

Safety levy review – conclusions

1. In April 2008, we consulted on possible changes to our policies and procedures governing the operation of the railway safety levy <http://www.rail-reg.gov.uk/upload/pdf/363.pdf>. We received 13 responses from industry parties reflecting a range of interests and this letter sets out our conclusions.
2. Three of the respondents asked for their responses to be kept confidential. The other ten are published on our website.

Summary of our conclusions

3. The responses were all generally supportive and as suggested in the consultation document, we are not proposing to introduce significant policy changes. There are however a number of areas where the guidance we offer and the procedures we operate could be further clarified and improved. We will therefore introduce the following changes with effect from 1 April 2009:

- we will issue improved and enhanced guidance with our turnover request letters
- we will introduce a new flat rate charge of £5000 for those operators who have a relevant turnover of between £5 million and £10 million

Consultation responses

Question 1 - publication of responses.

4. As mentioned above, ten of the 13 respondents were content for their responses to be published on our website.

Question 2 - scope

5. Question 2 asked for any comments on the current scope of the levy and the identification of the “railway service provider”.

6. The Confederation of Passenger Transport UK (CPT) pointed out that although the example used in the consultation review was useful, different contractual arrangements existed across the light rail sector and these would need to be considered on a case by case basis. Network Rail also commented that the identification of the railway service provider may not always be clear and suggested that ORR should be able to provide further clarification on this point where necessary.

7. We will provide further guidance for next year (2009-10) on scope and on identification of the railway service provider. We will also be happy to discuss individual circumstances with prospective levy payers either in correspondence or through face to face meetings.

Question 3 – relevant turnover and the treatment of capital grant

8. Question 3 asked for comments on the definition and calculation of relevant turnover.
9. EWS considered that turnover remained the best available metric, while Stagecoach requested improved guidance. TfL was concerned that the use of turnover would impact particularly heavily on London Overground and the Docklands Light Railway in the light of significant investment leading to increasing service levels and revenue.
10. We remain of the view that company activity, measured by turnover, is the best available proxy for risk. This will remain the basis of the safety levy calculations going forward.
11. Several consultees, and in particular CPT, were concerned about the treatment of capital grants. All revenue subsidy or grant payments should be included in the calculation of relevant turnover as required under appropriate accounting standards. (Otherwise the relative size of the franchisees – and hence their levy contributions - would be distorted.) We recognise however, that the treatment of grants for capital projects – especially in the light rail sector – presents particular problems. Again we suggest that the most practical and pragmatic approach would be for prospective levy payers to contact us to discuss individual cases.
12. Heathrow Express suggested that substitute year-ends should be accepted where appropriate rather than the April to March standard. We believe that the current system is effective and does not produce an onerous burden on levy payers. If, for example, the relevant financial year runs from January to December the relevant turnover return should be compiled using audited accounts for April to December and management accounts from January to March.

Question 4 - Start up operations

13. Question 4 covered the application of the levy to start up operations EWS suggested a levy on new operators entering the industry. We believe that this proposal would be difficult to administer. A levy on start-up operations could also be considered a barrier to entry.

Question 5 – Franchise change

14. Question 5 asked for comments on the treatment of franchise change. At present where an operation has changed hands during the financial year in respect of which the levy is payable the current incumbent at the time the invoice is issued will be required to pay the full amount and to reclaim the appropriate amount from the preceding operator. CPT commented that although our policy on franchise change seemed reasonable it might be more appropriate to invoice franchisees separately for their portion of the levy. The balance of opinion was broadly that the current approach was reasonable.
15. We received no adverse comments during the review on our policy towards franchise change but we subsequently (during the 2007-08 levy round) received comments on this matter i.e. concern about the collection of turnover data from predecessor franchisee(s) in complex remapping scenarios e.g. London Midland. Where franchise migration changes have occurred

during the previous financial year – that is the year for which the relevant turnover figure is provided – in complex cases we will now accept relevant turnover returns based on a reasonable forecast for the existing (i.e. post migration) franchise. This is instead of requiring the existing franchisee to obtain historical data from the predecessor franchisee(s). Where we have agreed to this alternative approach we would expect to make adjustments for under or over payments in the following year when actual figures are available.

Question 6 - thresholds

16. Question 6 asked about the current thresholds and our new proposed flat rate £5,000 threshold for turnover between £5 million and £10 million.

17. The addition of a new £5 million to £10 million threshold received broad support. EWS suggested extending the current flat rate charge of £1000 to all railway service providers with a turnover below £1 million. CPT suggested raising the thresholds in line with inflation.

18. We remain of the view that a threshold of £1 million is appropriate. We do not consider that a fee for those under £1 million would be appropriate in view of the associated costs of collection.

19. We believe the new threshold of £5 million to £10 million will give a degree of certainty to smaller operators and we will introduce this for the 2009-10 levy.

20. We do not intend to increase the thresholds in line with inflation for 2009-10. While we do not intend to index link the thresholds with inflation when we do review the thresholds we will take inflation into account.

Question 7 - other issues

21. Question 7 asked for any further comments. A few responses raised the issue of audit/professional fees cost and the expectation that regulatory costs would reduce over time.

22. The audit requirement is written on the face of the Railway Safety Levy Regulations 2006 and hence we have no discretion as to its application. There are currently no plans to revise the Regulations. However, we will take the opportunity to address this concern when it arises.

23. As far as regulatory costs are concerned we are committed to ensuring a 2% reduction in costs year on year (RPI-2%) and we expect this commitment to continue for the foreseeable future. We strive to be as efficient as possible and have a policy of returning any underspend each year. We returned a rebate in 2007 (£1.8 million) and 2008 (£82,000) to levy payers.

24. EWS suggested that fines imposed on railway service providers for breaches of safety regulation should be set against the cost of safety regulation. However, the principles in which government finance is based would not permit this. Fines imposed by the courts are paid to central government funds and do not form part of ORR's income.

25. EWS asked whether the old railway charging review group should be re-introduced to ensure the levy remains efficient and transparent.

26. We do not intend to re-convene this group and believe that our business planning process, which we consult on every year, gives the opportunity for stakeholders to challenge our planned costs and activities.

Next steps

27. As outlined in this paper any changes will take place for the 2009-10 levy. We will issue a new guidance document in April 2009 outlining in greater detail changes as a result of this review.

28. Please contact Will Jackson (020 7282 2068) if you have any further comments or queries.

29. We are grateful to all the respondents for their contribution to this review.