ the officials who undertake duties of the Association on the Association's behalf. Its Chief Officer is the Director General of the Association. Each member of the ATOC Council owns one share in ATOC Ltd.

The ATOC Council elects the ATOC Management Board and establishes the Scheme Councils which are set up for new Schemes. It also has responsibility for determining ATOC's areas of activity, establishing its annual budget and identifying those Schemes which are to be implemented each year. Its core subscription budget is around £1.2 million per annum. The ATOC Council is required to meet at least twice in every calendar year (one meeting being the Annual Council Meeting) and may convene Extraordinary Council Meetings when it thinks fit, or on the requisition of members. The Chairman and Deputy Chairman of the Council are elected from amongst the Council's members.

The broad terms of reference of each Scheme Council have been established by the ATOC Council resolution to establish that Scheme. However, each Scheme Council acts independently of the ATOC Council (each Scheme Council may have different voting arrangements and indeed membership). The relevant Scheme Council sets its own budget. Many ATOC staff are funded from these budgets. Each Scheme Council, on which all members of the relevant Scheme are represented, determines the detailed terms of the Scheme for which it is responsible as well as voting rights under that Scheme and is the high-level decision making body for the Scheme. Each Scheme is implemented and administered on a day-to-day basis by a Scheme Management Group which is elected by the passenger operators which are members of that Scheme.

The Schemes administered by ATOC are those referred to in this document and available for inspection in the relevant data rooms.

A number of dispute resolution mechanisms are provided for under the ATOC Dispute Resolution Rules in respect of any disputes between ATOC members arising from the operation of any Scheme (see section 6.2, “Dispute Resolution, Claims between Operators and Claims by Third Parties”). Each Scheme contains provisions setting out how the ATOC Dispute Resolution Rules will apply to disputes arising under that Scheme.

The Schemes also contain provisions relating to changes to their provisions (including the need, in specified cases, for the consent of the Regulator and/or the Franchising Director). They also include a dispute resolution mechanism which can be activated by minority passenger operators which are subject to material and unfairly prejudicial conduct by others.
5.2 TICKETING AND SETTLEMENT AGREEMENT

The Ticketing and Settlement Agreement came into effect on 23 July 1995 (subject to certain transitional arrangements) and deals with fares setting, fares distribution, through fares and inter-availability, the retailing of fares and other products by passenger operators and travel agents, methods of payment, ticket brands, licensing of RSP-owned software, common conditions of carriage, the allocation of revenues, settlement of amounts owing to and from passenger operators and a number of other related matters. The RSP is a party to the Agreement. The Agreement has created the ATOC Ticketing and Settlement Scheme and the ATOC Travel Trade Scheme. Like the other ATOC Schemes, the Ticketing and Settlement Agreement broadly preserves and codifies the former relationships upon which passenger operators rely. The Agreement is designed not only to preserve for passenger operators the commercial benefits of being able to offer network-wide products, but also to ensure the retention of important “network benefits” for passengers. It therefore satisfies a number of requirements of the Railways Act 1993, the passenger licence and the franchise agreements.

All participating passenger operators are members of the Ticketing and Settlement Scheme Council and the Travel Trade Scheme Council. The Agreement sets out procedures for the election and responsibilities of the Scheme Management Groups and a number of Scheme Management Sub-groups, the holding of meetings and the making of decisions by the Schemes, including decisions on changes to the Agreement. Voting rights are linked to income from all fares received through the RSP (in the case of the Ticketing and Settlement Scheme) and the gross income from sales made by travel agents, rail inclusive tour operators, and companies which act as self-ticketing licensees (in the case of the Travel Trade Scheme). Changes to the Agreement which may affect the network benefits which the Agreement seeks to preserve require the approval of the Regulator and/or Franchising Director. The Ticketing and Settlement Scheme Sub-Groups are responsible for considering and making recommendations about certain matters which fall within the scope of the Ticketing and Settlement Scheme but they have no decision-making powers (unless such powers are delegated to them by the Ticketing and Settlement Scheme Council or the Ticketing and Settlement Scheme Management Group).

Fares Setting, Through-ticketing and Inter-availability

The Agreement uses the word “fare” to describe the totality of the product—the right to make one or more journeys on certain conditions—which is offered to the passenger. The main components of the fare are the origin and destination stations, the permitted route(s), its name (the “fare type”), its price and the rights and restrictions attached to it (including its period of validity, any restrictions on the times of day in which travel is allowed and the class of accommodation). A fare may, by agreement between a passenger operator and a third party, incorporate goods or services provided by that third party, e.g. ferry travel or entry to a tourist attraction. The Agreement sets out the ways in which new fares can be created and existing ones altered.

Permanent, Temporary and Special Fares

The Agreement provides for two principal kinds of fare. The majority of fares will be “permanent fares”. These may be created by passenger operators on three occasions each year by means of a procedure called the “fares setting round”. This involves the passenger operators notifying fares which they have created (and alterations to existing fares) to the RSP. The RSP does not itself create or alter fares: passenger operators determine the terms of each fare themselves. All permanent fares which a passenger operator creates must be notified to the RSP to enable them, when finalised, to be retailed by others in accordance with the retailing rights and obligations described below. All proposed fares that are notified to the RSP in a fares setting round are disclosed to all passenger operators to enable them, if they wish, to respond to other passenger operators’ pricing decisions and to address anomalies (e.g. the fare from A to C via B being priced lower than the fare from A to B). Any amendments to such proposed fares must themselves be
notified to the RSP by a cut-off date, following which the RSP makes the fares available (either electronically or via fares manuals) for sale by retailers until the next fares setting round is completed.

In addition to permanent fares, passenger operators are able to create temporary fares. These are not notified as part of the fares setting round and may be notified to the RSP at any time in accordance with a set procedure. Temporary fares may be created for no more than 17 weeks and may not replace a fare with the same or substantially similar rights and restrictions. This is to prevent passenger operators relying exclusively on temporary fares, and thereby taking advantage of the more limited retailing obligations which apply to them. A temporary fare may be retailed only by those passenger operators which are required or authorised to do so by the passenger operator creating it.

The Agreement also enables passenger operators to create “special fares”. They include, for example, fares for rail inclusive tours and group travel.

**Flows and Permitted Routes**

For domestic fares, each combination of origin station to destination station journey opportunity is referred to in the Agreement as a flow. Where there is more than one route there may be more than one flow for the same origin and destination (e.g. via London/not via London). At present substantially all flows are subject to compulsory inter-availability provisions (see below).

Within each flow there may be a number of “permitted routes”. The permitted route concept will replace the existing “any reasonable route” designation. This is necessary partly because, in a world of independent operators, what is or is not a “reasonable route” is too open to different judgements, and partly because its continued application would require a comparison of fares which relate to different journeys. This may be impossible once there is no common fares structure. The permitted route will be the shortest possible route or any alternative route shown in the routeing guide. The routeing guide is expected to be introduced in the Autumn of 1996 and is intended broadly to reflect existing journey opportunities. The Agreement contains a procedure for amending it from time to time. Until the routeing guide is introduced, the present “any reasonable route” designation will continue to apply.

**Creating Dedicated and Jointly Agreed Fares**

On any particular flow, the following categories of fare (whether permanent, temporary or special) may be created by any passenger operator, subject to the restrictions described in the following paragraphs:

(a) a “dedicated” fare, which is a fare created by a single passenger operator and valid only on its own trains; and

(b) a “jointly agreed” fare, which is a fare created by agreement between two or more passenger operators in order to give the passenger the benefit of a through journey using the trains of more than one passenger operator and/or a choice between the trains of different passenger operators which run in parallel on the same flow (an inter-available fare).

**Creating Fares on Compulsory Inter-availability Flows**

On each flow to which compulsory inter-availability applies, the Agreement designates a “lead operator”. The lead operator is usually the operator with the greatest commercial interest in the particular flow and/or the best understanding of the market which the flow serves. Since this is likely to change over time, the Agreement contains a change procedure which enables the lead operator to be altered by agreement or by an arbitrator. The lead operator may, on its own initiative, create through and inter-available fares over the flow and require other TOCs (and any open access operators which have agreed to be bound by the compulsory inter-availability provisions) which run trains on the flow to honour these fares. This reflects, to some extent, the way in which different business units within BRB previously set fares. This right does not however extend to fares with an advance purchase train-specific requirement, or to special fares, each of which may only be created by agreement with the other passenger operator(s).
which are to honour the relevant fare. Nor is the lead operator allowed to create inter-available first class fares where it does not offer first class accommodation unless it is instructed to do so by the other TOCs (and any open access operators which have agreed to be bound by the compulsory inter-availability provisions) which do offer such accommodation on the flow. In this event, the terms of the first class fare are determined by those other operators. The lead operator is required to be even-handed between other operators in creating its inter-available fares.

As indicated above, passenger operators other than the lead operator may also create their own dedicated or jointly agreed fares for the flow. These co-exist with the lead operator’s fares, and enable some price competition notwithstanding the existence of compulsory inter-availability. The lead operator’s rights to create dedicated and jointly agreed fares are circumscribed to prevent it undermining the inter-availability obligation by marginalising its inter-available fares and then pricing them out of the market. Thus the lead operator is only permitted to create the following dedicated fares:

(a) first class fares;
(b) advance purchase train-specific fares;
(c) temporary fares that are valid for travel for up to 12 weeks a year on each flow; and
(d) special fares.

Compulsory inter-availability will only apply to open access operators where they have voluntarily agreed to be bound by it (although they may not choose to be bound on some flows and not on others).

Creating Through Fares on Other Flows

On flows where compulsory inter-availability does not apply, there is no lead operator. However, any passenger operator which operates over more than 50 per cent. of the route mileage on the flow (known as a “major flow operator”) is able to create through fares for the whole flow. These require the passenger to travel on its trains for the part of the flow over which it runs. For the remainder of the flow, the fare must be honoured on the trains of any TOC (and those of any open access operators which have agreed to be bound by these provisions). As with lead operators, major flow operators are not able to bind other operators to honour advance purchase train-specific fares or special fares; these require the agreement of those other operators.

Lifting the Inter-availability Requirement

The Agreement contains a procedure under which the Franchising Director may re-classify a flow to which compulsory inter-availability applies as one to which it does not apply, where he considers that the benefits of inter-availability will be outweighed by the potential benefits of price competition and service diversity if the requirement is lifted. The inter-availability requirement may be lifted provisionally or subject to specified conditions. The procedure for reviewing a flow may be activated by a passenger operator or by the Franchising Director himself. At present the only flows where compulsory inter-availability requirements have been lifted, in whole or in part, are certain flows on and including the London-Gatwick Airport corridor. There are currently no plans to lift the requirements more widely.

Discount Cards and Reservations

The Agreement also provides for the creation and notification to the RSP of Discount Cards and reservations (e.g. of seats or sleeper berths). Reservation availability is contained in either the RSP’s own database or, if a passenger operator wishes, another RSP-approved reservation system. In this way, Discount Cards and reservations are made available for other passenger operators to retail and/or issue them. Details of the Discount Card Schemes are discussed below.

Ticket Brands

Certain ticket brands (e.g. “saver” and “cheap day”) that were formerly owned by British Rail have been transferred to the RSP, which licenses all passenger operators to use them provided that they comply
with a set of user rules, set out in the Ticketing and Settlement Agreement, which is designed to protect the integrity of the brands. The licence is non-exclusive and royalty free.

**Emergency Disruption**

The Agreement contains provisions which oblige passenger operators to carry other operators' passengers following a disruption to the network, even if the passengers have purchased fares which are not usually inter-available. These provisions do not, however, apply to minor disruptions which affect only a single delayed or defective train.

**National Conditions of Carriage**

Domestic fares are sold subject to national conditions of carriage which are based on British Rail's former conditions of carriage and revised to reflect the disaggregation of passenger operations. Under the national conditions of carriage passengers have a right to compensation in the form of vouchers entitling them to a discount off the cost of future rail travel if they are delayed for more than an hour as a result of any circumstances that are within the control of a passenger operator, Railtrack, a station operator or a ROSCO. Any vouchers a passenger is entitled to will be equivalent to 10 per cent. of the price paid for the journey and may be exchanged for any type of RSP ticket. However, in the case of season tickets this will be 10 per cent. of the price of the ticket divided by the number of days for which it is valid and, in any event, will apply only where the passenger is not eligible for a potential discount off future season ticket purchases under a TOC's passenger's charter. Vouchers are not required to be given to passengers who are entitled to a refund in respect of a ticket.

Passenger operators will be free to add to the passengers' rights under the national conditions but not to derogate from them, except where the national conditions of carriage expressly permit this.

**Retailing**

**Rights to Retail Rail Products**

Permanent fares are, as described above, available to be sold by each of the passenger operators. Any passenger operator is therefore able to sell such fares through its retail outlets. This is also true of the Senior and Young Persons' Railcards as well as some other Discount Cards. In the case of temporary fares, the passenger operator creating the fare must specify the retail outlets at which it must or may be sold, although there are restrictions on an operator's ability to require temporary fares to be sold. Special fares may only be sold through retail outlets with the agreement of the passenger operator that is responsible for that special fare.

**Obligations to Retail Rail Products**

Following a consultation exercise, the Regulator issued a policy statement "Ticket Retailing: a Policy Statement", to the effect that lead retailers at all stations that had a staffed ticket office at 26 May 1995 will be required to continue to sell the same range of fares and certain other product(s), and at the same times as they did on that date. Such stations are also required to maintain the technical capability which they had at that date and to notify passengers of their opening hours and their hours of peak demand. Retailing obligations, and the procedures for effecting changes to them are reflected in the Ticketing and Settlement Agreement, although some of them are subject to transitional arrangements (most of which are expected to expire no later than 30 September 1996).

The retailing obligations do not generally apply to rail products which require something more than the issue of a ticket and the receipt of payment, e.g. the collection of tokens from cereal packets.

A lead retailer is required to sell products on an impartial basis at no fewer than 51 per cent. of its open ticket windows. (This will not prevent certain ticket windows being for the sale of certain products only, e.g. day of travel, provided that the full range of fares which it is obliged to retail is available from at least half the impartial windows.) Passenger operators are permitted to apply to the Regulator for specific
derogations where special circumstances apply. The impartiality requirement is designed to prevent a passenger operator which is both retailer and carrier exploiting its position as retailer to the detriment of other passenger operators. The Agreement includes detailed provisions designed to ensure impartial retailing and to ensure that certain other minimum standards are met at retail outlets. When the impartiality requirement applies, an operator that offers a particular type of fare for sale in respect of a flow must also offer for sale all equivalent fares for that flow including those which permit travel on other operators' services. This requirement also applies to sales through self-service ticket machines operated by lead retailers. Lead retailers are obliged to retail fares that are valid on all direct train services from the station where the relevant retail outlet is situated.

The impartiality obligation is reinforced by the payment by carrying passenger operators to lead retailers (and certain secondary retailers) at stations and all operators on trains, or at telephone sales offices from which impartial advice is given, of standard national rates of commission on all sales of rail products (other than those which require something more than the issue of a ticket and receipt of payment). The standard national commission rates are two per cent on season ticket sales and nine per cent on all other sales. For sales not covered by the standard national commission rates, commission is as negotiated between the relevant retailer(s) and carrier(s). Credit card commission is borne by the retailer.

For a transitional period there will be restrictions on the prices at which retailers may sell rail products. After that period, subject to a limited number of exceptions (principally in relation to special fares, excess fares and reservations), retailers will be permitted to sell rail products at a lower price than would normally apply. However, if they do so in relation to a rail product from which another operator receives revenue, they must account to the RSP for any price difference, so as to ensure that the other operator continues to receive the revenue to which it is entitled.

Other Retailing Provisions

At all stations, passenger operators other than the lead retailer are free to have their own separate retail outlets. At such outlets, they need only sell what they wish and there is no impartiality obligation as long as they make it clear that impartial advice is not provided. Where a passenger operator other than the lead retailer operates self-service ticket machines, the fares available are at the sole discretion of that passenger operator.

Tickets evidencing the purchase of fares and vouchers evidencing reservations, if applicable, must be issued to the passenger by the retailer. Tickets must indicate the relevant class of accommodation and that the national conditions of carriage are applicable and both tickets and vouchers must be issued in a format specified by the Ticketing and Settlement Scheme Council. Similar provisions apply to the issue of Discount Cards.

Refunds

Where it has sold the original fare, a retailer passenger operator is required to make any refund to which the passenger is entitled. Other passenger operators are obliged to provide advice and assistance to a passenger seeking a refund, but will pass the claim on to be dealt with by the retailer of the fare.

Retail Agents

The Agreement provides a mechanism for travel agents, rail inclusive tour operators and companies which act as self-ticketing licensees to be appointed centrally on behalf of all passenger operators, on the basis of standard form licences. These arrangements operate as a discrete ATOC Scheme, even though the relevant provisions are contained within the Ticketing and Settlement Agreement.

The Agreement sets out certain criteria for the approval of travel agents, rail inclusive tour operators and companies acting as self-ticketing licensees. The Travel Trade Scheme Management Group assesses whether applicants meet these criteria. If an applicant satisfies the specified criteria, the Travel Trade Scheme Management Group approves the grant of a standard form ATOC licence, to which the RSP is a
party. Following the grant of such a licence, the Travel Trade Scheme Management Group and the RSP monitor each such agent or licensee with regard to its compliance with the terms of its licence. If the Travel Trade Scheme Management Group is unable to confirm continuing compliance it is entitled to terminate a licence. The standard form ATOC licences contain provisions which require the revenue from rail products sold (less any applicable commission) to be paid to the RSP.

Passenger operators may also appoint other agents to carry out their own retailing activities, subject to the agent complying with the operator's obligations under the Agreement.

Methods of Payment

The Agreement provides for the central processing of information about sales that take place using a credit or debit card as the method of payment. Each passenger operator must negotiate its own arrangements with a credit card provider but, once it has done so, the RSP may agree to supply that credit card provider and the passenger operator with data about sales made by that passenger operator using credit or debit cards that are the subject of those arrangements. The data supplied will be compiled from information provided to the RSP by the retail outlets of the passenger operator. Payment will be made by the credit card provider directly to the passenger operator, which will also be responsible for reconciliation and for settling any chargebacks that arise.

Each passenger operator is required to accept certain types of credit card as a method of payment for any rail product that is sold at a station that currently has a staffed ticket office, except credit cards in relation to which that passenger operator is unable to reach an agreement with a credit card provider (or where an agreement can only be reached on unreasonably onerous terms). The credit cards that must be accepted if such an agreement can be reached are those accepted by passenger operators on 23 July 1995, i.e. VISA, Mastercard/Eurocard, American Express, Diners Club and Switch.

Acceptance of warrants by all passenger operators is required for an initial period of three years from 23 July 1995. Warrants are currently issued to many customers, both large and small. Warrants are frequently used for payment of season tickets and, amongst larger private and public sector customers, are popular as a means to prevent fraud, because cash refunds are not available for tickets purchased by warrant.

The Agreement provides for the appointment of a warrants administrator, which is responsible for managing the relationship with warrant account holders, processing the warrants and collecting the debts owed to the passenger operators. Receipts in respect of such debts are to be paid directly to the RSP.

Following the calculation by the warrants administrator of the amount due to the passenger operators in respect of such receipts, the RSP will pay these amounts to the relevant passenger operators. Initially such payments will be made once per settlement period but more frequent settlement is envisaged when suitable systems improvements can be made. Any interest earned by the RSP as a result of these arrangements will be paid to the passenger operators in proportion to the amounts they are due in respect of receipts from warrant account holders.

Third parties, for example certain ferry companies and LRT, also accept warrants. These third parties submit invoices in respect of the warrants they have accepted. The RSP will settle these invoices from the warrant account holder receipts and the amount of such payments, including any shortfall in such receipts, will be borne by the passenger operators in proportion to the amounts they are due in respect of such receipts.

In addition to sterling cheques and cash, vouchers, national transport tokens and permits to travel must also be accepted as payment for certain rail products.

Income Allocation

The creator of a dedicated fare (which entitles the passenger to travel on that passenger operator's trains only) is entitled to 100 per cent. of the price of the fare, after deducting any retail commission payable.
In the case of a jointly agreed fare (whether through and/or inter-available), the carriers are entitled to the proportion of the price of the fare (after the deduction of any retail commission payable) which has been agreed between them and notified to the RSP on the creation or recreation of the fare.

In the case of an inter-available fare created by a lead operator on a flow to which compulsory inter-availability applies, or a through fare created by a major flow operator, the principle is that income (after the deduction of any retail commission payable) should be allocated in relation to the actual number of passenger miles travelled on each passenger operator’s services in respect of that fare. At least in the short term and where no express agreements exist, this is usually implemented by allocating revenue in accordance with allocation factors produced by the ORCATS model. ORCATS allocation factors are based on the timetable and assumptions as to passenger behaviour derived from historical survey evidence. However, since ORCATS allocations cannot predict actual passenger miles travelled, they may be disapproved where an alternative allocation has been agreed between the relevant passenger operators or has been ordered following arbitration. An arbitrator may be requested to order an alternative basis of allocation where a passenger operator entitled to an allocation does not consider that the existing ORCATS allocation properly reflects actual passenger miles travelled. The arbitrator will base his decision on evidence of the actual passenger miles travelled presented to him by the passenger operators concerned.

Settlement

Both the Regulator and the Franchising Director require passenger operators to settle revenues arising from the sale of fares, reservations and Discount Cards on behalf of other passenger operators through an approved settlement system.

The revenue from the sale of fares, reservations and Discount Cards (and refunds made in respect of such sales) is settled through the RSP in accordance with the Ticketing and Settlement Agreement, unless a passenger operator obtains the Regulator’s and Franchise Director’s approval to use an alternative settlement system. The clearance of other revenues and non-travel debts and payments through the RSP will be optional for passenger operators and at the discretion of the RSP.

Each year is divided into 13 accounting periods of four (or occasionally five) weeks each (the “settlement periods”). Settlement occurs as follows:

- during each settlement period, information about the fares, reservations and Discount Cards sold by or on behalf of each passenger operator is forwarded to the RSP, as are details of all refunds made in respect of such sales and any non-travel debts or payments which the passenger operator has elected to clear through the RSP;
- at the end of each settlement period, the RSP (on the basis of the information which has been forwarded to it) calculates, on a net basis, the sum which each passenger operator owes or is owed in respect of that settlement period. This net payment (the “final payment”), depending on the amounts involved, is due either from the RSP to the passenger operator or from the passenger operator to the RSP and is paid in the third week of the following settlement period;
- all amounts are owed solely between the RSP and each passenger operator. No right of action for non-payment arises between the passenger operators themselves. It is intended that the RSP should not, however, assume the credit risk for a passenger operator’s default and that this should be spread amongst the non-defaulting passenger operators as explained below;
- to off-set the RSP’s exposure to the risk of non-payment, the RSP receives or makes in weeks one, two and four of each settlement period interim payments from or to each passenger operator amounting in total during each settlement period to 70 per cent. of the final payment made or received by the relevant passenger operator during the equivalent period in the preceding year (these interim payments are taken into account when calculating the amount of the final payment). Interim payments are also made by the RSP during the third week after the end of the relevant settlement period, totalling 90 per cent. of the RSP’s estimate of the amount it is due to receive in respect of that settlement period from retailers approved under the ATOC Travel Trade Scheme.
It is possible that a passenger operator might default on its obligations to settle revenues it has collected from the sale of rail products. That revenue will be due, via the RSP, to particular carriers in accordance with the applicable income allocations. Any loss (after the deduction of any proportion of it that is to be borne by a third party with which the RSP effects settlement on behalf of passenger operators) will be spread across all carriers in proportion to their turnover from rail products that are settled through the RSP plus any support payments from the Franchising Director or any PTE. Amounts owed in respect of such losses will be included in the calculation of the final payment due to or from each passenger operator at the end of the settlement period after the one in which the default occurred. In contrast, defaults by ATOC approved travel agents, rail inclusive tour operators, companies which act as self-ticketing licensees and third parties with which the RSP effects settlement on behalf of the passenger operators are borne by the passenger operator whose fares or other products the agent has sold but has not accounted for at the time of the default. Passenger operators committing a material and continuing payment default may have their participation in the Ticketing and Settlement Agreement terminated by the RSP in order to protect the other passenger operators.

Arrangements with other Parties

Other Transport Providers

The passenger operators and the RSP have entered into, or are expected to enter into, contractual arrangements with certain third parties whose services are retailed by passenger operators, or who are entitled to sell fares which permit passengers to travel on passenger operators' services. Where contractual arrangements have not yet been finalised, transitional arrangements determine the relationship between passenger operators, BRB and the RSP.

For certain ferry and other transport companies there are reciprocal arrangements which permit passenger operators to retail the third party's services and the third party to retail fares permitting travel on passenger operators' services. In each case, a particular passenger operator or group of passenger operators is appointed as sponsor for the commercial arrangements and will agree prices for the services offered. A clearance agreement between the RSP and each of these third parties is intended to be put in place to ensure that settlement is through the RSP.

It is intended that a retailing agreement will be entered into pursuant to which EPS will be permitted to sell fares entitling the passenger to travel on passenger operators' services. It is also intended that certain passenger operators will enter into an agreement with EPS which permits them to sell fares entitling the passenger to travel on Eurostar services. It is intended that a clearance agreement between the RSP and EPS will be put in place to ensure that the RSP settles revenue arising from the sale by EPS of fares that are valid on passenger operator services, and the sale by passenger operators of fares that are valid on Eurostar services.

LRT is authorised to retail fares which permit travel on passenger operators' services and passenger operators are entitled to retail rail products which permit travel on LRT services. There is an ATOC Scheme which covers the commercial arrangements between LRT and the passenger operators (see below). LRT also has a clearance agreement with the RSP.

Systems Administrator

BRB has been appointed, for an initial period, as the systems administrator for the RSP under the terms of a Systems Administrator Agreement (SAA). Under this Agreement, the RSP has sub-contracted to BRB (acting through Business Systems) certain duties under the Ticketing and Settlement Agreement and the various clearance agreements. The duties, responsibilities and obligations of the systems administrator include the management of the fares, distribution and information systems, the maintenance of details of the terms of the fares and other rail products that have been created, the receipt and verification of information supplied by passenger operators and third parties in respect of RSP-settled products, the calculation and notification to passenger operators, third parties and the funds administrator of interim and...
final payments, the provision, upon request, of related information to the RSP and passenger operators and third parties and the operation and maintenance of software including revenue collection and allocation systems software, hardware and back-up arrangements (including disaster recovery).

The systems administrator must achieve certain performance targets in carrying out its functions. The detailed levels of service to be achieved have been substantially agreed. The Ticketing and Settlement Agreement provides that the RSP will not be liable for any breach to which a particular service level applies to the extent that its obligations are performed in accordance with that service level.

The RSP has the right to terminate the Systems Administrator’s appointment after three years from 1 December 1995. Both parties have rights of termination after five years from 23 July 1995, but the RSP has the right to extend the contract for a further year. The Agreement provides flexibility for both parties to reduce the services covered by the Agreement, although the Systems Administrator may only propose changes to services if the continued performance of the services is uneconomic. A cap on the prices for the second and following years of the agreement has been agreed. Prices will be reduced in the second and third years of the agreement and there will be a cap applied of RPI minus two per cent. on the total, after adjusting for volumes. Prices and liquidated damages (payable for failure to perform in accordance with specified points of the service level agreements) will be finalised when the service level agreements forming part of the Systems Administrator Agreement have been finalised.

**Funds Administrator and RSP Banker**

The RSP has also entered into a Funds Administrator Agreement with BRB (acting through its treasury services division) under the terms of which BRB, as the funds administrator, will, for an initial period, carry out certain functions of the RSP referred to in the Ticketing and Settlement Agreement. These include maintaining daily control accounts, maintaining bank accounts in accordance with the RSP’s instructions, operating the credit facility provided to the RSP, making interim and final payments to and from accounts of passenger operators and third parties as instructed by the systems administrator, verifying amounts receivable and payable for each settlement period and the operation of funds software and hardware and back-up systems (including disaster recovery).

The Royal Bank of Scotland PLC has been appointed as the RSP banker. The RSP banker is to provide overdraft and revolving credit facilities to the RSP to enable the RSP to make payments to passenger operators notwithstanding a payment default.

**Other Provisions**

**Change Procedures**

After two years in operation, the Ticketing and Settlement Agreement will be reviewed generally by the participating passenger operators to ensure that it is operating efficiently and meeting its regulatory objectives. As a result of the review, the passenger operators may make changes to the Agreement and/or the systems which underpin it. Both at the two year review and generally, the Agreement may be amended by a special resolution of the Ticketing and Settlement Scheme Council. However, the prior consent of the Regulator and/or the Franchising Director will usually be required.

**Enforcement and Disputes**

The passenger operators must allow the RSP’s representatives access to their premises, personnel and records for the purpose of monitoring compliance with certain provisions of the Agreement. The RSP will carry out such monitoring of passenger operators’ compliance with the Agreement as it is required to do by the Ticketing and Settlement Scheme Council. Interim arrangements are in place to manage the RSP’s audit requirements. Full arrangements are expected by September 1996. The appointment of one high level audit committee to service every Scheme has been recommended and accepted by ATOC Council. Accountable to each individual Scheme, the committee would also be responsible for reassuring the Association as a whole that such matters were being properly managed.
Disputes in relation to the Agreement are to be resolved by discussion in committee and, if necessary, arbitration under the ATOC Dispute Resolution Rules.

**RSP Charges**
Each passenger operator must pay such amounts for the RSP’s services as the RSP notifies it from time to time. Budgets are set from time to time by the Ticketing and Settlement Scheme Council.

**Availability of Data**
Whilst earnings data is confidential to the relevant passenger operator, sales data by outlet and by flow, together with ORCATS and other revenue allocations data, is available to all passenger operators.

The RSP obtains from Railtrack the data it needs for revenue allocation pursuant to the Train Services Data Agreement with Railtrack. This Agreement gives the RSP’s members access to view and use data on certain computer systems owned by Railtrack which will feed into the RSP’s customer information and timetabling systems. This data is also used for booking and passenger ticket issuing systems. A separate agreement between Railtrack and the RSP relates to the publication of the timetable.

**Hardware Sub-Sub Leases**
The majority of the ticket issuing machines used by passenger operators are either owned by or leased to BRB. All of these machines were sub-leased to the RSP and have been sub-sub leased to the TOCs and to some travel agents. The machines were allocated in accordance with the location of the machines as at 1 December 1995. The terms of the sub-sub leases reflect the term of the longest outstanding lease relating to that particular type of equipment leased to BRB. These range from five to seven years. The charges payable under the sub-sub leases are maintenance charges payable by the RSP to the Systems Administrator. The RSP has limited flexibility under the terms of the Systems Administrator Agreement to reduce the numbers of ticket issuing systems held by individual passenger operators and all those passenger operators holding machines pursuant to such sub-sub leases.
5.3 OTHER ATOC SCHEMES

London Transport

An ATOC LRT Scheme has been established in connection with arrangements between LRT and the passenger operators. Participation in this scheme is mandatory for all passenger operators. Under the Scheme, members are required to enter into the Travelcard Agreement and the Through-Ticketing (Non-Travelcard) Agreement with LRT (the “LRT Agreements”). The Scheme also governs arrangements for free or concessionary travel for elderly and disabled people in London, as set out in an agreement between the London Committee on Accessible Transport (“LCAT”) and BRB dated 30 March 1994 (the “LCAT Agreement”). The Scheme provides for voting by passenger operators at Scheme Council and Scheme Management Group level and describes how income arising from the operation of the LRT Agreements and the LCAT Agreement is apportioned as between passenger operators. The costs of operating the Scheme and amounts payable to LRT are allocated between passenger operators.

Under the Travelcard Agreement, the passenger operators and LRT agree to offer for sale, issue and accept Travelcards. This provides Travelcards which are valid for travel over a range of zones within the Greater London area and are accepted on London Underground, Docklands Light Railway and LRT bus services and passenger operator rail services. Travelcards may also be purchased from outside the zones, valid for travel from the station of origin to the outer zone boundary and within the zones specified. LRT agrees to procure that its subsidiaries (and certain third parties such as Docklands Light Railway which LRT represents in negotiations with ATOC) will meet their own specific obligations in these respects. LRT accounts to the RSP for all monies due to the passenger operators from it and its subsidiaries and agents in respect of Travelcard sales; each passenger operator accounts to the RSP for all such monies due to LRT resulting from sales by it or by persons authorised by it to sell Travelcards. Disputes between the parties are resolved by mediation or, failing that, binding arbitration. An operating schedule sets out the principles governing fare setting and revenue sharing together with the actual details of these for the current year.

The Travelcard Agreement contains provisions to adjust revenue allocations in the event of serious disruption to rail services.

Increases in the price of Travelcards which require the agreement of LRT also require the agreement of the Scheme Management Group. If no agreement is reached the prices of such Travelcards increase by the percentage increase in the RPI over the relevant period.

LRT and the passenger operators also offer a range of combined tickets valid for through journeys on certain LRT services and passenger rail services. On certain routes LRT and the passenger operators’ tickets (other than Travelcards) are accepted on each other’s services. Under the Through-Ticketing (Non-Travelcard) Agreement, LRT honours for travel on its services through tickets issued by operators in accordance with the Agreement, and vice versa. LRT and the passenger operators also honour tickets which are valid over certain inter-available routes, subject to the provisions of the Through-Ticketing (Non-Travelcard) Agreement. This agreement also provides for agency sales by passenger operators and LRT of each other’s tickets at certain stations served jointly by them.

The LCAT agreement provides that, in return for a specified financial compensation from LCAT, free or concessionary travel is allowed on former Network SouthEast services within London outside morning peak hours for elderly and disabled persons in possession of a travel permit issued by one of the London Boroughs. The LCAT agreement expired on 31 March 1996. However, negotiations for a follow-on agreement are being conducted by ATOC and the LCAT agreement remains in force until these negotiations are concluded.

Railcards

A number of Discount Card products are offered to passengers through the ATOC Railcard Schemes, which are largely based on products formerly offered by British Rail. These cards entitle the bearer to various discounts on certain ticket types. TOCs participate in a number of products as follows:
Mandatory Schemes

The Act requires the Franchising Director to ensure that all franchise operators participate in certain approved Discount Card Schemes for young, elderly and disabled passengers (the "mandatory Card Schemes"). All franchisees are obliged to participate in such Schemes under the terms of their franchise agreements. Open access operators will also be entitled, but not required, to join the mandatory Card Schemes and participate in their benefits and obligations.

There are mandatory Card Schemes for the Young Persons Railcard (for young persons aged between 16 and 24 and students in full time education), the Senior Railcard (for those over the age of 60) and the Disabled Persons Railcard (for those with severe disabilities). Subject to certain minor variations, the Schemes are standard in form. All participants in these Schemes are required to sell, honour and otherwise operate the relevant Railcards. In the case of the Disabled Persons Railcard only, this is done centrally on behalf of all participants.

The Discount Card Schemes, both mandatory and voluntary (see below), provide for voting at Scheme Council and Scheme Management Group, and for making amendments to the Scheme (some of which require the prior consent of the Franchising Director).

Card revenue in respect of Discount Card sales is allocated to carriers pro rata to their share of revenue from fares bought with the relevant Discount Card. All participating carriers are subject to minimum marketing requirements which oblige them to ensure that Discount Cards are sold and promoted at sites such as designated stations and, in respect of certain Discount Cards, by ATOC licensed travel agents. Each participant's share of the marketing budget (fixed by the Scheme Council) and other costs incurred in connection with the operation of each Scheme is set according to its share of revenue in the preceding year arising from the sale of fares to holders of the relevant Discount Card. There are special provisions for setting and reviewing initial marketing contributions from new entrants.

For the purposes of ensuring that Scheme costs, voting rights and revenue are calculated and allocated fairly, a participant is required to allow all other participants in the same Scheme access to information on the aggregate sales of Discount Cards and those tickets which are purchased with the benefit of the relevant Discount Card.

Independently operated databases on Discount Card purchases have been set up for the benefit of participants and operated under rules set by the relevant Scheme Council.

Participants whose involvement in a Discount Card Scheme is a requirement of their operations are permitted to leave the Schemes only if they participate in an alternative Scheme which has been approved by the Franchising Director.

Voluntary Schemes

It is recognised that other Discount Cards may offer significant benefits to customers and passenger operators. As a result, certain voluntary Schemes have been established; these cover arrangements for the Family and HM Forces Railcards and the Network Card (which currently covers the south-eastern region of England and is confined to passenger operators serving that area).

The voluntary Discount Card Schemes operate on similar principles to the mandatory Card Schemes. However, unlike the mandatory Card Schemes, no decisions need to be referred to the Franchising Director for his prior approval.

International Travel

Passenger operators issue tickets and passes which are valid for rail travel in Europe, and honour tickets and passes issued overseas which are valid for travel on the rail network in Great Britain. All of these tickets and passes are subject to the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail ("CIV") contained in the Convention Concerning International Carriage by Rail ("COTIF"). Implementation of COTIF is overseen by CIT, an organisation which publishes a series of regulations for railways and other transport undertakings offering international products.
It is intended that contractual arrangements relating to the accounting and settlement of revenues relating to such tickets and passes will be put in place on the basis described below. Until contractual obligations in this area are finalised binding transitional arrangements will cover arrangements as between BRB, the RSP and passenger operators.

**The International Products Scheme**

A voluntary ATOC Scheme to govern international passenger travel has been established. The Scheme has a standard structure, with a Scheme Council and a Scheme Management Group, and passenger operators have voting rights at each level. Since the Scheme is voluntary, it may be amended by the requisite majority vote of the passenger operators without the consent of the Franchising Director and/or Regulator. Details of the rail tickets and passes subject to the Scheme are set out below.

**TCV Point to Point tickets:** These tickets are valid for rail journeys between a specific origin and destination except those wholly within the country in which the ticket is issued. Each country enters details of its pricing structure into an international tariff, the Tariff Commun Voyageurs ("TCV"). Following inclusion in the TCV tariff, any member of the TCV group (a group made up of representatives of those countries which retail or honour TCV Point to Point tickets) may retail a ticket valid in a single country at the price in the TCV. It is also permissible to summate the prices provided in the TCV by different countries to create an International TCV Point to Point ticket, valid for rail travel from an origin in one country to a destination in another country. The Scheme will determine the pricing for TCV Point to Point tickets which are valid for travel on the rail network in Great Britain.

**Eurailtickets:** These are valid for rail travel between two points in a single country and may only be retailed outside Europe. Prices are provided in ECU to the Netherlands state railway which manages the product. The prices for Eurailtickets are then published in dollars in a Eurailticket Manual. Eurail products are retailed outside Europe, with each national railway that is a member of both Eurailticket and Eurail pass (BR is a member only of Eurailticket) being allocated an area in which it may retail Eurail products.

**InterRail pass:** These passes may be purchased by passengers under 26 years of age in the form of a global pass, valid for one month throughout the InterRail network in Europe and North Africa, other than in the country of purchase. Alternatively, the InterRail pass may be purchased in zonal form, for one, two or three zones selected from the seven zones into which the InterRail network is divided. The holder will be entitled to unlimited travel for one month (or 15 days when only one zone is purchased) on the rail network(s) of the selected zone(s). Passengers who are over 26 years of age may also purchase a global InterRail pass, valid for 15 days or for one month, but it is not valid throughout the InterRail network since certain railways have withdrawn from this pass.

In respect of sales of zonal InterRail passes which permit travel in Zone A (Britain, Northern Ireland and the Republic of Ireland), the passenger operators are entitled to a certain portion (currently 80 per cent.) of total revenue, net of retail commission, applicable to Zone A, and the remainder is divided between Northern Ireland Railways and Irish Railways. In respect of global passes, passenger operators are entitled to five per cent. of total sales revenue net of commission. All InterRail pass sales currently attract retail commission of 10 per cent.

**EuroDomino pass:** This is a national pass which entitles the holder to travel on the rail network of the country whose pass is retailed for a fixed period. Members of the EuroDomino committee may retail all EuroDomino passes other than their national pass. The EuroDomino pass which is valid on the rail network in Great Britain is retailed at the same price as the equivalent BritRail pass.

**BritRail passes:** This is a collective term for the BritRail pass, the BritIreland pass and the South East pass. The BritRail passes are retailed and marketed exclusively by BRIL in accordance with an agreement between BRIL and the passenger operators. The BritRail pass entitles the holder to travel anywhere on the rail network in Great Britain on any day on which the pass is valid. The BritIreland and South East passes carry similar entitlements in the geographical areas indicated by the passes' names. The passes may be retailed anywhere in the world other than the UK.
Non-TCV Point to Point tickets: These are tickets which are similar to TCV Point to Point tickets, but are sold by BRIL-appointed agents outside Europe at prices to be agreed by the Scheme which may differ to those notified in the TCV.

Allocation of Revenue between Passenger Operators

Revenue which results from sales outside Great Britain of tickets and passes which are valid for travel on the services of the passenger operators is allocated by the RSP as follows:

TCV Point to Point tickets and Eurailtickets: Revenue due to passenger operators is allocated on the basis of a previously agreed sampling of the counterfoils remitted by each foreign railway. It is intended that some sales information will be recorded electronically by retailing railways and forwarded to EPS. This information will be interfaced to OASSIS, a system operated by EPS, and will then pass to CAPRI. To the extent that this information is available, revenue allocation among the passenger operators will be on the basis of this information. Where information continues to be provided manually, revenue will be allocated on the basis of sampling of counterfoils as described above.

InterRail passes, EuroDomino passes, BritRail passes and Non-TCV Point to Point tickets: Revenue due to passenger operators is allocated on the basis of passenger surveys commissioned by the Scheme, which estimate the number of holders of a pass or ticket carried by each passenger operator. Any revenue arising on the Great Britain portion of outward sales will be allocated in the same way as described in 5.2 above.

Settlement with Foreign Railways

Sales of tickets and passes which are valid for travel on services of foreign railways are made in the UK by BRIL, BRIL-appointed international travel agents and passenger operators. Foreign railways sell tickets and passes which are valid for travel on train services operated by passenger operators. These tickets and passes are created under the auspices of the UIC (which is the International Union of Railways).

Settlement of amounts due between the railways involved in the multilateral arrangements outlined above may take place pursuant to bilateral agreements, or through the Bureau Central de Compensation ("BCC"), which members of the UIC may join.

British Rail is a member of BCC, and carries out its international settlement obligations for BCC and non-BCC settlements through the International Rail and Accounting Centre operated by EPS. It is intended that the RSP will enter into an agreement with BRIL and EPS which will provide for EPS to carry out the international accounting services necessary for international settlement to take place. It is intended that, subject to negotiation, the RSP will undertake this service.

For revenue due to carrier foreign railways which are members of BCC, accounts are settled via BCC by BRB on behalf of and funded by an equal payment by the RSP. Payments and receipts due as between BR and other members of the BCC for both inward and outward sales are netted, so that the minimum number of settlements take place between BCC members to extinguish debts between them. Payments between BCC members are settled in ECU and the RSP will be required to deliver the necessary amounts of ECU to BRB for this purpose. The RSP’s costs in doing this will be borne by the passenger train operators in proportion to the value of the outward sales made by each of them. In respect of revenue due to carrier foreign railways which are not members of the BCC, accounts will be settled directly with the foreign railway by BRB in the relevant currency, on behalf of and funded by an equal payment in that currency by the RSP, in accordance with a bilateral agreement between the foreign railways and BRB. In each case payment due to the foreign railway and payments due to BRB on behalf of the passenger train operators are netted, so that a single sum is payable. The RSP’s costs in paying the relevant currency to BRB will be borne by the passenger train operators in proportion to the outwards sales made by them.
National Rail Enquiry Scheme

A telephone service for answering enquiries from the general public in relation to passenger rail information is currently provided by a network of some 40 TEBs. These are located across Great Britain and are operated mainly by TOCs and RailDirect Limited. Preservation of the TEB service as a nationwide network benefit, together with participation in a national and impartial TEB Scheme, is a requirement of both the passenger licence and the franchise agreement. Passenger operators participate in the ATOC NRES, as the means of meeting these requirements. Others may join the Scheme provided that they are ATOC members.

Under the Scheme, every TEB is required to meet national performance targets by 1 April 1997. In general, these standards are not currently met. A failure to achieve these standards by 1 April 1997 would represent a breach of the passenger licence for every TOC; for franchised TOCs this would also represent a breach of the franchise agreement. The NRES Management Group has taken a series of actions which are intended to facilitate fulfilment of the licence condition in the most cost-effective way practicable. The main effects of these actions were:

- to increase capacity from about 46 million to 60 million calls per year (research suggests that there is suppressed demand for at least this level of service). In order to provide additional call capacity as rapidly as possible, the call centre in Newcastle, which was formerly run by BRB's marketing services unit TRMC (Travel and Rail Marketing Company) and is now owned by RailDirect Limited, a wholly owned subsidiary of BRB, has commenced providing call handling services to the Scheme and additionally to individual TOCs. It is anticipated that RailDirect will be capable of answering between eight million and 10 million additional calls per annum;
- to introduce a single “0345” (local rate) telephone number for all train enquiries, to which all bureaux would be connected. A plan to progressively introduce 0345 484950 as the common number for all TEBs has been prepared and is currently being implemented;
- to develop detailed “pro forma” conditions, which will represent the benchmark specification of service standards and the basis for contractual terms with all TEB suppliers (these conditions will have to be approved by the Regulator and the Franchising Director);
- to put the provision of all TEB services on arm's length contractual terms with effect from 1 April 1997 and to allow the provision of services by outside contractors. Until 31 March 1997 participants in the NRES may also be providers of TEB services. These providers are obliged by the Scheme to enter into contracts with ATOC for the supply of these services from 1 April 1997 incorporating the pro forma conditions which become effective from that date.

Broad estimates of the additional costs nationally which would arise from these actions are between £14 million and £20 million per annum. However, the actual level of costs will not be finalised until a competitive tendering exercise has been conducted for the contracted supply of the services. The incremental costs would be borne by TOCs under the Scheme rules, i.e. in proportion to workload resulting from answering enquiries about that TOC's services.

Summary of the principal terms of the Scheme

The costs incurred by services providers are allocated amongst all members of the Scheme on the basis of an estimated workload relating to the train services of each participant at that TEB. Each TEB's operations will be surveyed periodically and calls will be, where possible, attributed to the particular fare to which the enquiry relates. Attributing calls to particular fares in this way, enables an estimate to be made of the workload resulting from enquiries about the services of each participant on the basis of this estimated workload.

Each TEB service provider is obliged to make a TEB service available to the general public for a specified number of hours per day at each of its TEBs. A call re-direct system or recorded message offering an alternative number must be made available by a provider whenever a TEB service is not available. Each
TEB must supply a specified minimum level of information which includes, *inter alia*, details of fares, timetables and tickets and the conditions which apply to them.

TEBs must also give reasonable assistance to callers in respect of complaints and certain other rail related enquiries. Such assistance must, as a minimum, involve providing a contact telephone number in respect of such enquiries. All participants are required to provide TEBs with sufficient information to enable them to deliver these services.

Telephone sales operations are not a requirement of the service but, are permitted under the Scheme. The costs of telephone sales operations are not recoverable under the Scheme, but may be recovered separately, as agreed between individual passenger operators.

All TEBs are required to operate impartially so that the services of one train operator are not given preference over another. Information must be provided in an impartial and objective manner, based on customers' specific enquiries and requirements. Any sales must be made on an impartial basis.

The NRES Council is required to prepare a business plan each year giving details of the means by which demand for telephone enquiries will be met during the coming year, details of the amount which will be payable to third parties and a review of the previous 12 months' activities. This business plan must be submitted to the Regulator and the Franchising Director for their approval.

The NRES Management Group is responsible for monitoring quality and advertising TEB telephone numbers in local telephone directories. Changes to the NRES which affect the service delivered to customers require the approval of both the Regulator and the Franchising Director.

**Staff Travel**

British Rail formerly provided a specified amount of free and unlimited reduced fare staff travel facilities for leisure and commuter use on its passenger services and procured, on a reciprocal basis, such facilities from certain third parties, for example, certain other rail and ferry companies and London Underground. These staff travel facilities are now made available to the eligible current and former employees (and their dependants) of BRB, train operating companies and certain third party employers, such as Railtrack and businesses which were sold in earlier privatisations, pursuant to the ATOC Staff Travel Scheme. BRB employees who, as a result of the reorganisation and sale of existing BRB businesses, transfer employment to a new employer, retain, as against their new employer, their existing contractual entitlements to staff travel facilities. The ATOC Staff Travel Scheme provides a mechanism whereby new employers (including new third party employers and train operating companies) can obtain travel facilities to fulfil their obligations and whereby the existing obligations to staff and former staff and their dependants and to the staff and former staff (and their eligible dependants) of existing third party employers can be fulfilled after reorganisation. Thus those past and present BRB, train operating company and third party employees who are eligible ("Safeguarded Employees") and their eligible dependants can benefit from the Scheme, in accordance with a Government commitment to safeguard existing facilities. The Franchising Director requires these staff travel facilities to be extended in respect of all the then current and former employees of Railtrack and BRB who were entitled to staff travel facilities on 31 March 1996. The Scheme also includes provision for the continuation of staff travel facilities to specified Safeguarded Employees who become redundant or whose employer becomes insolvent.

Membership of the ATOC Staff Travel Scheme will be a condition of each franchise agreement and the Franchising Director will retain under each franchise agreement and the Scheme itself a degree of oversight to ensure its proper operation.

Under the Scheme the members agree with each other to provide leisure and commuter travel facilities to each other's Safeguarded Employees and their eligible dependants and also agree to provide Safeguarded Employees of third parties and their eligible dependants with the staff travel facilities necessary to enable RSTL to fulfil its obligations under third party contracts. RSTL will use its reasonable endeavours to maintain, where necessary, travel facilities on the services of third parties, such as London Underground. In addition, the members agree with each other and RSTL that where a Safeguarded
Employee leaves the employment of a specified employer to take up employment with another, such employer may continue to provide benefits for that employee provided that the new employer offers the same terms and conditions for him as he would for any of his other Safeguarded Employees.

Many third parties will make payments for the staff travel facilities received by their Safeguarded Employees at rates laid down in their agreements with RSTL. Pre-existing third party contracts which have been transferred from British Rail to RSTL to discharge, will continue at the rates fixed in them. Railtrack may be charged for the provision of staff travel facilities from 31 March 2001. To cover administration costs, RSTL levies an annual fee on each employer whose employees benefit from the operation of the Scheme, depending upon the level of administration services, such as the issue of tickets and passes, which it or its administrators provide. RSTL is entitled to deduct administration fees from the monies received from third parties. Even those who do not pay for the provision of travel facilities—Scheme members and a limited number of third parties, such as Railtrack and British Rail—pay a core administration fee.

After the receipt of payments from applicable third parties in return for the facilities received, RSTL makes payments (net of administration charges and other deductions) to Scheme members broadly in proportion to the use made of travel facilities on the services of individual members. Individual allocations may be calculated on the basis of periodic survey data for both leisure and commuter travel, although it is expected that in due course RSTL will be in a position to refine the allocation for commuter travel from centrally compiled records. In cases where the facilities enjoyed by Safeguarded Employees require them to pay a portion of any ticket price, that payment continues to be made in the normal way at a ticket office and is allocated to the relevant train operators through the RSP.

Reciprocal arrangements previously between British Rail and third parties, such as LRT and certain other rail and ferry operators, have been or are currently being re-negotiated due to the introduction of the Staff Travel Scheme and it is expected that new formal contracts with RSTL will be entered into shortly. Generally speaking, reciprocal arrangements do not provide for fees or charges to be paid by either party but it is possible that payments could arise if the use made of one party's services greatly exceeds the use made of the services of the other. It is intended that RSTL should try to retain international staff travel facilities currently obtained on a reciprocal basis as a result of British Rail's membership of international organisations and arrangements between British Rail and individual foreign rail companies (and thereby retain all Safeguarded Employees' existing entitlements in respect of international staff travel) but this cannot be guaranteed by the Scheme.

It has been estimated that the number of people who were entitled to receive travel facilities from British Rail was approximately 500,000. Based on various surveys conducted between 1990 and 1992 the number of passenger miles travelled by Safeguarded Employees and their dependents using their travel facilities was approximately 600 million per annum. As at 1 April 1996 there were approximately 96 third party employers being charged for facilities for some 41,000 staff. These charges are expected to raise £13.2 million in the financial year 1996/97.

Due to the on-going sale of parts of the restructured British Rail many employees currently employed by British Rail are changing to a position where they obtain staff travel facilities under third party agreements between their new employers and the Scheme. This involves payments being received by RSTL from their new employers which would not have been received had the employees continued in the employment of British Rail.

The ATOC Staff Travel Scheme is initially subject to transitional arrangements. These include:
- continuation of existing arrangements for any reciprocal third party agreements (including international staff travel facilities) until new contracts have been entered into.
- continuation of existing administrative arrangements pending development of new agreements.
Duty Travel

Until 31 March 1996, rail staff travelled on the BRB network without charge for duty purposes. Most duty travel arrangements between operators have now lapsed and (with the exception of the proposed schemes described below) there will be no special arrangements for rail staff who need to travel by train in the course of their duties. BRB is allowing its senior staff to continue using their staff facilities to travel on duty on the services operated by the TOCs it owns. This arrangement will automatically cease to apply when the TOCs are franchised as well as when these senior staff cease to be employed within British Rail as a result of the transfer of the company which employs them to another owner. New formal ATOC sponsored duty travel schemes to provide certain duty travel facilities may shortly be entered into by all of the TOCs. These schemes will cover duty travel for TOC train crew, freight train crew, travelling post office staff and infrastructure staff (the latter category including certain staff of Railtrack and its contractors). Prior to the adoption of formal written schemes (and third party agreements where relevant), informal arrangements are currently operating for the provision of such duty travel facilities to the above four categories of staff. All but the proposed scheme for TOC train crew (which involves an exchange of facilities between TOCs) will charge third party employers for the schemes' facilities. On the assumption that all of the freight businesses sign up to the freight train crew scheme's facilities at the charges currently envisaged, initial estimates of the total that such charges for the freight train crew scheme and the travelling post office staff scheme will raise nationally for TOCs are between £900,000 and £1,100,000 per annum although this is expected to reduce as a result of freight train crew restructuring. The revenue raised from the freight train crew scheme and the travelling post office staff scheme will be allocated to each of the TOCs in accordance with that TOC's pre-set proportion in the respective scheme. In the first two periods of 1996/97 the infrastructure staff arrangements raised some £475,000 but it is not clear whether receipts will continue at this rate.
Section 6

Industry-wide Arrangements

INTRODUCTION

This section discusses a number of separate issues which will be of importance to a franchisee. It summarises the new regimes for insurance and pensions in the restructured rail industry as well as the arrangements for the ownership of and access to certain intellectual property and information technology. It also introduces the industry-wide mechanisms for dispute settlement and discusses some of the continuing relationships a franchise operator will have with parts of British Rail. The section concludes with a discussion of certain taxation issues.
6.1 INSURANCE

Property Insurance

Generally, it is up to each industry party to arrange its own property insurance. In relation to leased property, however, there are economies of scale to be derived from the lessor arranging insurance. Therefore, Railtrack arranges property insurance for the stations and depots it owns, and charges the premium to the lessee as an additional element in the rent. This insurance element is separately identified. The excess which Railtrack requires the TOC to bear in respect of such insurance varies depending on its turnover (see also section 4.3, "Access to Stations" and section 4.6, "Access to depots").

Railtrack also insures all the other infrastructure which it owns, such as track and signalling equipment. The cost forms an element of the fixed track charge (see section 4.2, "Access to Track").

The rolling stock which a TOC leases from the ROSCOs is insured by the relevant ROSCO. The ROSCO recovers the relevant premium as an element in its lease rental charge. The insurance is a three year policy with a provision for automatic annual adjustments to premium depending on claims experience.

All other property insurance will be the responsibility of the franchisee. It will need to ensure that it has adequate cover in place at the start of its franchise for items such as plant, spares, computers, office contents and buildings which the franchisee is responsible for insuring.

Motor and Employer’s Liability Insurance

Third party motor insurance will be needed for all road vehicles owned or leased by the franchisee, to comply with road traffic legislation.

All franchise operators must have effective employer’s liability cover in place upon commencement of the franchise in order to comply with the Employers Liability Act 1969.

Business Interruption Insurance

A franchise operator may, if it wishes, seek to insure against loss of revenue caused by business interruption or its continuing liability to pay rent or its increased costs of working following an insured property loss caused by an event such as a fire, explosion or (if it causes actual damage) derailment. The type of delay or interruption catered for in the performance regime in the track access agreement would not normally be covered by this kind of insurance.

Liability Insurance

All industry parties that are licensed under the Act are required by their licences to insure against third party liabilities up to a specified level (currently a minimum of £155 million). An industry party may obtain such insurance independently or, in respect of liabilities above £5 million, insurance may be obtained by participating in an existing industry facility. As presently structured, the facility provides separate cover for each participant up to £60 million. Liabilities above this level can be covered on the basis of a shared limit, or by the purchase of a separate limit, if sufficient capacity is available in the insurance market.

The Claims Allocation and Handling Agreement, to which all licensed operators are parties, provides that no claims between industry parties who have signed the Claims Allocation and Handling Agreement for property damage arising out of railway operations are allowed below a threshold of £10,000 and above a cap of £5 million. Both figures apply to the aggregate of all losses resulting from a single event or circumstance. Both the threshold and the cap are subject to the terms of any contract between the relevant industry parties (see section 6.2, "Dispute Resolution, Claims between Operators and claims by Third Parties—Claims between operators"). The ROSCOs are not bound by the threshold and cap referred to above in relation to claims they might bring against other industry operators. However, a franchise operator’s exposure is limited by the fact that insurers of rolling stock under the policy arranged by the...
ROSCOs have waived their rights of subrogation against all train operators insured under the same policy. There can be no assurance that similar waivers of subrogation rights will be available on renewal of the existing rolling stock policy.

The terms of the third party liability cover, and the insurers with whom it is placed, must be acceptable to the Regulator, as must the level of any excess or self-insurance. He requires a licensed operator to provide to him a Certificate of Insurance at least 15 days before the start of cover, and the policy must contain certain restrictions, specified by the Regulator, as to cancellation and modification. It is also a licensing requirement that the insurance includes cover for liability in respect of inter-operator property damage. The Regulator's requirements are set out in guidance notes entitled "Guidance on Third Party Liability and Insurance 2nd Edition", dated January 1996.
6.2 DISPUTE RESOLUTION, CLAIMS BETWEEN OPERATORS 
AND CLAIMS BY THIRD PARTIES

Dispute Resolution

There are three sets of dispute resolution rules which are intended to limit the cost and time spent in resolving disputes within the industry:

(i) the ATOC Dispute Resolution Rules: these apply to disputes arising out of ATOC Schemes and arrangements;
(ii) the Access Dispute Resolution Rules: these apply to disputes arising under the track access, station access and depot access agreements and their related conditions;
(iii) the Railway Industry Dispute Resolution Rules: these rules, which are now in force between most industry parties, apply to all disputes between industry parties not falling within (i) or (ii) above, including certain disputes between the Franchising Director and a franchisee under the franchise agreement.

Each set of rules includes a number of dispute resolution mechanisms, some informal and some formal.

An informal dispute resolution mechanism (committee or mediation) is non-binding in the sense that a party can subsequently refer the dispute for resolution by a formal mechanism. An informal mechanism can provide a relatively quick and cheap resolution to a dispute.

A formal dispute resolution mechanism is binding, with little or no right of appeal. Therefore it has to allow the parties sufficient opportunity to present their arguments and for sufficient investigation of the facts. Nonetheless, a formal procedure should still be a quicker and cheaper mechanism for dispute resolution than court proceedings.

The dispute resolution clause in each agreement between industry parties will specify which procedures from which set of rules apply to that agreement. In most cases, disputes are submitted first to an informal mechanism followed, if that fails to resolve the dispute, by a formal mechanism. It is hoped that, in this way, a significant number of disputes will be settled quickly at the informal stage, without needing to invoke the more lengthy and expensive formal stage.

Informal Mechanisms

Committee

There is a separate committee, with a different constitution, under each set of rules (though the same individual may sit on more than one committee and the constitutions differ only in their details). Such committees are comprised of representatives of the relevant category of industry parties affected by the rules. Each may have specialist sub-committees, to deal with specific areas (e.g. the timetabling sub-committee under the Access Dispute Resolution Rules). In each case the parties to a dispute argue their case before the committee or sub-committee, which may decide the dispute:

- Under the Railway Industry Dispute Resolution Rules, decisions of the Industry Dispute Resolution Committee established under those rules must be unanimous and the parties in dispute can vote. This means that a party can block a decision against it. But the independent chairman has power to make a ruling in the event that the parties cannot reach agreement. To discourage parties taking small disputes to arbitration, there are costs disincentives to appealing against that ruling.
- Decisions of the Access Dispute Resolution Committee established under the Access Dispute Resolution Rules must be unanimous, but the parties in dispute cannot vote (except to the extent that their employees are members of the Committee). Where there is disagreement the independent chairman has power to make a ruling.
Decisions of the ATOC Schemes Committee, established under the ATOC Dispute Resolution Rules must be unanimous. Neither the parties' representatives, nor any of their employees who are members of the Committee, can vote. The ATOC chairman, who will usually chair the committee, has no power to make a ruling. But a train operator may ask for an independent chairman. In such a case the independent chairman (rather than the committee members) has power to make a decision.

In each case a party in dispute may appeal against the committee's or chairman's decision to one of the formal mechanisms discussed below.

Provision is being made to ensure that disputes which fall within the jurisdiction of both the Access and Industry Dispute Resolution Committees are dealt with by the appropriate Committee.

Mediation

This uses an independent mediator to assist the parties to a settlement. The parties and the mediator may meet more than once, but, unless all involved agree, the meetings will not continue later than 35 days after the date of the appointment of the mediator. It is suitable for large disputes involving a small number of parties, whereas multi-party or routine disputes generally go to the relevant committee.

Formal Mechanisms

Certain specified disputes are to be decided by the Regulator: for example, appeals from the timetabling sub-committee. Likewise, certain specific disputes will be suitable for expert determination, in which an appropriate expert decides the issue on the basis of his own knowledge, rather than the parties' submissions and evidence: for example, valuation disputes. However, most disputes will require the hearing of argument and evidence and therefore will be suitable for arbitration.

Arbitration

Unless the parties can agree on an arbitrator, he will be appointed by an independent disputes secretary. Both the Railway Industry Dispute Resolution Rules and the Access Dispute Resolution Rules provide for the appointment of a disputes secretary who may be the same person and whose appointment is made pursuant to each set of rules. Both sets of rules provide for a procedure and timetable which limit the time and money spent on, for example, documentary discovery and oral evidence, while allowing the facts to be investigated with reasonable thoroughness. The arbitrator may vary the timetable to accommodate unusually complex cases but, unless he does, the rules provide for a hearing within 10 weeks of the arbitrator's appointment. Appeal against the arbitrator's decision is possible only on a point of law and with the leave of the court.

Expert determination.

Again, a suitable expert is appointed by the disputes secretary unless agreed by the parties. The timetable is tighter than for arbitration, with no oral hearing and a decision within eight weeks of appointment.

Determination by the Regulator

The Regulator may set the procedure to be followed in determining any issue referred to him.

Court determination

Disputes over the allocation of third party claims falling within the Claims Allocation and Handling Agreement (see below), arising out of a single incident and exceeding £5 million, may (under the revised draft referred to below) be submitted for decision by the courts rather than arbitration.
Disputes Under the Franchise Agreement

The franchise agreement provides for certain disputes to be resolved through the Railway Industry Dispute Resolution Rules. Breaches of the franchise agreement by a franchisee are dealt with by the statutory enforcement mechanism provided by section 55 of the Act (see section 3.7, “Franchise Management—Enforcement of Franchise Agreement”). Breaches by the Franchising Director would be dealt with through the courts.

Claims Between Operators

Claims for Loss of Revenue

Where the condition or lack of availability of track prevents a TOC running services on time, or at all, compensation from Railtrack is normally governed by the performance regime. Similarly, where the operator of a station or depot fails to provide the services it has contracted to provide, the User's remedy may be claimed under the ROSCOs, and consequential damages, in accordance with an agreed formula. See section 4.2, “Access to Track”, section 4.3, “Access to Stations” and section 4.6, “Access to Depots”. Disputes under access agreements are dealt with under the Access Dispute Resolution Rules, discussed above.

Save where expressly permitted by an agreement between them, a licensed operator may not bring, against any other licensed operator, any claim for loss of revenue or other consequential loss (other than third party claims) caused by that other party in connection with railway operations.

A licensed operator may bring a claim for consequential loss against an unlicensed party, unless prevented by a contractual provision. If another licensed operator has given an indemnity to the unlicensed party, in some circumstances that could result in the liability falling on the second licensed operator.

Physical Damage

In addition to express contractual indemnities, one licensed operator may claim against another for damage to its property, in accordance with the normal legal principles of liability for negligence. In order to limit the number of small disputes between operators, under the Claims Allocation and Handling Agreement no such claims arising out of railway operations are allowed below a threshold of £10,000 per incident, a figure which is capable of review by the Committee to be established under the Railway Industry Dispute Resolution Rules. There is also a cap of £5 million for such claims. The figure of £5 million (under a clarifying amendment being made to the Claims Allocation and Handling Agreement) applies to the aggregate of all net claims by all parties to the Agreement resulting from a single event or circumstance. The £10,000 threshold and the £5 million cap are both subject to the terms of any contract between the relevant licensed operators. As indicated above, loss of revenue resulting from physical damage may not be claimed unless this is expressly permitted by an agreement between the relevant licensed operator. Neither the threshold and cap nor the limit on claiming for loss of revenue apply to ROSCOs or other unlicensed parties.

An amendment to the rolling stock Master Lease is under consideration which would provide that claims for damage to rolling stock leased from the ROSCOs, if in excess of £25,000, would be brought by the ROSCOs (see section 6.1, “Insurance”, as to the waiver of subrogation by the ROSCOs’ insurers).

Claims by licensed operators (but not by ROSCOs) must be brought by mediation, followed if necessary by arbitration, under the Railway Industry Dispute Resolution Rules, unless an applicable contract provides otherwise.

Third Party Claims

These are dealt with by the Claims Allocation and Handling Agreement, to which all licensed operators are parties. Other ex-BRB businesses which have been sold will be able to join if they satisfy...
certain pre-conditions. The description below relates to the revised text of the Agreement which is currently in the course of adoption.

The principles behind the regime are to (i) avoid the risk of a non-industry claimant who has, for example, been injured in an accident having to pursue more than one industry party, and (ii) minimise industry parties' costs incurred in defending such claims. In pursuance of the latter of these objectives, a distinction is made between minor claims, responsibility for which is pre-allocated and which are handled centrally, and major claims, responsibility for which is decided in accordance with legal liability and which are handled by the responsible party. A major claim is one which, when aggregated with all other claims arising from the same event or circumstance, is above £7,500 (including interest, but excluding both the claimant's costs and the costs of defending the claim). This figure will be increased every three years in line with the Gross Domestic Product Deflator at market prices as at the third quarter of the immediately preceding year as published by the Central Statistical Office and rounded up to the nearest £500. When in this section the figure of £7,500 is used, it is subject to the above adjustment.

Claims Handling
To achieve both the aims set out above, a central agency has been established. It handles minor claims, assists to the extent desired in the handling of claims above that level and may act as a nominal defendant in any legal proceedings brought against parties to the Claims Allocation and Handling Agreement. This agency is RCL, a company limited by guarantee. All operators of railway assets licensed under the Act and certain non-licensed industry parties may be members of RCL. Control of day-to-day management and administration of RCL lies with the Management Committee, made up of two representatives from each of the following categories: British Rail, Railtrack, the freight operators, the passenger train operators and other industry parties. Each category (other than British Rail and Railtrack) may nominate representatives only once there is at least one company within the category which is not owned or controlled by British Rail.

The Management Committee reports to a board, upon which the same categories of industry parties are represented. At present, British Rail has two representatives and one of those is the Chairman. The other categories have one representative. Until the majority by number of the TOCs is not owned or controlled by British Rail, the TOCs' representative will be nominated following consultation between British Rail and the TOCs which are not owned or controlled by British Rail; and in default of agreement British Rail may appoint the representative. Once a majority of TOCs is not owned or controlled by British Rail, the TOCs' representative will be nominated by those TOCs, and British Rail will be entitled to only one representative on the Board and will no longer be able to nominate the Chairman. Representatives of other categories of members are nominated jointly by the members falling within those categories.

(i) Claims below £7,500: RCL handles all claims against parties to the Claims Allocation and Handling Agreement for less than £7,500. At present (though this is under consideration) RCL charges for claims handled by it on a flat rate basis (plus legal costs and other disbursements). These charges are specified in schedule 4 to the Claims Allocation and Handling Agreement.

The exceptions are where (a) an industry party accepts liability for a claim, (b) an industry party accepts liability for a category of claim or (c) it is an employee liability claim, and the industry party has chosen to handle its own employee liability claims. In all these cases, the industry party may, if it wishes, handle the claim itself, or employ another claims handling service to do so.

(ii) Claims above £7,500: Claims against parties to the Claims Allocation and Handling Agreement for more than £7,500 will be handled by a lead party, or its insurers on its behalf. The lead party is the party which is (a) agreed, by the potentially liable parties, to be likely to bear the largest share of liability for the claim or (b), if that cannot be agreed, picked by the potentially liable parties on a without prejudice basis or (c), if neither is possible, selected on the basis of the same formula as is used for the pre-allocation of claims below £7,500.
The lead party (or its insurers) will manage the claim, but it must:
- agree with the other potentially liable parties how frequently, and in what form, it will report to them and consult with them, and the extent to which it must obtain those parties' agreement to particular steps in defence of the claim;
- report and consult in accordance with the agreed procedures, and comply with reasonable requests for changes to them and for information regarding the claim;
- instruct a firm of solicitors which is acceptable to all potentially liable parties;
- not settle the claim without the consent of the other potentially liable parties. Consent may not be withheld unreasonably, save on the instructions of a party's insurer;
- act reasonably and in good faith towards other potentially liable parties.

Again, an industry party may accept liability for the whole of a claim and then handle it without reference to other industry parties.

If an incident seems likely to result in claims exceeding £5 million, the lead insurers of the lead party's cover over £5 million may manage the conduct of the claim jointly with the lead party.

The Claims Allocation and Handling Agreement is in the course of amendment to provide that the relevant industry parties, rather than RCL, will be the named defendants in any court proceedings brought by a third party and falling within that Agreement. This is intended to simplify the procedure for bringing contribution and indemnity claims against non-industry parties.

RCL has a general right to obtain from parties to the Claims Allocation and Handling Agreement documents which are relevant to a specific claim (and are not privileged), for use in handling that claim. Where a lead party is handling a claim, it may require RCL to exercise this right. This power is subject to safeguards intended to avoid the lead party obtaining an unfair advantage in a subsequent arbitration.

**Allocation of Claims**

Liability for valid claims below £7,500 is allocated according to pre-agreed rules. For example:
- a claim by an employee will be paid by the employer;
- a claim by an independent contractor, or the employee of an independent contractor, will be paid by the party which employs that contractor;
- claims by passengers on a train will be paid by the operator of that train; and
- claims resulting from people falling off station platforms will be paid by the station operator.

If there is a dispute as to which category a claim falls into, it will be decided by the Industry Disputes Resolution Committee pursuant to the Railway Industry Dispute Resolution Rules described under "Dispute Resolution". RCL pays the claimant either from funds it holds on behalf of the liable party or by such other means as the Regulator may approve.

Liability for valid claims above £7,500 is allocated to the party or parties which would be liable at law (taking into account any contractual arrangements between them). If the potentially liable parties are unable to agree on the allocation of the claim by the time it has been settled or judgment given, allocation will be decided by the Industry Disputes Resolution Committee followed, in most cases, by arbitration under the Railway Industry Dispute Resolution Rules. But where an incident gives rise to claims exceeding £5 million, a party wishing to challenge the Committee's allocation may instead take the issue to the High Court.

In the meantime, RCL pays the claimant by invoicing the potentially liable parties on an interim basis (an invoice which may be met out of the bank facility referred to below), with adjustment payments to be made following final allocation.

**Bank Facility**

The Claims Allocation and Handling Agreement provides that a bank facility may be arranged to fund, on an interim basis:
the costs of defending claims arising out of a single event or circumstance, to the extent that the costs exceed the excess under the lead party’s liability insurance;
• payment of a claim pending its allocation by the Industry Disputes Resolution Committee or by arbitration; and
• an insolvent and uninsured industry party’s share of a claim, until it can be paid by the levy referred to below.

Each industry party is required to guarantee, jointly and severally, the obligations of any other industry party which draws on the facility.

**Levy**

The provisions described under Insurance are intended to minimise the danger of an industry party being unable to pay a claim as a result of being uninsured. But should a party to the Claims Allocation and Handling Agreement have inadequate resources, either of its own or from insurance, to pay its share of a claim, that share will be met by a levy on all parties to the Claims Allocation and Handling Agreement, pro rata to their turnover (including subsidy) in the previous financial accounting year derived from railway operations.

**Non-industry Parties**

A non-industry party may be wholly or partly responsible for a claim which is brought against RCL or an industry party. The Claims Allocation and Handling Agreement divides such parties into three categories:

• Cleaners, decorators, maintenance contractors, suppliers of small parts or regularly used materials and very frequent suppliers of goods or services: it is up to the party to the Claims Allocation and Handling Agreement which enters into the contract (“the Employer”) to include a clause in the contract binding the independent contractor into the claims handling procedure. If it does, the independent contractor is treated as a party to the Claims Allocation and Handling Agreement in relation to a claim in which it is involved. If it does not, in most cases the Employer pays the independent contractor’s share of liability and it is up to the Employer to recover it from the independent contractor in separate proceedings. In both cases, if the independent contractor fails to pay its share of the liability, the Employer must do so.

• Other independent contractors such as train manufacturers or rolling stock leasing companies which are not signatories to the Claims Allocation and Handling Agreement which entered into the contract may seek to negotiate a similar provision, in the absence of which there are a number of options depending on the circumstances. If necessary, industry parties which are involved in the claim may be separately represented.

• Non-contracting parties (for example, motor vehicle drivers): a party to the Claims Allocation and Handling Agreement may assign its rights against the non-contracting party to RCL or it may seek to recover from the non-contracting party in separate proceedings.

**Change Procedures**

The Claims Allocation and Handling Agreement may be amended if an amendment is approved by 75 per cent. of the Industry Disputes Resolution Committee and approved by the Regulator. Reviews of the operation of the Claims Allocation and Handling Agreement are to be carried out every two years. The Regulator will participate in those reviews and may require amendments to be made even if not supported by the Industry Disputes Resolution Committee. Any amendments made pursuant to such a review will take effect at least 12 months after the review has been concluded.
6.3 INTELLECTUAL PROPERTY

Branding

A number of registered trade marks and service marks and a number of trading names (including train names) relating to passenger railway services formerly owned by British Rail are available to franchise operators. They fall broadly into four categories: The first comprises marks which are industry-wide, such as the "double arrows" device trade mark, the second being discount card and ticket names, the third being multi-user brands such as "InterCity" and the fourth comprises marks specific to a particular railway business, such as "Garwick Express".

The "double arrows" device mark has been transferred to the Secretary of State and is available under licence for use by all railway businesses, including Railtrack. It has been licensed to British Rail and will continue to be used as its corporate logo for at least five years. It has also been licensed to the RSP and to BRIL. It is already a prescribed traffic sign under the Road Traffic Regulation Act 1984 and is to be used to designate the location of stations and the operation of a national rail network generally. The double arrows licence which is being granted to TOCs is non-exclusive and royalty free but essential licensing terms apply, including how the mark is to be represented. It will not be allowed to be used where it could confuse traffic. The use of the double arrows device by TOCs to denote stations is required under franchise agreements.

Discount card and ticket trading names have been transferred to the RSP and licensed under the Ticketing and Settlement regime discussed above.

The InterCity related trade marks, multi-user marks or trading names and registered trade marks and trading names specific to particular train operators are now owned by the Franchising Director. Registered trade marks, service marks and trading names specific to a particular TOC have been exclusively licensed, under an Exclusive Trade Mark Licence, royalty free, to the TOC for the term of its franchise. The InterCity trademarks and related marks have been licensed on a non-exclusive basis to TOCs requiring a licence and fulfilling certain criteria under the Brand User Agreement. The multi-user marks include trading names previously used by several TOCs, such as "NETWORK SOUTHEAST" and "Business Direct". The Franchising Director has licensed these marks and trading names on a non-exclusive, royalty free basis under a Non-Exclusive Trade Mark Licence. Payments under all of the licences, including the Brand User Agreement for InterCity trade marks and the exclusive and non-exclusive trade mark licences, only cover administrative, registration and enforcement costs. Additional charges may be required to deal with infringement proceedings.

Franchise operators will not be permitted to dispose of or encumber any trade marks or trade names licensed to them by the Franchising Director and all rights (including goodwill) will revert to the Franchising Director at the end of the Franchise. Any franchisee not wishing to have a licence of and to use any of these marks will be responsible for the costs of any de-branding. Similarly, if a franchisee re-brands during the course of its franchise, it may be responsible for the cost of re-branding at the end of its franchise in accordance with the franchise agreement. These provisions essentially enable an outgoing franchisee to choose between licensing a successor franchisee to use the brands on reasonable terms or paying that successor's reasonable costs of removing the brands from all assets over a reasonable period of time. The Franchising Director has the power to insist that the brands are licensed to a successor on an interim basis.

Licensed Rights other than Software

Apart from trade marks and trade names, other types of intellectual property which may be expected to be used by a franchise operator include copyright, confidential information or know how, registered and unregistered designs and patents. Intellectual property rights in computer software are dealt with below.
Categories of intellectual property include traction and rolling stock intellectual property ("T&RS IPR"), comprising rights to copy and use technical drawings, documentation and manuals relating to rolling stock.

T&RS IPR is required for the maintenance of rolling stock. Some of that IPR is owned by British Rail and other intellectual property is owned by third party manufacturers of rolling stock and components for rolling stock. T&RS IPR owned by or licensed to British Rail is licensed to TOCs under the Universal Licence Agreement. There are limitations on the use of some T&RS IPR licensed to British Rail which may affect TOCs which undertake Heavy Maintenance.

Intellectual property created after the vesting of a TOC and before it is franchised (other than trade marks, logos, document styles, business plans and marketing material created exclusively for the TOC) is licensed back to British Rail on a sole basis and is available to all successor bodies under the Universal Licence Agreement.

The Universal Licence Agreement is a non-exclusive perpetual royalty free licence to use all British Rail owned intellectual property and intellectual property licensed to British Rail, excluding brands and computer software, but including intellectual property owned by, or licensed to British Rail, up to the date of franchising.

Access to copies of intellectual property owned by or licensed to BRB is limited to a three year period from commencement of a franchise. After that date TOCs will be able to access T&RS IPR from Railway Documentation and Drawing Services Limited ("RDDS"), which is described below. For a three year period from the date they cease to be a subsidiary of BRB TOCs are required to license to BRB all safety related improvements they have generated, subject to BRB requiring a licence and a payment for use of such improvements. A side letter entered into at the same time as the Universal Licence further defines this obligation. To the extent that BRB does not have copies of any of the licensed intellectual property then, until three years from the date of franchising or 1 October 1998, whichever is later, TOCs will be obliged to make at least one copy of any licensed intellectual property in its possession or control available to BRB at BRB’s cost.

British Rail holds a number of patents which are licensed under the Universal Licence Agreement. It is intended by BRB that the costs of maintaining the patent portfolio will be met by successor bodies which have an interest in such patents. TOCs may disclaim interest in any of the patents within a year of franchising and thus avoid contributing to the cost of maintenance of such patents.

All the intellectual property rights used exclusively by Railtrack or considered by BRB to be crucial to Railtrack’s business have been transferred to it. All intellectual property rights which were transferred to Railtrack under its 1 April 1994 transfer scheme were licensed back to BRB in the form in existence at that date and are available to TOCs under the Universal Licence Agreement.

Railtest and RDDS

The Railtest division of Central Services currently provides a number of services to TOCs and other successor businesses including a library of technical drawings related to infrastructure and computer aided engineering design. Railtest also maintains the data on the Parts and Drawings System ("PADS") and provides certain vehicle and infrastructure testing.

A former part of the Railtest division of Central Services has now been vested in a subsidiary of BRB, RDDS. RDDS has stewardship of BRB’s common domain T&RS IPR. Some aspects of the management of RDDS are subject to the control of those of its users who are parties to a usage contract and members of the RDDS Managed Documentation ("RMD") Stakeholder Group. The Committee of the RMD Stakeholder Group has power in relation to setting of the budget and charges for RDDS. The usage contracts with RDDS are for a term of four years. Parties to usage contracts are responsible for payment of a standing charge and a charge for copies to be made by RDDS. All TOCs, except Great Western, LTS and South West Trains, are parties to such usage contracts. RDDS is also responsible for BRB’s responsibilities under the Universal Licence Agreement to provide copies of T&RS IPR for three years from the date of franchising.
successor businesses leave BRB ownership. RDDS intends to charge a higher rate for copying requested under Universal Licence Agreements than that specified under usage contracts.

BRB intends to transfer its intellectual property rights associated with traction and rolling stock documentation to RDDS later this year. Any transfer by BRB of such intellectual property rights to RDDS will be subject to BRB’s obligations under the Universal Licence Agreement.

The Board intends to vest the remainder of the Railtest division into a subsidiary of BRB, Railtest Limited, and to vest the shares in RDDS and Railtest Limited in a holding company known as Railway Technical Association Limited (RTA). RTA will be a company limited by guarantee and its members will be railway industry participants. The TOCs will be eligible for membership of RTA. The Department of Transport is currently considering whether other options are available for Railtest’s business.

Software and Computing Services

Many of the key processes involved in providing a train service require computer systems and computer software to support them. The computer software is described briefly below.

Train Planning

Information is available to assist the TOCs in preparing their input to the train planning process.

The PROTIM system enables train planners to enter details of desired train routes with calling stations. It combines point to point journey times relevant to the type of train to assist in the formulation of the specification for a proposed train service.

Twice a year, around May and October, the Great Britain Passenger Rail Timetable is published. To establish this and other timetable changes as described under section 4.2, “Track Access Conditions” above, a bidding process takes place between Railtrack and the TOCs. A TOC’s bid is essentially the full set of specifications for the train service it seeks; in most cases this is passed to Railtrack in an approved form and then handled on Railtrack systems, currently a mixture of PROTIM and APLAN. Railtrack, on receipt of all the bids, combines them to check for conflict and then responds with its acceptance or rejection of each bid.

Train Operations

TOPS is the main source of train movement information, providing comprehensive monitoring of a train’s complete operational cycle — where it is, whether in service, under maintenance (for all rolling stock other than multiple units), etc. GEMINI provides this function for multiple units. Trains are monitored for their arrival and departure times at various points on their journey. Real-time information on train running performance against plan is provided by TRUST. The current performance data is recorded in whole minutes with the effect that anything up to a 59 second excess over the threshold figure of lateness is not included in Passenger’s Charter performance figures. In addition, new recording mechanisms are being implemented in some parts of the rail network and these may lead to a step change in recorded performance.

Historic TRUST data is stored in PALADIN giving information on completed journeys compared to planned journeys and a summary of any delays. Various enquiry systems provide access to, and analysis of, this data including PIKIT and PEARS. Various safety-related systems are used for accident/incident reporting information.

Other systems are available for the provision of day to day station and depot operations such as allocating crew and rolling stock to train plans and dealing with delays.
Customer Information

The three main areas of customer information are:

Static information, in the form of printed timetable information displayed at stations, the Great Britain Passenger Rail Timetable and pocket timetables, is provided by information systems from the TSDB suite of systems. Short term changes, such as engineering works, are also catered for through these systems.

Dynamic information, such as platform visual display screens and customer announcements, derive their information on real-time train running from the signalling systems and from systems within TOPS, generally via a manual interface.

Customer enquiry information for TEBs is currently delivered by CATE or FACETS which provide on-screen timetable information of the best options for the services, reservations and fares. Ticket issuing machines also offer price information.

Vehicle Management

RAVERS provides productivity data in relation to vehicle maintenance activities and can also provide vehicle work schedules and produce future/forward maintenance plans for several years in advance. Work schedules can be allocated to depots using RAVERS through Business Fleet Engineers. RAVERS can also provide information to support the billing process. GEMINI provides information on the utilisation (hours and mileages) of multiple unit rolling stock which is interfaced to RAVERS. Defects can also be input to GEMINI and logged against vehicles in RAVERS.

Retailing

Most stations where tickets are sold use APTIS machines to sell and issue tickets in manned booking offices. SPORTIS machines are used at some stations and on board trains by conductors to perform a similar task. Some stations, typically with high volumes of commuters, use QUICKFARE self service ticket machines. Reservations and fare enquiries are handled using the CRS and FACETS information systems respectively. TRIBUTE, a new retail system which is being used by some TOCs, is designed to give a combined rail travel information, booking and ticket issue capability for TOCs and travel agents.

Passenger Revenue and Accounting

Information systems are used to acquire and collate retail data to provide retail accounting and a management information function. A key retail information system is CAPRI which captures ticket information, determines the revenue to be paid to passenger operators and third parties and provides financial and management accounting for TOCs. It also provides data for marketing analysis so that TOCs can monitor trends and the impact of marketing schemes. The ORCATS model is a suite of computer programs which provides a file of allocation factors for the CAPRI system, which is used to apportion, to individual passenger operators, passenger revenue on certain flows. The ORCATS model is normally run twice a year to reflect changes in the winter and summer timetable, and can be run at the end of a financial year. ORCATS obtains its information as to the timetable from TSDB, which is the database of agreed train plans.

Human Resource

The National Payroll System (NPS) enables TOCs to pay employees on a weekly or four weekly basis. The PEARLS system maintains personnel records and provides management information. PROBE, an online enquiry system, gives access to a personnel database which draws data from both the payroll and personnel systems.

Finance

The SAPPHIRE system provides general ledger, purchasing ledger, sales ledger, cash accounting and fixed asset accounting functions. SAPPHIRE is used by most TOCs. In addition to SAPPHIRE, a number
of British Rail legacy systems are still in use including NPS, IBIS (Inter-Business Billing System) and IMACS (Inventory Management and Control System). IBIS is not used by privatised businesses. It and a number of other legacy financial systems are being phased out by British Rail.

**Safety**

Many of the information systems above are classed as safety critical because, for example, they provide information such as whether drivers are certified to drive a particular route. Others, such as BRIMS, permit the reporting of safety related incidents.

**Hardware**

Business Systems operates computer centres at Nottingham and Crewe. The mainframe computers at these centres are accessed through terminals or PCs through local area networks or BR data links. TOCs have mini-computers running their SAPPHIRE systems as well as local area network and PC-based systems. British Rail intends to sell Business Systems by the end of 1996.

Computing and Software Documentation

The software owned by each of British Rail, the RSP and Railtrack is licensed to TOCs by the relevant owners. The RSP licenses the systems it owns to TOCs under the Ticketing and Settlement Agreement and provides services by means of its Systems Administrator and Funds Administrator agreements. Both British Rail (through Business Systems) and Railtrack provide access to some of the systems owned by them and licensed to TOCs. The remainder are PC-based.

**BRB Owned Software**

Access to the British Rail mainframe computers is dealt with in the computer services agreement between Business Systems and each of the TOCs. It is effectively an umbrella agreement which covers the bureau services provided by Business Systems for all mainframe computer software licensed by British Rail to the TOCs and the maintenance of the bulk of BRB owned software. It also contains provisions relating to the commissioning of the development of licensed software and the provision of training. The agreement is for a period of five years from the date of vesting. The principal commercial terms of the agreement are contained in service level agreements set out in a schedule to it. These set out for each of the main systems run on the British Rail mainframe computers the terms on which such services are made available, including costs, service specification and service availability and, where appropriate, liquidated damages which apply if there is a failure to perform. There are similar service level agreements for maintenance and support of various systems. Most service level agreements are for a year. Individual service level agreements of over two years in length are terminable on 12 months' notice which may be given at any time between the date of the franchising and two years after that date.

The Master Software Licence is a licence of British Rail owned software used by the TOCs. That software was created or acquired by British Rail. The licence is non-exclusive, perpetual and royalty-free. It is limited to the business of the TOC and can only be sub-licensed for the purpose of that business. It cannot be assigned without consent. It contains provisions relating to the development of such software. If a stakeholder group exists to which the relevant TOC and British Rail are parties then the decisions of that stakeholder group will govern the development of the software. In the absence of a contractually binding stakeholder group there are provisions for the modification of the licensed software based loosely on Access Condition G and, in the case of three necessary systems, the Systems Code. Business Systems will either maintain BRB owned software under the Computer Services Agreement or assist in obtaining maintenance from British Rail successor bodies through call-off agreements. As part of the process for the sale of Business Systems the Department of Transport is currently considering ownership of British Rail owned software, including systems such as GEMINI and TRIBUTE.
Each TOC vested before August 1995 has entered into new master software licences, computer services agreements and sub-licence deeds containing various amendments including some related to the implementation of the Systems Code. Those vested since that date were vested with the new template agreements.

RSP Systems

In order to perform the distribution, income allocation and settlement functions referred to under the Ticketing and Settlement Agreement, the RSP relies on a number of computer systems. These systems have been licensed to Business Systems as the systems administrator under the SAA. The RSP is not entitled to change some of these systems without the prior approval of the Ticketing and Settlement Scheme Council (except where urgent changes are required to ensure the continued functioning of the systems). These systems and other RSP owned systems, have been licensed to passenger operators under the Ticketing and Settlement Agreement. A group of systems, which are used to assess timetable changes in relation to ORCATS algorithms and to model train loading, are owned by the RSP and licensed to passenger operators on the basis that Rail Operational Research Limited which developed them, will maintain MOIRA and REVENUE by ARC under agreements with passenger operators and will maintain the others under an agreement with Business Systems. Rail Operational Research Limited will also provide operators, on a subscription basis, with the Passenger Demand Forecasting Handbook.

The RSP and BRB have entered into a software exploitation licence giving BRB the non-exclusive right to license all RSP owned systems previously owned by BRB and exploitation rights in the RSP-owned systems (other than those developed by Rail Operational Research Limited). Such exploitation rights are limited to the versions of the RSP owned systems in existence on 23 July 1995 (or 22 December 1995 for some systems). Rail Operational Research Limited has non-exclusive licensing rights and exclusive exploitation rights in the systems developed by it and owned by the RSP. Such exclusivity may be terminated in each case on three years’ written notice.

Railtrack Owned Software

Most of the relevant systems required to gain access to and to use railway facilities are owned by Railtrack. These systems were transferred to Railtrack pursuant to certain transfer schemes (“the Railtrack Software”). The Railtrack Software includes software required to be used to exchange data under track access agreements.

Under the terms of the Railtrack Exploitation Software Licence between Railtrack and British Rail, British Rail has been granted a non-exclusive licence to use the Railtrack Software and to grant sub-licences to third parties. British Rail also has an exclusive right to market and exploit the Railtrack Software in the form that existed on 1 April 1994.

The terms of the Railtrack Exploitation Licence Agreement have been amended to allow Railtrack to provide source code to operators of mainframe software once that software ceases to be shared by Railtrack and the TOCs. The TOCs will then be able to use that software for their own business in the mainland of the United Kingdom. All TOCs have now entered into Railtrack software licences and no longer rely on Railtrack sub-licence deeds granted by British Rail.

Railtrack and the Regulator have agreed to an amendment to Railtrack’s network licence requiring it to produce and comply with the Systems Code. The Systems Code has been approved by the Regulator. The Systems Code is applicable to all systems which are necessary or expedient for or in connection with the operation of trains on or access to Railtrack’s infrastructure. It applies to all such systems owned by Railtrack and to all necessary systems, regardless of ownership. The Systems Code is in two parts, with the principles of the Code set out in the first part. More detailed provisions relating to Railtrack’s management and development of its systems are set out in the second part. When the Systems Code was approved by the Regulator the agreed changes to track access agreements and to Track Access Condition G removing the references to systems and systems interfaces were made. Track access agreements include an obligation
on operators to use Railway Code Systems as defined in the Code in their dealings with Railtrack. Other agreements to which TOCs are parties, including rolling stock leases and spare parts contracts, require the use of other computer systems which are in the main owned by British Rail.

Access to and use of Railtrack Software is dealt with under the Railtrack contract for computer services. The principal commercial provisions of that contract are set out in service level agreements called service specifications, which detail aspects of the service provided including availability, whether maintenance and help desks are provided and the price of the services. The specification also indicates whether the system is covered by the Systems Code. Railtrack cannot terminate the provision of services relating to a system dealt with under the Systems Code without the Regulator’s prior consent.

Third Party Software

TOCs benefit from third party software (other than Railtrack and RSP Software and software relating to SAPPHIRE) through two principal documents: a sub-licence deed with British Rail (the “Sub-Licence Deed”) and the Computer Services Agreement with Business Systems.

The Sub-licence Deed is non-exclusive and royalty free and limited to the TOC’s business. The term is the term of the head licence, subject to any extensions of such term. TOC licensees are bound by the terms of head licences to the extent copies have been provided to them. Copies of most of the head licences have been provided to TOCs.

A list of the sub-licensed software is set out in the Deed. It includes software relating to PC based packages and programming tools.

The Computer Services Agreement also includes a list of the third party software used by Business Systems in operating and maintaining its mainframe computers. This software is not licensed to the TOCs.

Other software owned by third parties and resident on specific hardware transferred to each of the TOCs from BRB has been transferred to the TOCs.

SAPPHIRE

The SAPPHIRE system was supplied to each of the TOCs (other than Island Line Limited) under BRB’s contract with Andersen Consulting which in turn had a licence from SAP (UK) Limited. The benefit of this licence was transferred to each TOC under its transfer scheme as the relevant software was loaded on to hardware transferred to the TOC. SAP (UK) Limited has provided an individual licence and support agreement to each TOC.

SAPPHIRE is installed on Hewlett Packard Unix processors. There is a separate licence for the Oracle database the SAPPHIRE system sits on.

The licences to the SAP software are royalty and premium free and are not terminable except for breach of the licence terms. They are otherwise on the standard SAP licence terms. Various support, maintenance and disaster recovery agreements exist between the TOCs, SAP, Business Systems and Origin Technology In Business UK Limited.

Stakeholder Groups

Stakeholder groups are intended to be groups comprised of those with an interest in a particular group of systems. Such groups are anticipated to remain in existence for the short to medium term, by which time the difficulties of the continued use and development of single version multi-user systems should have been resolved. They are intended to ensure that members are aware of potential developments of software, are able to take advantage of any developments at a fair cost and are able to participate in decisions on costs and change. It is proposed that each stakeholder group will have its own constitution and voting structure.

Stakeholder groups are referred to under the Master Software Licence and Computer Services Agreement.

The T&RS Systems Management Group was established in December 1995.
Under the Systems Code, Railtrack will set up user groups relating to its systems.

**Informed Traveller Project**

The Informed Traveller Project was established in March 1995 by British Rail and Railtrack, pursuant to a request by the Secretary of State for a joint initiative to improve the scope, quality, presentation and accuracy of service information available to the public. The aim was to present a seamless national network to travellers. The project covers information relating to the planning of rail journeys and train service details provided to customers when travelling.

The most significant area of work has been the development of improvements to the NRES which is described in section 5.3, "Other ATOC Schemes".

Work is also continuing relating to the development of suitable systems for application in call centres, stations and travel agents that would enable TOCs and contracting third parties to deliver more accurate, reliable and consistent information via electronic interfaces.

The work done by the Informed Traveller Project will conclude with amendment to the spot bidding process under Track Access Condition C which will ensure that sufficiently advanced information on engineering work is available to consumers. This is further described in section 4.2, "Access to Track".

**Telecommunications Services**

Links between BRB's mainframe computers and the TOCs are provided by the BRT telecoms networks. All purely operational telecommunications assets and "hybrid" operational and business telecommunications assets are owned by Railtrack. Railtrack has granted a finance lease of the hybrid assets (the bulk of the telecoms network) to BRT. BRT maintains the hybrid telecommunications assets under the finance lease and the operational telecommunications assets as a sub-contractor to infrastructure maintenance companies.

BRT owns or administers most of the railway telecommunications networks. It uses these networks to provide business telecommunications services and has granted rights to Railtrack for operational telecommunications purposes. It provides business telecommunications services on its trunk networks to TOCs, as well as maintenance services for what are known as retail telecommunications assets; these include public address systems, some station clocks and indicator boards. Business telecommunications services include the operation of the current railways voice telephony and data networks, the provision of telecommunications equipment, the operation of and access to the national radio network owned by Railtrack, and the provision of other telecommunications services. Most of these services are provided to TOCs under terms and conditions for the provision of business telecommunications services (Business Telecoms Agreements).

**Business Telecoms Agreement**

Business telecommunications services are received from BRT pursuant to standard terms and conditions. Addenda to this Agreement make certain amendments relating to the ownership of local area networks and termination for persistent breach. The Business Telecoms Agreement sets out the terms and conditions relating to all existing services being provided by BRT and give the customer the right to call for further services included in a catalogue which forms part of the agreement and which will be regularly updated. The agreement has a minimum term of five years (which commenced on 1 April 1994), following which it continues until terminated by three months' written notice by either of the parties. During the initial five year period, all services included in BRT's winter 1994 catalogue must be obtained from it unless BRT is unable to supply them. This is subject to a right to obtain services from third parties in limited circumstances for market testing purposes. The first seven TOCs to be franchised together with ScotRail and InterCity West Coast Limited will have the right to market test up to 50 per cent. by value of their first year's budgeted charges of the defined exclusive services in years three to five. Other TOCs have the right to market test up to 20 per cent. of their first year's budgeted charges in these three years. In the
event that the customer obtains services elsewhere, BRT will supply relevant information as to connection and applicable safety and technical criteria, on payment of a reasonable charge.

BRT has also offered to supply goods under its standard terms and conditions but no exclusivity attaches to that part of the agreement. The services contemplated include the existing railways extension trunk dialling network, high speed data lines and access to the national radio network. BRT has agreed to use its best endeavours, if so requested by a TOC, to establish network termination points after 1 April 1995, to ensure that such network termination points meet the relevant RGS and to transfer local area networks at cost to the TOCs.

Retail Telecoms Agreement

Retail telecommunications services are provided by BRT to TOCs pursuant to the Retail Telecommunications Maintenance Service Agreement. The agreement relates to retail telecoms equipment, being equipment used for the dissemination of information to the general public including all types of public address and dynamic visual information systems, fixed public address systems and some clock systems, all of which are located at the various stations. The agreement has a minimum term of five years (which commenced on 1 April 1994), following which it continues until terminated by six months' written notice by either of the parties. There is a similar, but more limited, contractual term relating to the market testing term in the Business Telecoms Agreement which allows variations to the scope of the work to be undertaken and for alternative service providers to be used.
6.4 PENSIONS AND INDUSTRIAL RELATIONS

Pensions

The Railways Pension Scheme ("the Pension Scheme") was established by statutory instrument on 31 May 1994. Assets were transferred to the Pension Scheme from the BR Pension Scheme ("the BR Scheme") on 1 October 1994 pursuant to the Railway Pensions (Transfer and Miscellaneous Provisions) Order 1994.

Approximately 99 per cent. of employees of British Rail who are members of an occupational pension scheme are covered by the Pension Scheme. The remaining employees are members of closed arrangements which include the British Railways Superannuation Fund, the Great Western Railway Supplemental Pensions Reserve Fund, the B.R. (1974) Pension Fund or the NFC Retirement Plan ("the Closed Schemes"). In view of the small number of individuals concerned and the fact that the Closed Schemes no longer admit new entrants, franchise operators' obligations in relation to employees who are in membership of the Closed Schemes are outside the scope of this overview.

The Pension Scheme is an industry-wide arrangement which is open to all employers within the railway industry. Generally, such employers will either establish and participate in separate sections of the Pension Scheme ("Sections") or will participate in Sections already established by another employer with which they are associated.

Sections of the Pension Scheme may offer benefits on a Defined Benefit, Defined Contribution or Shared Cost basis. Under the Shared Cost basis final salary benefits are provided, the cost of these benefits being split between the employee and employer in proportions specified in governing documentation. Employers who both establish and participate in Sections will become "Designated Employers" in relation to those Sections.

The terms of the franchise agreement provide that a franchise operator must participate in the Pension Scheme by establishing its own Section in relation to which it will be the Designated Employer. Only individuals employed by the franchise operator may join the franchise operator's Section. A company which is associated with the franchise operator may thus not participate in the Section under which the franchise operator's employees are accruing benefits.

By the Railway Pensions (Protection and Designation of Schemes) Order 1994 ("the Order"), employees who were members of the BR Scheme immediately before 5 November 1993 (together with certain other classes of person) have two distinct rights. These are:

(i) the right to remain members of a Shared Cost Section of the Pension Scheme ("the indefeasible right"); and

(ii) the right to build up future benefits which are "no less favourable" than those under the BR Scheme as at 31 May 1994.

The Order also:

- places a duty on franchise operators who employ persons with the right described under (ii) above ("protected persons") to contribute to their Sections at a level which will provide adequate security for pension rights; and
- contains provisions for the elimination of any deficit.

The franchise operator as Designated Employer of its Section will take on duties and discretions as set out in documents governing the Pension Scheme. It will also become a member of Railtrust Holdings Limited, the holding company of the trustee of the Pension Scheme and will have voting rights in relation to appointment of the board of the trustee. The trustee is the Railways Pension Trustee Company Limited ("the Trustee"). More specific obligations on a franchise operator depend upon the benefit structure of the Section which it has established.

As the majority, at least initially, of ex-British Rail employees who are employed by a franchise operator will have the benefit of the indefeasible right, it will invariably be the case that the franchise operator will establish a Shared Cost Section. Franchise operators may offer new employees membership
of this Section or may establish Defined Benefit and/or Defined Contribution Sections for the provision of their benefits. In relation to Shared Cost Sections the following should be noted:

(1) As a general principle, the franchise operator will be obliged to contribute at a rate equal to 1.5 times the amount contributed by its employees.

Following the apportionment of assets of the BR Scheme it is expected that:

(i) the standard joint contribution rate will be 23.8% per cent. of Section Pay. It is not anticipated that this contribution rate will become payable until 2003;

(ii) as a result of the apportionment referred to above initial contribution rates are likely to be as follows:

(a) Members 5 per cent. of Section Pay; and

(b) Franchise operators 7.5 per cent. of Section Pay.

It should, however, be noted that the above information is designed only to offer guidance to franchise operators. Contribution rates for individual Sections will be determined separately by agreement between the franchise operator and the trustee of the Pension Scheme in accordance with Rules governing the Pension Scheme. Such rates will depend upon a variety of factors (including financial and demographic experience) and may be affected by legislation; they consequently cannot be guaranteed. In particular it should be noted that there are currently significant differences between actual pay and pay used for determining pension benefits and contributions. Changes to Shared Cost Sections are proposed which will allow some flexibility with regard to the impact of any restructuring on pension liabilities.

For the purpose of this sub-paragraph (1) “Section Pay” means broadly basic pay (plus certain allowances (such as London allowance) less 1.5 times basic state pension).

(2) Should an actuarial surplus arise in the Section, the franchise operator may agree with the Trustee and with the Pensions Committee how to apply that surplus unless actuarial advice is received to the effect that either the surplus is trivial or it is prudent for it to be retained within the Section. The Pensions Committee acts as a “local” trustee in relation to particular Sections and is composed of an equal number of individuals appointed by members and individuals appointed by the franchise operator.

(3) In the event of an actuarial deficit (and in the absence of agreement to eliminate the deficit and as to how this will be achieved between the franchise operator and the Trustee) the contributions of members will be increased; this will result in an increase in the level of contributions payable by the franchise operator (subject to a maximum contribution of 130 per cent. of the franchise operator’s normal long-term funding rate for the Section (as determined on actuarial advice) unless the franchise operator agrees a higher rate).

(4) A proportion of the expenses of the Pension Scheme as a whole (which proportion must be determined by the Trustee to be equitable), together with expenses of the Section, will be deducted from the assets of the Section.

(5) The assets of the Section will be invested by the Trustee in one or more common investment funds known as “pooled funds”. The Pensions Committee will be notified by the Trustee of the pooled funds available and may, from time to time, determine the proportion of Section assets to be held in each such fund; this determination is, however, subject to Trustee approval.

(6) The actuary to the Pension Scheme is appointed by the Trustee.

Duties and obligations in relation to pension provision are also placed on the franchise operator under the terms of the franchise agreement. The most significant of these terms may be summarised as follows:

(1) The franchise operator may not, without the consent of the Franchising Director:

- take any action which might materially and adversely affect the funding of its Section(s) unless certain steps have been taken e.g. it has arranged for the cost imposed on those Section(s) as a result of that action to be met in the manner prescribed;
• provide pension benefits for and in respect of its employees other than under its Section(s) (this is, however, subject to the right of certain ex-employees of British Rail to continue to accrue benefits under the Closed Schemes);
• take any action which could materially affect contribution rates payable by it under its Section(s); and
• take any action which could result in its Section(s) being wound-up.

(2) The franchise operator must, following a request from the Franchising Director, provide a certificate signed by the Trustee confirming that it has complied with its obligations to contribute to its Section(s). In the event of the Franchising Director receiving advice or reasonably believing that the franchise operator has failed to comply with its obligations to contribute to its Section(s), the Franchising Director may deduct any unpaid contributions from any sum which it owes to the franchise operator.

When a franchise comes to an end, either a transfer value will be paid into the Section of the successor franchise operator or (more usually) the successor operator will take over the Section under which its newly acquired employees were previously accruing benefits.

In the event of a transfer value becoming payable it is unlikely that any assets of a franchise operator’s Section(s) will be returned to the franchise operator once liabilities in respect of its former employees have been transferred out to the successor franchise operator’s Section.

Pension Scheme provisions concerning transfer payments may be overridden by the Order. In particular, the Order requires that, in certain circumstances, a protected person is entitled to a transfer payment calculated on the higher of the cash equivalent/leaving service basis and past service reserve. To the extent that the actual payment made falls short of this target, the incoming franchise operator is placed under an obligation under the franchise agreement to secure payment of the difference. The incoming franchise operator must also ensure that its inherited employees who are protected persons are credited with the past service benefits which are “no less favourable” than those under the transferring arrangement.

The Pension Scheme is being valued as at 1 April 1996, though copies of the valuation will not be available until later this year.

Industrial Relations
British Rail recognises each of the following trade unions:
• ASLEF for train drivers and their supervisors and other traincrew;
• BTOG for employees within the Management Staff Grade;
• CSEU for workshop staff;
• RMT for wages, workshop and salaried staff; and
• TSSA for employees within the Management Staff Grade and other salaried staff.

Police federated ranks are represented by the British Transport Police Federation.

No trade union is recognised to represent executive group staff.

Railtrack recognises each of the following trade unions:
• AEEU;
• RMT; and
• TSSA.

For Railtrack, no trade union has collective bargaining rights for managers, but recognised trade unions may represent managers who are members of that union for disciplinary or individual grievance purposes.

Traditionally, there has been high union membership among railway staff. While no accurate figures are available, the approximate level of union membership for salaried staff in BRB as at 1 April 1994 was 74 per cent, and for wages staff as at May 1995 was 77 per cent.

British Rail and Railtrack each have collective bargaining arrangements with their respective recognised unions. New procedure agreements for the joint regulation of negotiable terms and conditions for railway...
staff and for joint consultation on other matters, were introduced by British Rail in 1992. These had the aim of devolving responsibility for resolving local matters to local managers and local employee representatives, replacing longstanding industry-wide procedure agreements. The new agreements were themselves amended in April 1994 in order to reflect the changes to the industry structure introduced at that date.

Under arrangements operative to December 1995, general pay awards and general allowances and certain specified general conditions of employment for employees other than those within the Management Staff and Executive Grades were negotiated within a forum that covered all TOCs owned by BRB and a number of BRB’s other businesses. Mindful of the need to have established, not later than the date of sale of each TOC, collective bargaining arrangements specific to the TOC in question, each TOC in early 1996 introduced revised procedures to provide freestanding channels through which all collective matters can be addressed. Each TOC has reached joint agreement on revised procedures with TSSA and CSEU. While agreement has not yet been reached with RMT and ASLEF, those unions (along with TSSA and CSEU) have followed the new arrangements by presenting and negotiating their claims for improvements to pay and conditions to take effect from the anniversary of the last general pay review (i.e. on 1 April 1996) separately on a TOC by TOC basis. There will be no further industry-wide negotiations on pay and conditions.

So far as employees within the Management Staff Grades are concerned, negotiations have been restricted to certain specified conditions of employment other than pay. TOCs have not brought forward procedures to replace the former industry-wide forum for Management Staff negotiations; the arrangement thus lapses on the franchising of a TOC. There are no negotiations in respect of Executive Grades.

Terms and conditions of employment comprise both nationally and locally agreed terms. The earliest of such agreements date back to 1919 and full codification has not taken place. The terms also include, in certain cases, an entitlement to redundancy payments greater than statutory payments as well as promotion, transfer and redundancy arrangements. Where TUPE operated to transfer the employment contracts of BRB staff to a TOC on vesting, these contractual terms and conditions of employment (other than in relation to occupational pensions) also transferred, and accordingly such terms will apply to such employees of a TOC until changed. Pension rights in respect of BRB employees who transferred to a TOC on vesting are, in certain circumstances, protected by secondary legislation—see the previous Section.

Since the start of 1989, the industry has experienced a number of national strikes. In 1989 RMT and CSEU members staged six one day strikes over pay and new collective bargaining proposals and in 1993 members of the same two unions staged two one day stoppages to protest against redundancies and plans for the contracting out of work. Members of ASLEF also took strike action on one of those days in 1993 over proposed staff transfers arising from depot changes under the restructuring plans. During 1994 RMT instructed Railtrack signal staff to take strike action for a total of 19 full days.

Members of ASLEF planned a series of six one day strikes over pay in 1995. The strikes were suspended after the first two episodes and were subsequently withdrawn completely following the reaching of a framework agreement opening the way to restructuring of drivers’ work and terms and conditions of employment at the individual operating company level. The terms of the agreement are as follows:

"GENERAL PAY 1995:
AGREEMENT FOR SETTLEMENT OF DISPUTE WITH ASLEF"

It is noted:
(i) That train drivers represent a key resource for all of our train operating companies.
(ii) That a core objective for each of those companies is the restructuring of train drivers' working practices, terms and conditions of employment in a way that will deliver benefits both to the companies and to the train drivers themselves. In this, the companies have the British Railways Board’s full support.

In recognition of these facts, and in response to the concerns expressed by ASLEF on behalf of train drivers, it is agreed:

(i) That ASLEF accepts BR’s offer of a 3 per cent. increase of rates of pay, with effect from 3 April 1995.
(ii) That BR reaffirms its commitment to restructuring working practices, terms and conditions of employment for train drivers and associated grades.
(iii) That ASLEF endorses the principle that the way forward to enhance the status of train drivers is through restructuring.
(iv) That, as soon as practicable and not later than 31 August 1996, Operating Companies will have brought forward and, where jointly agreed, be implementing restructuring proposals, the purpose of which will be to improve productivity and to add value both to the businesses and to the employment package for train drivers and associated grades. The proposals will:
   (a) be specific to the Operating Company in question,
   (b) be negotiated with each Operating Company in accordance with the relevant procedure agreements (i.e. between Operating Company managements on the first part and divisional council drivers' representatives or equivalent assisted by a full time paid trade union official on the second part),
   (c) contain proposals for more flexible scheduling of working time with a minimum equivalent to 37 hours per week for full time staff.

Within six months of the date of this agreement, a preliminary discussion will take place within each Operating Company.

(v) That the industrial action authorised by the ASLEF Executive Committee shall cease forthwith.”

After negotiations with CSEU, British Rail entered into a broadly similar framework agreement for workshop staff employed within the TOCs. The terms of the agreement are as follows:

"GENERAL PAY 1995:
AGREEMENT FOR SETTLEMENT OF THE 1995 WAGES CLAIM WITH THE CSEU"

It is noted:

(i) That the workshop staff represent a key resource for all of our train operating companies.
(ii) That a core objective for each of those companies is the restructuring of workshop staff’s working practices, terms and conditions of employment in a way that will deliver benefits both to the companies and to the workshop staff themselves. In this, the companies have the British Railways Board’s full support.

In recognition of these facts, and in response to the concerns expressed by the CSEU on behalf of workshop staff, it is agreed:

(i) That the CSEU accepts BR’s offer of a 3 per cent. increase of rates of pay, with effect from 3 April 1995.
(ii) That BR reaffirms its commitment to restructuring working practices, terms and conditions of employment for workshop staff.
(iii) That the CSEU endorses the principle that the way forward to enhance the status of workshop staff is through restructuring.
(iv) That, as soon as practicable and not later than 31 January 1997, Operating Companies will have brought forward and, where jointly agreed, be implementing restructuring proposals, the purpose of which will be to improve productivity and to add value both to the businesses and to the employment package for workshop staff. The proposals will:

(a) be specific to the Operating Company in question,

(b) be negotiated with each Operating Company in accordance with the relevant procedure agreements (i.e. between Operating Company managements on the first part and workshop representatives or equivalent assisted by a full time paid trade union official on the second part),

(c) contain proposals for more flexible scheduling of working time with a minimum equivalent to 37 hours per week for full time staff.

Within six months of the date of this agreement, a preliminary discussion will take place within each Operating Company."

The current policy of each of ASLEF, BTOG, CSEU, RMT, TSSA and AEEU is to oppose the privatisation of passenger rail services.
6.5 THE FRANCHISING DIRECTOR'S RELATIONSHIP WITH BRB

British Rail is contracted to provide passenger rail services to the Franchising Director; and this agreement has been made under section 52 of the Railways Act 1993. Section 52 empowers the Franchising Director to buy passenger rail services from British Rail or its subsidiaries and OPRAF envisages that while franchising is in progress these powers will be used to put in place agreements with British Rail for as long as it is still the owner of any of the TOCs.

The 1995/96 agreement was drafted in terms of the complete British Rail passenger timetable, with certain specific service changes from the preceding year identified. It also provided for financial support from HM Government to be explicitly allocated across the individual TOCs. As PSRs were agreed and put into place, these applied to the TOCs in question. As individual TOCs were franchised and ownership of assets was transferred, British Rail ceased to operate the rail passenger services of the TOC in question. Accordingly, the relevant support payments to British Rail were abated and replaced by support payments to the franchisee under the franchise agreement.

The 1996/97 arrangements follow the same pattern. But the section 52 contract with British Rail is now more detailed as it allows for the implementation of the OPRAF/TOC incentive regime during the early part of the year. It binds British Rail into some of the same commitments as franchised operators—for instance on unfair competition and predatory pricing. During the course of 1996/97 OPRAF intends to reach individual contracts with some BR owned TOCs.
6.6 TOCs' RELATIONSHIPS WITH BRB

Introduction

TOCs continue to have in place a number of contractual relationships with BRB for the provision of services which were centrally managed in the rail industry before its restructuring. In most cases the provider of such services has been offered, or is intended to be offered, for sale to the private sector, though British Rail will continue to be the employer of the British Transport Police until new arrangements are put in place. A description of the principal contracts and their providers (other than in respect of telecommunications and computer services, which are dealt with above) is set out below.

British Transport Police Agreement

The Transport Police are employed by BRB under section 53 of the British Transport Commission Act 1949 ("BTCA"). They are organised as a single force under a scheme made or treated as if made under section 132 of the Railways Act 1993 and set out in the schedule to the British Transport Police Force Scheme 1963 (Approval) Order 1964 (the "scheme").

Under the BTCA the Transport Police have jurisdiction to provide services to the TOC and its subsidiaries in, on and in the vicinity of any land, building or other structure, or any rolling stock, which is owned or used by, leased or hired to, or under the management of, the TOC or its subsidiaries and elsewhere, in relation to matters connected with or affecting the TOC or its subsidiaries or the undertaking of any of them.

The provision of policing services to each TOC is governed by a British Transport Police Agreement ("BTPA"), under which BRB undertakes to make available to the TOC police services which during the first year of the Agreement shall be at approximately the same level of resource at which such services were undertaken for BRB by the Transport Police during the year to 31 March 1994. This initial level of services is set out in the schedules to the BTPA. After the first year the level of resource at which the Core Police Services will be made available shall be specified by the British Transport Police Committee, being the Committee constituted under the scheme.

The Agreement is terminable by four years' notice in writing, such notice not to take effect prior to 31 March 1999.

Core Police Services are those services undertaken by the Transport Police to maintain law and order and include (without limitation) services undertaken in relation to safety, anti-terrorism, the prevention and detection of crime, the keeping of the peace, the bringing of offenders to justice and the rendering of support to the victims of crime but do not include the Non-Core Police Services. The Non-Core Police Services include the escort of high value goods, the static guarding of any premises or goods, the supervision of car parks and any ancillary services.

BRB may from time to time request the provision of suitable additional or alternative premises or facilities and the TOC grants to the Transport Police the necessary rights of access to and egress from any land, building, structure, premises or rolling stock necessary to enable the Transport Police to carry out their activities.

In return for provision of the Transport Police the TOC pays an annual sum calculated with reference to the total cost to the Board of providing the Core Police Services.

At all times the Chief Constable of the Transport Police retains his discretion to deploy the Transport Police as he thinks fit and the British Transport Police Committee retains the right to determine the minimum resource appropriate to provide the Core Police Services.
Taxation Agreement

Pursuant to the vesting transfer scheme British Rail has entered into (or will enter into) a taxation agreement with each TOC under which each party gives a number of covenants to the other in respect of the conduct of its tax affairs. The agreement is largely intended to govern tax affairs for the period between the vesting of the TOC and its sale to the initial private sector franchisee and therefore a number of its provisions will cease to have any practical effect once the TOC ceases to be a British Rail tax group member (e.g. VAT grouping, group income election, group relief, payroll costs and conduct of certain tax matters).

Since the agreement has no termination date, however, some provisions, including some limited tax indemnities, will continue in force to bind the TOC once it has been sold to the initial franchisee (e.g. the TOC's agreement to indemnify British Rail against any liability of British Rail to tax as a result of the TOC's failure to pay any tax when due, the parties covenant to provide certain information to each other and to co-operate in the conduct of their tax affairs, the TOC's indemnity to British Rail for any tax on deferred consideration and the TOC's indemnity to British Rail as regards tax arising from a transfer of patent rights).
6.7 TAXATION

Introduction

Special tax provisions were introduced by Schedule 24 of the Finance Act 1994 with the aim of ensuring that the reorganisation of the railway industry pursuant to the Railways Act would not generally give rise to tax liabilities simply by virtue of such reorganisation taking place and that successor companies to BRB's operations would generally inherit BRB's tax position.

The following section provides a general summary of the principal United Kingdom tax issues arising from the proposals for franchising railway passenger services. In particular, it deals with the principal tax issues under the laws of the United Kingdom arising on the transfer of shares in a TOC to the initial private sector franchisee, during the running of the franchise and at the expiry of the franchise. A TOC may have incurred tax liabilities in the period before it was transferred to the initial franchisee. These liabilities are not discussed below.

This summary is intended to be for general guidance only and is not intended to be an exhaustive review of all possible tax issues. Accordingly, it should not be construed as tax advice to any particular TOC or potential franchisee. TOCs and potential franchisees are strongly recommended to consult their own tax advisers and to consider for themselves all possible tax issues that may affect them arising under the laws of the United Kingdom and the laws of all other jurisdictions which may be applicable to potential franchisees.

Where it is indicated that confirmation has been given by the Inland Revenue or HM Customs & Excise of a particular point, this will have been on the basis of information and facts supplied to them. A person who wishes to rely upon such a confirmation should have made certain that his circumstances correspond to those on which the Inland Revenue or HM Customs & Excise gave their confirmation. Extracts from the correspondence with the Revenue will be made available to potential franchisees.

The summary is based on the structure described in this Memorandum. Any change to these proposals could have different tax consequences. Tax legislation can also change.

Transfer of a TOC to the First Franchisee

The tax treatment of the transfer of shares in a TOC to an initial franchisee is as follows:

Capital Gains Base Cost

The transfer will be made at the direction of the Secretary of State, and will therefore not be "a bargain at arm's length" for tax purposes. However, because of special tax rules contained in paragraph 11, Schedule 24 to the Finance Act 1994 and provided that the franchisee is not connected with BRB, the transfer will be treated as being made for a consideration equal to the consideration actually provided by the franchisee, and not for a deemed market value as would normally be the case.

Capital Gains Degrouping

The transfer of shares in a TOC to a franchisee will result in the TOC ceasing to be a member of the BRB capital gains tax group. Under normal rules, this could give rise to a charge to tax under section 179 of the Taxation of Chargeable Gains Act 1992 in respect of assets acquired by the TOC from BRB (namely, assets vested in the TOC under the original transfer Scheme) and other BRB group members within the period of six years prior to the transfer to the franchisee. This charge is disappplied by paragraph 8, Schedule 24 to the Finance Act 1994. However, the effect of these provisions is such that, should the franchisee dispose of the shares of the TOC within six years of the TOC acquiring any such assets, then the section 179 charge will apply to any such assets held by the TOC at the time of that disposal.
VAT
The transfer of shares in a TOC will be exempt from VAT (save where the transfer is to a non-EC franchisee in which case the transfer should be outside the scope of VAT).

Stamp Duty
The franchisee will be liable to pay stamp duty under normal stamp duty rules at 0.5 per cent. on the consideration provided for shares in the TOC.
Now that Railtrack has been privatised, stamp duty, at a rate which is unlikely to exceed two per cent. of the average yearly rent, will be payable on the grant of new station and light maintenance depot leases entered into at the time of franchising.

Taxation Agreement
The burden of certain limited tax indemnities may pass with the TOC to the first franchisee under a taxation agreement entered into between BRB and each TOC at the time of that TOC's vesting (see section 6.6, "TOC's Relationships with BRB—Taxation Agreement").

Running the Franchise
The TOC will be subject to corporation tax on its trading profits, calculated by reference to its trading receipts (primarily ticket revenues, access charges (where the TOC is a station or light maintenance depot facility owner) and franchise and incentive payments made to the TOC) and its deductible expenses (which will include franchise and incentive payments made by the TOC, track access charges, station and light maintenance depot lease payments, rental payments in respect of rolling stock leased from the ROSCOs and other expenses incurred in the course of its trade).

The following summarises the tax treatment of certain payments which will be made or received by the TOC.

Access Payments
A TOC will be required to pay access payments to Railtrack and to station and light maintenance depot facility owners in accordance with the terms of the various access agreements:

Corporation tax
Access charges for the use of railway facilities (such as track, signalling, stations and light maintenance depots owned and operated by a third party) will be deductible as trading expenses, and can be paid gross to the relevant facility owner (primarily Railtrack).
Access charges received by a TOC which is a station or light maintenance depot facility owner should normally form part of its general trading income, representing a receipt from the exploitation of assets held for the purposes of its trade.

VAT
HM Customs & Excise have confirmed that access charges whether paid to Railtrack or a TOC will be subject to VAT at the standard rate.

Licence Fees
A TOC will be required to pay a fee to the Regulator (or the Secretary of State) pursuant to the licence granted to that TOC to permit it to provide passenger services. The tax treatment of payments to the Regulator are set out below and payment of licence fees to the Secretary of State should have the same consequences:
Corporation tax

The Inland Revenue have confirmed that licence fees paid to the Regulator will be deductible as trading expenses, and can be paid gross.

VAT

HM Customs & Excise have confirmed that licence fees paid to the Regulator will be outside the scope of, and accordingly will not be subject to, VAT.

Franchise Payments

The TOC will enter into a franchise agreement with the Franchising Director under the terms of which payments will be made either to or by the TOC by or to the Franchising Director (or, in certain circumstances, by or to a PTE). The term “franchise payments” is used below to refer both to the payments described as franchise payments in the franchise agreement and also to the payments made under that agreement described as incentive payments.

Corporation tax

The Inland Revenue have confirmed that periodic franchise payments made by a TOC to either the Franchising Director or a PTE will be deductible as trading expenses and can be paid gross. Correspondingly, periodic franchise payments made to a TOC by either the Franchising Director or a PTE may be paid gross and will be taxable receipts in the hands of the TOC.

VAT

HM Customs & Excise have confirmed that franchise payments to and from the Franchising Director and to and from PTEs are outside the scope of, and accordingly will not be subject to, VAT.

Rental Payments under Station and Light Maintenance Depot Leases

A TOC which is a station or light maintenance depot facility owner will be required to make rental payments (primarily to Railtrack):

Corporation tax

Rental payments made by a TOC under the lease of such a railway facility should be eligible for relief as a trading expense and may be paid gross.

VAT

Such rental payments may be subject to VAT at the standard rate, depending on (a) the nature of the relevant facility and (b) where the facility is property (for example stations), whether the relevant property owner granting the lease has opted to tax the property concerned (if no option to tax has been exercised, rental payments will be exempt from VAT).

Tax Losses

Paragraph 15, Schedule 24 to the Finance Act 1994 provides that a TOC may receive an apportioned amount of BRB’s tax losses under the vesting transfer scheme. However, any such losses as are transferred will only be available for relief against profits generated whilst the TOC is in the public sector and such losses will not therefore pass to the initial franchisee. Losses arising after the vesting date may be carried forward after franchising.
**Fuel Oil Duty**

Diesel fuel is subject to a detailed structure of duty rates and reliefs. Red diesel fuel which is used mainly by the rail, agricultural and construction industries is taxed at a lower rate than diesel fuel for other industrial uses.

**Taxation of Franchise Assets**

Under paragraph 20, Schedule 24 to the Finance Act 1994 a TOC should inherit an amount of BRB’s qualifying expenditure for capital allowances purposes in respect of assets transferred to it. The amount of such qualifying expenditure will be specified in or determined by the Secretary of State in accordance with the terms of the vesting transfer Scheme. Such amounts will to be determined by allocating BRB’s qualifying expenditure between all successor companies in accordance with a methodology agreed by HM Treasury.

The franchise agreement gives the Franchising Director an option, and the TOC an option, to require the Franchising Director to make a transfer scheme under section 86 of the Railways Act to transfer all or any of the primary franchise assets at the end of the franchise to a new franchise operator (see above under “Termination of a Franchise”). The Inland Revenue have confirmed that, notwithstanding the existence of the option in the franchise agreement, the fact that assets have been designated as franchise assets will not by itself prevent those assets being treated as “belonging” to the TOC for capital allowances purposes and a TOC should therefore generally be entitled to claim capital allowances on franchise assets as long as the normal conditions for claiming such allowances are satisfied.

**Expiry of a Franchise**

On expiry of a franchise, assuming the incumbent TOC has not successfully re-bid for that franchise, a new franchise operator may assume responsibility for running the relevant Passenger Services. The section 86 transfer Scheme, under which the franchise assets are likely to be transferred, will provide for a price to be paid by the new franchise operator for such transfer. The price will be the amount specified in, or will be determined in accordance with, provisions contained in the franchise agreement, subject to any contrary agreement between the outgoing TOC and the new franchise operator. Broadly, the tax treatment of such transfers of franchise assets will be as follows:

**Capital Gains**

The TOC and the Franchising Director grant options to each other under the Franchise Agreement for the transfer of certain franchise assets at the end of the franchise. There may be a tax charge on the grant of the options if they are regarded as being granted otherwise than by way of a bargain at arm’s length. In such a case a market value consideration may be deemed to have been paid for the grant.

On the transfer of such franchise assets at the end of the franchise to a new franchise operator, a taxable gain or loss may arise which will be broadly equal to the difference between the base cost of the assets and (assuming that the TOC and the new franchise operator are not connected) the sum of the amount received for the assets, as adjusted by any consideration deemed to have been received for the grant of the option having taken into account indexation. If tax was paid at the time of the grant of the option it may, in some circumstances, be possible to obtain repayment of that tax at the time of exercise.

**Capital Allowances**

The Inland Revenue have confirmed that, on the basis that the transfer represents a permanent loss of a franchise asset, the outgoing TOC’s disposal value for capital allowances purposes will be equal to the consideration actually received.
VAT

The transfer of franchise assets to a new franchise operator is likely, as a general rule, to be regarded by HM Customs & Excise as a transfer of a going concern ("TOGC"), and accordingly no VAT should be chargeable on the transfer. However, whether TOGC treatment is available in respect of a particular transfer of franchise assets will depend on all the facts and circumstances relating to that transfer.

Tax Liabilities

The tax liabilities of the franchise operator at the end of a franchise will not be transferred to a new franchise operator.

Trading Losses

If at the end of a franchise the original franchise operator has carried forward trading losses they would be available for offset against subsequent taxable profits of the same trade as the original franchise operator carried on prior to the termination of the franchise. Trading losses would generally be available only to the original franchise operator. They will be available only if an original franchise operator acquires a new franchise and it is uncertain whether they would be available in that case.

Rolling Stock

A TOC should be entitled to a deduction for rent paid under any rolling stock leases which it enters into. Anti-avoidance provisions in sections 781 and 782 of the Income and Corporation Taxes Act 1988 ("ICTA") (which might otherwise restrict the ability of the TOC to obtain a full deduction for such rent) will not apply as a result of provisions contained in paragraph 19 of Schedule 24 to the Finance Act 1994.

At the end of a franchise, however, if a TOC receives a capital sum on the disposal of a rolling stock lease, the provisions of section 781 could apply to tax all or part of that sum as income.

VAT

The provision of passenger services is currently zero-rated so that TOCs will be taxable persons for VAT purposes (and accordingly able to recover input VAT relating to their taxable activities). Other supplies made by TOCs will be subject to VAT in accordance with normal rules.

The present transitional arrangements under EU legislation which allow the zero rating of public transport fares are due to come to an end in December 1996. No decision has yet been taken on legislation to replace the transitional arrangements. Any such legislation will be subject to unanimous agreement by the Member States.

If the rate of VAT is adjusted on passenger rail transport before 31 March 2003, adjustments may be made to franchise payments and/or to other provisions under the franchise agreement in order to ensure that, until that date, the franchise operator suffers no net gain or loss as a result of the change.

Staff Travel

Staff Travel Arrangements

In dealing with TOCs and third parties, RSTL will be acting as principal, rather than as agent. Payments received by TOCs from RSTL in respect of staff travel should be regarded as trading receipts.

RSTL will charge TOCs and third parties an administration fee for its services (depending on the level of administration services) to enable it to meet its administrative costs. The fee should be tax deductible as a trading expense, and will be subject to VAT at the standard rate. Where TOCs supply services pursuant to reciprocal travel arrangements, the services will be zero-rated for VAT and the value of the services supplied will be the cost to the TOCs of administering the staff travel scheme.
**Employees**

Concessionary travel benefits provided to an employee by a TOC may, depending on the individual circumstances of the employee, represent a taxable benefit in kind for that employee.

An employee earning £8,500 or more a year or a director will be subject to income tax on the cost to the TOC of providing concessionary travel.

Employees earning less than £8,500 a year will be subject to tax on the cost to the TOC of providing travel benefits to that employee unless the employee is within paragraph 27 of Schedule 24 to the Finance Act 1994. Paragraph 27 of Schedule 24 is intended to preserve for such employees who were employed by BRB (or a subsidiary of BRB) on 11 January 1994 the exemption from tax on such benefits contained in section 141(6) ICTA. For paragraph 27 to apply, certain detailed conditions must be satisfied.

**Railway Settlement Plan**

In dealing with TOCs and third parties (such as travel agents) the RSP will generally, in respect of its settlement functions, be acting as principal, rather than as agent. Insofar as TOCs account for ticket revenues received by them relating to journeys on other TOCs’ services, payments made to the RSP in respect of such revenues should be deductible for tax purposes; payments received from the RSP will be trading receipts.

The RSP will charge TOCs, and other users, a fee for its services to enable the RSP to cover its administrative costs. The fee should be tax deductible as a trading expense, and will either be subject to VAT at the standard rate or exempt, depending on the nature of the RSP’s activities. HM Customs & Excise are currently of the opinion that the supplies should generally be standard rated.
Appendix

The 25 TOCs

INTRODUCTION

The following schematic map gives a general indication of the area served by the 25 TOCs and is provided for illustrative purposes only.

Not all of the passenger services indicated on the schematic map are now operated by British Rail, having been transferred to the private sector as part of the franchising timetable. This process is ongoing and further TOCs are expected to be transferred to the private sector during the coming months.

A list of the TOCs' legal names and defined names for the purposes of this Document is set out at the end of this Appendix.
Principal Passenger Rail Services

Note: This schematic map should be taken as a guide only and does not portray the complexity of the networks in the major conurbations.
### TOCs' Legal Names and Defined Names for the purposes of this Document

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Annex

Opposition Parties' Policy Statements

INTRODUCTION Details of recent policy statements from the Labour Party and the Liberal Democrats made in connection with rail privatisation are set out in this Annex.
Set out below are recently published policies of the Labour Party and the Liberal Democrat Party. The policies of opposition parties are the responsibility of those parties.

Labour Party

An extract from “Consensus For Change”—Labour’s transport strategy for the 21st century (published May 1996) is reproduced below:

"The Labour Party is deeply opposed to rail privatisation, as is the British public. It is clear to all serious analysts that government policy is driven by an ideological commitment to privatisation at any price, rather than a proper consideration of the national interest and the country’s long term transport needs. Labour is committed to a publicly owned and publicly accountable railway.

The challenge facing an incoming Labour government will be to inherit a disintegrating and damaged rail network and turn it into a high quality rail system to serve Britain’s transport needs.

Although the rail network of the past had many virtues compared with the privatised model, it clearly was far from perfect. Investment was far too low and freight by rail had slipped to just below six per cent. of all freight movements. Thus it is not Labour’s aim to go back to the old structures but to create a new system capable of mobilising higher levels of investment and more intensive use of rail.

This means we must create structures which can build public private partnerships which will generate higher levels of rail investment.

We also seek a new relationship between management and staff. We totally reject the Tory model of profit seeking by cuts in pay and conditions for staff that has been seen in the bus industry after deregulation, and in the privatisation of many other services. It is clear that high quality, high productivity services require fair and inclusive relationships with staff who are justly rewarded and properly respected so that they work with full commitment to the success of their enterprise. We will discuss with all interested parties the possibility of staff representation on the new British Railways Board in order to make the new British Rail a model of the stakeholder company of the future.

An incoming Labour government will use all the levers at its disposal to halt the damage of privatisation, reintegrate the rail network and generate higher levels of investment. On coming to office Labour will set in place a structured programme to return the railways to an integrated whole. We will build on what is left of British Rail to create a renewed publicly owned company which will be charged with reintegrating the network, protecting the public interest and organising public private partnerships to increase investment. A Labour government will negotiate with the Rolling Stock Leasing Companies and the rail manufacturers, to encourage high levels of investment in new rolling stock. British Rail will also have the right to make leasing deals with the rail manufacturing companies who are keen to supply new stock to the system.

Labour will also legislate shortly after taking office to return to the Secretary of State the power to direct the Rail Regulator to use the existing regulatory regime to secure higher levels of investment and more intensive use of the system. Labour will ensure that there is full public accountability for taxpayers’ annual input into the system.

The privatisation process includes the splitting up of train operations between 25 separate companies covering different railway lines, with these lines being handed over to private companies under fixed term franchise contracts. Depending on the speed with which the government manages this process, some of the train operating companies will probably still be controlled by British Rail when Labour takes power. We will end the franchising process so that these franchises will remain with British Rail. We will abolish the Office of Passenger Rail Franchising and give the powers of the franchising director to British Rail, who will supervise the franchises which have already been let and resume control of these lines when the contracts expire. We will regulate existing franchises tightly and renegotiate contracts to encourage investment and ensure fair and inclusive relationships with staff.

Any franchisees who cannot fulfil their contracts under these conditions will be invited to return them to British Rail.
Labour will ensure that Railtrack operates in the public interest and that important national assets are not sold off or misused in order to provide short term profits for shareholders. The powers of the rail regulator over Railtrack are considerable, and under the new regulatory framework will be used to the full to protect the interests of passengers and taxpayers. For example, the Regulator will be asked to ensure that land and property needed for the railways is not sold off, and that proceeds of any sales which do go ahead are invested in the railways. Railtrack's current obligations to invest in the network are not sufficient.

Labour will ensure that there is far greater public accountability for public subsidy. As already mentioned, train operating companies are dependent on high levels of public subsidy because of the high charges which Railtrack sets for the use of the track, making it impossible under the present arrangements for rail to compete with roads on an equal basis. Labour plans to reorganise the subsidy regime, and will ask the rail regulator to review the current arrangements. In Holland and Sweden the railway subsidy is put into the infrastructure, so that train operating companies are profitable. A re-routing of the subsidy towards the infrastructure would create a greater transparency, enable government to reach an agreement with Railtrack on the use of the subsidy and would also reduce the marginal costs of enhancing rail use by both passengers and freight.

As well as the powers of regulation and of subsidy, a Labour government will use its powers to acquire the ownership of Railtrack which is necessary to ensure proper public accountability and a return on public investment. We will acquire ownership in the light of available resources, and are examining various means of achieving this objective. We do not believe the public would be willing to tolerate an annual payment to Railtrack which might well amount to a larger sum than the sale price of the company without proper accountability.

Labour wants to ensure a high quality, reliable, affordable and safe service for all rail passengers. We are concerned about the threats to safety under the new fragmented system, and in particular believe that safety cannot be left to the commercial imperatives of Railtrack. We will therefore review arrangements, with one solution being a transfer of responsibility to the Health and Safety Executive. Cuts in the staffing of stations have also led to growing fears about passenger safety, which discourage many people—particularly women—from using the railway.

We are aware that many maintenance activities which ensure the safe and efficient running of the railways are undertaken away from the gaze of the public. It is regrettable that the debate over rail privatisation has tended to overlook these functions, some of which have already been transferred to the private sector. Labour is mindful that separating railway engineers from direct responsibility for the total quality of the service may lead to a deterioration in standards. We believe the instability and insecurity resulting from compulsory competitive tendering may undermine standards as it has in local government. Bearing in mind that current infrastructure maintenance contracts have been let to the privatised suppliers for terms which will generally expire during the first term of the Labour government, we will review these arrangements when the time comes for renewal of the contracts.

Improved services for passengers will also depend upon good quality information, and an integrated ticketing system. Both of these are currently being undermined and eroded by the fragmentation of the system. Labour will instruct the rail regulator to use all the powers available to ensure that information and ticketing is co-ordinated across the network.

Before privatisation local authorities and Passenger Transport Authorities frequently worked with British Rail to re-open local stations and enhance local services. The attitude of Railtrack and the costs of track access charges are putting existing arrangements under strain and make further enhancements unlikely. The new British Rail will be charged with responsibility for encouraging partnership arrangements with local authorities for the enhancement of local rail services. We must ensure that ports and airports are well served by rail services and other public transport links.

Labour is determined to expand the carriage of freight by rail and sees that the Channel Tunnel creates a great opportunity because the distances freight can now travel by rail are vastly increased. We
have made clear our intention to reduce track access charges but have no intention of providing windfall profits to companies that purchased freight capacity with full knowledge of the current charges. We will seek a partnership agreement with such companies to encourage more investment in freight terminals and “piggy back” capacity (which enables freight from lorries to be easily transferred to rail). We will establish a high level working party to drive through a continuing expansion of freight on rail in order to meet the targets set out in the Royal Commission report*.

Rail is by far the least environmentally damaging mode of transport for long distance travel within the UK. A Labour government will commission a feasibility study into the costs and practicalities of developing a high-speed rail network that extends beyond London to link the nations and regions of the United Kingdom to the Channel Tunnel. The objective would be a line capable of taking high speed trains to Birmingham and Manchester and then beyond to Scotland. The West Coast Main Line is already capable of taking high-speed trains, though not at full speed. Consideration would also be given to connecting high speed links to the west of England and Wales. Where possible existing lines would be upgraded. Whilst France completed their high-speed link to the Channel Tunnel in time for the tunnel’s opening, and now have a high-speed network that extends via Lille to Brussels and via Paris to Lyon and Bordeaux, work still has yet to start on the high-speed link from Folkestone to London as a result of Tory failure. Labour wants a rail network capable of matching the best in Europe.

Labour is confident that full use of the power of the Regulator, the public subsidy and our commitment to acquire ownership where necessary will deliver a publicly owned, publicly accountable railway under the renewed British Rail which will be of a higher quality and will be more intensively used than the pre-privatisation network.”

Liberal Democrat Party

In March 1996 the Liberal Democrats issued a document entitled “Railtrack: A National Asset” which reaffirms the party’s policy that the rail network should remain under public control within an integrated national transport system and proposes that fresh guidelines be given to the Rail Regulator. It also proposes that: “Having put in place the new regulatory system we will then move to make an offer to take controlling interest in the company, at a price no greater than that at which the shares were issued.” The document also includes policies to allow franchisees to manage track, signalling and stations provided they commit to renewing their assets and to enable the contractors maintaining the railway to have their contracts supervised by the TOCs. It also proposes that Railtrack, the Franchising Director and British Rail should be combined into one body to own the freehold of the railway infrastructure, to procure services and investment and to plan the railway contribution to integrated transport and land use strategies. In a letter to SBC Warburg dated 10 April 1996, David Chidgey MP, Liberal Democrat Spokesman for Transport, set out the Liberal Democrat’s policy concerning Railtrack. The policy statement set out in the letter was as follows:

“An early act of a new government will be to issue fresh guidance to the Rail Regulator. The Regulator will no longer be required to promote competition on the railway. Instead the Regulator will be obliged:

- to set onerous and ambitious targets increasing the number of passengers and the amount of freight to be carried on the railway and to make these increases a condition of the Track Access Charges which Railtrack is allowed to charge. If traffic does not increase, the Regulator will reduce Track Access Charges. This change in the price cap formula will be immediate and will not be delayed until the next price review;
- to cap the dividends payable by Railtrack at a low level, and less than that of long-term gilt edged stock;
- to direct Railtrack to use its asset base as an instrument to raise capital only for investment in

* Transport and the Environment, Royal Commission on Environmental Pollution, 1994.
extensions to an upgrading of the rail network, and not to finance "bonus" dividends to shareholders. This Government is proposing to sell Railtrack with all its high value land and property for far less than the cost of building the Channel Tunnel link. A large capital sum would be made available for investment by injecting additional debt into Railtrack's balance sheet, supported by realistic asset value;

- to prevent Railtrack from exploiting its property assets at the expense of the taxpayer. We will tell the Regulator to reconsider the 75 per cent. of the proceeds of property development which he proposes should benefit Railtrack shareholders. We will allow only some 20 per cent. to be used in this way—and will strictly control the disposal of land necessary to develop the carriage of freight and passengers. The lion's share of property income will be used for the benefit of passengers and commuters;

- to charge freight only marginal (wear and tear) costs, for the use of the network, so that a greater incentive exists for freight to use the railway. We would allow freight companies to take over freight lines provided they allowed access to all potential train operators;

- to force Railtrack to make the Working Timetables public documents so that franchises and prospective freight users can themselves establish that the timetable is being managed so as to facilitate the customer—with a right to appeal to the Regulator to grant access rights.

We believe the Track Access Charges already agreed by the Regulator are sufficient to help create a first class infrastructure provided Railtrack is prevented from paying away this income, together with its property income in dividends. We intend to see this does not happen. We also believe that by renegotiating franchises, ample private funds will become available to build and maintain new trains.

If this government succeeds in floating Railtrack, let investors be clear about the policy of the Liberal Democrats after the election. We intend that the next government should recover the majority controlling interest of the rail network for the nation as soon as possible.

Anyone buying Railtrack shares will risk being locked into regulated and restricted dividends which will only be paid if Railtrack meets these exacting targets: increased carrying, safety, reliability and quality. If these targets are not met there will be no dividends and there will be no safety net for Railtrack shareholders."
Front cover photographs courtesy of COI Pictures, Roy Nash, Tom Clift.
OPRAF
Office of Passenger Rail Franchising

Information Supplementary
to the June 1996
Passenger Rail Industry Overview

September 1996
To: Pre-Qualifiers/Tenderers

Recent Developments in The Railway Industry of Relevance to Passenger Rail Franchising

Introduction

This document describes developments in the railway industry since the June 1996 issue of the Passenger Rail Industry Overview ("PRIO") which are of significance to passenger rail franchising. It is supplementary to the June 1996 PRIO and is presented in the sequence of, and cross-referenced to that document.

Important Notice

The information given in this document constitutes information additional to that given in Information Memoranda relating to passenger rail franchises issued by the Franchising Director, and the reader's attention is drawn to the Important Notice issued with an Information Memorandum. The document is being issued only to organisations who have pre-qualified to receive invitations to tender for passenger rail franchises and signed confidentiality undertakings. It is subject to the terms of those confidentiality undertakings, and furthermore may not be passed to any person in the United Kingdom unless that person is of a kind described in either Article 11(3) of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996 or Article 5 of the Financial Services Act 1986 (Investment Advertisements) (Exemption) (No. 2) Order 1995.

Office of Passenger Rail Franchising
20 September 1996
Section 1 The British Railway Industry

Section 1.1 Background to the Industry - Continuing Involvement of British Rail

British Rail proposes to disband its safety directorate and its central purchasing group, First Procurement, from 1 April 1997. It has issued an Information Memorandum relating to Business Systems with a view to sale early in 1997. The Secretary of State for Transport has directed BRB to forward a copy of the Information Memorandum to Railtrack PLC. Railway Operational Research is also to be sold, and bids have recently been invited in connection with this.

Section 1.2 Trends in the Industry - Development of the Railway Network

The application by Central Railway plc for a Transport and Works Act Order covering construction of a largely new or reinstated railway between the Channel Tunnel and the East Midlands was rejected by Parliament in July 1996 and subsequently withdrawn by the applicant.

Section 2 The Operational Environment

Section 2.1 The Franchising Director

On 24 July 1996, the Secretary of State further amplified the Objectives, Instructions and Guidance given to the Franchising Director with the instruction that, in fulfilling his objectives, he "should take into account any Government policies which are relevant to the provision of passenger services insofar as they affect, or may be affected by, the fulfilment of [his] objectives".

Section 2.2 The Regulator

The Regulator has recently issued a policy statement on:

- Penalty Fares

and consultation documents on:

- Accurate and Impartial Retailing: Meeting the Needs of Passengers
- Insurance: Third Party Liability
- Accounting Separation for Stations and Light Maintenance Depots: Regulatory Accounting Policies
- Railtrack’s Network Management Statement

Section 2.10 Safety

In July 1996, the House of Commons Transport committee issued a report on Railway Safety. The report recommends, inter alia, "that future franchises must contain a programme for the replacement of Mark 1 rolling stock" and "an action plan, to a timescale, for the installation of Cab Secure Radio or its digital equivalent in those areas of the national rail network not presently covered.

Driver Reminder Appliances

Railtrack has recently issued a consultation document regarding Driver Reminder Appliances. These devices would be installed in the cabs of rolling stock fleets and are designed to prevent the driver from starting his train against a red signal. Feedback from the consultation is currently awaited.
Section 2.12 Recent and Proposed Legislation

The Railway Heritage Bill

The Railway Heritage Act received Royal Assent on 18 July 1996 and came into force two months later. The Act extends the Railway Heritage Committee’s remit to cover railway records and artefacts in private sector ownership. It will have powers to designate railway artefacts and records of historical interest belonging to the British Railways Board, a wholly owned subsidiary of the Board or certain Government-owned successors to the Board, franchisees, franchise operators, companies formerly subsidiaries of the British Railways Board, and companies which were formerly publicly owned railway companies, and to direct the transfer of those items to museums or other collecting institutions at the end of their working life.

The new heritage regime under the Act works as follows. The Committee is obliged to notify everybody to which the Act applies of every designation they make. Owners of designated items, provided that they have been so notified, have to provide the Committee with any information they might reasonably require about those items. If an owner to which the Act applies wishes to transfer a designated artefact or record to a body to which the Act does not apply and the Committee has notified him of its designation, he is required to give the Committee notice of the disposal. The Committee is then obliged either to consent to the disposal or to give a direction within six months of notification requiring the owner to offer the item to another person or prioritised list of persons, or on different terms, or both. The owner is required to dispose of the item under the terms of an offer made in accordance with the direction if that offer is accepted within six months of being made. Any disposal in which the owner fails to meet any of these requirements would be void.

Owners in the private sector will have a right to market value compensation. The amount of such compensation will be determined by agreement with the offeree or by arbitration if agreement cannot be reached. The requirement to provide the Committee with information will necessitate keeping track of the condition and whereabouts of designated items, but owners might well do that in any case for business reasons.


The Department of Transport is intending to make an Order in this Session of Parliament amending the definition of "statutory undertakers" in Section 88 of the Environmental Protection Act 1990. It is intending to amend the definition to include operators of British Rail's former rail network - in practice Railtrack PLC - and the operators of stations and light maintenance depots used on or in connection with that network. The change will enable the Department of the Environment to designate any or all of these operators under Section 86(6) of the 1990 Act. A statutory undertaker who is designated in this way will come under a statutory duty to ensure that his "relevant land" is, so far as practicable, kept clear of litter and refuse.

Land will be "relevant land" if, broadly speaking, it is under a person's direct control and either it is land to which the public are entitled or permitted to have access with or without payment or, in such cases as the Department of the Environment might prescribe by Order, it is land to which the public have no such entitlement or permission.

Section 4 Other Commercial Arrangements

Section 4.2 Access to Track

All of the proposals for changes to Part D set out on page 129, other than the proposal that the working timetable for each bank holiday would be developed independently of the rest of the
working timetable over a twelve-week period ending twelve weeks before the relevant bank holiday, have been approved by class representative committee. The proposals are now in the course of being implemented.

BRB and Rail express systems Limited issued draft codes of practice in connection with Charter Services. Rail express systems Limited published a final version of its code on 1 August 1996. The final version of BRB's code is yet to be published.

The Regulator issued a notice implementing the arrangements for the sharing with train operators of property profits made by Railtrack referred to on page 120, on 6 August 1996.

The first stage of moderation of competition under Schedule 10 referred to on page 125 commenced on 2 August 1996.

The Regulator has recently issued two General Approvals in respect of the provision of Charter Services to cover the period up to 17 January 1997.

Section 4.3 Access to Stations

There is currently no agreement between OPRAF and Railtrack about how longer term leases will be dealt with in the future. Therefore, although reference is made on page 135 to present negotiations on the provision of longer term leases to coincide with longer term franchises, the current position is as follows: terms were negotiated with Railtrack for longer term leases in the case of the South Eastern franchise and terms would need to be negotiated in the event of any other longer term franchises being granted. Where such longer term leases are entered into, it is likely that a number of provisions will be adjusted to reflect the longer term being granted.

On page 144, with regard to the issue of new Station Access Agreements between TOCs and LUL, the Franchising Director may not actively pursue a resolution of the issue.

On 12 September, the Interim Station Access Contracts (Life Extension) (No. 2) General Approval came into force.

Section 4.6 Access to Depots

With regard to the General Approvals and Consents to be issued by the Regulator as referred to on page 150, the Regulator has now issued General Approvals and Consents to enable specified amendments to depot access agreements to be made more efficiently and quickly. The General Approvals cover: administrative details, applicable systems interfaces, depot access conditions, diagram timings, minimum and maximum levels of services, off-depot services, specifications and short term changes. The General Consents allow changes to incorporated documents, for example diagrams and specifications on similar terms to those applied to modifications covered by the General Approvals.

The Regulator has stated that he expects to issue a further General Approval covering changes to charges following the issue of the Depot Accounting Guidelines.

As for access to stations, there is currently no agreement between OPRAF and Railtrack about how longer term leases will be dealt with in the future. Although reference is made on page 151 to present negotiations on the provision of longer term leases to coincide with longer term franchises, the current position is as follows: terms were negotiated with Railtrack for longer term leases in the case of the South Eastern franchise and terms would need to be negotiated in the event of any other longer term franchises being granted. Where such longer term leases are entered into, it is likely that a number of provisions will be adjusted to reflect the longer term being granted.
Section 4.7 Rolling Stock Arrangements

National Cycling Strategy

In July 1996, the Department of Transport published a Departmental Policy Statement setting out a National Cycling Strategy with the basic objective of doubling the use of cycles by 2002 and doubling it again by 2012. In a section on Cycling and Sustainable Transport, the Strategy states:

"For longer journeys, bicycles can combine very well with public transport, especially rail. With provision at both ends of a longer public transport journey, this combination can offer competitive door to door transport choice. Combining cycling with public transport requires improved provision and a strategic approach to its development. There are no legal or practical constraints to prevent such improvements, which can also benefit other passengers. However, planning and co-operation are essential to ensure that space on trains is used flexibly, and that secure parking and effective information is provided at stations.

OPRAF, PTAs and rail and bus operators, as appropriate should:

- Ensure, as railway rolling stock is refurbished or renewed, that there is sufficient flexible space on all passenger trains to carry bicycles
- Plan to provide secure cycle parking at all public transport interchanges by 2000".

This policy is not binding on OPRAF, but is clearly a Government policy falling within the revision to the Franchising Director's Objectives, Instructions and Guidance which is described in section 2.1 above.

Section 4.9 Direct Agreements

It has now been agreed that the terms of the proposed Direct Agreement with Business Systems will be finalised as part of the vesting of that business.

Section 5 ATOC and ATOC Schemes

Section 5.2 Ticketing and Settlement Arrangement

With reference to the routing guide mentioned on page 185, the National Routing Guide is now being introduced, coming into operation on 29 September 1996. As a consequence, from that date the permitted routes specified in the guide will apply to the routes which can be taken for a journey rather than the "any reasonable route" rule which used to apply. In connection with the introduction of the guide, the Ticketing and Settlement Scheme Management Group, on behalf of the Operators, has given certain undertakings to the Regulator and the Franchising Director.

Discussions have taken place between BRBS and the RSP in relation to changes to the Systems Administrator Agreement. The RSP wishes to gain closer control of the settlement process and to ensure that the process delivery components of the Agreement are sufficiently clearly distinguished so that they can be tendered separately at the point where the Systems Administrator Agreement is renewed, re-tendered, or some parts of the process are taken in-house by the RSP.

RSP will be able to give not less than six months' notice if they wish any staff currently employed by BRBS to transfer to the RSP. In the meantime, BRBS has agreed to delineate each of the allocation and settlement processes and to distinguish these from the distribution and retail support services it performs under the SAA. There will be agreement on the employment of certain key personnel. The scale of any transfer of staff to the RSP would be about 20 people, controlling the allocation and settlement of revenue.
Section 5.3 Other ATOC Schemes

ATOC Limited has applied to become a member of a number of international bodies including the International Union of Railways (the "Union") after BRB's resignation from the organisation. ATOC will take on the subscriptions to the Union and its constituent bodies.

National Rail Enquiry Scheme

NRES is setting up a new company - NRES Limited - to provide a clearer focus for decision making, negotiation with outside contractors, financial control and achievement of regulatory targets. The company will be jointly owned by all participants.

NRES has not yet reached its target of 60 million calls per annum, but the estimated cost of achieving this is between £14-20 million as stated on page 198.

The target for complete implementation of the 0345 scheme is October 1996.

Section 6 Industry Wide Arrangements

Section 6.3 Intellectual Property

Licensed rights other than software

British Rail's policy in relation to PR owned by it has recently changed. It is considering transferring a number of patents which are currently licensed under the Universal Licence Agreement to successor bodies, in particular to BR Research. If such patents are transferred, the obligations in relation to them under the Universal Licence Agreement will be transferred to the new owner of the patents.

Data relating to operators is licensed to some former British Rail businesses, such as Rail Operational Research. Under the Passenger Demand Forecasting Handbook Services Contract, if Operators vote for particular items of research then they are required to provide all necessary data to Rail Operational Research. Under an agreement between the RSP and Rail Operational Research, to the extent that Rail Operational Research requires data for the development of ORCATS, the RSP has licensed this to it, subject to obligations of confidentiality.

Railtest and RDDS

British Rail now intends to vest the remainder of the Railtest division into a subsidiary of BRB and to offer that subsidiary for sale later this year. The shares in RDDS and Railtest Limited will not now be vested in Railway Technical Association Limited. Nor will British Rail be responsible for forming that Association. As a result of the decision not to form the RTA, the transfer previously proposed by BRB of intellectual property rights in traction and rolling stock documentation to RDDS will be subject to further consideration.

Software and Computing Services

TRIBUTE is likely to be owned by a joint venture company, owned by interested passenger operators. All Operators will be able to become shareholders in this company. GEMINI may also be owned by a similar company, of which Railtrack will also become a shareholder.

Millennium Problems

In common with much of industry, the vast majority of computer systems developed, procured by or used by British Rail had data space minimisation as a major consideration. As a result, year numbers were stored using only the last two digits with the century number always assumed to be 19. Many of these systems are now required to operate beyond the year 2000. As a result, most may not function correctly when the year 2000 arrives and, in a significant number of cases,
the problem will occur much earlier as the systems produce forward projections or allow the input of dates in the future. The problem has already arisen with British Rail owned software and with Railtrack Software.

Business Systems has identified systems owned by British Rail, the RSP and Railtrack which are expected to require modification to work correctly with year 2000 dates. Third party software packages will also potentially be affected and it is understood that some personal computers will give unreliable results when the year 2000 arrives.

Much of the software originated by British Rail (and now owned by it, Railtrack or the RSP) is written in older software languages in respect of which there is a limited resource of programmers available to undertake the necessary compliance work. Each of British Rail, the RSP and Railtrack are currently considering how to deal with the implications for their computer systems of the year 2000 and how the costs of any compliance work are to be met. In the case of RSP owned systems, the bulk of the users are also the RSP shareholders. Accordingly, they will probably bear the bulk or all of these costs.

Safety

Railway Standard GO/RT3435 deals specifically with management and development of Railway Group safety related computer information systems. Railtrack is responsible for ensuring that the systems which it owns are compliant with the safety standards. Much of the other software which has safety implications is owned by British Rail and discussions are currently taking place as to the future management of safety responsibility in respect of British Rail owned systems, particularly those where one version is used by a number of users or the ability to obtain maintenance of previous versions of licensed software may be limited, once systems have been modified.

There are also ongoing discussions about changing the systems safety standard so that successor businesses, rather than Business Systems, British Rail or other IPR owners, have safety responsibility, together with responsibility for the business processes in which such software is used. This process is subject to operator approval, and ultimately approval by the Regulator.

Computing and Software Documentation

BRB Owned Software

Under the Master Software Licence between British Rail and Operators, British Rail is obliged to ensure that maintenance of licensed systems is available from successor bodies rather than Business Systems. To enable maintenance to be available, it has entered into agreements known as MSL Software Support Contracts. Train Operators will be entitled to request BRB to call-off maintenance they require, up to the limits set out in the Contract.

Following the changes to the IPR policy of British Rail, a substantial amount of BRB owned software is being transferred to successor bodies, particularly Business Systems and BR Research. To the extent that such software is transferred the relevant parts of the Master Software Licence are being transferred. In addition, a substantial amount of the third party software licences currently sub-licensed either under the Computer Services Agreement or under the Sub-Licence Deed is being transferred to Business Systems. To the extent that these software licences are being transferred, so are parts of the relevant agreements. All Computer Services Agreements entered into with British Rail are being transferred to Business Systems, which has performed obligations under these agreements in the past.
The Informed Traveller Project has identified that telephone enquiries made to TEBs are considered by passengers as an important element of customer service. As a result, a comprehensive national train information service is being developed. This development may affect the way TEBs are operated and funded in the future. Nationally this may result in additional costs dependent upon future volume growth; the actual level of costs will in part be controlled by a competitive tendering exercise to be undertaken by NRES.

**Stakeholder Groups**

Consideration is currently being given to setting up stakeholder groups relating to Train Operations and Train Planning systems, other than those owned by Railtrack. The Board is seeking changes to the T&RS Stakeholder Group Constitution, but this will be subject to Operators' approval.

**Section 6.4 Pensions and Industrial Relations**

Pay reviews for employees other than those in the Management Staff and Executive Grades have been settled with RMT, TSSA, CSEU and ASLEF for the period from 1 April 1996. In the normal course, claims from the trades unions for a pay review with effect from 30 March 1997 would be expected to be received in February 1997. The annual pay review for Management Staff and Executive Grades, due on 1 July 1996, has been completed: the next review for these groups is due on 1 July 1997.

Each TOC submitted its proposals in time in accordance with the agreement with ASLEF quoted in Section 6.4.

In a number of TOCs, the RMT has balloted those of its members employed in traincrew and on-board catering grades in pursuit of claims for: recognition of alleged improvements in productivity; the diagramming of personal needs breaks for conductors, senior conductors, ticket examiners, and train (wo)men; and a reduction of the basic working week for train drivers to 37 hours without cost-compensating employer benefits. Some of the ballots have given the RMT mandates for discontinuous strike action; bans on overtime and rest day working have also been called. Each TOC is managing its own response to the claims and to industrial action.

The Railways Pension Scheme was valued as at 1 April 1996.

**Section 6.7 Taxation**

Now that Railtrack has been floated, franchisees are responsible for the payment of stamp duty on leases of stations, depots and exclusive areas at Major Stations.