ASLEF Response to the Department for Transport and ORR Consultation: A greater role for ORR regulating passenger franchises in England & Wales

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems.

2. ASLEF regards the concept of a neater regulatory system for the railway with one body overseeing both Network Rail and the Train Operating Companies as a laudable aspiration. In many ways it would make sense for the ORR to oversee both the infrastructure owners and the Train Operating Companies to ensure a coherent and joined-up approach to standards and delivery of service satisfaction.

3. ASLEF believes that Network Rail's devolution of powers and the creation of new "Alliances" between Network Rail and Train Operating Companies, gives reason for there to be a closer connection between regulation of the two areas. However it is also important to remember the distinct differences between Network Rail and TOCs. Network Rail is a not for dividend company which is charged with ensuring the safe and reliable upkeep of the rail infrastructure in Britain. TOCs however are run for profit within a franchising system and compete with each other on specific routes and may compete for future franchises at a parent company level.

4. Alliancing raises some interesting questions with regard to regulation and fines resulting from delays. Under the new system, operators would pay track access charges to the Alliance and the Alliance would still be

responsible for delay attribution penalties to the TOCs and FOCs. Given that the finances of the alliance will be between Network Rail and the relevant operator and that any profits will go to both companies, it will in effect mean if delays are the fault of either company there will be no penalty as they will be paying it to themselves. The closer relationship therefore needs examination and it would seem appropriate to have a regulator that can deal with both agencies.

5. ASLEF notes that the consultation frequently emphasises that there will be no increase in regulatory burden. We are concerned that in fact it states "elements of previous franchise contracts could vanish entirely, with no equivalent replacement regulation." Considering the enormous profits that are taken from the industry whilst the tax payer continues to heavily subsidise the privately owned TOCs, the union feels that it would be a mistake to reduce regulation at this moment. We'd contend that while unnecessary red tape can be counterproductive, most elements of franchise contracts are in place for a reason. Reducing any regulation for political purposes is dangerous and costly to the railway's staff and passengers.

6. ASLEF notes that the consultation is not looking to alter the existing franchise change mechanisms. We restate our belief that the current system of franchising is not fit for purpose. Whilst it may be beyond the scope of this consultation it is worth noting that since privatisation, more than £11 billion of public funds has been misspent: on debt write-offs, dividend payments to private investors, fragmentation costs including profit margins of complex tiers of contractors and sub-contractors, and higher interest payments in order to keep Network Rail's debts off the government balance sheet.

7. ASLEF believes that the transfer of complaints handling and disabled people's protection policies (DPPPs) to ORR should not have a significantly negative impact in these vital areas.

8. We take the view that it is positive for all aspects of station asset management to be taken on by a single organisation. ASLEF understands the concerns over some elements of stations being maintained by a franchisee and others by Network Rail. It is frankly ludicrous that a franchisee can be in a position where they must only maintain half of the height of a wall whilst Network Rail must maintain the other half. This often duplicates work and removes economies of scale with two separate call outs and contracts required for such work. The union feels it would be far more cost efficient for all parts of stations to be considered as one entity and ASLEF would support attempts to achieve this common sense measure.

9. One concern ASLEF does have is the short term thinking that comes from franchisees managing stations. It is self-evident that stations exist before and after the terms of a franchise. Giving maintenance control over to a franchise that is likely to have to return control after a few years does little to promote or incentivise the long term maintenance of this asset which ultimately belongs to Network Rail. The ORR must take a key role in ensuring that should this change take place, the long term maintenance of stations remains a key priority.

10. ASLEF believes that it is in areas of train service performance and service quality standards that the transfer of responsibilities could become troublesome. Service performance and quality of Train Operating Companies are areas where the public has strong feelings which often become political issues so it is therefore essential that the person in charge of rail performance is the Secretary of State for Transport. ASLEF would strongly oppose any changes which stop railway performance being

publicly accountable via the Secretary for Transport facing questions at the dispatch box in Parliament.

11. While we appreciate all changes require transitional periods, ASLEF would have concerns over the prospect of a two tier regulatory system within the TOCs. Whilst it may seem logical to have the new system coming into play for new franchises as they come up for tender, assurances must be made that whilst some TOCs come under the auspices of the DfT and others under the ORR, both must abide by the same strict standards.

12. ASLEF understands that the Department for Transport and ORR wants to be less prescriptive to franchises in order to "allow them… more flexibility to meet customer needs in different ways and to contribute to the reduction of the industry's cost base." However it must be remembered that customers' needs and commercial needs are not always the same. Whilst it may seem sensible to focus funding on busier services by reducing services on quieter routes, the social impact of this can be significant on communities. Therefore focusing on outputs may be a reasonable strategy in some areas, it is still essential that government is there to ensure service provision to areas that are more vulnerable to commercial decisions.

13. There is a concern that should services be reduced to reduce costs on less busy routes, it may be the beginning of a death by a thousand cuts. If stations with infrequent services have these reduced further, they become less convenient and local residents begin to find alternatives and turn their back on rail. Therefore while acknowledging that some adjustments may be needed on certain lines, we recognise that investment may be needed on other rural lines. This must be dictated by the Department for Transport. It would therefore be wrong to totally reject all input based contractual provisions.

14. Regulation is an important tool in ensuring a quality rail service in which public money is sensibly spent and safety is given absolute priority. It is therefore important that its regulatory body is held accountable. The best way for this to happen is to ensure that the ultimate responsibility lies with the Secretary of State. There is a lot of sense in having one regulatory authority but it must be done in a way that ensures both Network Rail and the Train Operating Companies are held to account with strong repercussions for failing passengers and the tax payer. That is the only way we will ensure real value for money and a quality rail service in England and Wales.

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