

**Second Consultation on Prospective Levels and Principles
of Track Access Charging for the High Speed 1 Railway**



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Second Consultation on Prospective Levels and Principles of Track Access Charging for the High Speed 1 Railway

Purpose

1. The Consultation on Prospective Levels and Principles of Access Charging for the High Speed 1 Railway (the “first stage prospective consultation”) was issued in October 2007. The greater part of the first stage prospective consultation was concerned with the level of the investment recovery component of the track access charge and the basis on which it would be applied. This second stage prospective consultation provides further detail on the remaining elements of the track access charging regime.
2. The purpose of this consultation is:
 - to provide feedback on the first stage prospective consultation identifying the changes that have been made to the investment recovery charge proposals in response to comments from consultees; and
 - to seek comments from industry parties on the prospective principles and levels of the remaining elements of the track access charging regime for the High Speed 1 railway (HS1) set out in this document.
3. The proposals in this second stage prospective consultation have been made in accordance with the draft Charging Framework letter issued for consultation by the Department of Transport (DfT) on behalf of the Secretary of State for Transport on 1 September 2008, a copy of which is attached.
4. A third stage prospective consultation on other elements to be included in the Network Statement will be issued in autumn 2008. This third stage prospective consultation will be primarily concerned with the capacity allocation framework.
5. Consultation on station access charges took place in 2007. Save as described in paragraphs 35 and 36, the station access consultation process is now complete.

Context and the prospective nature of the consultation

6. CTRL (UK) Limited (CTRL (UK)) is the infrastructure manager of Section 1 of HS1 and HS1 Limited is the infrastructure manager of Section 2 of HS1. Both CTRL (UK) and HS1 Limited are wholly-owned subsidiaries of London & Continental Railways Limited (LCR).
7. The first stage prospective consultation was jointly issued by CTRL (UK) and Union Railways (North) Limited (URN). On 1 July 2008 the name of URN was changed to HS1 Limited. This second stage prospective consultation is therefore being jointly issued by CTRL (UK) and HS1 Limited.
8. The Railways Infrastructure (Access & Management) Regulations 2005 (the 2005 Rail Regulations) impose a number of obligations on the infrastructure manager of HS1. A key obligation for the purposes of this consultation is, following consultation with all industry parties, to develop and publish a Network Statement including a description of

the charging principles and tariffs, details of the charging methodology, and exceptions to the charging principles.

9. Network Rail (CTRL) Limited (NR (CTRL)) has issued a Network Statement for the HS1 railway on behalf of CTRL (UK) and HS1 Limited. Under the 2005 Rail Regulations, NR (CTRL) is carrying out the functions of the Charging Body and the Allocation Body for Sections 1 and 2 of HS1 i.e. selling and allocating capacity on the railway on the terms set out in the Network Statement.
10. As the railway will be maintained and operated as a single asset, HS1 Limited and CTRL (UK) intend to consolidate the concessions of Sections 1 and 2 of HS1 into a single LCR subsidiary, HS1 Limited. The consolidation is expected to occur by the end of 2008 following the receipt of a number of third party consents and approvals. LCR is also engaged in a wider restructuring of its businesses following the completion of the HS1 project. The charging structure outlined in this consultation is subject to the implementation of this restructuring.
11. NR (CTRL) is currently contracted by CTRL (UK) and HS1 Limited to be the infrastructure operator for HS1, responsible for operating and maintaining the railway. This will continue to be the case when HS1 Limited becomes the single infrastructure manager of the unified HS1 railway.
12. In 2007, CTRL (UK) and URN decided to issue jointly a prospective statement of the principles and levels of access charging proposed for HS1 for consultation with the industry. This document, the first stage prospective consultation, was issued prior to the entry into service of the completed railway in order to allow future users of HS1 to begin to make planning and other strategic decisions in relation to HS1.
13. As envisaged in the first stage prospective consultation, CTRL (UK) and HS1 Limited are issuing this second stage prospective consultation which sets out the revised proposals for the investment recovery charge and provides further detail on the remaining elements of the access charging regime for HS1. The principles and charges in this document are prospective and remain conditional on a number of third party consents and approvals.
14. The current Network Statement is subject to change. This consultation is a prospective one about the long term regime. It is anticipated that the new regime will come into force from March 2009 when a new Network Statement will be published and will supersede any prior Network Statement.

Components of the HS1 track access charge

15. The proposed components of the HS1 track access charges include:
 - an investment recovery charge to recover the costs relating to the construction of HS1 and, potentially, any further investments in relation to HS1;
 - a charge to recover operating and maintenance costs (OMC) and lifecycle replacement (renewal) costs;
 - performance and possessions regimes;
 - a capacity reservation charge;

- a congestion tariff; and
- charges for other services specified under Schedule 2 of the 2005 Rail Regulations.

Investment recovery charge for passenger operators

16. A number of interested parties responded to the first stage prospective consultation and their comments have been taken into account in the revised proposals for investment recovery.

Principles

17. The 2005 Rail Regulations generally require charges to be set at the directly incurred cost of operating a train service. However, HS1 is a specific investment project within the meaning of paragraph 3 of Schedule 3 to the 2005 Rail Regulations and may levy higher charges reflecting the long term costs of the project by virtue of the contractual arrangements entered into for its construction.
18. In 1996, LCR was awarded the concession to design, build, finance and operate the Channel Tunnel Rail Link project (the former name for HS1) following a competitive tender process managed by the UK Government. As part of its competitive tender, LCR agreed to sell to the Secretary of State for Transport sufficient capacity on HS1 to operate up to 8 train services an hour for domestic passenger services at specified speeds in return for semi-annual payments by the Secretary of State for Transport of a “Domestic Capacity Charge” (DCC). These arrangements persist at equivalent value and the Secretary of State for Transport has awarded a franchise to London & Southeastern Railway Limited to operate these domestic services.
19. For the avoidance of doubt, the proposals in this prospective consultation statement do not affect the arrangements in respect of the DCC or the appointment of the franchised operator to operate the related domestic services. However, the DCC represents a payment for use of HS1 for a given level and configuration of passenger train services operating at particular speeds, and therefore allows for an implied charge for the use of the railway to be calculated.
20. Accordingly, it is proposed that operators of passenger train services on HS1 should pay an investment recovery charge per train service comparable to the amounts paid in the current DCC arrangements.
21. The proposed charges have also been set so that they should encourage, as far as possible, the maximum use of HS1 subject to the need to recover investment costs and:
- encourage the use of HS1 as a high speed railway for which it was conceived, designed and financed;
 - not discourage the use of intermediate stations on HS1; and
 - recover investment fairly between different types of user.
22. In order to provide an incentive for efficient use of the railway infrastructure as service levels build up on HS1, the investment recovery charge should in principle reflect usage

of HS1 infrastructure by train operators. This is also consistent with a basic principle underlying the 2005 Rail Regulations that charges should reflect usage.

Charging Basis

23. The first stage prospective consultation set out two options for usage-based charging: one in terms of capacity and the other in terms of track occupancy (i.e. time spent on the HS1 through line). Following feedback from the first consultation, the second of these has been selected as the appropriate option for the investment recovery charging basis. This option is significantly simpler to apply, provides an incentive for efficient use of the network and ensures that HS1 would be utilised as conceived and designed.
24. The measurement of time would start on arriving on the HS1 through line or departing St. Pancras, and stop on leaving the through line or arriving at St. Pancras or at an intermediate HS1 station: the faster the train, the lower the charge between any two points.
25. As explained in paragraph 18, the DCC represents the investment recovery charge for a specified number of domestic passenger train services operating at particular journey lengths, stopping patterns, speeds and journey times over HS1. The DCC has been used to calculate an equivalent investment recovery charge, on a track occupancy basis, for international passenger services, after adjusting for the longer distance travelled on HS1 but at the standard HS1 line speeds for international services.
26. If investment recovery charges were applied simply on the basis of track occupancy, the charge for a stopping train would be greater than for a non-stopping train. To avoid discouraging the use of intermediate stations on HS1 the charges for stopping services will be reduced by the incremental time it takes for a train to stop at a station.
27. This methodology has been used to calculate an investment recovery charge for passenger train services using HS1. The investment recovery charge calculated on this basis would be capped at £71.35 (June 2008 prices) per minute of time spent on the HS1 through line.
28. Illustrative charges per train for the principal types of passenger services from St. Pancras to the Channel Tunnel and to the junctions with the national rail network at Ashford and Ebbsfleet are shown in Table 1 below.

Table 1 – Illustrative investment recovery charges per train	
Type of passenger service	(June 2008 prices)
International passenger service (St. Pancras to the Channel Tunnel)	£2,244
Domestic passenger service (St. Pancras to Ashford)	£2,192
Domestic passenger service (St. Pancras to Ebbsfleet)	£1,044

29. The first stage prospective consultation proposed that HS1 Limited would be afforded some protection against severe downside levels of usage. If demand for access on HS1 for international services and those not subject to the DCC arrangements were to fall significantly below expected levels, there would be a corresponding increase in the cost per passenger train service. In addition, it was proposed that if demand were to rise substantially above expected levels, there would be a corresponding decrease in the cost per passenger train service to ensure that HS1 Limited did not make returns exceeding the costs of construction plus a reasonable return.

30. Following consideration of the responses to the first stage prospective consultation the proposal on usage levels has changed. It is now intended that volume risk should not rest with the train operators but with HS1 Limited. HS1 Limited will also enjoy the corresponding gains from any increase in volume as a result of bearing this risk. Therefore the proposals in the first stage prospective consultation relating to significantly low or high levels of usage have been removed and train operators will not now see a change in the investment recovery charge per train as a result of any change in volume on the network.
31. As part of HS1 Limited's strategy to manage volume risk, HS1 Limited may introduce schemes granting time limited discounts to encourage the development of new rail services as allowed for in paragraph 6 of Schedule 3 of the 2005 Rail Regulations. Any such scheme will be offered in a non-discriminatory manner to all users or potential users of the specified traffic flow to which the relevant discount scheme applies.
32. In addition, HS1 Limited may differentiate between groups of services, as permitted by the 2005 Rail Regulations, and apply time limited discounts for services. In particular, discounts may be applied to some existing services while markets are being established following the full opening of HS1.
33. The charge in paragraph 27 will:
- be subject to semi-annual indexation with RPI in accordance with paragraph 4.3 of the DfT's draft High Speed 1 Charging Framework dated 1 September 2008;
 - be a maximum charge per minute per train service in accordance with paragraph 4.2 of the DfT's draft High Speed 1 Charging Framework;
 - be calculated on the basis of:
 - timetabled paths, not actual paths used; and
 - scheduled journey times of timetabled services in minutes (excluding time for station stops);
 - remain applicable even if the Secretary of State for Transport chose to procure the operation of fewer domestic services than the maximum entitlement (as set out in paragraph 18) used to derive the charges set out above.
34. The investment recovery charge in paragraph 27 relates to recovery of part of the costs of initial construction of HS1. In the event that there is further investment in relation to HS1 or any related facilities, HS1 Limited expects to recover this additional investment through an additional investment recovery charge in accordance with paragraph 4.4 of the DfT's draft High Speed 1 Charging Framework.

HS1 stations

35. The investment recovery element within the station access charges for the HS1 stations at St. Pancras, Stratford and Ebbsfleet will be set to nil in line with the objective of not discouraging use of the HS1 stations.

36. Station retail and car parking income will not be used to cross-subsidise investment recovery charges and will be applied to remunerate investment in the station retail and car parking facilities.

Contribution to operating, maintenance and renewals costs (OMRC) for passenger services

Principles

37. The 2005 Rail Regulations allow arrangements to be put in place to enable an infrastructure provider to achieve full recovery from all sources of its costs of operation, maintenance and renewal.
38. The 2005 Rail Regulations also require that basic charges for the minimum access package¹ are set at the cost that is directly incurred in operating the train service. In this context we use the term directly incurred costs to mean all OMRC (variable and fixed) as, given the nature of HS1's business, all of these costs can be attributed to the provision of access/operation of train services on the HS1 infrastructure for core users of the line (i.e. high speed passenger train services). The Regulations allow the charges to be averaged over a reasonable spread of train services and times, provided that the relative magnitudes are related to the costs attributable to the services. As required by the Regulations, the same principles are applied over the whole of the HS1 network. This section does not address scarcity of capacity which is dealt with later in the section on Managing Congestion.
39. There are a number of categories of OMRC. Some costs vary according to usage of the infrastructure and characteristics of the train. Other costs are incurred in maintaining the asset base of the railway to ensure its safe and efficient operation but do not vary appreciably with utilisation of the railway.
40. It is proposed that the apportionment of OMRC between train operators will be made on each principal category of cost reflecting, as far as is reasonably practicable, the way in which usage of the railway impacts the cost category. Costs which do not vary appreciably with usage will be shared in line with the usage of the railway by each train service.
41. In addition the Regulations require that the charges that HS1 Limited sets result in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market. Although domestic and international high speed passenger services clearly serve different markets, HS1 Limited does not consider that it is discriminatory to adopt the same principles in relation to charging for these services. The principle of non-discrimination is considered in relation to the approach to charging for additional high speed passenger services.

Cost Base

42. Table 2 sets out the annual level of OMRC expected to be incurred once both international and domestic passenger trains are running on HS1 based on the timetables expected to be run. They can be considered as a base budget of annual costs expected to

¹ Within the meaning afforded to that term by Schedule 2 of the 2005 Rail Regulations

be incurred from 2010 onwards but subject to revision in the event of significant changes to the timetables (such as the introduction of a new substantial train operator) as set out in paragraph 60. These costs are subject to confirmation with developing work on the Asset Management Plan, which sets out the arrangements for the operation, maintenance and renewal of the high speed railway, and associated costs and efficiencies.

Table 2 – Base annual OMRC from 2010 (Q1 2008 prices)	
	£ million (Q1 2008 prices)
Management and administration	6.0
Operations	7.0
Maintenance	37.6
Overheads (e.g. rates, insurance, fees)	20.9
Renewals	5.8
Total²	77.4

43. The annual renewals cost is the sum of two components. The first component covers renewals expenditure for the line’s power systems, as per HS1 Limited’s existing contract with EDFE. The second component was derived by converting a profile of projected renewals expenditure for the line itself into an annuity. This annuity accounts for renewals expenditure but not the cost of specific upgrade projects (i.e. signalling system³, control system⁴ and ballast/trackform/sleepers⁵). The cost of such upgrades will be financed when required and will be recovered through an additional investment recovery charge as set out in paragraph 34.

Cost Apportionment

44. As stated in paragraph 40 above the apportionment of OMRC between train services reflects, as far as is reasonably practicable, the way in which usage of the railway impacts costs. The costs have been apportioned by reference to the different types of passenger train usage.
45. The first stage in the apportionment was to split the OMRC into:
- long run incremental operating, maintenance and renewal costs (LRIC) associated with the use of HS1 by, on the one hand, high speed international passenger services, and on the other hand, domestic passenger services i.e. the costs that would not be incurred in the long run if either of such services did not operate on HS1; and
 - costs which would be incurred to keep the line open and operate any high speed passenger train but which are not incremental to either international or domestic passenger services specifically: these are referred to as “common costs”.

46. LRIC is made up of:

² Any difference in total is due to rounding

³ Large scale replacement of the current signalling infrastructure with a more advanced system conforming to European standards and providing enhanced capacity to the network.

⁴ New versions of the Rail Control and Engineering Management systems (EMS).

⁵ Large scale replacements of the track base which aim to improve the speed, diagnostics and useful life of the whole of the line.

- costs which vary with usage of the line (for example track renewals). These have been calculated using NR (CTRL)’s EMGTPA (“equivalent million gross tonnes per annum”) model based on the expected timetable (399 international services and 1,051 domestic services per week) including empty coaching stock (ECS) moves; and
- costs which do not vary with usage of the line but are associated with either international or domestic passenger services specifically:
 - costs associated with sections of route used by only international passenger services or only domestic passenger services; and
 - other costs (insurance, staff, office administration, legal and professional) that would not be incurred if particular services were not in operation.

47. The LRIC assigned to each type of operation is the cost that would not be incurred in the long run if that type of operation did not take place on HS1. The charges in respect of LRIC for domestic and international operations are shown in Table 3 on a per train basis.

	Domestic operator (£ per train)	International operator (£ per train)
Variable costs	61	239
Incremental track costs	74	421
Other costs	11	30
Total⁶	147	690

48. In total, OMRC identified as the LRIC of either international or domestic passenger services totals £22.4 million. The remaining costs are not specific to any train operation, but are incurred to enable any operation by high speed passenger services. These common costs are £55.0 million, 71% of total OMRC. These costs cannot be attributed to a particular train service on the basis of cost causation. Instead, it is necessary to apportion these costs on some other basis. A variety of approaches to apportioning common costs has been considered.

49. In fully allocated cost (FAC) methods these costs are apportioned on the basis of a measure of output generated or resources used. Two FAC methods have been considered for the apportionment: timetabled distance travelled by the train service on the HS1 track (train-km) and track occupancy (minutes). Ramsey pricing⁷, in which common costs are apportioned in a way which takes into account the relative price sensitivity of consumers, can be shown to be the most economically efficient way of recovering common costs and was considered as an alternative method of apportionment.

50. For comparative purposes, we also considered a simplified version of the methodology adopted on the rest of the national rail network (the “Network Rail model”).

⁶ Any differences in totals are due to rounding

⁷ Under the Ramsey pricing approach, prices for customers whose demand is relatively sensitive to price would be based on incremental costs plus a relatively small contribution to common costs. In contrast, prices for customers whose demand is relatively insensitive to price would be based on incremental costs plus a relatively large contribution to common costs.

51. The resulting charges in respect of common costs using each of the approaches described above are shown in Table 4 on a per train basis.

Table 4 – Illustrative charges in respect of common costs levied on passenger train operators (Q1 2008 prices)		
	Domestic operator (£ per train)	International operator (£ per train)
Train-km	625	1,003
Minutes	680	858
Ramsey pricing ⁸	778	601
Network Rail model	672	879

52. Charges in respect of total OMRC have been calculated by combining the LRIC charges and the common cost charges. Results are shown on a per train basis in Table 5 and are similar for all of the methods of apportionment considered.

Table 5 – Illustrative charges in respect of total OMRC levied on passenger train operators (Q1 2008 prices)⁹		
	Domestic operator (£ per train)	International operator (£ per train)
Train-km	771	1,694
Minutes	827	1,548
Ramsey pricing ¹⁰	924	1,292
Network Rail model	819	1,569

53. Each of the potential approaches was assessed against the criteria which would be important to stakeholders:

- whether LRIC is correctly identified and quantified;
- economic theory;
- precedent;
- transparency;
- “reasonableness”; and
- practicality of implementation.

54. Although from a theoretical perspective, Ramsey pricing may be the preferred option, it is less transparent than many of the other methods, and there are likely to be problems with practicality of implementation (in particular, in obtaining robust elasticity estimates). On most of the other criteria, using train-km or minutes would be preferred. Of these two options, apportionment on the basis of minutes is proposed for consistency with the way that the investment recovery charge apportionment is calculated. It is not

⁸ The figures provided here for Ramsey pricing should be regarded as illustrative only. There are difficulties in obtaining sound evidence of the relevant price elasticity of demand for the services in question, and the results depend on the choice of unit used.

⁹ Any differences in totals are due to rounding

¹⁰ See previous footnote on Ramsey pricing

intended to make any charge for extra minutes occasioned by slowing to stop at any HS1 station. This approach provides an incentive for efficient use of the network and would ensure that HS1 would be utilised as conceived and designed: the faster the train, the lower the charge between any two points, but with no disincentive to make station stops.

55. Illustrative charges per train, with minutes as the basis of common cost apportionment, for the principal types of passenger services from St. Pancras to the Channel Tunnel and to the junctions with the national rail network at Ashford and Ebbsfleet are shown in Table 6 below.

Table 6 – Illustrative charges in respect of total OMRC levied on passenger train operators – including split by domestic operator calculated on the basis of minutes (Q1 2008 prices)	
Type of passenger service	£ per train (Q1 2008 prices)
International passenger service (St. Pancras to the Channel Tunnel)	1,548
Domestic passenger service (St. Pancras to Ashford)	1,153
Domestic passenger service (St. Pancras to Ebbsfleet)	539

56. The OMRC apportionment above is based on a realistic timetable developed by HS1 Limited on the basis of provisional timetabling for the first period of operation of domestic high speed trains. Subsequently, timetable proposals have been worked up in more detail by Eurostar (UK) Limited (EUKL) and LSER. NR (CTRL) is currently working on these timetable proposals. Once NR (CTRL)'s work is complete the apportionment work will need to be reviewed to ensure that this revised timetable is properly reflected.
57. It is proposed that the total OMRC in Table 2 would be subject to indexation in line with the basket of indices applied in the Asset Management Plan.

Implementation

58. It is proposed that charges would be levied on each rail operator on a fixed basis subject to review and reapportionment of the OMRC in the event of a significant change of use. The fixed charge would not be amended for small changes in the use of HS1, for example, small changes in the number of train paths for a new timetable period.
59. The initial fixed charge for each operator will be calculated on the basis set out in the Cost Apportionment section above. For each timetable year a per train charge for each type of passenger service will be calculated as the total charge for the type of passenger service divided by the number of trains in the timetable for that year for the type of passenger service.
60. Where, however, there is a significant change in the use of the HS1 line, the charges would be subject to review and reapportionment between domestic and international operations using the methodology discussed above. In this context, a significant change would be defined as a greater than 4% change in the number of timetabled train movements on HS1 in any one timetable period. Timetable changes during the period of the 2012 Olympics will not be considered a significant change.
61. The charging basis for additional domestic or international passenger services would be non-discriminatory as between new high speed passenger services of new operators and

additional high speed passenger services of existing operators. HS1 Limited does not anticipate that there will be a case for a high speed passenger operator not to pay its contribution to OMRC on the same basis.

Incentivisation

62. The 2005 Rail Regulations require that an infrastructure manager is provided with incentives to reduce the costs of provision of infrastructure and the level of access charges. The proposed approach to incentivisation is set out below.
63. It is proposed that there will be a review of the OMRC element of charges every five years. The first review period will run from December 2009, when both international and domestic passenger services will be running on HS1. A five year review period will create more powerful incentives than a shorter period and is consistent with the review period on the national rail network. It is further proposed that the benefit of any savings made by HS1 Limited will be retained for a full five years regardless of when they are achieved in the review cycle. This approach provides incentives to reduce costs throughout the review cycle rather than just in the early years and is used in other industry sectors such as electricity distribution and water.
64. In addition to the periodic review it is proposed that HS1 Limited would instigate extraordinary reviews in case of substantive change, for example changes in safety requirements, regulation, legislation and Technical Standards for Interoperability (TSIs).
65. The Network Statement will be updated from time to time, primarily as part of a regulatory process of periodic review. HS1 Limited will seek to agree with train operators a common approach to OMRC charging to inform the regulatory body's consideration in each such periodic review. The DfT has signalled its intention that the conduct, approval and determination of such periodic reviews is intended to be a function of the Office of Rail Regulation (ORR).
66. Consultees are invited to comment on the OMRC apportionment methodology and the proposed incentive mechanism.

Freight charges

Principles

67. HS1 Limited's main objectives with respect to the freight charging framework are to:
 - attract freight traffic which can bear the additional costs incurred by HS1 Limited as a result of freight services running on HS1; and
 - create a flexible charging framework which allows for future adaptation to enable freight services to make a contribution to common costs where possible.
68. These objectives are compatible with the 2005 Rail Regulations which generally require charges to be set at the directly incurred cost of operating a train service (paragraph 1(4) of Schedule 3) but also give exceptions to this principle which allow higher charges to be levied:

- through mark-ups, depending on what the market can bear, in order to obtain full recovery of the costs incurred (paragraph 2 of Schedule 3); and
 - in relation to specific investment projects (paragraph 3 of Schedule 3).
69. There is also an obligation in the 2005 Rail Regulations to ensure the competitiveness of international rail freight.
70. The HS1 line was built primarily for high speed passenger trains with freight as a potential future additional service. Thus freight access charges should reflect the marginal costs to HS1 Limited of providing for freight services. In the context of freight, directly incurred costs can therefore be defined as the long run incremental costs of freight (i.e. the costs that would be avoided in the long run if freight did not operate on the line).
71. HS1 Limited anticipates that the contribution of most freight services will be limited to the recovery of marginal costs and the pricing in this consultation document reflects this. However, HS1 Limited will retain the right to recover a contribution to common costs from freight operators if changes in the economics of the market increase freight operators' ability to pay, or in the case of the development of future freight market segments which can bear such costs.
72. The 2005 Rail Regulations also:
- require the infrastructure manager to levy equivalent and non-discriminatory charges for undertakings performing services of an equivalent nature in a similar part of the market; and
 - allow for the averaging of charges across a reasonable spread of train services and times.
73. In practice this means that total freight costs should be averaged across all individual freight services. This will ensure broadly equivalent treatment of individual freight services.
74. The passenger charging principles are independent of the freight charging framework, and should continue to be treated separately, as the markets are different and subject to separate considerations.

Charging basis

75. HS1 Limited proposes to calculate freight charges on the basis of the long run incremental cost (LRIC) of freight. Freight LRIC includes both variable costs (which vary with the number and type of trains using the line) and freight-specific fixed costs (for example, OMRC associated with track sections used exclusively by freight).
76. This charge would cover all costs which would be avoidable in the long run if freight trains did not operate on HS1 (providing the actual traffic level was consistent with the level on which the per-unit charge was based) and is therefore the lowest level of charge that would allow HS1 Limited to recover the cost of freight operation, although it does not contribute towards common costs.

77. Charging on the basis of freight LRIC is compatible with paragraph 1(4) of Schedule 3 of the 2005 Rail Regulations as it would recover no more than the directly incurred cost of freight as defined in paragraph 70 above.
78. There is significant uncertainty over the volume and type of future freight traffic that may use the HS1 line. The “base case” freight timetable used in the calculation of costs and charges was five hi-cube return journeys from the Channel Tunnel to Ripple Lane per night (which is considered to be the most likely medium term timetable).
79. On the basis of this timetable, total freight charges would be £2,038,000 per annum, equivalent to £1,611 per return journey¹¹ or £9.25 per train-km¹². This is the minimum charge which would allow HS1 Limited to recover its directly incurred costs.
80. As indicated in paragraph 71, HS1 Limited wishes to encourage the development of new freight markets and does not preclude the possibility that the profitability of services in such markets would enable them to make a contribution to common costs. In such circumstances, HS1 Limited reserves the right to introduce additional charges for such markets on a non-discriminatory basis in the form of a contribution to common costs.

Implementation

81. HS1 Limited proposes that freight operators would be charged per timetabled return journey (whether or not used) on the basis of freight LRIC as set out above. If charges are set on the base case timetable of five hi-cube returns per day between the Channel Tunnel and Ripple Lane, the charge would be £1,611 per return journey (Q1 2008 prices).
82. This is based on the type of freight rolling stock currently expected to use HS1. HS1 Limited reserves the right to vary the charge for different types of rolling stock.
83. This estimate of freight charge is based on the base case timetable as outlined in paragraph 78. If responses to this consultation suggest that the level of freight usage assumed is inappropriate then it may be necessary to revise the level of charge per return journey using the principles and methodology above.
84. Given the difficulty in forecasting HS1 freight usage and the freight market’s ability to pay, and the likelihood that this will change over time, it is important that the charging structure offers flexibility for future adaptation. However HS1 Limited recognises that rail freight operators’ ability to compete against other modes is dependent upon a stable charging basis and we therefore propose that for the first five years HS1 Limited will take volume risk on the base level of trains per day (i.e. freight charges will not increase if this volume target is not met). HS1 Limited is also prepared to review freight charging levels with freight operators on an annual basis if higher volumes materialise.
85. HS1 Limited will review freight charging on a five year basis as part of the overall OMRC review process set out in paragraph 63. This will allow charges to be updated to reflect better information on, and changes to, the costs that are actually involved in running freight services on the line and the ability to pay of different freight market segments.

¹¹ The charge is quoted per return journey reflecting the fact that freight trains are likely to be laden in one direction only

¹² The charge is quoted per train-km for consistency with the standard method of charging for freight in Europe

86. It is proposed that the freight charges would be subject to indexation in the same way as passenger OMRC charges described in paragraph 57 above.
87. Consultees are invited to comment on the base timetable assumptions used in the calculation of charges and the acceptability of the proposed charges.

Performance regime

88. This section relates only to the principles and mechanics of the proposed performance regime. The payment rates and benchmarks are individual to each operator and service group and are yet to be calibrated. They are also confidential to each operator. As such, the levels at which the payment rates and benchmarks will be set are not discussed within this consultation. Following the outcome of this consultation, HS1 Limited will consult directly with individual operators on payment rates and benchmarks based on expected service frequencies.

Principles

89. The 2005 Rail Regulations require the track access agreements between HS1 Limited and train operators to include a performance regime designed to encourage all parties to minimise disruption and improve the performance of the railway network.
90. Performance on HS1 is already monitored using Network Rail's TRUST system, as on the national rail network. In addition, the principles and procedures underpinning delay attribution on the national rail network, as set out in the Delay Attribution Guide (DAG), are applied for the purposes of allocating responsibility for service disruption on HS1. HS1 Limited anticipates that this approach to performance monitoring and delay attribution will continue, although there may be a case for modifying certain elements of delay attribution to reflect the interface between HS1 and adjacent rail networks.
91. There is already a performance regime between HS1 Limited and EUKL, which has provided the basis for the regime proposed here. However, as EUKL is currently the only train operator using HS1 to provide commercial services, the existing regime does not include any incentives for parties to minimise so called TOC on TOC delay, arising where incidents caused by one train operator disrupt the services of another. The future performance regime will need to provide for such incentives in order to encourage parties both to minimise the frequency of TOC on TOC disruption and to contain the impact when it occurs.
92. Building on existing contractual arrangements, the proposed performance regime for passenger services would operate as follows:
 - performance would be measured using the existing TRUST monitoring system, with incidents allocated both to cause codes and responsible manager codes in accordance with the DAG;
 - HS1 Limited would take responsibility for incidents caused by failures of HS1 infrastructure and of management or operation of that infrastructure, and pay compensation to operators for disruption resulting from such incidents;

- HS1 Limited would also take responsibility for incidents caused by third party train operators and pay compensation to operators experiencing any associated disruption to their services;
 - train operators would take responsibility for incidents caused by them and make performance payments to HS1 Limited reflecting the impact of the resulting disruption to services operated by others; and
 - both HS1 Limited and train operators would be subject to performance benchmarks, based on a reasonable expectation of each party's contribution to measured performance, which would provide the basis for the determination of bonus and penalty payments.
93. This approach is broadly equivalent to that taken on the national rail network, with the infrastructure manager channelling compensation payments between train operators as well as paying compensation for poor performance caused by failures of the infrastructure and of infrastructure operations. It would ensure that all parties were incentivised in line with the objectives set out in the 2005 Rail Regulations and provide for a more efficient channelling of performance payments as compared with a regime based on bilateral arrangements between individual train operators.
94. HS1 Limited is, however, proposing some changes compared with the approach taken on the national rail network. Some specific changes are set out below. In addition, HSL Limited proposes to focus the regime on incidents which are manageable by HS1 Limited or train operators and certain incidents will therefore be excluded. For example, it is envisaged that delay due to severe adverse weather conditions, fatalities and security alerts would be excluded as neither HS1 Limited nor train operators would be in a position to manage the frequency of such incidents.

Performance measurement

95. The existing performance monitoring system on HS1 is capable of capturing both lateness at Monitoring Points (located at key stations) and delay at Recording Points (located at a number of points along the route). It would therefore be possible to measure performance by reference to lateness and cancellation minutes and allocate overall performance minutes to each party according to their respective shares of delay (as under Schedule 8 of the model track access agreement in use on the national rail network).
96. The alternative would be the approach taken in the existing contractual arrangements between HS1 Limited and EUKL, whereby each party's performance is measured simply by reference to the delay and cancellation minutes allocated to them. Delay is the measure used in performance analysis and performance improvement planning and has increasingly been used as the basis for performance measurement in contracts on the national rail network (e.g. in franchise agreements between the DfT and train operators). Use of delay minutes as the basis for performance measurement is also consistent with current thinking on the development of a performance regime for the European rail network. In addition, although lateness may be seen as a more passenger-focused measure of performance, delay and lateness are highly correlated such that measures to reduce delay are likely to have a commensurate impact on lateness.

97. HS1 Limited therefore proposes that, for passenger services, performance on HS1 will be measured by reference to delay and cancellation minutes, as under the existing contractual arrangements with EUKL.

Cross-boundary delay

98. HS1 interfaces with other rail infrastructure, specifically the south-eastern region of the national rail network and the Channel Tunnel. Services currently running or expected to run over HS1 in the future will cross at least one boundary in the course of any given journey. The HS1 performance regime will therefore need to recognise late presentation of trains at boundary points and provide for the allocation of any consequential delay incurred by trains (both those presented late and others delayed by them) travelling on HS1 itself.
99. Under the existing contractual arrangements between HS1 Limited and EUKL, late presentation of a Eurostar train at the boundary with the Channel Tunnel is identified as an incident within TRUST and any consequential delay captured by TRUST while the train (or another affected train) is travelling on HS1 is attributed to EUKL. This is consistent with the DAG, which treats late presentation elsewhere on the national rail network in a similar manner and HS1 Limited is not therefore proposing any changes to the recording and attribution of delay due to late presentation (at both Channel Tunnel and national rail network boundary points) for the HS1 performance regime.
100. From December 2009, HS1 will be used by at least two operators, with the result that late presentation on the part of any operator may give rise to TOC on TOC delay. Consideration has been given to whether delay caused by late presentation should be included in the determination of performance payments.
101. Such delay could be treated in the same way as other TOC on TOC delay and included in the determination of performance payments. This would mean that an operator that experienced service disruption as a result of late presentation on the part of another would receive a performance payment from HS1 Limited. HS1 Limited would, in turn, receive a commensurate payment from the responsible operator, with the level of payment reflecting the delay it had caused.
102. However, it could be difficult for operators causing late presentation incidents to reduce them or to mitigate their effects, particularly where such incidents were caused by a failure on the part of an adjacent infrastructure operator.
103. In view of this concern, it may be appropriate to exclude delay arising from late presentation from the performance regime for the purpose of calculating performance payments. This would reduce the financial risk associated with late presentation from the perspective of operators causing it, although equally operators experiencing consequential disruption to their services could not expect any compensation under the performance regime.

Definition of train operator performance measure

104. Train operator performance could be measured either in terms of TOC on self delay (analogous to the approach taken on the national rail network under standard Schedule 8 arrangements), or in terms of TOC on TOC delay by perpetrator.

105. Under the first option, operators would be more confident of directly affecting their measured performance since it would be determined by factors that they were well placed to manage, for example the level of rolling stock failures or station delays. However, in this case effective calibration of the regime would require a stable and well understood relationship between TOC on self and TOC on TOC delay. In the absence of such a relationship, it would be difficult to ensure that payments to HS1 Limited from an operator causing delay to another's services reasonably matched the corresponding payments from HS1 Limited to the operator experiencing the delay. Given that there is currently no historical performance data that would enable the interaction between services to be investigated, establishing this relationship within a reasonable time frame would be challenging.
106. The second option would involve more direct measurement of one train operator's impact on another's performance and address the specific calibration issue identified above. At the same time, it would be more difficult for operators to manage the level of TOC on TOC delay that they cause since, for any given incident, this would depend on the timetables in operation, the actions of the infrastructure operator following the incident and the response of the operator experiencing the delay to those actions. In these circumstances it is not clear whether this approach to measurement would result in effective incentives to improve performance.
107. HS1 Limited would expect to have an incentive to manage service disruption under either of the options discussed here.
108. At this stage, HS1 proposes to measure train operator performance by reference to TOC on self delay, consistent with the approach taken on the national rail network. This is a well established measure and one that train operators are able to affect directly.

Payment rates

109. The current agreement between HS1 Limited and EUKL anticipated a "top down" approach to the determination of performance payment rates. This would involve setting a monetary value representing the expected maximum level of payment from one party to another over a defined period. A pounds-per-minute value would then be derived by dividing this maximum payment by an estimate of the likely variation in delay over an equivalent period.
110. This approach has not been used in practice but could be the basis for determining payment rates in the future. In principle it is relatively simple to apply, although it relies on the availability of data on the variability of delay, derived either from observations of actual performance (which could only be made after the relevant train services had commenced) or from a simulation exercise (which would be difficult to validate in the absence of historical data). It would also clearly limit the risk faced by each party. At the same time, there could be no guarantee that payment rates derived in this way would provide for adequate compensation for revenue lost due to poor performance, although they would provide some incentive to improve performance at the margin.
111. An alternative would be to derive estimates of the impact of performance on train operators' revenue – the marginal revenue effect (MRE) – using the methodology applied for the purposes of calibrating Schedule 8 values on the national rail network. The

standard methodology would also need to be modified if the regime were to be based on measurement of delay rather than performance minutes (to ensure that the calculation of a given payment based on delay was similar to an equivalent calculation based on lateness).

112. Given the importance of ensuring that all parties face appropriate incentives, HS1 Limited proposes to set payment rates on the basis of estimates of the marginal revenue effect for each operator. If this approach were taken, it would need assistance from operators in setting appropriate values.
113. Regardless of the preferred approach, HS1 Limited proposes to specify a cap for performance payments from one party to another, thereby limiting the financial risk from the perspective of both. The cap will need to strike an appropriate balance between maintaining incentives over a wide range of performance outcomes while constraining financial risk to manageable levels for all parties. The proposed cap for each passenger operator will be 1.5% of that operator's total annual OMRC and investment recovery charges, subject to a minimum cap of £500,000 and a maximum cap of £2 million per annum (June 2008 prices) per operator. The cap, which will be fixed for the term of the track access contract, will be subject to indexation with RPI on the same basis as the investment recovery charge.

Calibration

114. Performance benchmarks should represent a reasonable expectation of each party's measured performance over a defined period. Ideally, this should be determined on the basis of actual performance data collected over at least 12 months. An historical data series that might assist in understanding the possible performance interaction between different services will not be available until December 2010 at the earliest, as commercial high speed domestic services will not be in operation until December 2009.
115. HS1 Limited proposes to set out a process for calibration within the track access agreements and base the calculation of benchmarks on performance data collected over the first 18 months from December 2009.
116. The operation of the performance regime during the period of data collection will include measurement against interim benchmarks determined through simulation, using an appropriate modelling tool. Once the final benchmarks are established through the calibration process, interim performance payments can be adjusted retrospectively, although HS1 Limited proposes that adjustments are only made where they are considered significant (for example, where they represent a deviation of more than 5% from interim payments). In addition, it is envisaged that adjustments will represent only a proportion (perhaps 90%) of the difference between interim payments and payments based on the final benchmarks. This will ensure that effective incentives on all parties are maintained during the calibration period.

Freight

117. The performance regime operating on HS1 will need to accommodate the introduction of freight services in the future. In HS1 Limited's view, the framework for the regime outlined in paragraph 92 is consistent with the standard Schedule 8 regime for freight operating on the national rail network. In addition, some of the options described above, for example the measurement of delay minutes and benchmarking train operator

performance by reference to TOC on TOC delay, would accord well with these standard arrangements. The determination of payment rates for incentivising HS1 Limited would, however, require further consideration.

118. Consultees are invited to comment on whether the performance regime proposals for passenger and freight services set out above are an appropriate and practical means of incentivising all parties.

Possessions

Principles

119. HS1 is a high speed railway, hence tolerances and the operating standards to which it needs to be maintained are very much more demanding than on the national rail network.

120. HS1 Limited needs engineering access to the HS1 network in order to carry out the necessary inspection, maintenance, repair and renewal of the infrastructure and other works to the routes and to inspect, maintain, repair or renew the fabric of stations.

121. Some of the maintenance and renewals activities can be undertaken at times which have no impact on the running of trains. However, there will also be the need for longer possessions for this work to be carried out efficiently. These possessions may have a disruptive impact on the running of passenger or freight operators' normal timetabled services, although it should be noted that the possessions will be planned in advance and incorporated into a revised timetable.

122. HS1 Limited's possessions strategy will aim to achieve a balance between the engineering access requirements for efficient delivery of maintenance and renewals work and the train operators' requirements of minimising disruption.

123. The regime set out here does not include any possessions which may be required for upgrades to the HS1 infrastructure (see paragraph 43). Any such upgrades would require an additional possessions allowance.

Possessions allowance

124. HS1 Limited will be able to take an unlimited number of possessions at times which do not disrupt train operators' services that are booked to run.

125. In addition, in order to carry out its maintenance and renewal activities, HS1 Limited will need to take possessions at times which may disrupt train operators. HS1 Limited will be able to take such possessions within a given allowance with no payment to train operators. HS1 Limited's proposed planned possessions allowances for maintenance and renewal activities are set out separately below.

126. The possessions allowance for maintenance activities will be:

- 12 x 8 hours Saturday to Sunday planned disruptive possessions per year between St. Pancras and Temple Mills. In the event that there is a demand for passenger or freight paths to the North London Line, this requirement will increase to 20 x 8 hour planned disruptive possessions per year in the St. Pancras area; and

- daylight maintenance possessions: one double line possession of up to 40 minutes per weekday, the timing of the possession will be early afternoon and the location will vary.

127. There are some additional requirements for night time single line blocks but these will be agreed locally through the Rules of the Route process.

128. Given that HS1 is a new railway, there are currently no planned disruptive possessions requirements for renewals activities until 2017. However, there may be a need for some possessions to facilitate renewal activities before 2017. These will be agreed through the Rules of the Route and Rules of the Plan processes for HS1.

129. From 2017 onwards the possessions allowance for renewals (in addition to the possessions allowance for maintenance activities) will be at least two blocks per year up to a maximum of 54 hours each (between 0001 on Saturday and 0600 on Monday).

130. HS1 Limited intends to review the possessions allowance for renewals every five years in line with the process for the periodic review of OMRC charges set out in paragraph 63.

The proposed possessions regime

131. It is important to note that HS1 Limited is under no obligation under the 2005 Rail Regulations to provide such a regime to train operators. However, given the potential risk and impact that engineering activities have on train operations, HS1 Limited will consider entering into a possessions regime with operators to effectively manage this risk.

132. It is also important to set out, at the outset, that HS1 Limited is not of the size that it can financially sustain a regime that is similar in operation or financial impact to that implemented on the national rail network.

133. The proposed HS1 possessions regime will incentivise HS1 Limited to conduct its maintenance and renewal activities within the agreed possessions allowance: where it does not do so there will be a financial impact. The regime will recognise some of the impacts on the business of train operators who have been granted access to the network and, but for the disruptive possession, would have been able to run their normal timetabled train service. The key to the regime is that it will act as an incentive and cost regime, balancing engineering requirements with train operating requirements, without it being a financial burden for any party.

134. It is HS1 Limited's aspiration to have all possessions outlined in the Rules of the Route and Rules of the Plan in order to enable efficient planning. However, it should be noted that HS1 Limited is not under any obligation to adhere to specific timescales (such as the T-12 commitment on the national rail network).

135. The key principles of the regime will be:

- for possessions outside the possessions allowance, there will be a recognition of the disruption to passenger and freight operators where the restriction of access to the network results in train operators not being able to operate a normal timetable;

- compensation to the train operator will be designed to reflect any demonstrable reasonable costs and expenses (excluding revenue loss, profit and consequential loss) that the operator faces as a result of managing the impact of the possession; and
- the measures of impact will be curtailed services and cancelled services assessed by comparing the working timetable and the applicable timetable.

Managing congestion

136. Under regulation 23, HS1 Limited must declare the relevant element of the infrastructure to be congested if:

- after the co-ordination of requests for capacity and consultation with applicants in accordance with regulation 20(4), it is not possible for HS1 Limited to satisfy requests for infrastructure adequately; or
- during the preparation of the working timetable for the next timetable period, the infrastructure manager considers that an element of the infrastructure is likely to become congested during the period to which that working timetable relates.

137. HS1 Limited proposes to deal with timetable conflicts which do not amount to congestion in accordance with the capacity allocation process due to be consulted on as part of the third stage prospective consultation to be issued during autumn 2008.

138. It is important to note that HS1 is not currently a congested network within this definition. HS1 Limited is able to accommodate all known requests for capacity on HS1.

139. In the event that all or part of HS1 became congested, HS1 Limited would follow the process set out below to manage congestion:

- Stage 1: Identification of the congested network segment and /or time zone
- Stage 2: Undertake capacity analysis
- Stage 3: Negotiation of a commercial resolution
- Stage 4: Application of the regulatory framework to prioritise requests
- Stage 5: Determination of a specific investment resolution

140. **Stage 1: Identification of the congested network segment and /or time zone.** If conflicting timetabling aspirations could not be satisfied adequately in accordance with regulation 20(4), the relevant segment of the infrastructure would be declared congested (regulation 23(1)). HS1 Limited would inform the affected parties, including both existing and potential operators, DfT and the ORR that it has declared the infrastructure congested. HS1 Limited would continue to work with industry parties to resolve the congestion.

141. **Stage 2: Undertake capacity analysis.** Following a declaration of congestion, HS1 Limited would, in accordance with regulation 23(4), undertake a capacity analysis in accordance with regulation 24 (unless a capacity enhancement plan is in the process of being implemented).

142. **Stage 3: Negotiation of a commercial resolution.** Where the infrastructure has been declared congested, HS1 Limited may undertake a study to establish an appropriate congestion tariff, in accordance with paragraph 1(8) of Schedule 3. This may include offering competing train operators the opportunity to bid for the paths via an open bid auction.

143. **Stage 4: Application of the regulatory framework to prioritise requests.** Where the congestion tariff referred to in Stage 3 has not been levied or the congestion tariff has not achieved a satisfactory result, HS1 Limited may establish priority criteria for capacity allocation which includes the congested infrastructure. The priority will be as follows:

- high speed passenger trains;
- high speed freight trains; and
- other trains.

144. **Stage 5: Determination of a specific investment resolution.** If a conflict still exists at the end of Stage 4, HS1 Limited will identify the reason for the congestion. Within six months of the publication of a capacity analysis in accordance with regulation 24, HS1 Limited would produce a capacity enhancement plan and in doing so HS1 Limited would consult with affected parties, including both potential and existing operators, DfT and the ORR, with a view to developing a business case for implementing the plans. If the Secretary of State for Transport is minded to approve a plan involving significant investment to remove or alleviate the congestion, the consequences on operation and charging for users will be the subject of consultation after which the Secretary of State for Transport may approve the plan for implementation.

145. In the event that the implementation of the capacity enhancement plan does not prove economically or financially viable or cannot be implemented for reasons beyond the control of HS1 Limited, then HS1 Limited will continue the congestion tariff to reflect the scarcity of capacity, provided this is approved by the Secretary of State for Transport. HS1 Limited will also require the approval of the Secretary of State for Transport to continue the congestion tariff if it fails to produce a capacity enhancement plan or where, having received Secretary of State for Transport approval for the plan, HS1 Limited fails to make progress in its implementation as required by Regulation 25.

146. Where during the course of the working timetable period to which the declaration of congested infrastructure relates, but before the completion of the capacity analysis, the congestion is resolved, HS1 Limited will revoke the declaration of congestion referred to above.

Reserved capacity and capacity reservation charge

147. The 2005 Rail Regulations entitle HS1 Limited, as infrastructure manager, to enter into framework agreements with train operators and other applicants which specify the characteristics of the capacity on HS1 which has been allocated to such train operator or applicant for periods of time exceeding one working timetable period.

148. It is proposed that the reserved capacity would be subject to potential adjustments in accordance with a use-it-or-lose-it (UIOLI) regime required by the Regulations. Under

this regime, operators may be required to give up capacity which they are reserving for themselves so that it can be used by other operators. The principles of the proposed UIOLI regime will be set out in the third stage prospective consultation (see paragraph 4 above).

149. The 2005 Rail Regulations provide that the infrastructure manager may levy an appropriate charge for capacity which is requested but not used. The imposition of such a charge must provide incentives for the efficient use of capacity. Where capacity on HS1 has been allocated to a train operator or applicant, whether under a framework agreement or otherwise, it is proposed that such reserved capacity would be subject to a capacity reservation charge.

150. The capacity reservation charge for passenger services will be the capped investment recovery charge plus a management fee calculated as 7.5% of the OMRC charge per train path.

151. The capacity reservation charge for freight services will be 75% of the freight OMRC charge plus a management fee of 7.5% of the freight OMRC charge.

152. It is proposed that the capacity reservation charge:

- would be payable by the train operator on and from the date the reservation of capacity commences. For example, if a train operator enters into a framework agreement in January 2010 to reserve capacity on HS1 between 1 January 2015 and 1 January 2020, the capacity reservation charge would become payable on and from 1 January 2015;
- would be payable by the train operator unless the reserved capacity is used by that train operator or another person. It is proposed that capacity will be treated as having been used by a train operator if, as part of the timetabling process, such capacity has been translated into a train path and included in the relevant working timetable (timetabled train paths would be paid for in full whether or not trains are operated). If the reserved capacity is used by another person then the train operator would be entitled to a rebate of 75% of the lower of (a) the capacity reservation charge and (b) the equivalent amount paid by the operator using the train path;
- would not be payable by the train operator in relation to any part of the reserved capacity which the train operator surrenders in accordance with the terms of the UIOLI regime; and
- would not be payable by the train operator if it bids for a train path in accordance with the relevant provisions of the HS1 Network Code but is unsuccessful in obtaining the train path.

153. Where a framework agreement is structured so as to provide the train operator with an option to require the HS1 infrastructure manager to allocate to the train operator or a third party certain specified capacity on HS1, it is proposed that such capacity would be subject to the capacity reservation charge from the date when the option has been exercised and the train operator is entitled to bid for the capacity, in accordance with the principles described in paragraph 152 above.

Other services

154. This section covers charges for other services that HS1 Limited may be asked to supply to applicants as envisaged by Schedule 2 of the 2005 Rail Regulations. HS1 Limited will not supply all of the services described in Schedule 2. Proposals for charging for each of the services which HS1 Limited will supply are set out below.

Additional and ancillary charges

155. HS1 Limited will levy a charge for handling requests for new infrastructure capacity under paragraph 1(a) of Schedule 2 to the 2005 Rail Regulations. The level of such charge will vary depending on the nature of the capacity request and the type of rolling stock that is to be introduced. It is proposed that in future a provision will be made in OMRC for this cost.

Electric traction current (paragraph 3(a) of Schedule 2 to the 2005 Rail Regulations)

156. There will be a pass-through charge for the electric current consumed by operators. The charge will be based on a set of consumption rates (expressed in kWh for the type of locomotive or multiple unit) and electricity prices (expressed by day and time of day/night), which will be measured against the train path, mileage and train consist data of the operator. HS1 Limited is looking to implement the Passenger Access Billing System (PABS) for both passenger and freight operators. PABS will generate the usage charge per service per operator.

Abnormal trains (paragraph 3(d)(ii) of Schedule 2 to the 2005 Rail Regulations)

157. HS1 Limited will levy a charge for any testing programme for rolling stock that may be required to facilitate the granting of the infrastructure capacity requested. The charge for a testing programme will be a contribution to OMRC charged on a per train-km basis, plus electric traction.

158. In the event of service disruption, HS1 Limited will offer to assist train operators in the rescue of a failed train with the use of a Krupps unit operated by Europorte 2. The charge for using the Krupps rescue service will be on a call-out basis. The rates are £1,060 per day call-out charge plus £70 per hour per driver. The Krupps unit is operated by two drivers. These rates are in 2008 prices and are subject to indexation in accordance with RPI from 1 August each year.

Provision of supplementary information (paragraph 4(b) of Schedule 2 to the 2005 Rail Regulations)

159. There will be a charge for the provision of supplementary information which will be assessed on the nature and scope of the information being requested.

Consultation timetable and process

160. Consultees are asked to respond to this prospective consultation by 30 November 2008. Comments from consultees will be evaluated and considered by HS1 Limited and CTRL (UK) and will inform the development of the Network Statement for HS1. Where appropriate, HS1 Limited and CTRL (UK) will respond directly to the consultee.

161. Representatives of HS1 Limited and CTRL (UK) will be holding a “roadshow” briefing of industry parties on 30 October 2008 and will meet with industry parties if requested.

162. The development and publication of an updated HS1 Network Statement will be concluded after HS1 Limited becomes the sole HS1 infrastructure manager. The process will be informed by the preceding prospective consultations.

September 2008

Department for Transport Consultation Letter
High Speed 1 Charging Framework

1 September 2008

Dear Industry Party

High Speed 1 Charging Framework

On 26 October 2007, the Department for Transport wrote to railway industry contacts about the High Speed 1 Charging Framework. The letter explained that charges for access to High Speed 1 would be set by the owner of the infrastructure within the bounds of a Charging Framework put in place by the Secretary of State for Transport. And it sought industry's views on how the Charging Framework should be developed.

In the light of the comments received and further work by the Department, a draft Charging Framework has now been developed, a copy of which is at Annex A. The draft Framework is broadly consistent with the approach envisaged when the Department consulted last year. The main features of the proposed Charging Framework are as follows:

- the High Speed 1 access charging regime is intended to operate in a manner consistent with the Railways Infrastructure (Access and Management) Regulations 2005 (the "Railways Infrastructure Regulations") and the High Speed 1 infrastructure manager would be required to comply with those Regulations;
- in accordance with the Railways Infrastructure Regulations, the access charges would be able to include the following components:
 - the basic charges provided for in paragraph 1 of Schedule 3 to the Railways Infrastructure Regulations;
 - a mark-up in order to obtain full recovery of the costs incurred by the infrastructure manager as permitted by paragraph 2 of Schedule 3;
 - an investment recovery charge on the basis of the long-term costs relating to the initial construction of - and any further investment in - High Speed 1 as permitted by paragraph 3 of Schedule 3;
- any investment recovery charge on the basis of the long-term costs relating to the initial construction of High Speed 1 would not be allowed to exceed £71.35 per minute per train service at current prices as at June 2008. Trains scheduled to stop at Stratford, Ebbsfleet and Ashford stations would not be charged for the additional time

taken to stop at such stations. This component of the access charges would be subject to semi-annual indexation with the Retail Prices Index (RPI);

- while the HS1 infrastructure manager would be able to include an investment recovery charge in its access charges, it would not be obliged so to do. Charges could be varied between different markets so long as such variation was non-discriminatory. In addition, the Charging Framework specifically provides for non-discriminatory discounts.

Government would welcome industry's views on the draft Charging Framework. The detailed application of charges will be the subject of a new Network Statement on which HS1 Co has advised that there will be further rounds of consultation as follows:

- late-September 2008: Consultation on the Charging Regime to be included in a revised Network Statement;
- mid-October 2008 for: Consultation on further proposed revisions to the Network Statement;
- early November 2008: Consultation on remaining proposed revisions to the Network Statement;
- January 2008: Final Consultation on the full set of revisions to the Network Statement.

It is intended that the new form of Network Statement for the HS1 infrastructure will be adopted during March 2009.

In its final form, the Charging Framework will form part of the High Speed 1 Concession Agreement which will replace the current Channel Tunnel Rail Link Development Agreement. The draft Framework makes reference to HS1 Co. HS1 Co is the company it is intended will become the infrastructure manager of the consolidated HS1 railway infrastructure. In addition, Government has signalled its intention to transfer to the Office of Rail Regulation (ORR) some of the regulatory functions in relation to HS1 which currently fall to the Secretary of State under the Railways Infrastructure Regulations. The principles and practicalities of these changes are presently being discussed with the ORR. Detailed proposals will be included in draft Regulations to implement the EU 3rd Rail Package which should be consulted upon in the Autumn. But the functions are expected to include making ORR responsible for ensuring that there are appropriate incentives for the HS1 infrastructure manager to increase efficiency and reduce the level of access charges and for ensuring that charges for the use of HS1 are compliant with the Charging Framework and with the 2005 Regulations. The Secretary of State would however establish the new Charging Framework and would retain the power to control the cap on the investment recovery charge.

I should be grateful if you would respond to this letter by 30 November at the latest. Responses should be sent either by email to john.carr@dft.gsi.gov.uk, or by post to the address above.

According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

Yours sincerely

John Carr

REGULATORY REGIME

SECTION 1

ACCESS CHARGES

1. Definitions

1.1 In this Section 1, unless the context otherwise requires:

“High Speed 1” means the Channel Tunnel rail link between St. Pancras and Cheriton;

“HS1 Co” means HS1 Limited a private company limited by shares registered in accordance with the laws of England under number 03539665 and having its registered office at 3rd Floor, 183 Eversholt Street, London NW1 1AY;

“HS1 Concession” means the concession for the design, construction, financing, operation, repair and maintenance of High Speed 1, in respect of which HS1 Co is the concessionaire;

“Long-Term Project Costs” means the costs relating to the initial construction of High Speed 1 after deducting therefrom any track access charges paid by train operators prior to this regime coming into effect;

“Railways Infrastructure Regulations” means the Railways Infrastructure (Access and Management) Regulations 2005.

2. Introduction

2.1 Any charges levied by HS1 Co on train operators for track access to High Speed 1 and for such other services as are referred to in Schedule 2 of the Railways Infrastructure Regulations, including station access, shall be determined by HS1 Co pursuant to this regime and to the Railways Infrastructure Regulations and in particular the provisions of Schedule 3 of those Regulations.

2.2 HS1 Co shall ensure that any track access or station access agreement entered into with a train operator relating to access to High Speed 1 contains provisions to give effect to the principles set out in the Railways Infrastructure Regulations to which each of HS1 Co and the other parties to such agreements shall be contractually bound.

2.3 The Secretary of State and HS1 Co acknowledge that this regime is intended to operate in a manner consistent with the Railways Infrastructure Regulations.

3. Access charges

3.1 Access charges may include:-

3.1.1 an investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations and in accordance with paragraphs 4.1, 4.2 and 4.3 of this Section 1; and

3.1.2 an additional investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations and in accordance with paragraph 4.4 of this Section 1.

3.2 HS1 Co may subject to the terms of the HS1 Concession apply discounts in accordance with paragraph 6 of Schedule 3 of the Railways Infrastructure Regulations.

3.3 HS1 Co may when determining any charges pursuant to paragraph 2.1 of this Section 1 levy mark-ups and The Secretary of State hereby approves the levying of such mark ups provided that HS1 Co levies them in accordance with the requirements of Schedule 3 of the Railways Infrastructure Regulations.

4. Investment recovery charge

4.1 Subject to paragraphs 4.2 and 4.3 of this Section 1, the Long-Term Project Costs shall be the costs taken into account in calculating any investment recovery charge of the type permitted in paragraph 3.1.1 of this Section 1.

4.2 Any investment recovery charge of the type permitted under paragraph 3.1.1 of this Section 1 shall be no more than £71.35¹³ per minute per train service. In the case of trains scheduled to stop at any one or more of Stratford, Ebbsfleet and Ashford stations the number of scheduled minutes for which any investment recovery charge of the type permitted under paragraph 3.1 of this Section 1 shall be levied will be reduced by the additional time taken to enable trains to stop at such stations.

4.3 The sum specified in paragraph 4.2 of this Section 1 shall be adjusted semi-annually in accordance with the provisions of Section 2.

4.4 It is recognised that, over the life of the HS1 Concession and subject to the terms of that concession, further investment in relation to High Speed 1 or any related facilities may be approved or required. In the event of such further investment, HS1 Co may, subject to the terms of the HS1 Concession and the Railways Infrastructure Regulations, also be entitled to take into account the long-term costs associated with that additional investment in calculating any investment recovery charge of the type permitted in paragraph 3.1.2 of this Section 1.

5. Compliance with Railways Infrastructure Regulations

5.1 HS1 Co shall comply with the Railways Infrastructure Regulations. In particular, HS1 Co shall:

5.1.1 comply with Regulation 9 of the Railways Infrastructure Regulations;

5.1.2 comply with Regulation 12(5) of the Railways Infrastructure Regulations;

5.1.3 prepare and maintain such accounts and estimates as are necessary to calculate and justify the amounts mentioned in Regulation 13(1) and paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations, such accounts and estimates to be subject to such more specific requirements as The Secretary of State may reasonably require or agree;

5.1.4 provide such accounts and estimates as The Secretary of State may require for the purposes of any negotiations and on conclusion of any negotiations following an application under Regulation 5 of the Railways Infrastructure Regulations, as well as

¹³ This figure is based on current prices as at June 2008 and will be adjusted in a manner consistent with the mechanism in Section 2 when this regime takes effect

during the conduct and on the conclusion of any appeal under Regulation 29 of the Railways Infrastructure Regulations; and

- 5.1.5 send copies of the accounts required under paragraph 6.2.1 and the accounts and estimates required under paragraph 6.2.4 to The Secretary of State at such times and for such periods as The Secretary of State shall, acting reasonably, require and allow such inspection and auditing of such accounts and estimates as The Secretary of State shall require.

SECTION 2

INDEXATION

1. Definitions

1.1 Words and expressions defined in Section 1 shall, unless the context otherwise requires, have the same meaning in this Section 2.

1.2 In this Section 2, unless the context otherwise requires:

“Indexation Base Month” means [to be determined];

“Indexable Element” or **“IE”** means the sum specified in paragraph 4.2 of Section 1;

“Indexation Formula” means $IE_m = (IE_{m-1} \times b/a)$ where:

“IE_{m-1}” means the Indexable Element applicable immediately before the relevant Indexation Review Date; and

“a” means the value of RPI for the February 12 months prior to that used in the calculation of "b" (save in the case of the first Indexation Review Date when it shall be the value of RPI for February immediately preceding the Indexation Base Month); and

“b” means the value of RPI for the month of February immediately preceding the relevant Indexation Review Date

“Indexation Review Date” shall be the date [six months (6)] immediately following the Indexation Base Month, and every [six months (6)] thereafter;

“RPI” means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting HS1 in no better nor worse position than it would have been had the index not ceased to be published).

2. Indexation

2.1 On each Indexation Review Date, the Indexable Element shall be adjusted by applying to it the Indexation Formula, the first such Indexable Element being IE₀.

2.2 On each occasion that the Indexable Element is to be adjusted in accordance with this paragraph, the Indexation Formula shall be applied to the Indexable Element applicable immediately before the relevant Indexation Review Date.