

CONFIDENTIAL

A close-up photograph of a red ink stamp on a light-colored surface. The stamp is rectangular and contains the text 'OFFICE' on the left, 'CLOSED' on the right, and '1994' in the center. The text is in a bold, sans-serif font. The stamp is slightly tilted and has a textured, slightly worn appearance.

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1276/49

PART NUMBER

23.7.92

ENDS

2016-94
18-4-94

FILE No.

IR 76/49

PART NUMBER

REFERRED TO	DATE	REFERRED TO	DATE	REFERRED TO	DATE
MRS Hooten	17.2.93				
Pa	15.2.94				
<div>CLOSED</div> <div>1994</div>					
CAB 164 / 2253					

CLOSED

CAB 164 / 2253

Dd 8219054 9/91 C20 GP 2276/2 CCN 52299

Folio	Ref No.	Date	Subject
1	A7172	20/05/93	BRITISH RAIL PENSIONS AND FRIEGHT

OK Pwhitmore 16-2-94

(AT BACK OF
FILE)

Folio	Ref No.	Date	Subject
1	R11157	23/07/92	BR PRIVATISATION: PARLIAMENTARY HANDLING
1M	A9657	28/07/92	BR PRIVATISATION BILL: HOUSE OF LORDS
2	A9836	30/07/92	BR PRIVATISATION BILL
3	A10561	21/08/92	BR PRIVATISATION BILL
3M	R12557	21/08/92	BR PRIVATISATION BILL
4	R11158	28/09/92	RAILWAYS BILL
4J	R11162	21/10/92	BR PRIVATISATION
4JL	R12560	22/10/92	BR PRIVATISATION
4K	R11160	22/10/92	RAILWAYS LEGISLATION
4KM	R11161	22/10/92	BR LEGISLATION
4LM	QF1250	23/10/92	RAIL PRIVATISATION
4M	K0339	23/10/92	RAIL PRIVATISATION
4N	K973	26/10/92	RAILWAY PRIVATISATION
4P	R11159	28/10/92	RAIL PRIVATISATION
5	K0347	30/10/92	RAIL PRIVATISATION
6	QF1967	02/11/92	MTG ON COAL & RAIL PAVING BILL
7	QF2098	11/01/93	RAILWAYS BILL TIMETABLE
8	A1539	02/02/93	SECOND READING OF THE RAILWAYS BILL
8J	K0441	03/02/93	BR PRIVATISATION
8JM	A2798	23/02/93	RAILWAYS BILL-FOREIGN PUBLIC SECTOR FRANCHISEES
8K	A3099	01/03/93	RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES
8L	K0487	08/03/93	RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES
8LK	QF2739	08/03/93	RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES
8LL	QF3014	30/03/93	RAILWAYS BILL - TIMING OF REPORT STAGE
8LM	QF3022	30/03/93	RAILWAYS BILL: TIMING OF REPORT STAGE
8LN	QF3023	30/03/93	RAILWAYS BILL: FOREIGN PUBIC SECTOR FRANCHISES
8LP	QF3060	02/04/93	REPORT STAGE OF RAILWAYS BILL
8LQ	K1927	02/04/93	REPORT STAGE OF RAILWAYS BILL
8LR	F2119	06/04/93	NOTE - AD HOC MEETING 3PM FRIDAY 26 MARCH
8LS	R12832	19/04/93	RAILWAYS BILL: TIMING OF REPORT STAGE
8M	A6250	30/04/93	BRITISH RAIL FRANCHISING
9	A6553	07/05/93	RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES
9M	A6921	14/05/93	PRIVATISATION OF THE RAILWAY FREIGHT BUSINESS
9N	A6915	14/05/93	PRIVATISATION OF THE RAILWAY FREIGHT BUSINESSES
10	F2406	19/05/93	GOV. RESPONSE TO T. S.C REPORT BR PRIVATISATION
10L	QF3511	19/05/93	BR PRIVATISATION RESPONSE TO TRANS SEL COMM REP
10LM	QF3620	07/06/93	RAILWAYS BILL - LORDS STAGES
10LN	R12833	05/07/93	RAILWAYS BILL - LORDS STAGES
10LP	K2843	06/09/93	BRITISH RAIL: FRANCHISING
10LP	QF4510	06/09/93	BRITISH RAIL FRANCHISING
10M	K0729	07/09/93	RAILWAYS
11	A13358	04/10/93	RAILWAYS BILL
11L	K3042	04/10/93	RAILWAYS BILL
11M	A14451	25/10/93	RAILWAYS BILL: REMAINING STAGES
12	A14561	27/10/93	RAILWAYS BILL: REMAINING STAGES
13	A14625	27/10/93	RAILWAYS BILL: REMAINING STAGES
14	QF6224	17/12/93	RAILWAYS ACT - COMMENCEMENT

OK. 16-2-94
P. Whitmore

Mrs Bailey

From Miss J M Harper
23 December 1993
cc Mr Bird

LPS/409/93: RAILWAYS ACT COMMENCEMENT

No action is needed on Mr Freeman's letter of 17 December (received in your office today).

I understand that it is the Attorney General who decides whether there are any reasons why legislation should not be brought into force in less than the normal two month period from Royal Assent. Juliet Wheldon in the Attorney's office has established from Transport that there is no one whose interests will be damaged by early commencement (the few who will be affected in this particular case already know what is intended, and are content) and she sees no reason why the Attorney should oppose it; she has also discovered that Transport made the commencement order earlier today! Transport have apologised for their delay in issuing the letter and failure to wait for any reactions before acting on it.

JM
Miss J M Harper

LPS/0409/93 -

Advice pt - Mr Bird

cc Mrs Harper
Mrs Turnbull



THE DEPARTMENT OF TRANSPORT

FROM THE MINISTER FOR PUBLIC TRANSPORT

2 MARSHAM STREET LONDON SW1P 3EB
TELEPHONE 071-276 3000

The Rt Hon the Lord Wakeham
Lord Privy Seal
Privy Council Office
Whitehall
SW1A 2AT



My Ref:

Your Ref:



17 Dec 1993

Dear Mr,

RAILWAYS ACT - COMMENCEMENT

I am writing to let you know of our intention to commence certain sections of the Railways Act 1993 before the customary two months period after Royal Assent has lapsed.

The Act received Royal Assent on 5 November. It made provision for section 1 and Schedule 1 to come into effect immediately to allow for the early appointment of the Rail Regulator and the Director of Passenger Rail Franchising. We expect to bring most of the rest of the provisions of the Act into force by April next year. But, in order to meet the timetable for privatisation we need to commence section 33 before the end of this month.

Section 33 requires British Rail and Passenger Transport Authorities and Executives to cooperate on the renegotiation of agreements under section 20 of the Transport Act 1968 between BR and PTAs/PTEs for the provision of local rail services in metropolitan areas. It gives the Secretary of State powers to set a deadline for the PTAs/PTEs and the Board to reach agreement on amendments to section 20 agreements and to direct the PTAs/PTEs and BR to enter into new agreements should they fail to meet the deadline. The revised agreements will need to be in place by April when the railway is restructured to split responsibility for track and infrastructure from the operation of train services. But BR have indicated that the principles of the new agreements must be settled by the middle of next month to enable them to finalise their budget for 1994/95. We therefore need to start the statutory process as soon as possible and I propose to commence section 33 in the next few days. At the same time we shall need to commence a number of related procedural and definitional provisions. For convenience the Order will also provide for the commencement of those sections of the Act which we want to come into force on 6 January, after the two month period has elapsed.

We do not expect early commencement to cause any particular difficulties; the Order will breach the two month rule but only by some two weeks. Moreover, it will affect only a limited class of persons - the BR Board and the PTAs/PTEs - and they are aware of our intention to provide for early commencement.

/ I am copying this letter to Nicholas Lyell and to First Parliamentary Counsel.

Hummer
Down

ROGER FREEMAN

LPS/0409/93 -

Advice PL - Mr Bird

cc Mrs Harper
Mrs Turnbull



THE DEPARTMENT OF TRANSPORT



FROM THE MINISTER FOR PUBLIC TRANSPORT

2 MARSHAM STREET LONDON SW1P 3EB
TELEPHONE 071-276 3000

The Rt Hon the Lord Wakeham
Lord Privy Seal
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Whitehall
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Hummer
Down

ROGER FREEMAN

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Sir Robin Butler

12/9

CONTROLLED DISTRIBUTION REQUIRED

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

Serial No 109

Copy No 4 of 4

My ref:

Your ref:

27 OCT 1993



Mrs Mary Francis
Private Secretary
10 Downing Street
LONDON
SW1A 2AA



C. Mr Owen
Mr Bird

Dear Mary,

RAILWAYS BILL: REMAINING STAGES

My Secretary of State has seen the Chancellor of the Exchequer's minute to the Prime Minister of 27 October.

The Secretary of State was grateful for the Chancellor's agreement to our stance on pensions. Ministers here have consistently stressed, and will continue to stress, that the arrangements now on offer to railway pensioners are generous by any standards.

In his minute, the Chancellor makes a number of points about BR's eligibility to be a franchisee. We intend to table an amendment on Thursday afternoon which will give effect to the policy proposals outlined in my Secretary of State's minute to the Prime Minister of 25 October. I should emphasise that the amendment will reflect the extensive soundings taken by the Secretary of State and his colleagues among Government backbenchers during recent days and weeks. The Secretary of State's central objective is to win the amendment and in so doing to reverse the most damaging aspects of Peyton. That must be our top priority.

The Secretary of State believes that, taken as a whole, the package of measures he proposes will go as far as it is politically possible to go to weaken the impact of the Peyton amendment. The amendment will depart from my Secretary of State's previous proposals in only one material respect: we no longer consider it necessary to restrict BR to bidding only through subsidiaries.

Moving to the Chancellor's specific comments about franchising, I can confirm that we intend that the Franchising Director should be able to decide not to invite bids from BR for particular franchises. That is the whole thrust of my Secretary of State's

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proposal. It is an essential element in ensuring that others are not deterred from bidding.

My Secretary of State agrees in principle that BR should be disbarred from bidding for as many franchises as possible. The Secretary of State's approach, which the Chancellor supports, is based on the application of general principles by the Franchising Director on a case by case basis. My Secretary of State is clear that it would not be politically feasible to place a specific restriction in respect of particular franchises on the face of the Bill. Inevitably, under the process we propose, it is not possible absolutely to guarantee the outcome as far as BR is concerned. But we can be sure that any explicit restriction on BR per se would jeopardise our chances of winning over backbench waverers.

Similar considerations apply to the Secretary of State's guidance to the Franchising Director. We intend to include in the amendment a provision which explicitly prevents the Secretary of State from issuing guidance and instructions to the Franchising Director on the exercise of his power to determine whether BR should bid. My Secretary of State understands the Chancellor's concern on this point. But he regards this provision as an absolutely essential element in selling the amendment to backbench supporters. Without it, we would have no answer to their claim that we might undermine the Peyton amendment by instructing the Franchising Director to exclude BR entirely.

Finally, my Secretary of State is happy to give the Chancellor the assurance he seeks about the "Route 2" approach to the sale of franchises. Nothing he says will rule out the flotation option.

/ I am copying this letter to Owen Barder (HM Treasury), Murdo Maclean (Chief Whip's office) and Melanie Leech (Cabinet Office.)

Yours ever,

Jm

J. BETTS
Private Secretary

CONFIDENTIAL



Sir Robin Butler

CABINET OFFICE	
A	14561
27 OCT 1993	
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FILE No.

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POLIO
12

Treasury Chambers, Parliament Street, London, SW1P 3AG
071-270 5000

R76/49

PRIME MINISTER

R C. Mr Owen
Mr Bird

RAILWAYS BILL: REMAINING STAGES

I have seen John MacGregor's note of 25 October.

I strongly support John's proposals on both the amendments he discusses, on franchising and pensions.

On franchising, John's proposals helpfully anticipated the point made in my private secretary's letter of 25 October (with which it crossed). This was that BR should effectively be prevented from bidding for franchises, where possible, not just prevented from being awarded franchises. I understand that - though John's note does not say this in terms - this would be one practical effect of the new amendment that he is proposing.

Against this background, I have just a few points to add:

- first, I think we need to be clear, at least for our own purposes, where these proposals will leave matters in practice. I take it that, at the minimum, we can count on BR effectively being unable to bid for the first seven franchises;
- second, I understand that John is considering a provision in the amendment which would prevent the Secretary of State from giving guidance or instructions to the Franchising Director on how to exercise this new power. The difficulty is that this would distinguish this function from all the other powers of the



Franchising Director. Given the key role that decisions under this power will have for the policy, I would prefer not to exclude the possibility of guidance being given by the Secretary of State;

- third, I continue to believe that it is essential that we do nothing which would rule out the flotation option ('route 2') for at least a proportion of franchises. I think that John's statement to the House will need to reflect this.

Subject to these points, I am content with John's proposals on franchising.

I also think John is right to be determined to reverse the Lords defeat on pensions. As John says the arrangements now on offer to rail pensioners are very generous, indeed unprecedented:

- an absolute Government guarantee of index-linked pensions;
- and the opportunity of real increases in pensions from a share of surplus.

These are extraordinary provisions which could prove very costly. We must not make them more costly by allowing the Lords amendment to stand.

I am copying this minute to John MacGregor, John Wakeham, Richard Ryder and to Sir Robin Butler.

A handwritten signature, likely of John Wakeham, consisting of a large, stylized 'L' followed by a flourish.

[K.C.]

27 October 1993

POLICY IN CONFIDENCE



Sir Robin Butler
RB

CABINET OFFICE
A 14451
25 OCT 199
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FILE No. R 76/49



PRIME MINISTER

RAILWAYS BILL: REMAINING STAGES

C. Mr Owen
Mr Bird

1. We have taken extensive further soundings of Commons backbench colleagues, and I have discussed the prospects and handling with John Wakeham, Tony Newton and the Whips.
2. Our agreed conclusion is that there is no prospect of reversing the Peyton amendment which would allow BR to be a franchisee. We therefore need a fallback.
3. Keith Speed is a key figure. He gives the lead to several of the backbenchers who are sympathetic to the Peyton amendment. He is not willing to agree that Peyton should be reversed. But if he can be convinced of its merits, we will be able to carry a compromise.
4. I have of course discussed this with Keith Speed. I cannot yet be sure of his final stance, but I believe he and those taking their lead from him may accept the following compromise which builds on the proposal I covered in my minute to you of X October.
5. A new amendment to the Bill would give the Franchising Director a power to debar BR from being a franchisee where that is desirable:
 - (1) to promote management and employee buy-outs (MEBOs)
 - (2) to promote competition for franchises
 - (3) to encourage new entrants, to prevent or reduce dominance in the provision of rail passenger services and otherwise to promote competition in the provision of these services.

POLICY IN CONFIDENCE

POLICY IN CONFIDENCE

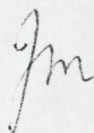
These criteria are designed to appeal to backbench support for MEBOs and the encouragement of competition.

6. In addition, we would: give guidance to the Franchising Director on the assessment of bids, to establish so far as possible a level playing field by taking account of the special privileges of a public sector bidder; announce our policy that, in line with my duties under the Bill, we would dispose of any franchises which BR did win; and, by a further amendment, confine BR to bidding through subsidiaries.

7. The Lords also agreed an amendment from Lord Peyton and others on pensions. It would have the effect of giving the trustees of the BR Pension Fund a veto over the rephrasing of the Government's contributions to the fund. This amendment is wrong in principle. It would allow an outside body a veto over both an element of public expenditure and the Government's power to bring forward secondary legislation. We will therefore aim to reverse it at CCLA. I believe we will be able to persuade colleagues on this, on the grounds set out above and in the light of the very generous arrangements now in place for railway pensioners.

8. Lords' Third Reading of the Bill is next Wednesday 27 October. The amendments I propose here for CCLA must be put down at the latest on Thursday 25 October, with CCLA on the first two days of the following week. The present indications are that the Lords are unlikely to prolong matters with "ping-pong" exchanges.

9. I am copying this to John Wakeham, Kenneth Clarke, Richard Ryder and Sir Robin Butler.



JOHN MACGREGOR

25 OCT 1993



Mr Gallows

File

FOLIO
112PRIME MINISTER

RAILWAYS BILL

I chaired a discussion on 1 October between John MacGregor and the business managers in both Houses to discuss the handling of the Railways Bill, in particular the amendment made to the Bill in the House of Lords on BR franchising (the Peyton amendment).

We all agreed that, although John should continue to keep in close touch with John Peyton, it is most unlikely that the latter will be persuaded to agree either to reconsider his amendment, or to accept a compromise approach. There is no prospect therefore of resolving the matter in the Lords. Our tactics therefore depend crucially on the attitude of our supporters in the Commons.

Michael Brown's assessment is that it will not be possible simply to reverse the Peyton amendment in the Commons, which was John MacGregor's preferred policy option. He considered that, if John were able to reach an agreement with Keith Speed, either on a reversal or a compromise approach, sufficient of our supporters would be likely to follow his lead.

In the Lords, much will depend on the position of John Peyton. My own view is that it should be possible to secure the Lords agreement to what comes back from the Commons, although we cannot at this stage be completely confident of avoiding a second round of ping-pong.

Both Tony Newton and I are conscious of the possibility of disruption during the latter stages of the Bill, as we move towards Prorogation, which is currently planned for 4 or 5 November. The Bill is expected to be returned to the Commons on 27 October, with around 650 amendments, and CCLA to take place on 1 and 2 November. The Bill is not guillotined, and there will be ample scope therefore for the Opposition to try to spin things out. While we did not think that our own supporters would, in the last resort, seek to frustrate the passage of the Bill, we did note Michael Brown's advice that, if we were unable to secure a majority for our proposals on BR franchising, we were unlikely to be able to get a guillotine motion either.

CONFIDENTIAL

PERSONAL AND CONFIDENTIAL



Against this background we agreed that should seek to talk to Keith Speed immediately after the Conference, and advise us, in the light of his discussions and the debates at Lords Report Stage, how he wishes to proceed.

I shall convene a further meeting, and report to you further, at that stage.

I am copying this minute to John MacGregor, Tony Newton, Malcolm Caithness, Nick Ullswater and Michael Brown, and to Sir Robin Butler.

WAKEHAM

4 October 1993

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PERSONAL AND CONFIDENTIAL



Sr Robin B. He
NB

CABINET OFFICE
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FILE No. R76/49

11

PRIME MINISTER

RAILWAYS BILL

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WAKEHAM

4 October 1993

CONFIDENTIAL

K0729

R76/49

FROM: R BIRD
DATE: 7 September 1993

cc: Mr Owen
Mr Niven
Mr Marston
Miss Turnbull

MR GALLOWAY

RAILWAYS

I spoke today to Peter McCarthy (DOT) about onward handling of the Railways Bill.

2. He confirmed that the major outstanding issue was the amendment carried against the Government in the Lords permitting BR to compete for franchises. DOT Ministers had not yet decided on the strategy. Mr MacGregor's initial preference was to try to reverse the amendment when the Bill came back to the Commons (likely to be on 2 November). But this might not be saleable to a wrecking minority of Conservative backbenchers. So other possibilities were being investigated which would not involve changing this part of the Bill but would achieve the policy objective by administrative means.

3. Mr MacGregor would be taking stock on Thursday. DOT will let us know the outcome and whether some collective discussion is likely to be needed.

4. There are also some outstanding pensions issues but these are being settled bilaterally between DOT and the Treasury. There are in addition a huge quantity of technical amendments which will add to the complications at Lords Report Stage.

R BIRD



Chancellor of the Duchy of Lancaster
Minister of Public Service and Science

Kb01747

Rt Hon John MacGregor MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

Miss Turnbull

L. In.

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 071-270 0400

FOLIO
10P



CC Mr. Mowbray
Mr. Burt
Mr. Marston

Mr. Nwe

6 September 1993

L. G. Mowbray

BRITISH RAIL: FRANCHISING

Thank you for your letter of 10 August about setting performance standards when BR's services are franchised. I understand the concerns you have about the issue, but I think that it is important that we reach agreement on this fundamental point before going much further into the detail of the franchises.

As always, we need to ensure that the standards we set are challenging, but realistic. There is however a further point in this instance which is that franchising must be seen to deliver a quality service which justifies the decision to franchise the service in the first place. It is therefore vital that the onus should be on the franchisee to show that the quality standards proposed are at least as good, in terms of the benefit to the passenger, as were BR's standards. Where they are different it must be publicly apparent that they are as good or better. We shall need to work closely together to ensure that we can achieve this. I appreciate the particular problems you face as far as InterCity standards are concerned; we shall obviously need to look into this in some detail.

As you mention in your letter, we had lengthy discussions about the setting of the 1993 performance targets, and you are aware of the importance that I place on improving the standards of service for all public services. I agree absolutely that franchising is about strengthening the link between the service provider and the passengers. This is why I do not want to see the standards set in the Passenger's Charter reduced after franchising.

I am particularly concerned that the standards of service should be specified in the invitations to bid that are sent to potential franchisees, so that we can set and monitor the quality of service delivered. I appreciate the budgetary concerns that you have about this particular issue and about which Stephen Dorrell wrote on 10 August, but I would be very reluctant to invite tenders from potential franchisees without first specifying the standards of service under which they would be required to operate. It should then be for them to propose equal or higher standards if they could demonstrate the case for this.

There is much still that requires discussion on the whole issue of franchising, and I shall ensure that the Charter Unit work closely with Roger Salmon over the next few months, so that we can resolve these issues together.

I am copying this letter to members of EDI and to Sir Robin Butler.

12
hmc

WILLIAM WALDEGRAVE

Jenny's

R76/49



R12833

From: Jennifer Turnbull
Date: 5 July 1993

- Ames 5/7*
1. Mr Galloway
 2. Mrs Bailey

cc: Mr Bird
Sir Peter Graham
Mr Sandeman
Mr Maclean
Mr Ollard

RAILWAYS BILL - LORDS STAGES

The Secretary of State for Transport wrote to the Lord Privy Seal on 7 June seeking agreement to his proposed handling of the Railways Bill.

Transport have been fairly slow in completing their ring-round and I'm afraid the reply has also been slightly delayed by my absence from the office on Thursday. As this relates to handling in the House of Lords it is appropriate for the Lord Privy Seal to respond but you should check that the Lord President's office is content in the usual way before the reply issues.

No colleagues have commented on Mr MacGregor's proposals. I attach a draft reply accordingly.

JENNIFER TURNBULL

DRAFT REPLY FOR THE LORD PRIVY SEAL TO SEND TO:

Rt Hon John MacGregor OBE MP
Secretary of State for Transport
2 Marsham Street
London SW1P 3EB

RAILWAYS BILL - LORDS STAGES

Thank you for your letter of 7 June seeking agreement to your proposed handling of the Railways Bill. Tony Newton has asked me to reply on behalf of Business Managers in both Houses. I apologise for the delay in replying.

I note that whilst a significant number of amendments will need to be tabled to the Railways Bill as a result of commitments given in the Commons, you will ensure that they are restricted to those which are essential to the proper working of the Bill.

No other colleague has commented on your proposals. You may take it, therefore, that you have EDH and LG Committees' agreement to proceeding as you suggest.

I am copying this letter to Tony Newton, members of EDH and LG Committees, First Parliamentary Counsel, and to Sir Robin Butler.

WAKEHAM

LPS/0120/93 - MR BIRD - ADVICE FL

cc MR OWEN
MR GALLOWAY



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:



The Rt Hon The Lord Wakeham
Lord Privy Seal
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

Nick Turnbull

7 JUN 1993

Dear JH,

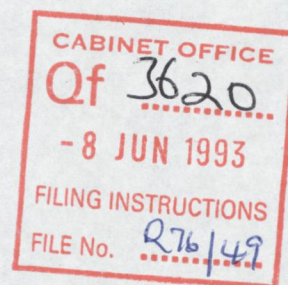
RAILWAYS BILL - LORDS STAGES

Thank you for your letter of 17 May about Government amendments to Bills in the House of Lords. I am writing to seek your agreement to the handling of the Railways Bill.

As you will know, the Bill has required a considerable number of Government amendments in the Commons. This is partly because of the speed with which the Bill was drafted and to cater for late developments on some important policy issues. The Bill is now in better shape but the process is still not complete and further work remains to be done in the Lords. The main sections of the Bill which still need revision are the provisions on liberalising access to the railway, and the provisions for ensuring continuity of service in the event of insolvency. The Bill also needs various detailed technical changes to ensure that it can operate as a coherent whole. In addition, we shall need to incorporate in the Bill a number of amendments to meet commitments given at Report Stage in the Commons. The most important of these relate to pensions and to the Franchising Director's duty to ensure that franchisees provide discounted fares for the elderly, students, and the disabled, and that the fares they charge should be reasonable.

I shall ensure that we restrict amendments to those which are, as you suggest, essential for the proper working of the Bill. But such are the complexities of the inter-relations between the different parts of the Bill that, in order to work properly, the Bill is likely to require a significant number of changes.

In addition, there is one new provision that we need to introduce. The Bill contains no provisions to ensure the security of the railways from terrorist attack. At present, security arrangements rest on voluntary agreement with BR. We shall not be able to rely on this in future and we therefore



propose to bring forward provisions to enable the Secretary of State to give directions to railway operators to take measures needed to ensure security. I hope you will agree that these are essential and that the necessary new clause should be added to the Bill at Committee Stage in the Lords.

I expect that almost all the Government amendments will be uncontroversial and I would not expect them to detain the House for long. As at Report Stage in the Commons, I would expect most of the debate to centre on amendments on more controversial issues tabled by the Opposition.

I should be grateful for your agreement to preparing for Committee Stage of the Lords on this basis.

I am copying this letter to Tony Newton, other members of LG Committee and First Parliamentary Counsel.

Yours etc,

JM

JOHN MACGREGOR



Mike Turnbull

From: S A MARSTON
Date: 19 May 1993
Copy: Mr Bird
Mr Niven



PS/LORD PRIVY SEAL

BRITISH RAIL PRIVATISATION: RESPONSE TO TRANSPORT SELECT COMMITTEE REPORT

Issue

1. Response to Mr MacGregor's letter of 12 May seeking clearance for a draft response to the Select Committee report.

Recommendation

2. That the Lord Privy Seal write to Mr MacGregor as attached giving clearance on behalf of EDI, subject to amendments that have been agreed with the Treasury and OPSS.

Timing

3. Urgent. Agreement with Treasury and OPSS was reached only this morning. Mr MacGregor wants to publish the response on Friday (21 May), in time for report stage of the BR privatisation Bill. To do that, he needs to send an advance copy to the Select Committee today (Wednesday).

Discussion

4. The Transport Select Committee published its report at the end of April. It expressed reservations about some important aspects of the privatisation policy. For example, it saw difficulties in giving a general right of access to lines for passenger services, which it saw as incompatible with franchising. It recommended that franchises should be vertically integrated to include track and signalling. It wanted Railtrack and the Franchising Authority to be merged into a single Rail Authority. And it sought various reassurances about continuity of services, consultation with passenger groups, line closures, investment, safety standards, pensions, and preservation of through-ticketing.

5. Mr MacGregor circulated his draft response to EDI on 12 May, seeking comments by Monday 17 May. The draft is mainly a restatement and elaboration of existing policy. No EDI members have written in reply. DoT and Treasury officials have agreed revised wording for several passages. OPSS were also concerned that the response should make clear that franchisees will be held to the standards laid down in the Passengers' Charter; again, a form of words has been agreed on that. With these exceptions, I understand that all EDI members are content.

S A MARSTON

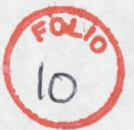
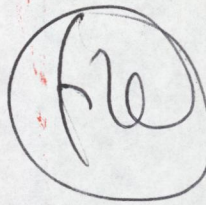
DRAFT LETTER FOR LORD PRIVY SEAL TO SEND TO SECRETARY OF STATE
FOR TRANSPORT

**GOVERNMENT RESPONSE TO THE TRANSPORT SELECT COMMITTEE REPORT ON
BRITISH RAIL PRIVATISATION**

Thank you for your letter of 12 May seeking clearance from EDI Committee for your draft response to the Transport Select Committee's report on British Rail privatisation. You asked for early comments in order that the response could be published before Report stage on the Railways Bill.

I understand that your Department has agreed some amendments to the draft response with the Treasury and with the OPSS Citizen's Charter Unit; and that otherwise colleagues had no comments on the draft. On this basis, and given the time constraint, you may take it that you have EDI endorsement to proceed as you propose.

I am copying this letter to members of EDI and to Sir Robin Butler.



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

19 May 1993

Dear Tom

**GOVERNMENT RESPONSE TO THE TRANSPORT SELECT COMMITTEE REPORT ON
BRITISH RAIL PRIVATISATION**

Thank you for your letter of 12 May seeking clearance from EDI Committee for your draft response to the Transport Select Committee's report on British Rail privatisation. You asked for early comments in order that the response could be published before Report stage on the Railways Bill.

I understand that your Department has agreed some amendments to the draft response with the Treasury and with the OPSS Citizen's Charter Unit; and that otherwise colleagues had no comments on the draft. On this basis, and given the time constraint, you may take it that you have EDI endorsement to proceed as you propose.

I am copying this letter to members of EDI and to Sir Robin Butler.

John
[Signature]

WAKEHAM

The Rt Hon John MacGregor, OBE, MP

Done 1/5
CONFIDENTIAL



CABINET OFFICE
A 6915
17 MAY 1993
FILING INSTRUCTIONS
FILE NO. R76149



Mr. Blair
cc Mr. Nire
Mr. Mack
file
16/5
Mr. Galloway
C. M. Owen
Nick Turnbull
Prime Minister

PRIVATISATION OF THE RAILWAY FREIGHT BUSINESSES

I have seen John MacGregor's minute to you of 30 April about the privatisation of the Railway Freight Business. I have also seen Norman Lamont's minute of 10 May.

I am content with the broad thrust of John's proposals, and with the specific intentions regarding Freightliner, Channel Tunnel Freight and Rail Express. In particular I am pleased that a cautious approach is to be taken in respect of Channel Tunnel Freight, given the difficulties which recently occurred in respect of the proposed joint venture between BR and AMEC for the establishment of the Mossend terminal.

On Trainload Freight, I am however somewhat unclear as to why a 3 company rather than a 2 company structure is proposed, particularly as the latter appears to be favoured by the consultants and the financial advisers. I believe it is important to establish companies which are as strong as possible and have the best chance of retaining as much freight on rail as may be consistent with the requirement to promote a competitive freight market. Given open access from 1 April 1994 there should be considerable scope for competition even with the 2 company option, whereas the 3 company option appears to risk a much greater rationalisation of freight than may be really needed. John indicates in his memorandum accompanying his minute that the arguments are finely balanced. I would certainly welcome some further explanation of the options. Nevertheless, if he and other colleagues feel that the 3 company option is the right way to proceed, and that a decision needs to be announced now, I would not wish to stand in his way.

CONFIDENTIAL

I am copying this minute to John MacGregor, Norman Lamont, Michael Heseltine, Gillian Shephard, Michael Howard, David Hunt and to Sir Robin Butler.

Yours Sincerely

Robert Law

PP

IL

Approved by the Secretary of State
and signed in his absence

The Scottish Office
14 May 1993

BR

CONFIDENTIAL



Miss Turnbull

CABINET OFFICE	
A	6921
17 MAY 1993	
FILING INSTRUCTIONS	
FILE NO.	R76/49

9M

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

cc Mr. Nix *Done*
17/5 14 May 1993

Mr. Gird

Mr. Harsh

Dear Paul,

B
16/5

C. Mr. Owen

Mr. Gallows

PRIVATISATION OF THE RAILWAY FREIGHT BUSINESS

The Prime Minister has seen your Secretary of State's minute of 30 April and the Chancellor's minutes of 10 and 14 May. He is content for an announcement to be made on the basis which has been agreed. He notes that some issues remain outstanding and will need to be discussed further in due course.

I am copying this letter to Private Secretaries of the Chancellor, Mr Heseltine, Mrs Shephard, Mr Howard, Mr Hunt and Melanie Leech (Cabinet Office).

Yours,

Mary

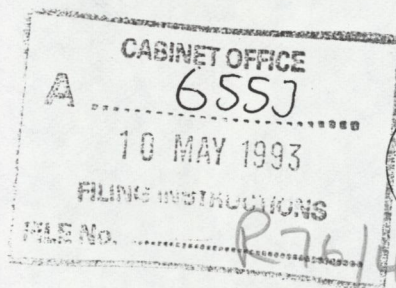
MRS MARY FRANCIS

Paul Coby Esq
Department of Transport

CONFIDENTIAL



THE DEPARTMENT OF TRANSPORT



FROM THE MINISTER FOR PUBLIC TRANSPORT

2 MARSHAM STREET LONDON SW1P 3EB
TELEPHONE 071-276 3000

Rt. Hon. Tristan Garel-Jones Esq MP
Minister of State
Foreign and Commonwealth Office
LONDON
SW1A 2AH

My Ref: *C.M. Bird*

Your Ref: *W. Owen*

Dear Mr. Jones,

7 May 1993

RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES

Thank you for your letter of 1 March about the line we should take in response to questions about foreign public sector bids for franchises for passenger railways services.

Following up your helpful suggestion, officials have now met to discuss the issue. I note that, however we seek to present the policy, a strategy to exclude foreign public sector bodies from bidding for franchises would be likely to be unsustainable if challenged in the European Court. I am clear that, if the policy were challenged, we would almost certainly have to back down and there may well be advantages in doing so earlier rather than later if the alternative were the prospect of defeat in the courts.

In what we say on this policy our main objective is therefore to minimise the risk of any challenge. Although the issue has not arisen during Commons Standing Committee consideration of the Railways Bill it was raised last week during Lords' Questions. Moreover, we have now had a direct approach from SNCF seeking a meeting to discuss our proposals for franchising. We still therefore need a more robust line to carry us through in Parliament and elsewhere on this issue. With this in mind, officials have prepared the attached line to take which I believe strikes about the best balance we can hope to achieve. I hope that you can agree that we should draw on it as necessary when the issue is raised in future.

I am copying this letter to Stephen Dorrell, Neil Hamilton, Nicholas Lyell, Alan Rodger and to Sir Robin Butler.

Yours sincerely
Rog. F.

ROGER FREEMAN

FOREIGN PUBLIC SECTOR BIDDERS FOR FRANCHISES

Line to Take

Will SNCF [or any foreign public sector bidder] be allowed to bid for franchises?

We have made it clear that the purpose of our policy is to introduce private sector management and expertise into the operation of the railways.

So will you stop SNCF from bidding?

It will be for the Franchising Director to determine who may and may not bid. The draft guidance to the Franchising Director, tabled as Committee Paper No 3 during Committee stage of the Bill, makes it clear that his principal objective "is to secure as soon as reasonably practicable that the function of providing passenger railway services in Great Britain is performed by private sector operators".

In pursuing this objective the Franchising Director will want to assure himself that bids are financed by commercial risk capital.

If pressed for a direct answer on SNCF

The Franchising Director will want to consider any proposed bid involving SNCF very carefully to examine whether or not it assists him in meeting his primary objective.

Is this consistent with EC obligations?

Of course the Franchising Director will have to have regard to our obligations under EC law.

Our policy is non-discriminatory. UK public sector bodies including BR will not be allowed to become franchisees.

CONFIDENTIAL



10 DOWNING STREET
LONDON SW1A 2AA

CABINET OFFICE
A 6250
- 4 MAY 1993
FILING INSTRUCTIONS
FILE NO. R78/49



From the Private Secretary

30 April 1993

Dear Paul,

Mr Marston

C. Mr Cwen.

Done 4/5.
Ch. Niren

H. Gind

BRITISH RAIL FRANCHISING

The Prime Minister met your Secretary of State, together with the Minister of State for Public Transport and the Financial Secretary to the Treasury, today to discuss British Rail franchising. Mr Roger Salmon (Franchise Director Designate), Mr John Swift (Rail Regulator Designate), Mr Montagu and Mr Wood (Department of Transport), Mr Robson (Treasury) and Mr Rosling (No.10 Policy Unit) were also present.

Your Secretary of State said that the Committee Stage of the Rail Privatisation Bill had been completed this week with no defeats for the Government. He congratulated the Minister of State on this achievement. The Bill was on course for delivery to the Lords and completion on time. There were two outstanding issues to be cleared at Report Stage: pensions (on which he had circulated a letter) and freight (on which he would be minuting the Prime Minister tonight). The first seven franchises had been announced at Second Reading. They accounted for about one third of the passenger railway and had a strong regional dimension. The Government had announced a two-stage approach to competition in the liberalised railway. He had taken the view that some moderation of competition was needed initially, because of indications that a large number of potential franchisers might refrain from bidding if there was substantial open access. British Rail was now making good progress in restructuring, especially as Bob Horton was now in place as Chairman of Railtrack.

Continuing, your Secretary of State said that proposals for the franchise map had been set out in Jim Betts' letter of 15 April. He was proposing thirty four franchises in total, thirteen of which would be small, local franchises such as the Cornish lines. The rest would equate fairly closely to BR's existing major profit centres. How to treat the Cross Country routes of Regional Railways and InterCity was difficult and he had commissioned a consultants' study on this. He hoped to publish the franchise map towards the end of May, after consultation with other colleagues.

CONFIDENTIAL

Your Secretary of State said he had commented on the method of sale in his [undated] minute to the Prime Minister. He noted the points which the Financial Secretary had made on this in his letter of 29 April, but he strongly preferred Route 1 (a series of trade sales) to Route 2 (a flotation). A "big bang" flotation would carry high practical and political risks, would involve higher subsidy and would be a U-turn politically. It could also cause second-order management problems. He was not convinced by the merchant bankers' arguments for Route 2 and did not accept the Financial Secretary's analogy with the Health Service: wholesale introduction of hospital Trusts would have caused more, not fewer, problems at the last Election.

On timing, your Secretary of State said that of the first seven franchises, two should be ready for transfer by October 1994, and the other five by April 1995. All the remaining franchises should be in shadow form by April 1995. The main risk to privatisation was insufficient private sector interest.

The Minister of State said he had been making four particular points in the House: that the first flotations would be let in the second half of 1994; that there would be a rolling programme of transfers, with a significant proportion completed by the end of this Parliament; that franchises would be let by competitive tender; and that the key criterion for successful privatisation was improved services for passengers. He had not indicated that routes other than trade sales were out of the question: for instance management buy-outs would be considered.

Mr Salmon said that the changes taking place amounted to the largest reorganisation of the railway since nationalisation and probably the most complex privatisation ever. They were being handled extremely fast. The task was to deliver the successful transfer of franchises. Success would be measured by the effects on passengers, franchisees (ie profitability) and value for money. If the first few franchises were successful in these terms, a virtuous circle should develop which would make subsequent transfers easier. There had been a sea change in BR in the last couple of months: the attitude now was "It's going to happen - let's make it work.". If privatisation was moved forward too rapidly, however, that support would be lost. There were still very considerable risks, including management and systems problems in setting up the new franchises; the need for a map of franchises which would give management a firm basis to work on; and the risk that the initial franchises would be unprofitable if these things were not got right. Virtually all planning to date had been on the basis of sales through Route 1. Route 2 had the advantage of speed, but it would almost certainly mean higher subsidy. He was concerned that there would not be sufficient interest amongst institutional

investors and venture capitalists to sustain public offers. Getting value for money from franchising was essential, and he believed any available resources should be devoted to sharpening up incentives for passenger services.

Mr Swift said it was important to establish his independent role as Regulator. Huge changes were in hand: detaching control of the track from the supply of passenger and freight services, and disaggregating passenger services into some thirty units. His first duty was to facilitate benefits to the consumer. He would have to oversee a complex matrix of licence agreements and contracts. He would need to make these changes in consultation with the Secretary of State, BR and Brussels. The Government's policy on moderation of competition raised important issues for him: he was sympathetic to the argument that a certain amount of exclusivity had to be conferred by the Franchising Director in the initial stages of privatisation but he had a duty to promote competition. He would be looking particularly hard at major, exclusive, services such as Network South-East and would want to identify objective measures to justify exclusive, rather than open, access to the rail track. Exclusive contracts would be open to review when the initial letting period expired.

The Financial Secretary said the Government needed to be clear about its objective for the transfer of franchises. If the aim was to have transferred as much as possible of the network before the next Election, work needed to proceed rapidly on more than just the initial seven franchises. This in turn meant defining the shape of the businesses to be transferred. If the objective were to have achieved transfer by the summer of 1995 (allowing some margin of safety before a likely Election date), preparing the remaining franchises for sale needed to start straight away. He welcomed the proposal to publish the franchise map by the end of May. On method of sale, he was not arguing firmly for Route 2, but this option should not be closed off. It did not necessarily mean selling all the remaining franchises together, but offered an alternative route for bringing some of them to the market. Even if Route 2 involved a higher subsidy, this might bring higher returns to the Government in the short-term, since the market would capitalise that benefit.

The Prime Minister said that a number of questions arose from the presentation. What did moderation of competition mean in practical terms? How would we ensure that the franchising map was clear enough? He thought that it looked very complicated at present. Anglia was an example - what real competition would be lost by amalgamating some of the proposed franchises? What were the practical implications of letting very small franchises, e.g. for through-ticketing and for the long-term future of heavily subsidised lines?

Were Routes 1 and 2 mutually exclusive - or was there a possibility of floating some bundles of routes? How would performance measures be built into franchise agreements? Timetabling was critical: would it be possible to have sold over 50 per cent of franchises by the time of the next election? This pointed to having the next tranche ready right behind those already agreed. If the first sales were successful, we must be ready to capitalise on that very quickly.

Your Secretary of State said he believed there were sound reasons for some exclusivity in letting franchises initially: it would be for Mr. Swift and Mr. Salmon to work out the precise terms. He agreed that the map was very complex and that more thought needed to be given to franchising small lines. He agreed too that early publication of the map was essential to provide the market with information and to give everyone in BR a picture of the future shape of the network. It would certainly be desirable to have transferred 50 per cent or more of the network by the Election, though there were some real difficulties in getting the franchises into shape. This had caused delays for the first seven, but it should be possible to go faster thereafter. Mr. Montagu added that as BR gained experience of pre-structuring, it might be possible to squeeze their timetables. Mr. Salmon emphasised the importance of getting the first two or three franchises right. Subsequent purchasers would attach great significance to the way they performed. The Prime Minister asked when discussions with potential trade purchasers would begin. Mr. Salmon said there were already informal contacts, and formal discussions would begin as soon as he was appointed Franchise Director in December 1993.

The Prime Minister asked how long it would take to determine the next tranche of franchises. The Minister of State for Public Transport said we should have a pretty clear idea of the next two tranches by the end of May. Your Secretary of State said that the Franchise Director would be preparing the next tranches in parallel with getting the first tranche off the ground. He hoped that virtually all the BR passenger network would be structured into shadow franchises by 1995. We could then sell what seemed appropriate. Mr. Robson commented that the key was to define the businesses to be sold. If that could be done quickly, the earliest possible date for sales would be April 1995.

The Prime Minister stressed the importance of building on the Citizen's Charter performance targets. Mr. Salmon said that for major franchises, such as Network South-East, he hoped to link subsidies to performance incentives. These would cover the services offered, delivery of services (cancellations, punctuality, overcrowding), a consumer satisfaction measure and a measure of staff satisfaction. The Prime Minister asked whether the initial length of

franchises had been set. Your Secretary of State said this was still being considered: the period was likely to be between five and ten years.

Summing up, the Prime Minister said that the franchise map should be reconsidered to see if it could be simplified. Department of Transport should discuss with the Treasury the long term subsidy implications of maintaining very small franchises. The map should be published as soon as possible, with the minimum of health warnings. Work on structuring franchises as individual businesses, and identifying the next tranche of franchises for sale, should begin as soon as possible. The target should be to sell 50 per cent or more of the passenger network before 1 January 1996 and the bundles of franchises which would need to be sold to achieve that should be identified as soon as possible. It was agreed that the first seven franchises would be let through trade sales, but the Route 2 method of sale should not be excluded for some or all of the remainder.

I am sending copies of this letter to Jeremy Heywood (H.M. Treasury), William Nye (Financial Secretary's Office) and to Melanie Leech (Cabinet Office).

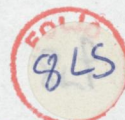
Yours,

Mary.

MRS. MARY FRANCIS

Paul Coby, Esq.,
Department of Transport.

Jonny's



R12832

From: Jennifer Turnbull
Date: 19 April 1993

- Auth 19/4*
1. Mr Galloway
 2. Mr Sandeman

cc: Mr Bird
Mr Maclean
Mrs Bailey
Mr Ollard

RAILWAYS BILL: TIMING OF REPORT STAGE

The Secretary of State for Transport wrote to the Lord President on 30 March seeking agreement to scheduling Report Stage of the Railways Bill as late as possible in the second half of May.

As rapid progress has been made in Committee Stage there will be a considerable amount of work to do in terms of drafting Government amendments and Mr MacGregor recommends that as long a gap as is possible be left between Committee and Report. The only timing consideration is that the Lords must have the Bill by Whitsun, and the Chief Whip's (Lords) Office do not think that scheduling Report for late May should present a problem for them. The Whips in the Commons are also content.

I attach a draft reply accordingly.

JENNIFER TURNBULL

DRAFT REPLY FOR THE LORD PRESIDENT TO SEND TO:

Rt Hon John MacGregor MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London SW1P 3EB

RAILWAYS BILL: TIMING OF REPORT STAGE

Thank you for your letter of 30 March seeking agreement to scheduling the Report Stage of the Railways Bill in late May.

I note that your Department still has a considerable amount of work to do in terms of drafting Government amendments before Report Stage is reached. Such amendments as you bring forward will, of course, need to be considered on their own merits. However, the Business Managers in both Houses are agreed that scheduling Report Stage for late May should not present a problem with getting the Bill to the Lords by Whitsun.

You may take it, therefore, that, subject to any other business considerations, the Business Managers will seek to schedule the Report Stage of the Railways Bill as late as possible in May,

I am copying this letter to John Wakeham, Richard Ryder and Alexander Hesketh.

TONY NEWTON

F2119
R70/49


~~84/10~~

POLICY IN CONFIDENCE

Note of an ad hoc meeting held at the Cabinet Office at 3pm on
Friday 26 March 1993

Present

Mr B Bender, CO (Chairman)
Mr P McCarthy, DTp
Ms J Richardson, DTp
Mr K Darrough, FCO
Ms D Brooks, FCO
Mr D Richardson, DTI
Mr C Warren, DTI
Ms C Bradley, UKRep
Mr S Harker, CO Legal Advisers
Mr B Niven, CO
Ms H Dunstan, CO (Secretary)

1. L. Manton
2. L. Threl (0/1)

3. Mr. Hallways
Miss Turnbull

X Railway Privatisation: acquisition of franchises by state
controlled companies

Opening the meeting **THE CHAIRMAN** recalled that the issue had been discussed briefly at a Kerr/Fitchew meeting on 19 March. Sir John Kerr had stressed the importance of avoiding a repetition of HMG's difficulties with the Commission on the "Lilley doctrine" which had led to Ministers having to qualify significantly their original statement of policy.

Introducing the discussion **MR MCCARTHY** explained that Department of Transport Ministers' objectives for the privatisation remained as stated in the draft objectives proposed for the Franchise Director:

"Your principal objective is to secure as soon as reasonably practicable.... that the function of providing passenger railway services in Great Britain is performed by private sector operators"

It was intended to preclude the award of franchises to British Rail or to a foreign state-owned company. Ministers were aware, following the Law Officers' advice, of the risk of challenge from the Commission to a policy of excluding state owned companies from obtaining franchises. They had no wish to raise the profile of the issue. However, although no

questions had been asked on this subject during the Committee stage of the Railways Bill, it was very likely that questions would be asked at Report Stage (likely to be during the first or second week of May.) It was therefore essential that a line to take was devised which would be sustainable in the House but would minimise the risk of Commission challenge.

Continuing, MR MCCARTHY explained that in practice it remained unclear which companies would be likely to bid for franchises: these could range from small companies in the transport sector, such as bus operators, to large conglomerates with other transport interests. The likely level of interests in bidding for franchises was also unclear, although it seemed unlikely that competition for franchises would be fierce in all cases: there was a significant possibility that if, say, SNCF, was allowed to bid for a franchise, it could win. An indirect enquiry via a firm of solicitors had now been received from SNCF about the procedures for applying for a franchise.

The following points were raised in discussion:

- a. Three broad approaches would be possible in answering the question "would a state owned company be permitted to obtain a railway franchise?";
 - a) to make clear the underlying policy that franchises were to be awarded to private sector operators, perhaps by referring to the Franchise Director's objectives;
 - b) to dismiss the question as hypothetical, perhaps referring to the UK's Community obligations;
 - c) to answer the question by reference to less provocative criteria which would have the effect of excluding state owned companies.

- b. It could be argued that there should be no objection to making clear the underlying policy objective. In any subsequent discussion the UK could argue that such a policy would not be indirectly discriminatory given that there was a UK state owned company (British Rail) which would be excluded, and that the policy would be exercised in accordance with the UK's Community obligations. On the other hand, discussions with the Commission in other contexts indicated that they were most unlikely to accept such arguments. The Law Officers had advised that a Commission challenge of the underlying policy was likely to succeed in the European Court of Justice. The Commission was particularly alert to possible discrimination in the handling of privatisations and was likely to keep a careful watch on ministerial statements in the House. Such a statement would be sufficient to provoke a challenge regardless of whether a specific bid from a foreign state owned company had been rejected or discouraged.
- c. There could be no objection to referring to the objectives of the Franchise Director in the answer to a question on bids from state owned companies as these had already been provided to the House during the Committee stage, and were reflected in the Bill itself, but to rest the answer on these alone would be unhelpfully provocative as it would make the underlying policy clear without qualification. It might be possible to go on to make clear that in having regard to these objectives the Franchise Director would act in accordance with the UK's Community obligations, but to do so would not necessarily be helpful: it would invite an awkward follow up question as to what were the UK's Community obligations in this context, and would alert the House to the possibility that there was a Community law problem with the Government's policy.

- d. The Commission had, in 1986, challenged a French law establishing a framework for privatisation, which included a limitation on the level of foreign shareholding in privatised companies. In negotiation with the French authorities the Commission had agreed that as the framework law had no practical effect they would not pursue infraction proceedings in respect of it, but would keep a careful watch on the subsequent individual privatisations. This precedent might be seen as helpful to the UK's case on railway privatisation, but was not necessarily a useful pointer for the future: the Commission had told us that they regarded the precedent as an unfortunate one, and that the French Government had, in any event, amended the legislation concerned.
- e. The second option, of dismissing questions as hypothetical, would be disingenuous in the light of the expression of interest from SNCF. There was also press speculation about a possible application from the Irish state owned railway operator, although this seemed fairly implausible. Such line would also be very uncomfortable for the Minister who would be seen to be evading the question.
- f. In relation to the third option, if a less provocative criterion could be found which would have the effect of excluding state owned bids, this would permit a question about such bids to be answered in three parts: first, the Minister could remind the House of the principal objective of the Franchise Director; he could then go on to point to the criterion identified as one which would be taken into account; and, if pressed about the reaction to a particular bid, could conclude by saying that he would not, therefore, expect a bid from whichever state-owned operator had been the subject of the question, to succeed.

- g. In correspondence before the meeting, various possible criteria had been suggested which would have the effect of excluding bids from state owned companies. In considering these it was important to bear in mind that any criterion chosen would not need to be absolutely watertight in excluding all undesirable bids: the award of franchises would be a two stage process in which the Franchise Director issued an invitation to tender, which could itself exclude certain categories of potential bidder; the bids would then be assessed against criteria which could be formulated in considerably more detail.
- h. It had been suggested that Ministers' objective might be met by making clear that large railway operators would not be eligible for franchises. Although this test would have the desired effect of excluding British Rail and SNCF it would, however, also have the effect of excluding certain large private sector rail operators whom Ministers would be very keen to see secure franchises, eg the US rail operators. It would also be difficult to explain the justification for a test which could be presented as excluding precisely those bidders with the most relevant experience.
- i. Another suggestion had been that loss making companies should be excluded. Again, there was a possibility that such a criterion would exclude bidders whom Ministers might wish to see secure contracts: it was possible that good private sector transport operators did not make an operating profit before subsidies were taken into account. Indeed it was likely that UK franchisees would be subsidised. There was also a possibility such a test would fail to exclude state owned bidders: special subsidiaries could be formed or accounts could be presented to demonstrate that a profit was being made. It would be possible to refine the criterion to make it more difficult for state owned companies to meet, for example

by requiring that the bidder not make a loss on any part of its existing operations, but such refinements would not add to the risk of excluding desirable bidders.

- j. It had also been suggested that Ministers' objectives might be met by requiring that bids be financed by private risk capital. It could be argued that this was as likely to provoke Commission challenge as a clear statement of the underlying policy. It also seemed likely that the European Court of Justice would find that it was indirectly discriminatory. It did, however, have the advantage that it would a positive requirement which could, at least in theory, be met by state owned operators. Further consideration of this possible criterion would be needed to establish whether it would really exclude state owned bidders such as SNCF who were permitted to raise capital on the markets. There was also a possible danger that such a criterion would widen the field of potential complainants in that it might exclude private sector companies whose bids were financed by state owned banks. One way of avoiding both this risk would be to require that the company providing the capital for the bid should have no Government guarantee that they would get a return on the investment.

Summing up, **THE CHAIRMAN** said that the best outcome would be for Department of Transport Ministers to avoid getting drawn on the question of whether a bid from a foreign state owned company would be acceptable. This would not, however, be straightforward. If Ministers were pressed in Parliament, the objective remained to find a way of excluding such bids without provoking Commission challenge. A clear statement of the policy would be the highest risk option. Department of Transport would reflect on the discussion and consider further with the FCO and other interested departments whether there was a way of answering a direct and persistent questioner

along the lines identified in para f. above. Department of Transport Ministers would then write to colleagues to secure their agreement to a line to take on the subject in good time for the Bill's report stage.

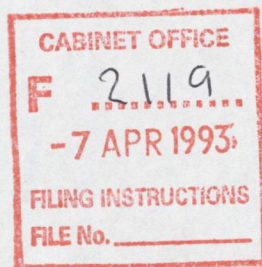
Cabinet Office

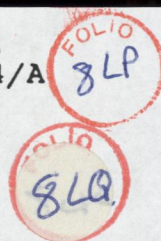
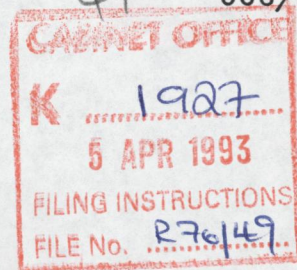
6 April 1993

cc Those present

Miss R Ford Law Officers' Department

Mr Fitchew Cabinet Office.





To: LORD PRESIDENT

Cc: Mr. Maclear
Mr. Bird
Mr. Atman

Miss Turnbull
I agree.

From: D Sandeman
Date: 2 April 1993

Mr. Galloway

A 6/4

True seems essentially -
Bul's point. B35/4

REPORT STAGE OF RAILWAYS BILL

You have in your box a letter from the Secretary of State for Transport asking that the Report Stage of the Railways Bill should be delayed until the second half of May. I have had a telephone call from DTp this morning confirming that the amendments to the Bill on Corporate Taxation Provisions cannot be dealt with in the Lords, and must therefore be brought forward at Report Stage. DTp was keen to emphasise that the need to make these amendments in the Commons reinforces their general case for the delay of Report Stage.

They would like to receive comment on this issue in the course of the next week.

D SANDEMAN
Principal Private Secretary

CABINET OFFICE
f 3023
31 MAR 1993
FILING INSTRUCTIONS
FILE No. R76/49

Miss Turnbull
Mr Galloway

POLICY IN CONFIDENCE

MR MARSTON

1 cc Mr Bird



X RAILWAYS BILL : FOREIGN PUBLIC SECTOR FRANCHISES

1. Here are the papers I borrowed for the meeting chaired by Mr Bender on 26 March.

2. After a 90 minute meeting, it was agreed that DTP would agree with officials from other Departments a series of defensive lines to take at Report stage. Mr MacGregor would then circulate them to colleagues for their information and endorsement. The lines favoured at the meeting were as follows (you will see that they are not cumulatively very informative nor necessarily in a strictly logical order!):

- a restatement of the Government's general approach to privatisation

- quote from the guidance to be given to the Franchising Director

- say that one criterion for the selection of bids will be whether they are financed by private sector risk capital

- [if pressed] say that on the above basis the Government does not expect a bid from [eg SNCF] to succeed.

3. DTP thought their Ministers would agree to such lines (to be fallen back on one by one as necessary). FCO were a bit stand-offish but gave the impression the lines would do for the immediate purpose. UKREP were generally content but wondered whether the language could be tailored to exclude bids the Government definitely did not want to succeed and to leave the door open to other more acceptable candidates (including it seems some American Railroad companies).

4. I apologise for my scribble on some of the papers. The meeting dragged somewhat from the point of view of this Secretariat.

R A NIVEN

30 March 1993

POLICY IN CONFIDENCE



CABINET OFFICE

Qf 3022

31 MAR 1993

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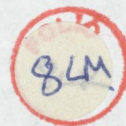
FILE No. R76/47

POLICY IN CONFIDENCE

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

30 MAR 1993



The Rt Hon Anthony Newton OBE MP
Lord President of the Council
70 Whitehall
LONDON
SW1A 2AT

Your ref: LGP PRESIDENT
OPT. CIL
31 MAR 1993
Mr Galloway

*Mr Galloway**Miss Turnbull**Dear Tony,**Clearly the whips' view will be
critical. NB 31/3
Mean dear.***RAILWAYS BILL: TIMING OF REPORT STAGE**

I am writing to seek your agreement to scheduling Report Stage of the Railways Bill as late as possible in May consistent with timely progress of future Parliamentary stages.

As you know, consideration of the Railways Bill in Standing Committee has made extremely good progress in accordance with a timetable agreed with the Opposition and without the need for a guillotine. Committee stage is due to end on Wednesday 21 April. However, the rapid progress made has meant that we have not been able to achieve all that we would have wished in terms of Government amendments.

When the Bill emerges from Committee there will be a considerable amount of further work to do and there would be clear advantages in allowing as long a gap as possible between Committee and Report. We have three particular problems. First, important policy issues remain to be settled on railway pensions which will need to be translated into appropriate amendments to the Bill. We ran into criticism in Committee for not having a clear statement of the Government's plans for pensions and I do not believe that it is sustainable for us to take the Bill to Report before we have resolved the policy. This is being done urgently but requires further discussions with BR and the Treasury.

Secondly, we have been unable to announce our policy on restructuring the freight businesses during Committee stage. This is a sensitive issue and an important part of our privatisation plans. We shall be open to criticism if the Bill leaves the Commons without there having been an opportunity to debate it.

Thirdly, we have not been able to do the necessary amendments to

POLICY IN CONFIDENCE

POLICY IN CONFIDENCE

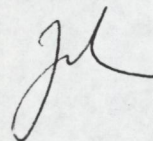
the taxation provisions in the Bill. Although these are technical and uncontroversial there may be problems of privilege in dealing with them in the Lords.

In addition there are a number of other areas of the Bill where amendments are required. Even with a decent interval between Committee and Report, further work on the Bill will be needed in the Lords. The more time we have now for preparation of Government amendments for Report, the fewer the number of amendments in the Lords and the easier the Bill's passage is likely to be.

I hope you agree that, for the reasons I have given, it would be sensible to schedule Report stage for towards the end of May.⁺ I am copying this letter to the Lord Privy Seal and the Government Chief Whips of both Houses.

*† or certainly in the second half of the month.
Perhaps we might have a word.*

Yours,



JOHN MACGREGOR

POLICY IN CONFIDENCE

K0487

CABINET OFFICE
Qf 2739
- 8 MAR 1993
FILING INSTRUCTIONS
FILE No. R76/49



FROM: R BIRD
DATE: 8 March 1993

cc: Mr Fitchew
Mr Owen
Mr Bender
Mr Niven
Mr Galloway

Miss Turnbull

MR MARSTON

✓ **RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES**

There has been correspondence recently (see FCO letter of 1 March attached) about the possible inclusion in the Railways Bill preventing foreign public sector bodies from bidding for franchises.

2. The FCO have suggested officials under Cabinet Office chairmanship should consider how such bids should be discouraged without breaking community rules. The original proposal at Deputy Secretaries last Thursday was that the Domestic Policy Secretariat should take the lead. However as the focus is on EC rather than domestic policy and as the EC Secretariat have led when similar issues have arisen in connection with previous privatisations, I have agreed with Mr Owen and Mr Bender that the EC Secretariat should take the lead in this case. There should however be a domestic policy presence at any key meetings which are arranged and I should be grateful if you could participate accordingly.

R Bird

R BIRD

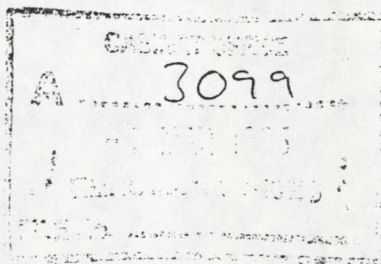
R. Dep Sec



Sir Robert Butler
to note 'X'

Foreign &
Commonwealth
Office

London SW1A 2AH



1 March 1993

From The Minister of State

Roger Freeman Esq FCA MP
Minister of State
Department of Transport
2 Marsham Street
London
SW1P 3EB

C. M. Owen
Mr Bender

Mr. Bird

at. Repines

I agreed to pursue this. U. have a word.

Dear Minister,

RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES

I have seen a copy of John MacGregor's letter of 23 February to Norman Lamont. Douglas Hurd will see the letter tonight and add any further points he may have tomorrow.

4/3

As John MacGregor points out, none of the options open to us are attractive. I note the Law Officers' advice that we are unlikely to be able successfully to defend a policy of excluding foreign public sector bidders. I therefore agree with him that a provision on the face of the Bill excluding foreign public sector bodies would not be sensible. There is much evidence that the Commission look at our legislation very carefully. I am sure that we would be challenged.

But I am similarly unhappy with your preferred alternative. I do not think that the risk of challenge would be significantly lessened by your setting out in debate our intention to exclude foreign sector bidders administratively. The Commission's strong reaction to Peter Lilley's advocacy of such a policy on company acquisitions strengthens me in this view.

I therefore suggest a different line. I understand that your Department has no evidence that foreign public sector bodies intend to bid for franchises. If the question is raised during Committee Stage, you could say that we do not expect foreign public sector bodies to bid, that none show any interest, and that it is our intention that UK railways should be run in accordance with market principles. This is why UK public sector bodies were explicitly excluded from the Bill. However, if a foreign public sector body were, unexpectedly, to bid, we would need to examine that bid in accordance with this principle and in the light of our EC obligations.



Such an approach would not state unequivocally that we will not entertain a foreign public sector bid. This should avoid immediate Commission challenge. But it would make clear our intention that UK railways should be privately run.

X
As for the substantive question of how we discourage bids from foreign state-owned bodies without breaking Community rules, further thought is clearly needed. This could perhaps best be done by officials meeting under Cabinet Office chairmanship. But I wonder whether a case could be constructed on competition grounds, since a state-owned bidder would not necessarily face the same profit/costs commercial criteria as a private sector bidder. Could the guidelines for the Franchising Director contain some provisions on these lines, while remaining consistent with Community rules ?

I am copying this minute to Norman Lamont, Michael Heseltine, Nicholas Lyell, Alan Rodger and to Sir Robin Butler.

Yours sincerely,

T. P. Walker

Tristan Garel-Jones
(agreed by Mr Garel-Jones
and signed in his absence)

K0487

K0487

R76/49

FROM: R BIRD
DATE: 8 March 1993

cc: Mr Fitchew
Mr Owen
Mr Bender
Mr Niven
Mr Galloway

MR MARSTON

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R Bird

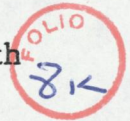
R BIRD

R. Dep Sec

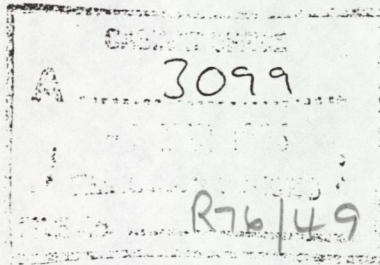


Sir Robert Butler
to note 'X'

Foreign &
Commonwealth
Office



London SW1A 2AH



1 March 1993

From The Minister of State

Roger Freeman Esq FCA MP
Minister of State
Department of Transport
2 Marsham Street
London
SW1P 3EB

C. M. Owen
Mr Bender

Dear Minister,

Mr. Butler at. Repres
I agreed to pursue this. It. have a word.

RAILWAYS BILL: FOREIGN PUBLIC SECTOR FRANCHISES

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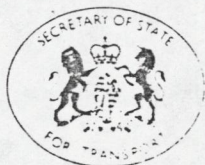
X
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Yours sincerely,

T. P. Walker

Tristan Garel-Jones
(agreed by Mr Garel-Jones
and signed in his absence)



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

The Rt Hon Norman Lamont MP
Chancellor of the Exchequer
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

2798

C. W. Owen
~~Mr Bird~~

276/49

Mr Bolder cc Mr Niven
Mr Martin
~~Mr Galloway~~
MR BIRD

You may wish to note.

Another potential
Factortame?

RB 24/23 FEB 1993

Miss Turnbull

Dear Norman

X RAILWAYS BILL - FOREIGN PUBLIC SECTOR FRANCHISEES

As you know, it is our policy that public sector bodies should not be allowed to bid for franchises. Clause 24 of the Railways Bill specifically excludes UK public sector bodies from doing so and we intended to apply a similar exclusion administratively to any foreign public sector body such as SNCF seeking to bid for a franchise. Recent advice from the Law Officers suggests that this policy may not be successfully defensible if challenged in the European Court of Justice and I should be grateful for your agreement to the line I propose to take when, as seems inevitable, the issue is raised during the passage of the Bill.

The Law Officers' advice suggests that the best chance of sustaining the policy would be to amend Clause 24 of the Bill to cover all public sector bodies regardless of nationality. I am concerned that this would draw unwelcome attention to the issue. It would give the Commission a target at which to aim and the likelihood and consequences of a successful challenge are such that I do not believe that the risks are worth taking.

Nor would I wish to concede that foreign public sector bodies should be allowed to bid for franchises. This would be hard to justify in the context of our primary aim of involving the private sector in the running of the railways and our firm policy of excluding BR and other UK public sector bodies from bidding for franchises.

I therefore propose to maintain broadly the approach we have adopted to date, seeking to minimise to the extent possible the risk of challenge and recognising that if challenged a successful defence of the policy is unlikely to be possible. The draft guidance for the Franchising Director makes it clear that his primary objective is to secure the provision of railway services by the private sector. When the issue is raised we would

POLICY IN CONFIDENCE

indicate our intention of excluding the foreign public sector administratively and point to this guidance indicating that we expected invitations to tender for franchises to impose appropriate limitations on the eligibility of bidders. If asked whether this policy was consistent with EC law we would maintain the line that our policy was clearly non-discriminatory as it had the effect of treating all public sector bodies equally,

We would, of course, aim to keep as low a profile as possible on this issue in order to minimise the risk of provoking a challenge. At present there is no evidence that SNCF or any other EC railway is interested in bidding. Also there is as yet no sign of Commission interest in the issue. We must, however, recognise that simply promulgating the policy might encourage them to take an interest. But if we proceed as I suggest we would, I believe, offer the Commission less of a target and lessen the risk of specific legal challenge. In the light of the Law Officers' advice we would, however, have to accept that, in the event of a challenge, we could not expect to defend the policy successfully. But there is no need now to decide whether or when to concede. We can consider in the light of circumstances how far to press a defence against a challenge.

The Law Officers' advice has placed us in a difficult position and none of the options open to us is particularly attractive. I hope you will agree that the approach I propose to adopt offers the best way of maintaining a reasonably coherent line on this issue during the passage of our Bill.

I am sending copies of this letter to Douglas Hurd, Michael Heseltine, Nicholas Lyell, and Alan Rodger and to Sir Robin Butler.

Yours etc,

Jd

JOHN MACGREGOR

(E-MAIL).

KO441

Miss Turnbull

FROM: R BIRD
DATE: 4 February 1993

cc: Mr Owen
Mr Galloway
Mr Marston

MR NIVEN

R76/49

BR PRIVATISATION

There has been recent three-way correspondence between No 10, Treasury and Transport about franchising. There are two main issues:

- a. how the rail passenger network franchises should be divided up and over what timescale, beyond the 7 prospective franchises announced during the Railways Bill Second Reading debate;
 - b. a proposal which the Treasury are championing for franchise floatation on the Stock Market to bring in institutional investors.
2. No 10 originally asked for a paper on franchise options by the end of next week. Transport want to put this off for some time arguing that it would be better tactically not to prepare a franchise map for several months.
3. Mrs Francis suspects that the solution will be for Transport to produce a paper in the near future setting out their proposals for procedure and timescale. She is not yet sure whether the Prime Minister will want to remain heavily involved with this issue. I mentioned the possible alternative of an EDI or a Lord Privy Seal chaired ad hoc group. But if the Chancellor continues to take a close personal interest the chances are that the Prime Minister will wish to do so as well.

R BIRD

Railways.

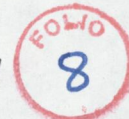


DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

Mr Bader

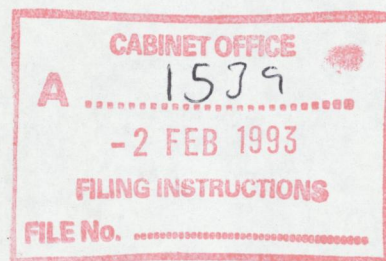


02 FEB 1993

Owen Barder Esq
Private Secretary to the
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

Mr Lumball

Mr Niven



Mr L. Cuthway

Dear Owen,

My Secretary of State has asked me to send you a copy of the defensive briefing which he and Roger Freeman will be using in this afternoon's debate on the Second Reading of the Railways Bill.

I am copying this letter and the briefing to the private secretaries of other members of the Cabinet, and to Murdo MacLean, Ed Ollard and Melanie Leech.

Yours ever,

Jim

J. BETTS
Private Secretary

PRIVATISATION: PASSENGER RAIL FRANCHISING

Why have these particular services been picked as first shadow franchises?

Can you name the companies that are interested in those lines?

How many are there?

Has the private sector expressed an interest in the East Coast Main Line/Great Western Main Line?

Why not include line from A-B?

When will the plan for franchising rest of network be published? Why not published already?

Will franchisees be able to drop any of the services BR currently provides?

Known interest by potential franchisees - in private sector and/or management buy-outs. Also representative cross-section of present network. All services will be franchised as soon as practicable.

Commercial-in-confidence at this stage. Some companies may want to declare their interest publicly. That is for them to decide.

Several. But idle to speculate about such matters at this early stage. What will count are the offers that come forward when the formal tendering process takes place once legislation is enacted.

There is management buy-out interest. No private sector interest as yet but sure that will be forthcoming when a specific proposition is put to market.

This is a first instalment. I expect to announce further franchises in due course.

Will be taking account of further expression of market interest among other things. [IF PRESSED: expect to announce a full plan within six months.]

First franchises will be based on BR timetable immediately prior to franchising in all major respects - stopping stations, service frequency. Franchising Director to get best value for money, balancing subsidy against commercial viability and social benefits.

What will BR now be setting up exactly?

Will potential franchisees have access to these shadow franchises?

Why not vertical integration?

Why is ScotRail on the list and not other Regional Railways?

Why is Wales not included?

Progress

How many companies in all have expressed an interest in running franchised services? Can you name any?

Operating companies within BR for each prospective franchise. These would be transferred - with staff - to the successful bidders for franchises.

Data on the running of the shadow franchises will be provided at formal tendering stage.

Fully explained in speech. To preserve equality among different operators on same track. To focus strategic investment through single body (Railtrack). To concentrate responsibility for safety standards and procedures. To ensure coordination of timetabling across network.

ScotRail is a self-contained service grouping with a clear market identity which makes it very suitable for franchising. Recent case-study work by BR will also facilitate the restructuring of ScotRail.

Wales is, of course, served by the GWML. Market and management interest has been expressed in other Welsh lines; and we do not expect that it will lag behind in the franchising process.

We already have had expressions of interest in response to our market testing exercise from over 50 private sector concerns and 20 management buy-out teams. Would not be appropriate for me to give details - we are treating all approaches on a commercially confidential basis - though one or two like Sea Containers have declared their interest publicly.

Bidding

How are bids to be assessed - on subsidy/premium alone or are other factors to be taken into account?

To what extent will bidders be free to make alternative proposals when responding?

Will SNCF be allowed to bid?
[Law Officers to advise]

Franchising Authority will be looking at all aspects of bids to see which offers the best overall value for money. Amount of subsidy required will clearly be a key element in that.

Market testing has provided information on the grouping of services and on the nature of activities to be covered. "Companies" will be structured within BR to reflect this and it is these companies that will be marketed. This is the process being followed for the first franchises announced today.

Policy is to extend private sector involvement in running the railways.

Contracts

What will be specified in the franchise contract?

Depends on services in question. Specified quality standards will be set where necessary to protect passengers' interests and will cover broadly similar areas to those for which BR is currently set performance measures, including punctuality and reliability. Contracts will also specify the minimum level of services to be provided (ie number of trains).

The length of the franchise contract is not fixed, but within what parameters will it be negotiable?

This will depend on market interest. [There is a trade off between more frequent competition for the market and the transfer of risk].

Will franchisees be required to comply with the provisions of BR's Passenger's Charter (ie pay compensation to passengers)?

Passenger's Charter is, of course, BR's document - its code of practice for dealing with passengers. Franchisees will generally be expected to publish their own codes of practice for dealing with passengers and providing compensation to

passengers if standards of service fall below a certain level.

If so, what mechanisms will there be for attributing blame for delays between the franchisee, Railtrack and others?

This will be covered in franchisees' contracts with Railtrack and others.

What provision will there be for changes in contract terms or specifications within the life of the contract?

Wish to allow franchisees some room for manoeuvre in responding to market demand.

May also be adjustment factors, with agreed 'triggers' in the franchise contract terms, for example to take account of changes in costs eg additional safety requirements, over which the franchisee has no control

To what extent will PTEs be able to prescribe the service pattern run by franchisees?

Proposal is for PTEs to have the ability, as now, to decide appropriate service levels for services which they support, but would hope that they would be receptive to franchisees' ideas.

Franchise Companies

Will a franchisee be required to take over the existing BR workforce?

Franchisees will obviously need to employ trained staff in order to run services, and those staff will come from BR. It is envisaged that an operating company will be formed within BR for each franchise, employing all the relevant staff, and that this operating company will be transferred to the winning bidder.

On what terms will BR staff transfer to the franchisee - will staff terms and conditions be renegotiable?

The staff which transfer with the passenger business to be franchised will bring with them the terms and conditions which applied immediately before the transfer, but the franchisee will then be free to negotiate changes.

The White Paper referred to end franchise transfer mechanisms - what will these be and how will

This is set out in Clause 26 of the Bill.

...ey work? Will they cover onward transfer of the workforce and other assets at the end of a franchise?

Will the franchisee have any responsibility for financing the purchase of capital assets during the life of the franchise contract?

On what terms will BR's existing rolling stock be made available?

Very keen to see the private sector invest. Will be exploring with potential franchisees how this can be encouraged.

Firstly, I should say that we are keen to see the private sector take on the responsibility for providing rolling stock - believe there is a good opportunity for a leasing market to develop.

The terms under which BR stock would be available would need to be negotiated in each case, depending on factors such as the length of franchise and the age of the fleet in question. The agreement would probably stipulate the terms on which the rolling stock must be maintained and can be refurbished by the franchisee during the period of the franchise.

Scope of Franchise

What activities will a franchisee be able/be required to take on?

Clearly we want them to take responsibility for as much as possible.

In the model set out in the consultation document we indicate that the franchisee might be expected to take on the responsibility for managing all aspects of train operation, including train crew, on-board services and service marketing. The franchisee might also invest, or make his own arrangements, for providing rolling stock and other operational assets. We are also considering whether Railtrack might sub-contract some of its functions, for example track maintenance to franchisees.

Will a franchisee be able to take

Intend freehold of stations to

over stations, without buying
em?

remain with Railtrack. A franchisee would normally be offered the chance to operate the stations along a route served by his trains, particularly, for example, on a rural route where the franchisee provided the only passenger service.

Different approaches are likely to be appropriate for different stations. Railtrack may lease multi-user stations to independent stations operators.

How long will trainpath allocations be for? Will there be an annual renegotiation, or will there be longer contracts?

Each franchisee will have a contract with Railtrack. This contract will give the franchisee guaranteed rights of access for the duration of his franchise to the track and other infrastructure he requires, and set out the terms (including the charging system) that will apply.

How can a franchisee be sure of getting the trainpaths he needs to meet the terms of his franchise contract?

The franchisee's contract with Railtrack will include the necessary trainpaths agreed in advance between the Franchising Authority (on behalf of the company that will take on the franchise) and Railtrack.

Will a franchisee have exclusive rights to run services between particular stations or over particular stretches of track?

Only the franchisee will be eligible to receive subsidy for the particular services specified in his contract. In other words, the franchisee will have an exclusive claim on grant for the given service or service group specified in his franchise contract. There will, however, be scope for the Franchising Director to arrange for degrees of exclusivity in particular contracts for the first generation of franchises.

Cherry picking

How will you prevent the private sector 'cherry-picking' the most

First rights of access will be enjoyed by the Franchising

attractive services for franchising or time slots, thereby losing the benefits of the profits they may have generated for the network as a whole?

Director and some exclusivity may be granted to franchisees.

How will you protect access for disabled people?

Want to build on the good work that BR has done over the last ten years or so with the help of the British Rail Advisory Group on Disability, in improving access to train services.

Following privatisation, all operators of rail services will be required to have regard to the needs of people with disabilities as a condition of being granted a licence to operate.

Requirement will be policed by the new Rail Regulator, who will be responsible for issuing licences. All the key parts of rail service provision will be covered by this requirement - including, for example, public areas at stations.

What about continuity of service at the end of franchises? The White Paper referred to end franchise transfer mechanisms - what will these be and how will they work? Will they cover onward transfer of the workforce and other assets at the end of a franchise?

Clearly it is important that we have the right mechanisms in place to provide for continuity of service. But we need to frame any special measures carefully so that we do not, for example, deter franchisees from investing in necessary assets. Clause 26 of the Bill contains the relevant provisions.

Will privatisation lead to further destaffing of stations - won't that put people off in view of the security threat?

The Government believes that the private sector would make better use of the commercial opportunities at stations. These include providing services to passengers and improving the usefulness of stations to the community, by redevelopment and other means.

Believe that private sector operators will wish to attract people to stations to maximise their commercial benefit.

PRIVATISATION: SUBSIDY

Won't the subsidy bill increase?

See no reason why franchising should cost more - expect franchisees' profits to be more than offset over time by efficiency gains and increased passenger revenue through better targeting of services to demand.

Will Franchising Authority have as much subsidy as he needs, however much that is?

Have made it clear that subsidy will continue to be paid, where necessary. Clearly the taxpayer's pocket is not a bottomless pit, but would stress that we do not expect privatisation to lead to cutbacks or closures, but rather to more and better services.

By what mechanisms will subsidy be paid (fixed sum, inflation proofing, efficiency incentives, annual/monthly payments)?

Not yet decided.

Can level of subsidy be reviewed during the life of a franchise?

Franchisees will not be expected to come back asking for more grant during life of franchise.

However, there may need to be adjustment factors with agreed 'triggers' in the franchise contract terms, for example to take account of changes in costs over which the franchisee has no control.

What about PTA/PTE services?

Will continue to be funded, as

now, by PTEs, who are funded via the rate support grant paid to their constituent district councils.

What objectives will you set for the Franchising Director?

Still being developed. He cannot be appointed until after Royal Assent but objectives will reflect commitment to providing continuing subsidy to support regional and commuter services.

PRIVATISATION: FARES

Will you control fares levels?

On the question of fares levels, there will be controls on railway operator's freedom to increase fares where they might otherwise be able to take advantage of having significant market power to exploit passengers, for example on London commuter services. These will be exercised by the Franchising Authority for franchised services and by the Regulator for fully privatised services.

The Franchising Authority may also need to consider potential operators' proposals for fares levels when judging their bids to run franchised services and might need to ensure the franchise contract that they maintain the fares franchisees proposed in their tender.

PRIVATISATION: CLOSURES

Will there be a statutory closure procedure? Will it explicitly cover services, stations and track [including freight lines]?

We made clear in White Paper that we see no reason why our franchising/privatisation proposals should lead to closure of services.

Agree the need for a formal, statutory closure procedure offering no less effective a safeguard than that existing. There will clearly need to be some changes to the existing procedure to reflect the changed

structure of the railway. Details of scheme are set in Bill (Clauses 35-44)

[if pressed - do not believe freight only lines should be brought within the closure process, Freight is a commercial business and the market process should decide the level and nature of freight facilities required].

PRIVATISATION : RAILTRACK

What staff numbers do you envisage for Railtrack?

This will be up to the senior management of Railtrack to determine. Railtrack will be required to contract out its support activities where this presents value for money. Staff employed in non-core activities will not be transferred from BR.

Will private sector staff be recruited?

This will be up to the management of Railtrack to decide. They may wish to recruit staff from the private sector who have expertise not available within BR.

Will there be a compulsion to take on existing BR staff?

Staff involved on activities to be undertaken directly by Railtrack will transfer automatically under TUPE. Others will remain in BR pending privatisation of their activities.

What does this leave for Bob Reid?

He will continue to manage all remaining activities of BR until they are either franchised, sold or contracted out. Thereafter, the Board will retain responsibility for residual assets and liabilities remaining behind with BR.

Does this not signal the Government's dissatisfaction with Sir Bob?

Not at all. He has performed admirably in a very difficult economic environment. But the Government has now decided that railway operations should be separated from track and infrastructure. A new start is needed for Railtrack, and without the distraction or conflict of interest involved in remaining in the ownership of a body which also operates trains.

Why is it not necessary or desirable for Railtrack to stay in BR's hands?

We originally envisaged that Railtrack would remain in the ownership of BR. Even as a separate subsidiary of BR, Railtrack would remain entirely under BR's control. As a part of BR, Railtrack would inevitably retain the old BR culture and way of doing things. And it would be providing track not just to private sector operators but also to BR services in the same ownership. A new start is needed for Railtrack, and without the distraction or conflict of interest involved in remaining in the ownership of a body which also operates trains.

What direct activities will Railtrack undertake itself?

The Government's provisional view is that Railtrack's principal direct activities will include (this list is not exhaustive and does not include activities such as financial management):

- (1) day-to-day operation of the track and signalling
- (2) long term planning
- (3) operational timetabling
- (4) sales and marketing, grouping of train paths and capacity, negotiation of access
- (5) buying in services
- (6) coordination of infrastructure investment.
- (7) safety validation of service operators

What support activities will Railtrack be expected to contract out?

The Government will be looking to Railtrack to obtain by contract, unless there are conclusive reasons to the contrary, the following services in particular:

- (1) civil engineering design and contracting services, including track maintenance
- (2) design, manufacture, installation and (possibly) maintenance of signal and telecommunications equipment
- (3) maintenance of plant
- (4) maintenance of electrical installations.

What steps will be taken to ensure that Railtrack is stimulated to be efficient and responsive to customer demands, which will now come from the franchisees and from the freight companies?

Railtrack will be expected to act in a commercial manner. Revenue subsidies will be paid for the provision of services. So Railtrack will not be subsidised, but will be expected to charge operators for the use of its track which will be its main source of revenue, and to make a return on its assets. It will be set performance objectives, and will incur financial penalties if its performance falls below levels laid down in its contracts with operators.

If signalling is faulty, will Railtrack pay compensation?

Track access contracts between Railtrack and service operators will provide for penalty payments to be made in the event of Railtrack's performance falling below predetermined standards, such as where delays are caused by signalling faults.

RAIL FREIGHT - GENERAL

What does the Bill say about freight?

- It provides for open access to the rail network for new train operators, thus ending BR's freight monopoly

- It provides the powers necessary to transfer BR's freight operations to the private sector

- It establishes clear procedures for access and licensing

- It establishes a Regulator who can protect freight operators against monopoly abuse

- It updates the Freight Facilities Grants Scheme, and provides scope for its enhancement

When do you propose to sell off freight?

- The sale process will commence from April 1994 (when Railtrack is established)

What expressions of interest in running services?

Numerous, including open access and "own account". Recent conference attended by 300 people, mostly private sector, the vast majority keenly awaiting privatisation

Are today's announcements too little, too late?

Not at all. Rail freight badly affected by recession and changes to traditional markets. Our helping hand is aimed at reversing the long-term decline

Will rail freight grow?

Have to be realistic. Severely competitive market. Rail not really suited to "just-in-time" and widely dispersed market outlets. But our proposals offer hope of a recovery, including opportunities in Europe.

Moratorium on current rail freight closures?

Cannot impose this on BR, who must recover their marginal costs. Flows recently lost were severely loss-making. But the worst of the pain should be over. New traffic recently won to rail.

SNCF threat to sue?

No evidence that privatisation will threaten Channel Tunnel freight volumes. Vast market opportunity for private sector. Increased distances will tilt the balance in favour of rail. Should be welcomed by French.

ENHANCEMENT OF FREIGHT FACILITIES GRANTS:

Q1. Do the revisions announced to the Freight Facilities Grant scheme today go far enough?

A1. The new criteria (removal of lorries from motorways; inclusion of all forms of rail-related capital expenditure) add up to a very considerable enhancement of the existing Freight Facilities Grant Scheme, and I hope industry will take up the opportunities this offers.

Q2. Doesn't the small budget available for these grants act as a deterrent to prospective applicants?

A2. No proposal has been turned down through lack of funds. We shall bear in mind the likelihood of additional demand in setting future budgets for these grants.

Q3. Has not the number of grants awarded tailed off in recent years?

A3. Accept that levels not as high as mid-1980's, when much re-investment was taking place, but there is considerable interest in these grants again, and I am confident that my announcement today will stimulate more. Since 1979 the Government has awarded 140 grants worth £63m. This represents the removal of over 3 million lorry journeys every year. Several large schemes are

under consideration at the moment.

Q4. Too difficult to obtain grant and smaller firms are deterred by the application procedures?

A4. Earlier research found this not to be a great problem. Not Government's intention to burden industry but need for proper accountability. Smaller grants often go to smaller businesses which raises the question of commercial viability. Specialist consultants are available to help firms in preparation of grant applications.

Q5. Need for long term commitment to rail deters potential applicants?

A5. We are prepared to consider short-life projects where these still offer value for money. Often rail projects of short duration do not provide worthwhile environmental benefits for the cost involved.

Q6. Planning restrictions which preclude award of grant discourage switch from road to rail?

A6. All applications for grant considered on their merits. But, where local planning authorities make the use of rail a condition of planning permission it would normally be inappropriate to pay grant due to lack of road alternative.

Q7. Will intermodal systems be eligible for grant?

A7. Yes, in principle the rail element of intermodal systems will be eligible. Each scheme will have to be judged on its merits because intermodal systems will vary greatly in type.

Q8. Why not extend scheme to coastal shipping as well as rail and inland waterways?

A8. Current s.36 scheme already embraces freight carried by sea. Large number of UK ports fall within definition of "inland waterway". Want to see whether enhanced grant rules and greater publicity increase take-up before considering whether further measures (which would require legislation) are necessary.

Q9. Why so few s.36 awards when compared with rail schemes grant aided under Section 8 of the Railways Act 1974?

A9. Scheme is demand-led. Up to industry to put forward worthwhile schemes for the Government to consider.

Q10. How much extra money will be available?

A10. This will depend on demand for the Scheme and other pressures on public funds

Q11. When will it come on stream?

A.11 Need approval for the Bill. Will introduce as soon as possible thereafter.

Q12. Who will administer the
new Scheme?

A12. Same as existing
Scheme, i.e. DoT, Scottish
Office and Welsh Office.

NEW SCHEME TO ASSIST WITH TRACK CHARGES

Why introduce this Scheme now?

Government wants to see as much freight on rail as possible. This carefully targetted scheme will help to retain or attract marginal traffic which would otherwise go by road

Will it help existing traffic being lost?

Needs legislation, so there will be a time-lag. Recently-shed flows probably not salvageable

How much money will be available?

This will depend on demand and other calls on public expenditure. Experience from the Freight Facilities Grant Scheme shows that small amounts can achieve big results

How much traffic will be saved?

Too early to say. Traffic which cannot even cover its own operating costs will be lost - but a lot should be saved, and new traffic gained

Will the Scheme be permanent?

The Scheme will be reviewed after a few years. Grants will be linked to commercial contracts between customers, operators and Railtrack, and will last for the duration of those contracts.

How will it work?

Similar to FFG, but it will be a revenue grant rather than a capital grant. Applicants must demonstrate that road haulage of their traffic would be cheaper than rail, and identify the clear social and environmental benefits of lorry-mile reductions.

Grant would be paid up to the total of the applicants track charges. For particularly

sensitive flows, this could mean free track access at the point of use.

Why not apply to other modes, e.g coastal shipping?

Rail freight is in a period of upheaval, with special difficulties. These do not apply in the same measure to shipping, and parallel measures are unnecessary.

The Scheme is targetted specifically at rail track charges - the sea is free!

WEIGHT INCENTIVE FOR VEHICLES IN COMBINED TRANSPORT

When will the change be made?	The Government will publish a consultation paper shortly. Subject to the views received, the change will come into effect a.s.a.p.
What types of lorry?	Articulated vehicles and drawbar trailer combinations (a rigid vehicle pulling a trailer)
Present weight limits?	38 tonnes for articulated vehicles and 35 tonnes for drawbars
Bigger lorries?	44 tonne lorries will be no bigger than existing vehicles
Damage to the roads?	44 tonne vehicles on six axles and with road-friendly (usually air) suspension cause no more wear and tear than present vehicles
How will you confine the concession to road/rail operations?	Subject to consultation, we propose that the higher weight incentive be subject to a distance limitation from railheads and that a consignment note be carried
Why only lorries carrying containers and swapbodies?	Whole vehicles cannot be carried by rail in the UK and road/rail operations will be confined to the carriage of such units
What is a swapbody?	A demountable vehicle less heavy than a container

What is road-friendly suspension and axle layout?

Suspension which reduces the dynamic loads transmitted to the road. This would be coupled with specified minimum distances between axles

Financial implications for operators?

None. Operators will invest in such vehicles if it makes economic sense for them to do so

Views of road hauliers?

Consultation paper shortly. This will discuss the technical and other issues in detail and will be sent to those with an interest, including the road haulage industry

Q&A BRIEFING ON ACCESS AND CHARGING

How much will an independent operator pay to run trains?

The price charged to each operator will be a matter for commercial negotiation, subject to control by the Regulator.

What will the Regulator's role be?

The Regulator will approve access agreements and in doing so will have duties to protect the interests of users and to promote competition.

Why negotiated prices?

It is policy that infrastructure costs be paid by users rather than the taxpayer at large. Charging operators only their own costs would not allow the full costs of the network to be recovered, because most costs are common costs. So the Government would be subsidising infrastructure. If the common costs were averaged out, many operators would be unable to meet their share; they would be priced off the network; remaining operators would then have to pay more to joint costs, so more would drop out; and so on into a vicious spiral. Negotiated prices will allow Railtrack to recover costs without pricing off the less robust traffic.

Negotiated pricing means price discrimination. Isn't this against European law?

No. Article 8 of EC Directive 91/440 requires that track charges be determined on a non-discriminatory basis. But our advice is that the commercial value of paths is a relevant factor; and that it is permissible to charge different fees to operators in different markets. The Commission have indicated that our approach is acceptable.

What about the comparison with roads? I don't pay access fees to "Roadway".

We are looking at road pricing, which is clearly a complex issue. The principle is that the costs of infrastructure should be covered by users. Road users pay some two and a half times in special taxes the amount spent on roads.

Will there be discounts in charges to reflect the environmental benefits of rail travel.

Charges will be negotiated, not cost determined. Section 8 grants will continue. More efficient to pay for specific environmental benefits than to throw money at infrastructure.

How will the price paid for paths by the Franchising Director be fixed? Won't it just be shuffling money around within Government? What happened to the commercial approach?

The principles will be announced in a detailed document we will publish soon. Railtrack will be given clear incentives to maximise its return: the FD will be working within a budget. So both will seek to work the system as efficiently as possible. In the longer term the mechanism for allocating access will show the commercial value of the paths taken by the Franchising Director.

You have hinted at a short term and a long term. What's the difference?

In the short term there will be an explicit priority for franchising. The Franchising Director will secure the train paths he needs from Railtrack before paths are offered to independent operators. In the long term, Railtrack will assess the demand for paths from both the Franchising Director and independent operators before offering paths to the market. The Franchising Director and independent operators will then apply for paths simultaneously. This will expose the commercial value of paths and create more competition.

When does the short term become the long term?

We don't know yet. Whole of our policy has recognised that rail is loss-making: hence not a classic privatisation. Long term starts when industry strong enough to support the system. Timing likely to vary from line to line.

In the short term, BR will run services. How will this be arranged?

BR will be at arms-length from Railtrack. It will require an access contract. Subsidy will be channelled through the Franchising Director.

In the short term, it seems that the Franchising Director has the right to secure the trainpaths he wants. But how? No powers in the Bill.

We are considering how best to achieve this. May be that the Bill will need amending. A and decided what to offer to the technicality: policy is settled.

OR IF POLICY IS AGREED:

The Secretary of State will be able to give statutory guidance to the Regulator, which he will have to take into account. This will require a change to the Bill.

Isn't the delay in bringing in competition a climbdown?

No. We have always recognised this is a difficult privatisation and pragmatism is the order of the day. More radical changes over time. Amused to hear our opponents being converted to the benefits of competition: also to being criticised for pragmatism and careful consideration of policy.

In long term, how will competing bids for train paths between independent operators and the Franchising Director be resolved?

On basis of who pays most. It will be possible for the FD to outbid an independent operator but he will have to pay the market price for the path which the system will expose. Railtrack will deal both with the FD and with independent operators on a commercial basis. Details will be in the published document.

Who will write the timetable?
Will it change over the years?
How?

Railtrack. Yes. Railtrack will want to offer paths which best meet customer demand because it will seek to maximise its revenue. The Franchising Director is likely to have different requirements over the years as passenger demand varies.

What happened to the Coopers report?

Coopers continue to advise HMG on railway access and charging. They have participated in the drawing up of our proposals. But this is Government policy, and it is right that we, not Coopers, take responsibility.

NETWORK BENEFITS - Q&A BRIEFING

1. Will there be a national timetable?

Yes. Railtrack will be responsible for producing a working timetable for the railway; and will be required in their licence to ensure its publication.
2. Will through-ticketing continue?

We have given a clear commitment that through-ticketing will continue. This will be a requirement on every operator providing timetabled services.
3. Will through-ticketing be available only at full fares?

We have no reason to think that through-tickets will not be available across the range of discounted tickets as well as full fares.
4. What about Railcards?

We recognise the popularity of Railcards and expect that future operators will want to develop similar products to attract custom.

Railcards have not always been profitable in the past. It could only be right to impose such obligations generally if the benefits exceeded the overall costs. That judgment is properly for the Regulator, in the light of his statutory duties [but see Q5 below]
5. Disabled Persons Railcard?

We understand how much this is valued by people with disabilities, who rely particularly on the railway. We intend to ensure that all franchise operators will be obliged to offer discounts to disabled people.

6. Will you guarantee inter-availability?

We believe it would be wrong to impose a universal obligation. Inter-availability implies a degree of price fixing, which could be anti-competitive. So it will not always be appropriate.

The important point is that if validity is restricted, passengers should still have the flexibility to make last minute changes to their journeys without undue penalty.

For franchisees, requirements as to inter-availability will be a matter for the franchise agreement. Open access operators will be free to negotiate with other operators, subject to any requirements the Regulator might impose in the public interest.

7. Passenger information

It will be in operators' own interests to ensure wide availability of information. There will be conditions in licences and agreements to ensure against unfair competition in this area.

8. Travel trade

We see a continued and increasing role for ticket retailing through travel agents and in the High Street. There will be full opportunity for this, drawing on centralised ticketing data, as now.

9. Revenue allocation arrangements?

We envisage operators continuing to participate in central arrangements, both for ticketing and the apportionment of receipts.

This is implicit in our commitment to through-ticketing, and will be secured through the licensing arrangements.

10. Future of Britrail?

Current arrangements for the sale of national rail travel overseas appear to work well. We expect them to continue under collective arrangements in future.

11. Warrant accounts?

There is no reason why major customers should not continue to negotiate favourable deals with future train operators. We see no need to make special arrangements in this connection.

R2B2 January 1993

RAILWAYS BILL

General

Bill provides for new bureaucracy - more civil servants and Quangos ?

Not so. Apart from the Regulator no new activities. Franchising Director will do what DoT and BR have been doing, but he will do it on a more transparent basis. Otherwise replacements for existing bodies. Railtrack created out of existing BR.

Bill applies to all railways not just BR ?

Policy directed at BR but Bill could not be drafted to apply to BR only (hybridity). Provisions applying to all railways accompanied by generous powers of exemption. Intention is to exempt London Underground, preserved railways etc

Would Bill allow you to privatise or franchise London Underground ?

No. The restructuring provisions in Part II only apply to BR.

When will the Bill become law ?

Hope to secure Royal Assent in the Autumn.

Is any new money involved ?

Provision to pay for running costs of Regulator (up to £5m a year) and Franchising Director (up to £10m a year).

Franchising Director will pay subsidy to franchisees. Over time with private sector efficiencies anticipate provision of rail services at lower cost than would otherwise have been the case.

This privatisation not an exercise in making money but want to ensure taxpayer getting value for money.

Why have you published Bill before all your proposals have been announced ?

Bill provides the necessary statutory basis for all our proposals. Bill is not the place for details of implementation

Why publish before Select
Committee Report ?

Interim Report gives clear
indication of what will be in
final Report. Have answered
points made in interim
report. Final Report will
provide further contribution
to debate.

The Bill

Part I

Why are you stopping BR from being a franchisee ? (Clause 24)

Policy is to maximise private sector involvement in running railways. But private sector will want to utilise expertise of BR management and staff. Opportunities for staff and managers to bid for franchises. Hope they will.

Is not excluding BR against EC Procurement Directive ?

I understand Procurement Directive does not apply to concessions and therefore not to franchises. Our policy of not allowing BR to bid for franchises would therefore not contravene Directive.

Will you let SNCF bid for franchises ?

It is not the aim of policy to extend public sector involvement. Want private sector to come in.

Why does money Franchising Director receives go to Treasury ? (Clause 27)

Treasury will set Franchising Director's budget and provide subsidy for socially necessary services that are franchised.

How does new closure procedure differ from old one ? (Clauses 35 to 44)

New procedures build on the existing procedures to provide same level of protection. Changes reflect new structure of the railways.

Differences include: Decisions on closures will be for the Regulator but there will be right of appeal to Secretary of State; Regulator's decision time limited to 26 weeks; simplified procedure for minor infrastructure closures.

Will Regulator and Franchising Director produce Annual Reports ?

Yes. Clause 64 provides for this. Reports will be published.

Duties of new consultative committees more restricted than previously ? (Clause 66 to 68)

Consultative committees will fulfil very similar role to now and will have very similar duties and functions. Still an effective voice for the consumer. Differences to reflect new structure of railways. Only significant change is that committees will come under the Regulator.

Part II

Will you be writing off debts of companies for franchising before transfer to private sector ?

Clauses 95 and 98 give us reserve powers to write off debt. Unlikely that franchise companies will transfer with any significant debt.

Why include provisions for flotation ? (Clauses 96 and 97)

We do not want to close off options for the future.

Where does the Bill provide for capital grants for Railtrack as promised in White Paper ?

Clause 99 provides for Government to give grants to the BR Boards and to BR subsidiaries.

Part III

What bye-laws will private sector operators be able to make ? (Clause 112)

Would Bill allow direct funding of British Transport Police ? (Clauses 114 and 115)

Does Clause 118 place a new ceiling on the level of PSO ?

Will BR still be paid subsidy for services it operates that are not franchised ?

Do the freight facilities grants provisions (Clauses 119 and 120) mean new money is being made available ?

Similar to those of BR now eg no smoking in carriages. Bye-laws will need to be submitted to SofS for confirmation.

Bill includes provisons to enable SofS to amend or make new scheme. Funding one of issues discussed in consultation document. No final conclusions reached yet.

No this recreates the existing PSO ceiling.

Government will carry on paying BR subsidy for loss-making services not yet franchised. Clause 118 provides for this.

The Clauses expand the scope of the freight facilities grant scheme allowing us to take a wider view of the benefits to be assessed. Will allow us to look at benefits on a wider 'public interest' basis rather than just benefits to the locality as at present.

Issues not covered in the Bill

Why is there nothing in the Bill about ... ?

- what will be in licences
- what will be in access agreements/charges operators will have to pay
- what charges operators will have to pay
- what will be in franchise agreements
- the services to be franchised
- 'Railtrack'
- the new safety regime recommended in HSC Report

The Bill is largely an enabling measure. It will provide the necessary statutory framework for the implementation of our privatisation policies.

There will be different licences for different types of rail operator. Bill is not the place for detail of this kind. Will be producing illustrative draft of a licence to aid Parliament's consideration.

Tailored to individual operators although Bill provides for Regulator to produce model clauses. Will be producing illustrative draft to aid Parliament's consideration.

I will be announcing details of how we intend to implement access and charging policy and publishing a document very shortly. Such detail not appropriate for Bill.

Franchise agreements will be tailored to each franchise. Not appropriate for face of Bill. Will be producing illustrative draft to aid consideration of franchise provisions in Parliament.

Not appropriate for Bill. Will be announcing these shortly.

Names of companies rarely mentioned in legislation. Name may change in future. Railtrack covered by 'network owner' and leaves option open for more than one.

Safety regime to be implemented by Health and Safety regulations. Clause 107 facilitates making of those regulations.

Long Title

Why are ferries included in the long title ?

Simply to allow functions of existing Scottish consultative committee in respect of the Caledonian Macbrayne ferry to be continued by new Scottish consultative committee.

Do the Bill provisions apply to tramways as well ?

No. Tramways included in rail safety legislation being brought within ambit of Health and Safety at work Act to facilitate making of regulations by HSE for new safety regime.

What about inland waterways ?

Reference needed in long title because of the freight facilities grant provisions.



ALL CLOSURES LISTED ARE RELATIVELY MINOR

For decision before October 1993

Elsham and Brocklesby - 2 rural unstaffed stations in South Humberside

Llangelynin (Gwynned) - unstaffed halt on Cambrian coast

Philips Park Jct to Ashburys West Jct - 2 little used passenger
 & lines in the eastern
 Denton Jct to Ashton Moss Jct suburbs of Manchester

Morecambe - relocation of station in connection with local development project

Ditton - station just north of Runcorn on the Crewe-Liverpool line

Proposals likely to be announced before October

Dover Western Docks and Folkestone Harbour - both connected with the proposed withdrawal of Boat Trains to these stations

Attercliffe and Brightside - both stations to the east of Sheffield are lightly used following the opening of nearby Meadowhall station

Regional Railways may bring forward some other proposals involving lightly used stations.

MAJOR SERVICE CHANGES

May timetable

IN GENERAL, FEW DRAMATIC CHANGES.

INTERCITY

- direct services between London and Cleethorpes will be withdrawn. Passengers will need to change on to Regional Railways services at Newark
- direct services between London and Hull will be reduced to one (previously two) trains a day. Passengers will need to change trains at Doncaster
- London-Dover service to be withdrawn, except on summer Saturdays

REGIONAL RAILWAYS

- direct service from North West/Midlands to Stansted Airport will be withdrawn (apart from one train a day). Passengers will need to travel from Cambridge to Bishops Stortford to connect with the Liverpool Street- Stansted Airport service. Alternatively, they could travel via London
- some services will be thinned, mainly Sunday and late evening. These are not targeted at one particular part of the country.
- new service to Manchester airport to start

NETWORK SOUTHEAST

- General thinning of services in response to demand - peak demand fell about 7% between 1991 and 1992 autumn counts
- some improvements in services will take place during the year with the introduction of new stock on Waterloo-Exeter and Waterloo-Bank services.

September timetable

Too early for full details to be available. However, we are aware that Regional Railways are planning to withdraw Sunday services for the duration of the winter timetable from the following lines:

Derby-Stoke
Derby-Matlock
Nottingham-Lincoln
Lincoln-Cleethorpes
Retford-Lincoln

CREWE-HOLYHEAD

Background

1. There has long been a vociferous lobby to electrify the Crewe-Holyhead line.
2. Local Councils commissioned consultants to report on the viability of the project. They concluded that electrification was justified. But we have doubts. The line does not seem to have enough usage, either now or in prospect, to justify electrification. We believe the conclusion is dependent on capturing alleged contributory benefits of flows to the Manchester area, which in turn would require electrification of further lines. BR are not interested in electrification, certainly in the short term.
3. There are considerable and complex political sensitivities. There is Mr Hunt's concern to maintain an InterCity service, and assist the depressed port of Holyhead. There is the Irish Government's desire to see Dublin-Holyhead as the prime route linking Ireland to the Community. There is the conflicting concern of the Northern Irish and the Scots to protect the position of Larne-Stranraer. And there is the Commission, with their proposals for developing high speed and conventional rail networks. Crewe-Holyhead is on the high speed network map, thus encouraging lobbyists (probably unrealistically) to say that European grants are already available for electrifying the line, and causing deep suspicion in Belfast and Scotland.
4. Mr Freeman is to meet the local councils to discuss the consultants report on 22 March. It is likely that Sir Wyn Roberts will accompany him.

Line to take

- studying consultants report. Mr Freeman meeting local Councils on 22 March.
- any proposals for electrification must be fully justified.
- recognise international dimensions. But equally very few international passengers going through to continent. And freight services not dependent on electrification, since freight services to the EC would need to go via the Freight Terminal at Liverpool, and to change locos.
- Railtrack will be responsible for taking lead on infrastructure investment post-privatisation. Will be close collaboration with service operators, particularly in matters such as future electrification

BUS OPERATORS BIDDING FOR FRANCHISES - LINE TO TAKE

I am pleased that many bus companies have expressed an interest in bidding to run franchised passenger rail services, and I know that this interest is often related to services in areas which are complementary to their existing bus operations.

I believe that there could well be benefits for passengers from a bus company running a rail franchise so as to provide reliable connecting services.

It is not possible to give a blanket assurance that particular operations will never be investigated by the competition authorities. It would not be desirable to do so. Our policy for involving the private sector in running the railway is based on our desire to end the BR monopoly and promote competition.

As with all mergers, it will be open to companies who may be thinking of bidding for rail operations to approach the OFT, who are able, on a confidential and non-binding basis, to provide advice on whether or not the prospective acquisition would be likely to be referred to the MMC. This is a useful procedure and I would urge prospective bidders to contact the OFT at an early stage.

However, the key point, I believe, is that prospective bidders who are genuinely interested in running services that benefit the customer should have no fear about taking on a passenger franchise, and running it in that way. It is anti-competitive, anti-passenger practices that we must and will guard against.

Will all BR's existing rolling stock be transferred to private sector leasing companies so that BR has to lease back the trains it needs to run the services it remains responsible for?

No. As a general rule we do not envisage rolling stock being sold in advance of franchises being let. There is, however, a possibility the rolling stock will be transferred to public sector leasing companies which might then lease it back to BR.

ADVERSE WEATHER CONDITIONS IN SCOTLAND

Thomas (Tommy) Robertson

Period of atrocious weather conditions culminated in severe flooding over the weekend of 16/17 January.

Many engineering staff were on duty for extremely long hours.

Thomas Robertson was leader of night shift on the Saturday night out inspecting track and infrastructure. Previously been on call all day dealing with incidents as they arose.

Discovered one of the piers of the 5 span Forteviot Bridge had collapsed due to severe river scour damage.

This led to the track on 2 spans dropping by 1.5 metres. The actual rail track did not break and therefore the track circuit had not failed.

Damage

Severe flooding in Fife and Tayside.

Perth-Inverness, Mallaig/Fort William-Crianlarich and Dingwall-Kyle of Lochalsh lines also closed for a while.

Staff at ScotRail worked round the clock to restore services.

Most lines quickly back to normal service but lines in Tayside still affected.

Glasgow-Stirling-Perth-Aberdeen services have been re-routed, with some connecting bus services. This is because of the problems at Forteviot Bridge and is likely to last for 3 months.

Glasgow-Perth-Inverness services still affected by line blockage between Perth and Pitlochry. Connecting bus service provided. Line should re-open shortly.

Second Reading Debate: Foreign Comparisons

- Line to take
- Comparisons between railway systems of different countries can be misleading and must be treated with care (since each country has its own individual geography, economy and culture).
 - Our proposals are not unprecedented:
 - * Argentina, US and Sweden have already let 'franchises' for passenger services.
 - * Sweden already has a national track authority and Germany has plans to set one up (1997?).

Points to Make - BR compared to other national carriers

- BR very efficient compared to European counterparts (only NS, the Dutch carrier, is more efficient) - therefore needs less subsidy
- BR has lower debt levels than other railways (BR debts £1bn; SNCF £14bn; DB(Germany) £22bn and, further afield, Japan £180bn)
- BR runs more trains at over 100mph than any other European country
- BUT more can be done, hence privatisation
- AND we are not alone, other countries reorganising their railways as well

Key Facts on other countries' railways privatisation plans

1

- Argentina - railways currently losing £400m pa
- undergoing restructuring of railway services
 - policy is to let 'concessions' (franchises) for running services to private sector: six 30-year freight concessions (two already let); one 30-year intercity concession and seven 10-year commuter concessions (starting this year)
 - Government to own track and equipment and pay for redundancies (arrangement with World Bank)
- France
- subsidy to SNCF is high, but much of it goes to servicing its debt of £14bn (1991 figure) - £1.3bn interest annually, over a third of the total Government subsidy (£3.3bn)
 - although the French have no immediate plans to privatise, private capital has long been an important element in rail investment
- Germany
- combined DB/DR loss for 1992 expected to be £5.5bn
 - plans for restructuring similar to UK
 - split into business sectors: freight, passenger and infrastructure (projected for 1997)
 - aim is to privatise in the beginning of the next century
- Japan
- restructuring took place in 1987 when huge debts and inefficiency could no longer be tolerated
 - * old national JR split into seven new companies
 - one freight and six passenger, but still publicly owned
 - * the three Honshu companies are now profitable.
 - aim to float shares of profitable companies when stock market more favourable (should have been floated last year but for Tokyo stock market crash)

Key Facts on other countries' railways privatisation plans

2

Sweden

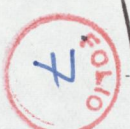
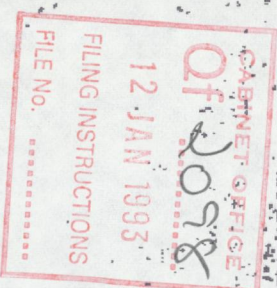
- restructuring took place in 1988
- national track authority, Bankverket
- franchises for regional, subsidised services put out to tender - private operator (BK Tag) has already run contracts, and the competition has forced SJ to reduce its costs by 20-30%
- aim to deregulate all Swedish services from 1995 (Commission looking at method, report imminent)

US

- some commuter lines put out to tender eg one of the Chicago lines run by Burlington Northern, a large, private freight operator
- track predominantly in hands of private freight companies



THE DEPARTMENT
OF TRANSPORT



RAILWAYS 2, DIRECTORATE

Fax Transmission

→ Mr Gallows

Theresa NB 13/1

Railways
Miff Turnbull

No. of pages: 3
(including this cover sheet)

Date: 11.1.93
Time Sent: 17.35 HRS

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Subject: Railways Bill

Comments:

TIMEABLE, AS REQUESTED.

WBS	Task Name	Start Date	End Date	Rev	1983			
					Q1	Q2	Q3	Q4
A	LEGISLATION	30 Nov 1982	26 Oct 1983					
A.2	MAIN LEGISLATION	7 Dec 1982	26 Oct 1983					
A.2.1	Notes on Clauses	7 Dec 1982	8 Feb 1983					
A.2.2	Last chance Instruct Counsel	8 Jan 1983	8 Jan 1983					
A.2.3	Final examined by Counsel	12 Jan 1983	12 Jan 1983					
A.2.4	L Committee	12 Jan 1983	19 Jan 1983					
A.2.5	Final Reading	21 Jan 1983	21 Jan 1983					
A.2.6	Second Reading	1 Feb 1983	1 Feb 1983					
A.2.7	Pre-Committee Tasks	9 Feb 1983	9 Feb 1983					
A.2.7.AA	Access: Heads of Agreement	9 Feb 1983	9 Feb 1983					
A.2.7.AB	Model Franchise Agreement	9 Feb 1983	9 Feb 1983					
A.2.7.AC	Rik Co. memoranda & articles	9 Feb 1983	9 Feb 1983					
A.2.7.AD	Rik and F.A. High level Obvies	9 Feb 1983	9 Feb 1983					
A.2.7.AE	Model Licenses ready/cops & Rik	9 Feb 1983	9 Feb 1983					
A.2.8	Committee	9 Feb 1983	1 Apr 1983					

A29	EASTER RECESS		2 Apr 1993	14 Apr 1993		A29 ■ A210
A210	Committee (Cont.)		15 Apr 1993	4 May 1993		■ A216
A211	Notes on Cases (Cont.)		8 Feb 1993	18 Jun 1993		A210 I A213
A212	Report/Third Reading		11 May 1993	12 May 1993		A212 & A214
A213	Introduction to Lords		13 May 1993	13 May 1993		A213 ■ A215
A214	SPRING RECESS		21 May 1993	2 Jun 1993		A214 & A216
A215	Lords Second Reading		7 Jun 1993	7 Jun 1993		A216, A211 ■ A217
A216	Lords Committee		21 Jun 1993	6 Jul 1993		A216 I A218
A217	Lords Report		26 Jul 1993	27 Jul 1993		A217 ■ A218
A218	SUMMER RECESS		29 Jul 1993	18 Oct 1993		A218 & A219
A219	Lords Third Reading		20 Oct 1993	20 Oct 1993		A219 & A220
A220	COLA		26 Oct 1993	26 Oct 1993		A220 A
A221	Royal Assent		29 Oct 1993	29 Oct 1993		

END

Miss Turnbull

Mr Galloway

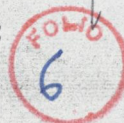


POLICY IN CONFIDENCE

to keep or destroy

FROM: R Bird

DATE 2 NOVEMBER 1992



MRS PAXMAN

CC MR GALLOWAY

MEETING ON COAL AND RAIL PAVING BILL

I attach a brief for the meeting tomorrow morning. Would you please attach to it the paper circulated under cover of my letter to Mr Sutton of 30 October.

Richard Bird

R BIRD

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Handling

5. You may wish to ask the Lord Privy Seal to explain why the Paving Bill has been stalled in the Lords. You could then run through the issues outlined above, inviting Mr Heseltine to comment on latest plans for coal privatisation and Mr MacGregor on the time table for rail privatisation.

Richard Bird

R BIRD

Cabinet Office

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to be introduced by the end of November. Any significant delay (particularly until after the Christmas Recess) would make it very difficult to enact such a large, complex and controversial piece of legislation this Session.

c. future options for Paving Bill. There are four possibilities viz.

- delay introduction of rail (and coal) privatisation Bills until Paving Bill is enacted;
- introduce rail (and coal) privatisation Bills before Paving Bill receives Royal assent;
- [if coal privatisation is to be dropped] amend Paving Bill to delete coal provisions (which if necessary can be reintroduced in a separate Bill later on in the Session);
- introduce new rail Paving Bill, suspending further discussion on existing Paving Bill.

All the above courses have difficulties (the feasibility of introducing the main rail privatisation Bill before the Paving Bill is enacted is discussed in the attached paper circulated on 30 October). The possibility of introducing a separate rail Paving Bill is under discussion with Parliamentary Counsel.

d. timing of future stages of Paving Bill. To be considered when the policy on the above issues has been settled.

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FROM: R BIRD
DATE: 2 NOVEMBER 1992

Lord President

MEETING ON FUTURE HANDLING OF COAL AND RAIL PAVING BILL

Decision Required

To agree how remaining stages of the Paving Bill are to be handled and on what time scale.

2. Background

The coal and rail Paving Bill provides for British Coal and British Rail to spend money on privatisation. The Bill has had its Commons stages and Second Reading in the Lords but is currently stalled because of the recent difficulties on coal pit closures.

3. Issues

a. future of coal privatisation. Future handling of the Paving Bill depends crucially on the strategy for coal privatisation. If the review of coal pit closures now means that there is to be no coal privatisation this Session there is no longer any urgency to proceed with this part of the Paving Bill (though coal Paving Legislation this Session would make it easier to secure early introduction of the coal privatisation Bill in 1993/4).

b. timing of rail privatisation. This is currently due to go to LG on 17 November. Mr MacGregor said in the Commons on 29 October that the Bill was expected

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POLICY IN CONFIDENCE

T Sutton Esq
Private Secretary to the
Lord President
68 Whitehall
London SW1A 2AT

30 October 1992

Dear Tim

RAIL PRIVATISATION

Following the meeting between the Lord President and the Secretary of State for Transport on 21 October you asked me to prepare a note on the implications of introducing the main railways privatisation legislation before the Paving Bill receives Royal Assent.

With the help of Parliamentary Counsel and the Department of Transport I have brought together the attached paper. As you will see the conclusion is that to proceed in this way would be a very high risk strategy indeed.

I am copying this to Joan Bailey (Lord Privy Seal's office), Paul Coby (Secretary of State for Transport's office), Murdo Maclean (Chief Whip's office), Ed Ollard (Chief Whip, Lords' office), Peter McCarthy (Department of Transport) and Robert Parker (Parliamentary Counsel).

Yours ever
R Bird

R BIRD

LINKAGE BETWEEN RAIL PRIVATISATION LEGISLATION AND THE PAVING BILL

Introduction

1. This note reviews the feasibility of introducing the main Railways Privatisation Bill before the Paving Bill (British Coal and British Rail (Transfers Proposals)) was enacted.

Background

2. Following the precedent of water privatisation (where the threat of legal challenge by NALGO forced the Government to seek paving powers), the British Coal and British Rail (Transfer Proposals) Bill was introduced in order to confer the right on the two nationalised industries concerned participate in their own privatisation. It was always intended that this legislation should be enacted before the main privatisation legislation was introduced and this was made clear by Ministers during debates on the Paving Bill (see Annex A).

3. There is no formal linkage between the two Bills and it is strictly true that the Rail Privatisation Bill could be brought in before the Paving Bill is enacted. But this would give rise to legal and political difficulties which are described below.

Risk of successful legal challenge

4. It is difficult to assess accurately the likelihood of challenge to BR's work on privatisation in the absence of the powers provided by the Paving Bill. The unions in particular must be aware of the precedent set by water privatisation but so far there has been no evidence to suggest that they are considering challenging BR's activities. Nevertheless the nearer the introduction of the main rail privatisation legislation becomes the more apparent it will be that BR are likely to have been undertaking activities which the powers provided by the Paving Bill are designed to cover. This will be even more the case if the main Bill is introduced in advance of enactment of the Paving Bill and the chances of legal challenge at that point must be high.

5. Legal advice is that such a challenge would almost certainly be successful. It is true that the Courts might recognise that the Government could make a certain amount of legitimate progress towards privatisation within existing powers, for example by requiring BR to

provide information or directing them to arrange their activities in a particular way though these powers could only be used for the limited purposes from which the powers were originally conferred. But if the main privatisation measure had been introduced the Courts would be virtually bound to draw the conclusion that BR's activities had come into the category of "facilitating privatisation" rather than going about their existing statutory duties. That the Paving Bill had received a Second Reading in both Houses would not be sufficient; the additional powers would only be conferred if the legislation had received Royal Assent. Nor does the Paving Bill have retrospective effect so there could be no "wiping the slate clean" once it was enacted. As BR's lawyers are bound to give similar advice, it is probable that BR would not seek to contest such a legal challenge.

6. The practical effect of a successful legal challenge would be that BR were forced to suspend their cooperation with the Government in developing the privatisation proposals but only until the Paving Bill had received Royal Assent. They would probably also have to cease employment of their privatisation consultants. Work by the Government on the privatisation Bill could however proceed provided that BR were not involved. But there would be serious embarrassment for the Government and it would make it considerably harder to secure a majority at Second Reading or more particularly during Committee stage.

Parliamentary handling

7. Even if legal challenge were not made, the propriety of introducing main legislation before completion of the Paving Bill would almost certainly become an issue at Second Reading. While this might not be a significant enough issue to lead, of itself, to a defeat for the Government, Ministers would find it difficult to explain why the Paving Bill was necessary if they were, after all, able to proceed with the main legislation before the Bill had been enacted. The final stages of the Paving Bill in the Lords would also be complicated. The Lords are likely to take the view that the Government was taking their agreement for granted in introducing the main legislation before they had fully considered the Paving Bill.

Conclusions

8. The main conclusions of this analysis are:

- a. although there is no sign of a legal challenge at present, the risk of such challenge would be heightened substantially by introducing the main legislation before the Paving Bill had received Royal Assent;
- b. the precise practical consequences of a successful legal challenge would depend upon the speed with which the Paving Bill received Royal Assent thereafter;
- c. but the political embarrassment would be very considerable and it would be difficult for the Government to make further progress with the Bill until Royal Assent for the Paving Bill had been secured;
- d. handling difficulties with both Bills would still arise even if there was no legal challenge although this might not prevent the main privatisation Bill receiving a Second Reading.

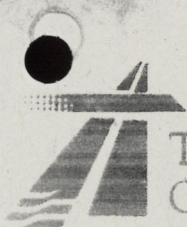
Cabinet Office
29 October 1992

Ministers have made it clear that the Paving Bill is needed to enable British Rail to assist in developing proposals for privatisation and specifically to help in preparation of the main legislation. For example Lord Caithness on Second Reading in the Lords on 13 July said:

"The Bill... will enable British Coal and British Rail to make their input into [our] proposals so that the Government can introduce main legislation that has had the benefit of the expertise in these two industries and to ensure that the proposals that the legislation seeks to implement will be workable."

(Hansard Col 13)

It would be very hard to reconcile such statements with introduction of the main legislation before the Paving Bill had received Royal Assent.



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15 FEB 1993
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Your Ref:

28 October 1992

Dear Richard,

RAIL PRIVATISATION

Thank you for your letter of 23 October.

I have consulted our lawyers and we would entirely endorse Robert Parker's assessment of the risk of a successful legal challenge to BR's work on privatisation were the case to go to court. He says, understandably, that he is not aware of the precise details of BR's involvement so far. In practice, BR have been closely involved with our work. We have established an elaborate network of joint working groups with BR on various aspects of the privatisation process. BR themselves have established a "privatisation studies unit" and have employed advisers - particularly Lazards - to help them prepare for privatisation. They have been commenting on the draft Bill. It is quite possible that all this activity would be regarded as ultra vires.

Because any challenge is likely to be successful, we think it unlikely that BR would seek to defend themselves. So the issue might never be argued in open court. Even so the problems, with BR having submitted to judgement, particularly of embarrassment, would be much the same. I attach a note which sets out considerations, other than those covered by Robert Parker, which will need to be borne in mind in deciding the scheduling of the further stages of the Paving Bill and our main legislation.

We agreed that you would work this into a consolidated note. I should be grateful for a copy as soon as possible.

*Yours ever,
Peter.*

P MCCARTHY
Railways 2B

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BR PAVING LEGISLATION

1. It has always been difficult to assess accurately the likelihood of challenge to BR's work on privatisation in the absence of the powers provided by the Paving Bill. We must assume that the Unions are aware of the precedent set by water privatisation (when the threat of a challenge by NALGO forced the Government to seek paving powers). And that they will be aware of the implications of our having introduced the Paving Bill. But so far there has been no evidence to suggest that the Rail Unions are considering challenging BR's activities. Nor is there any sign that BR might be considering withdrawing or restricting cooperation with the Government because of concern over the extent of the Board's legal powers.

2. Nevertheless, the closer we get to introduction of the main BR privatisation legislation the more apparent it will become that BR are likely to have been undertaking activities which the powers provided by the Paving Bill are designed to cover. Ministers have made it clear that the Bill was needed to enable British Rail to assist in developing proposals for privatisation and specifically to help in preparation of the main legislation. For example Lord Caithness on 2nd Reading on 13 July said:

"The Bill ... will enable British Coal and British Rail to make their input into [our] proposals so that the Government can introduce main legislation that has had the benefit of the expertise in these two industries and to ensure that the proposals that the legislation seeks to implement will be workable." (Hansard Col 13)

It would be very hard to reconcile such statements with Introduction of the main legislation before the Paving Bill had received Royal Assent. It would then become starkly clear that BR were vulnerable to challenge.

3. If there were a challenge to BR's work on privatisation the

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water industry precedent suggests that it is unlikely that BR would seek to defend themselves against the challenge in Court. Against the background of BR having admitted the validity of the challenge, BR would be forced to suspend their cooperation with the Government in developing the privatisation proposals. They would probably also have to cease employment of their privatisation consultants. Provided Ministers were prepared to face down the embarrassments, the suspension might, however, need to last only until the Paving Bill had received Royal Assent - which in practice may be only a few days. The practical effect of a challenge might therefore be minimal. But a challenge (successful, by virtue of not having been defended by BR) would be seriously embarrassing for the Government and for BR who would be under pressure to explain why they had, with the Government's encouragement, carried out work which they could be expected to realise would be judged to be ultra vires. A challenge (which in theory could occur at any time until Royal Assent to the main Bill) would add to the controversy of an already controversial policy and, depending on its timing, could complicate the passage of the main legislation.

4. The propriety of introducing main legislation before completion of the Paving Bill would almost certainly become an issue at Second Reading of the main legislation if the Paving Bill had not yet received Royal Assent. It is unlikely, in our view, to be a significant enough issue to lead, of itself, to a defeat for the Government; but, for the reasons outlined above, Ministers would find it difficult to explain why the Paving Bill was necessary if they were, after all, able to proceed with the main legislation before the Bill had been enacted. The final stages of the Paving Bill in the Lords would also be complicated. The Lords are likely to take the view that the Government was taking their agreement for granted in introducing the main legislation before they had fully considered the Paving Bill.

5. To summarise, our assessment is:

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- (i) that, although there is no sign of a challenge at present, the risk of challenge is heightened substantially by introducing the main legislation before the Paving Bill has received Royal Assent;
- (ii) a challenge might have little practical effect provided the Paving Bill receives Royal Assent quickly thereafter;
- (iii) a challenge would be extremely embarrassing to the Government and would complicate, but not seriously jeopardise, the Parliamentary passage of the main privatisation legislation.

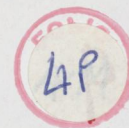


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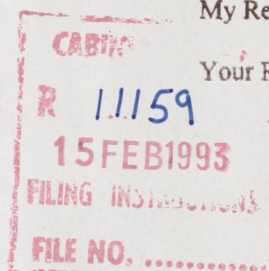
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Railways 2B

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3. If there were a challenge to BR's work on privatisation the

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water industry precedent suggests that it is unlikely that BR would seek to defend themselves against the challenge in Court. Against the background of BR having admitted the validity of the challenge, BR would be forced to suspend their cooperation with the Government in developing the privatisation proposals. They would probably also have to cease employment of their privatisation consultants. Provided Ministers were prepared to face down the embarrassments, the suspension might, however, need to last only until the Paving Bill had received Royal Assent - which in practice may be only a few days. The practical effect of a challenge might therefore be minimal. But a challenge (successful, by virtue of not having been defended by BR) would be seriously embarrassing for the Government and for BR who would be under pressure to explain why they had, with the Government's encouragement, carried out work which they could be expected to realise would be judged to be ultra vires. A challenge (which in theory could occur at any time until Royal Assent to the main Bill) would add to the controversy of an already controversial policy and, depending on its timing, could complicate the passage of the main legislation.

4. The propriety of introducing main legislation before completion of the Paving Bill would almost certainly become an issue at Second Reading of the main legislation if the Paving Bill had not yet received Royal Assent. It is unlikely, in our view, to be a significant enough issue to lead, of itself, to a defeat for the Government; but, for the reasons outlined above, Ministers would find it difficult to explain why the Paving Bill was necessary if they were, after all, able to proceed with the main legislation before the Bill had been enacted. The final stages of the Paving Bill in the Lords would also be complicated. The Lords are likely to take the view that the Government was taking their agreement for granted in introducing the main legislation before they had fully considered the Paving Bill.

5. To summarise, our assessment is:

POLICY-IN-CONFIDENCE

- (i) that, although there is no sign of a challenge at present, the risk of challenge is heightened substantially by introducing the main legislation before the Paving Bill has received Royal Assent;
- (ii) a challenge might have little practical effect provided the Paving Bill receives Royal Assent quickly thereafter;
- (iii) a challenge would be extremely embarrassing to the Government and would complicate, but not seriously jeopardise, the Parliamentary passage of the main privatisation legislation.

Mr Galloway 11/4
Miss Parnell
Woods to be eaten
in due course.
a



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

1/2 for Robert

4N

LODGED OF THE RECEIVED	27 OCT 1992
Mr. [unclear]	
Mrs. Bailey	
Mr. [unclear]	

26 October 1992

26 October 1992

CABINET OFFICE

K 973

28 OCT 1992

FILING INSTRUCTIONS

FILE NO. K76149

Thank you for your letter of 16 October, seeking a delay to the introduction of legislation on railway privatisation until your Select Committee has completed its inquiry into the Government's proposals.

Our proposals for railway privatisation were outlined in our manifesto at the last election. As early as last May, during the Second Reading debate of the Paving Bill, John MacGregor made clear our intention to bring forward legislation in the autumn session. The White Paper elaborating our proposals was published in July. Our proposals are the outcome of a great deal of very careful consideration of the issues and this work has continued since publication of the White Paper. The legislation will, as you recognise, be lengthy and complex; Parliament will need as much time as we can allow to consider the Bill. I do not therefore believe that it would be right to delay introduction as you suggest.

I see no reason why your Committee's consideration of these issues should not continue in parallel with the preliminary stages of the legislation. The Committee will also have an important part to play in informing the development and implementation of the detailed policy which will extend well beyond the framework provided by the enabling legislation.

John MacGregor will be responding separately to your letter to him on this issue.

Yours Ever,
John

Robert Adley, Esq., M.P.

POLICY - IN - CONFIDENCE

File copy
cc Mr Galloway



CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270



KO339

P McCarthy Esq
Room S18\08
Department of Transport
2 Marsham Street
LONDON SW1P 3EB

23 October 1992

Dear Peter

RAIL PRIVATISATION

We spoke this morning about the commission for the Cabinet Office to produce advice on the implications of embarking on the main Rail Privatisation Bill ahead of Royal Assent on the Paving Bill (Tim Sutton's letter of 22 October to Paul Coby refers).

You will want to see the attached advice from Parliamentary Counsel on the risk of a successful legal challenge were the case to go to court. I should be grateful for your confirmation that you agree with Counsel's assessment.

We identified two other issues which would need to feature in the note to Ministers. These were:

- a) the chances of the main privatisation measure being defeated at Second Reading if the Paving Bill had not been enacted by then, particularly in the light of any earlier Ministerial commitments;
- b) the likelihood that the matter would be taken to court.

A third aspect, which might be worth touching on, is the consequence of an adverse court's decision. Could the Government continue with the legislation (presumably without BR's active involvement) or would the Bill be stopped in its tracks (as seems more likely)?

I should be grateful for any clarification you can provide on the above points.

Yours

Richard

RICHARD BIRD

POLICY - IN - CONFIDENCE

Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone: 071-210-6628

Facsimile: 071-210-6632

Richard Bird Esq
Room 201
Cabinet Office
70 Whitehall
London SW1

22 October 1992

RAILWAYS LEGISLATION

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2. When we spoke this morning I said I had it in mind to prepare a note for you and the Lord President on how I see the issue. I have to stress that much of this rests on inference, as I have no actual knowledge of BR's involvement in the privatisation so far. My view rests entirely on the reasons for having Paving Bills and the kind of thing one might expect BR to be doing, and indeed, to have been doing in recent weeks and months.

3. In a very trite sense it is *literally* true to say that the Main Bill could lawfully be introduced before the Paving Bill has been passed, but that seems to be unhelpful in the present instance, as it ignores the nexus between the two Bills and the consequences flowing from that nexus.

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- (a) it would be shown that the Government had not involved BR, which *perhaps* would create no legal problem but would appear outrageous (and might infringe the recent, and still developing, doctrine of "reasonable expectation"): a truly Pyrrhic victory, or
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7. If the Main Bill were introduced, I think a court would begin to infer from that very fact that BR had been involved and if discovery of documents took place, the true position (whatever it may be) would quickly emerge.

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"Indeed, the Department have been told that British Rail have been advised that, strictly speaking, they should not even devote their own resources (specifically, the endeavours of their staff) to responding to privatisation proposals from the Government."

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Yours sincerely

R S PARKER



POLICY - IN - CONFIDENCE



CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 071-270

KO339

P McCarthy Esq
Room S18\08
Department of Transport
2 Marsham Street
LONDON SW1P 3EB

Miss Turnbull

23 October 1992

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Yours sincerely

R S PARKER

CONFIDENTIAL



116/10/A

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

R 11161

15 FEB 1993

FILE NO.

Mr Galloway

(am taking forward X)

22 October 1992

103 33/10

Dear Paul,

BR PRIVATISATION

The Lord President, the Lord Privy Seal and your Secretary of State met after the division yesterday evening to discuss the implications of recent events for the timing of the British Rail Privatisation legislation. Murdo Maclean, Robert Parker, you and I were also present.

The Lord Privy Seal said that he and the Chief Whip (Lords) would want to allow a breathing space in the Lords before reaching a considered assessment of the chances of making progress with the Paving Bill without the serious risk of defeats. There were also presentational disadvantages in moving too quickly either to press ahead with the Bill as it stood or to bring forward amendments to allow the coal and rail privatisation to proceed on separate timescales. The latter option would also mean the Bill returning to the Commons and a debate on Lords amendments to remove the coal provisions. Your Secretary of State queried whether the debate on the Rail White Paper scheduled for next Thursday would affect opinion in the Lords. After discussion Ministers agreed that that debate should proceed as planned.

As regards the legality of introducing the Rail Privatisation Bill ahead of Royal Assent on the Paving Bill, Counsel's firm advice was until Royal Assent to the Paving Bill there was no authority for BR to spend money specifically on preparation for privatisation. However, earlier advice including some to your Secretary of State had suggested that it was not absolutely essential that the Paving Bill be completed before the main Privatisation Bill started in the Commons. Your Secretary of State noted that no problems had so far arisen in the practice and that both the BR Board and the unions had been cooperating with his officials. However from a presentational point of view, Ministers agreed after discussion that it would be extremely difficult to justify proceeding with the main Bill before the Paving Bill had received Royal Assent. The Lord Privy Seal made the further point that to do so might make it harder to complete the passage of the Paving Bill through the Lords who might consider that their proceedings were being taken for granted.

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As to timing of the main Bill, consideration by LG Committee was currently scheduled for 17 November. Your Secretary of State said that he had been hoping for Second Reading as soon as possible thereafter, so that the Bill could start in Committee before the Christmas Recess. While the delay brought about by recent events meant that the start of Committee Stage would almost certainly now slip beyond Christmas, he would not wish to lose momentum. If, for example, the Lords were able to start Committee Stage of the Paving Bill in week beginning 16 November, it might be possible, while adhering to the usual conventions in both Houses, to get Report and Third Reading at the beginning of week beginning 30 November, publish the main Privatisation Bill immediately thereafter and get Second Reading in week beginning 14 December.

As regards the line to be taken for the time being about prospects for the Paving Bill, Ministers agreed after discussion that it was not possible to go beyond the position set out by the Lord Privy Seal in the House of Lords on Monday 19 October: it remained the case that the Bill was currently before the House of Lords and would be scheduled for Committee Stage in due course following discussion through the usual channels.

As to the pressure by Mr Robert Adley MP, including his letter of 16 October to the Prime Minister, your Secretary of State said that it was not clear whether Mr Adley was concerned more about the Paving Bill currently before Parliament or the preparations within Government for the main Privatisation Bill. His letter to the Prime Minister appear to concentrate on the latter, although he had specifically asked the Lord President about the Paving Bill. Your Secretary of State noted that he would be appearing before the Transport Select Committee next week in any event. Ministers agreed that it was essential not to let Mr Adley's demands for clarification dictate the Government's own consideration of the way forward.

X | Summing up the discussion, the Lord President said that further discussion would be needed in the light of the Lord Privy Seal and the Chief Whip (Lords)'s assessment of the prospects for the Paving Bill in the Lords the debate on the Rail White Paper should proceed as planned next week. While Ministers were agreed on the political and presentational difficulties of embarking on the main Rail Privatisation Bill ahead of Royal Assent on the Paving Bill, it would be helpful to have definitive advice which distinguished those factors and the strict legal position. He would ask the Cabinet Office to prepare this in consultation with Counsel and Department of Transport officials. The inevitable delay caused by recent events meant that there was little realistic prospect of the main Rail Privatisation Bill getting as far as Committee Stage before the Christmas Recess. However it should still come to LG Committee on 17 November as planned. For the time being, Ministers should continue to take the line set out by the Lord Privy Seal in the House of Lords on Monday 19 October. The demands of Robert Adley and the Transport Select Committee could not dictate the timescale of the Government's final decisions on when to proceed with either the Paving Bill or the Privatisation measures for which it prepared the way. The Department of Transport would be preparing a draft reply for the Prime Minister to send Mr Adley, which should take account of his evident concern about both Bills.

CONFIDENTIAL

I am copying this letter to William Chapman, Joan Bailey, Ed Ollard, Murdo Maclean, Peter Smith, Richard Bird and Robert Parker.

T J Sutton

T J SUTTON

Principal Private Secretary

Paul Coby Esq
PS/Secretary of State for Transport
2 Marsham Street
LONDON SW1P 3EB

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Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

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Richard Bird Esq
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22 October 1992

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15 FEB 1993
FILE NO.

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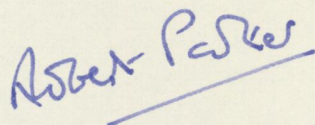
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Yours sincerely

A handwritten signature in blue ink that reads "Robert Parker". The signature is written in a cursive style and is underlined with a single horizontal stroke.

R S PARKER

CONFIDENTIAL



116/10/A

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

FOLIO
4 JL

R12560

Mr Paul

Mr Galloway

(an early ground &)

22 October 1992

R76/49

B3 23/10

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The Lord President, the Lord Privy Seal and your Secretary of State met after the division yesterday evening to discuss the implications of recent events for the timing of the British Rail Privatisation legislation. Murdo Maclean, Robert Parker, you and I were also present.

The Lord Privy Seal said that he and the Chief Whip (Lords) would want to allow a breathing space in the Lords before reaching a considered assessment of the chances of making progress with the Paving Bill without the serious risk of defeats. There were also presentational disadvantages in moving too quickly either to press ahead with the Bill as it stood or to bring forward amendments to allow the coal and rail privatisation to proceed on separate timescales. The latter option would also mean the Bill returning to the Commons and a debate on Lords amendments to remove the coal provisions. Your Secretary of State queried whether the debate on the Rail White Paper scheduled for next Thursday would affect opinion in the Lords. After discussion Ministers agreed that that debate should proceed as planned.

As regards the legality of introducing the Rail Privatisation Bill ahead of Royal Assent on the Paving Bill, Counsel's firm advice was until Royal Assent to the Paving Bill there was no authority for BR to spend money specifically on preparation for privatisation. However, earlier advice including some to your Secretary of State had suggested that it was not absolutely essential that the Paving Bill be completed before the main Privatisation Bill started in the Commons. Your Secretary of State noted that no problems had so far arisen in the practice and that both the BR Board and the unions had been cooperating with his officials. However from a presentational point of view, Ministers agreed after discussion that it would be extremely difficult to justify proceeding with the main Bill before the Paving Bill had received Royal Assent. The Lord Privy Seal made the further point that to do so might make it harder to complete the passage of the Paving Bill through the Lords who might consider that their proceedings were being taken for granted.

CONFIDENTIAL

As to timing of the main Bill, consideration by LG Committee was currently scheduled for 17 November. Your Secretary of State said that he had been hoping for Second Reading as soon as possible thereafter, so that the Bill could start in Committee before the Christmas Recess. While the delay brought about by recent events meant that the start of Committee Stage would almost certainly now slip beyond Christmas, he would not wish to lose momentum. If, for example, the Lords were able to start Committee Stage of the Paving Bill in week beginning 16 November, it might be possible, while adhering to the usual conventions in both Houses, to get Report and Third Reading at the beginning of week beginning 30 November, publish the main Privatisation Bill immediately thereafter and get Second Reading in week beginning 14 December.

As regards the line to be taken for the time being about prospects for the Paving Bill, Ministers agreed after discussion that it was not possible to go beyond the position set out by the Lord Privy Seal in the House of Lords on Monday 19 October: it remained the case that the Bill was currently before the House of Lords and would be scheduled for Committee Stage in due course following discussion through the usual channels.

As to the pressure by Mr Robert Adley MP, including his letter of 16 October to the Prime Minister, your Secretary of State said that it was not clear whether Mr Adley was concerned more about the Paving Bill currently before Parliament or the preparations within Government for the main Privatisation Bill. His letter to the Prime Minister appear to concentrate on the latter, although he had specifically asked the Lord President about the Paving Bill. Your Secretary of State noted that he would be appearing before the Transport Select Committee next week in any event. Ministers agreed that it was essential not to let Mr Adley's demands for clarification dictate the Government's own consideration of the way forward.

X { Summing up the discussion, the Lord President said that further discussion would be needed in the light of the Lord Privy Seal and the Chief Whip (Lords)'s assessment of the prospects for the Paving Bill in the Lords the debate on the Rail White Paper should proceed as planned next week. While Ministers were agreed on the political and presentational difficulties of embarking on the main Rail Privatisation Bill ahead of Royal Assent on the Paving Bill, it would be helpful to have definitive advice which distinguished those factors and the strict legal position. He would ask the Cabinet Office to prepare this in consultation with Counsel and Department of Transport officials. The inevitable delay caused by recent events meant that there was little realistic prospect of the main Rail Privatisation Bill getting as far as Committee Stage before the Christmas Recess. However it should still come to LG Committee on 17 November as planned. For the time being, Ministers should continue to take the line set out by the Lord Privy Seal in the House of Lords on Monday 19 October. The demands of Robert Adley and the Transport Select Committee could not dictate the timescale of the Government's final decisions on when to proceed with either the Paving Bill or the Privatisation measures for which it prepared the way. The Department of Transport would be preparing a draft reply for the Prime Minister to send Mr Adley, which should take account of his evident concern about both Bills.

CONFIDENTIAL

I am copying this letter to William Chapman, Joan Bailey, Ed Ollard, Murdo Maclean, Peter Smith, Richard Bird and Robert Parker.

T. J. Sutton

T J SUTTON
Principal Private Secretary

Paul Coby Esq
PS/Secretary of State for Transport
2 Marsham Street
LONDON SW1P 3EB

CONFIDENTIAL

P 11162
15 FEB 1993

FILING NO.

To: Mr Sutton

cc: Mr Maclean
Mrs Bailey
Mr Galloway
Mr Paul
Mr Parker (Parly Counsel)From: Richard Bird
Date: 21 October 1992**BR PRIVATISATION**

I've spoken to Transport about the paving/privatisation timing issue. There appears to be no statutory objection to the privatisation bill being introduced before the paving legislation is enacted. But it would be very awkward to explain why in this case the paving bill was introduced before the main bill in the first place. Also there is some risk of legal challenge against BR who would clearly be spending money on privatisation once the main bill was introduced.

So Mr MacGregor's strong preference will be to complete the remaining stages of the bill (truncated if necessary) before the main bill is brought in.

Hope this is helpful.

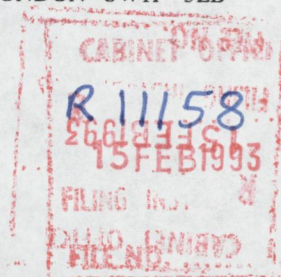
7.
Richard Bird

file

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

LORD PRESIDENT OF THE COUNCIL RECEIVED 29 SEP 1992	
ACTION FOR	<i>M. Galloway</i>
COMES TO	<i>M. Paul</i>



The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

28 SEP 1992

Mr Galloway

Dear Lord President,

*I discussed this with Mr Paul.
no reply needed. NB³⁰/2*

RAILWAYS BILL

Following your comments at Cabinet last Thursday, I have checked again the prospects for the Railways Bill.

As you will know, the timetable for preparing our Bill has always been extremely tight. The Bill is complex and lengthy and, given the fact that I had to deal with a large number of key policy issues on the subject following the Election, Counsel has had Instructions only since the end of July. He has made a good start with a first draft of some 73 Clauses and four schedules on which we have submitted a memorandum of comments. But this represents probably only two thirds of the total number of Clauses and there are a number of difficult issues which still need to be addressed. In addition the time available for drafting has been reduced by other calls on Parliamentary Counsel's time.

I have had to conclude that there is no realistic prospect of having a presentable Bill ready any earlier than your provisional target of the 3 November meeting of LG Committee. We shall continue to work towards that target. But it remains extremely challenging and I cannot, at this stage guarantee that we shall meet it. There are a number of outstanding issues which we have to resolve and you will appreciate that we are also dependent on Counsel not being further diverted by work on other legislation.

I am copying this letter to the Prime Minister, John Wakeham, Alexander Hesketh and Richard Ryder and to Sir Robin Butler and First Parliamentary Counsel.

Yours sincerely,

Jim Betts

pp JOHN MACGREGOR

(Approved by the Secretary of State
and signed in his absence)

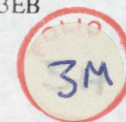


LORD PRESIDENT OF THE COUNCIL RECEIVED 25 AUG 1992	
ACTION	<i>M. Burt</i>
COMMENTS	<i>M. Bailey</i>
TO	

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref: J/PSO/9721/92

Your ref:



R12557

Mr Paul

R76/49

21 AUG 1992

The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

Dec Tony,

BR PRIVATISATION BILL

Thank you for your letter of 30 July replying to mine of 28 July on the handling of this Bill through Parliament. I welcome your remarks and appreciate the impossibility of giving absolute guarantees.

You invite me to consider whether there is scope for bringing forward the present target of 3 November for LG Committee. It is clearly too soon to take a view now; Instructions were duly delivered to Parliamentary Counsel on 31 July and indeed he has already made a significant start on preliminary draft Clauses on the basis of advance draft Instructions. But a balance must be struck if we are to have the Bill in reasonable shape for introduction and minimise the scope for problems during Parliamentary stages, and also have sufficient time for a comfortable passage and Royal Assent by the summer, which remains my objective. I undertook, in my letter of 24 June, to review the position in September - by which time we should have made substantial progress - and I will let you know then how things stand.

I am grateful for your response about the likely timing of a debate on the White Paper. I have asked my Private Office to liaise with yours to take this forward.

/ I am copying this letter to the Prime Minister, John Wakeham, Alexander Hesketh and Richard Ryder, and to Sir Robin Butler and First Parliamentary Counsel.

Yours ev,

JOHN MACGREGOR



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

LORD PRESIDENT OF THE COUNCIL RECEIVED 29 SEP 1992	
ACTION FOR	<i>M. Begg</i>
COMES TO	<i>M. Paul</i>

28 SEP 1992

Dear Lord President,

RAILWAYS BILL

Following your comments at Cabinet last Thursday, I have checked again the prospects for the Railways Bill.

As you will know, the timetable for preparing our Bill has always been extremely tight. The Bill is complex and lengthy and, given the fact that I had to deal with a large number of key policy issues on the subject following the Election, Counsel has had Instructions only since the end of July. He has made a good start with a first draft of some 73 Clauses and four schedules on which we have submitted a memorandum of comments. But this represents probably only two thirds of the total number of Clauses and there are a number of difficult issues which still need to be addressed. In addition the time available for drafting has been reduced by other calls on Parliamentary Counsel's time.

I have had to conclude that there is no realistic prospect of having a presentable Bill ready any earlier than your provisional target of the 3 November meeting of LG Committee. We shall continue to work towards that target. But it remains extremely challenging and I cannot, at this stage guarantee that we shall meet it. There are a number of outstanding issues which we have to resolve and you will appreciate that we are also dependent on Counsel not being further diverted by work on other legislation.

I am copying this letter to the Prime Minister, John Wakeham, Alexander Hesketh and Richard Ryder and to Sir Robin Butler and First Parliamentary Counsel.

Yours sincerely,

Jim Betts

PP JOHN MACGREGOR

(Approved by the Secretary of State
and signed in his absence)

a Mr Galloway (con)
Mr Paul

RAILWAYS BILL

Latest state of play (as at 25 September)

- 70% of Bill now drafted
- Parliamentary Council have just received DTp comments on first drafts
- Major outstanding problem is franchising. Original scheme is having to be revised because of taxation problems. Revised instructions expected by end of the week.
- Counsel also involved with Judicial Pensions Bill (where there are a large number of amendments, and possibility of hybridity). This may slow down remaining work on Railways Bill.
- Still a reasonable prospect of achieving LG on 3 November, but no chance of bringing the timetable forward.
- Bill is likely to be about 100 clauses plus schedules.



L.16

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref: J/PSO/9721/92

Your ref:

CABINET OFFICE
A 10561
25 AUG 1992
FILING INSTRUCTIONS
FILE No.

3

POLICY IN CONFIDENCE

The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

m. Bird

21 AUG 1992

Mr. Paul

Dear Tony,

BR PRIVATISATION BILL

Thank you for your letter of 30 July replying to mine of 28 July on the handling of this Bill through Parliament. I welcome your remarks and appreciate the impossibility of giving absolute guarantees.

You invite me to consider whether there is scope for bringing forward the present target of 3 November for LG Committee. It is clearly too soon to take a view now; Instructions were duly delivered to Parliamentary Counsel on 31 July and indeed he has already made a significant start on preliminary draft Clauses on the basis of advance draft Instructions. But a balance must be struck if we are to have the Bill in reasonable shape for introduction and minimise the scope for problems during Parliamentary stages, and also have sufficient time for a comfortable passage and Royal Assent by the summer, which remains my objective. I undertook, in my letter of 24 June, to review the position in September - by which time we should have made substantial progress - and I will let you know then how things stand.

I am grateful for your response about the likely timing of a debate on the White Paper. I have asked my Private Office to liaise with yours to take this forward.

/ I am copying this letter to the Prime Minister, John Wakeham, Alexander Hesketh and Richard Ryder, and to Sir Robin Butler and First Parliamentary Counsel.

Yours ev,
John

JOHN MACGREGOR



156/07/P

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

T. MacGregor
File 2
 30 July 1992

CABINET OFFICE
 A 9836
 31 JUL 1992
 FILING INSTRUCTIONS
 FILE No.

Mr Russell
as per

J. MacGregor

BR PRIVATISATION BILL

Thank you for your letter of 28 July reporting on Malcolm Caithness' discussions with the Lords Whips and the implications for Commons handling if we are to meet your timetable for Royal Assent by the summer recess next year.

Obviously in view of your past experience you will appreciate better than most that, on a Bill as controversial as this, the Commons Business Managers can give no guarantees about when we will be able to get the Bill to the Lords. This would be so even were we not faced with the very considerable uncertainty caused by the Maastricht Bill. I am sure you will understand just how greatly our planning of the session has been complicated by developments on that front.

Obviously we will do our best, and it is certainly helpful to have the Lords' estimate of the time they will need for your Bill. It would also help matters greatly if we could have the added flexibility of being able to make as early a start as possible on your Bill in the autumn. At present, as you know, we envisage the Bill coming to LG Committee on 3 November. If it were possible to bring this forward by one or two weeks, so that the Bill forms part of the first tranche that LG will be considering after the summer break, this would obviously give us added flexibility in our endeavours to meet your timetable.

On a related matter, you have also raised with me recently the timing of a debate on the BR White Paper. It would suit us quite well to schedule this for the second week back, when I am sure that we can identify a date that will also be suitable for you.

I am copying this letter to the Prime Minister, John Wakeham, Alexander Hesketh and Richard Ryder and to Sir Robin Butler and First Parliamentary Counsel.

T. Newton
 TONY NEWTON

The Rt Hon John MacGregor OBE MP
 Secretary of State for Transport

~~Handwritten~~
FileDEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

CABINET OFFICE	
A	9657
29 JUL 1992	
FILING INSTRUCTIONS	
FILE No.	

The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

28 JUL 1992

~~Mr. Russell~~

29/7

Dear Tony,

Mr. Bailey (v)

BR PRIVATISATION BILL: HOUSE OF LORDS HANDLING

As you know, it is of the highest importance for our timetable for implementing BR privatisation, that the Bill receives Royal Assent before the summer recess next year.

Lord Caithness has spoken to the Lords Whips, and has established that providing the Lords receive the Bill before Easter (that is no later than 7 April), we should be able to receive Royal Assent before the summer. Of course there is the uncertain factor of the Maastricht Bill, but if you are willing to give the BR Privatisation Bill second priority, we should achieve our timetable in the Lords.

I hope you will be able to agree to this. It is very important for us politically that we deliver the Bill on time to enable us to maintain progress towards BR privatisation and the sale and franchise of BR's services.

I am sending copies of this letter to the Prime Minister, Chief Whip, and Sir Robin Butler.

Yours ever,

JOHN MACGREGOR



The Rt Hon Tony Newton OBE MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

Mr Paul

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

23 JUL 1992

file
Mr Paul
Mr Bailey
14/7

23 JUL 1992

Dear Tony

BR PRIVATISATION : PARLIAMENTARY HANDLING

As you know, we published the White Paper on British Rail privatisation on 14 July.

On a subject of this importance, we would normally expect to offer a full debate, ahead of the introduction of the legislation and not too soon after the White Paper had been published. I do think that we ought to follow precedent and I would find the opportunity very useful. I hope therefore that time might be found in October.

Furthermore, I understand that BR have a private Bill due for Second Reading about that time (the British Railways (General Powers) (No 4) Bill). That could well turn into a debate on the White Paper in circumstances which we should find hard to control. So I think we should indicate that we shall arrange a debate informally to the Opposition subject, of course, to the exigencies of outside events. I hope that you will be able to agree to this.

Malcolm Caithness is keen to have a debate in the Lords around the same time, and will be discussing this with the Lords business managers.

I should add that EC business will prevent me from attending a debate on either 26 or 27 October, so I would be grateful if you would avoid these dates.

/ I am sending a copy of this letter to John Wakeham, Richard Ryder and to Sir Robin Butler.

Yours etc
John

JOHN MACGREGOR

PARLIAMENTARY QUESTION ON BR PENSIONS AFTER PRIVATISATION

HOUSE OF COMMONS

To ask the Secretary of State for Transport, if he has reached final conclusions on the future arrangements for railway pensions after privatisation; and if he will make a statement.

JOHN MACGREGOR

I have now completed my consultations about the future of railway pensions. I have had very helpful discussions with representatives of pensioners and of contributing members to the railway pension scheme, with the trustees, with the trade unions and with the Railways Board.

My objective remains to preserve the security of rights enjoyed by pensioners and members while adopting arrangements to suit the new structure of the privatised industry. The proposals I am announcing today meet this objective.

I have decided that there should be set up, under the powers granted in the Railways Bill, a joint industry pension scheme for the railways. This will be broadly on the basis set out in the consultation paper "Railway Pensions after Privatisation" issued in January. The governance and administration of the joint industry scheme will continue to involve both the employers and employees in the industry. We shall be discussing the detailed arrangements with interested parties. The eventual arrangements will need to reflect the recommendations of the Pensions Law Review Committee chaired by Professor Goode.

Existing employees' rights will be protected by statutory orders made under the Railways Bill. The benefits offered to employees must be no less favourable than those in the existing scheme. There will be no penalties for involuntary breaks in employment.

The present schemes under which the employer matches additional voluntary contributions made by employees (BRASS schemes) will continue subject to the existing right of the employer to withdraw matching for new or increased contributions.

Employees should be reassured by the statutory protection of these benefits. But I now propose to go further and give those staff serving at Royal Assent an individual right to remain in the joint industry scheme for as long as they are still employed in the railway industry. An amendment to the Bill to secure this "indefeasible" right - on which representatives have placed great importance - will be brought forward in another place.

There will in addition be specific safeguards, in franchise contracts, to cover the transfer of pension funds when a franchise changes hands.

In our consultation paper we proposed two possible broad approaches to arrangements for existing pensioners. Option 2 would have involved an appropriate portion of each fund being transferred to the Government, in return for guaranteed index-linked pensions. There was very little support for this option in the consultation. The Government has decided not to proceed with it.

Instead, Option 1, a closed scheme for railway pensioners with appropriate support by investment, will be set up in due course, which will enable them to participate in any future surpluses there may be. We shall discuss with the trustees and the Board the timetable for establishing this scheme taking account of the need to have clear arrangements in place as soon as possible. But we recognise the trustees' need for time to rearrange their investments to secure the pensions of their members. Meanwhile the pensioners will continue in the BR scheme with the Board's remaining employees. Again in response to points made in consultation, I am content for the pensioners' closed scheme to be managed as part of the joint industry scheme, provided that its governance arrangements are satisfactory. This will require further discussion and will again need to reflect the outcome of

the Goode Committee's recommendations.

The division of funds between sections of the joint industry scheme and any new schemes will take into account the liabilities of those schemes, and the decisions made by the trustees following the 1990 actuarial valuation, to improve pension benefits and to reduce contribution rates. The calculations will be subject to independent actuarial advice. These calculations will be carried out in the light of the present valuation of the fund, which is expected to be completed in the Autumn.

The Government will continue to make the contributions to BR pension funds fixed by the Transport Act 1980. The necessary amendments to the 1980 Act to make this possible have been put down for discussion at Report Stage.

Orders for setting up new schemes, transferring funds and protection of existing employees will be subject to the affirmative resolution procedure in both Houses. Orders relating to schemes and funds will be the subject of statutory consultation with the trustees.

It is both natural and right that pensioners, pension scheme members and Trustees should express their concerns and seek reassurance about pension arrangements in the privatised railway. The consultation document gave them the opportunity to do so: these decisions address those concerns and provide that reassurance.

Published Document

The published document that was enclosed on this file has been removed.

Published items are not preserved by the Cabinet Office.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20090704225842/http://www.fco.gov.uk/resources/en/pdf/public-diplomacy-review>

Title: Public Diplomacy Review

Organisation/Author: Lord Carter of Coles

Printed: Foreign and Commonwealth Office

Date: December 2005

Signed:

Dated:

COPRA, Cabinet Office

CONFIDENTIAL

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