

Stations and Depots Team  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

24 May 2012

Dear Sirs

**Consultation on a revised contractual regime at stations: Proposed Changes to the Station Access Conditions and Independent Station Access Conditions: emerging conclusions March 2012**

Thank you for the opportunity to respond on the emerging conclusions for the proposed changes to the Station Access Conditions and Independent Station Access Conditions March 2012. This letter constitutes the Go-Ahead Group's response and also represents the views of London Midland, Southeastern and Southern train operating companies. I confirm that no part of it is confidential.

In response to Chapter 13 and the list of the consultation questions, our responses are as follows:

- 4.5 Overall we agree to the definition of "Exempt Activity" set out in the proposed Stations Code and agree with the introduction of this concept with the approach that it focuses on the effect and impact of the activity rather than a description.
- 4.21 We agree that the £5,000 is an appropriate level for assessing financial impact to determine the type of Change proposal
- 4.22 We are not in favour of the alternative proposals dealing with the circumstance when a single change process has a material impact on one station party but not on another. We agree with ORRs view in paragraph 4.17 of the consultation document that the Financial Impact Test is about establishing the materiality of the proposed Station Change and there should be a single process.
- 4.23 We agree that a separate minimum threshold set at the same level as the Financial Impact Test of £5,000 should be introduced for consultees to receive compensation for a Material Change Process.
- 4.24 We would not be in favour of the grouping of Change proposals made at separate stations to meet the Financial Impact Test as this will not accurately reflect the materiality of changes at individual stations.
- 5.8 We are supportive of the proposed revised list of valid objections.
- 6.12 We have no proposals in respect of the participation deed and the support the introduction of a deed in the form contained in Annex C of the consultation document.

- 7.18 There should not be a distinction between public and private investors as all parties should be treated equally in the interests of the development of the station and passenger benefit.
- 7.19 We agree to one qualifying financial threshold and duration of interest. We still believe that £50,000 is too low a threshold as this does not represent a sufficiently meaningful investment at a station to justify a third party acquiring an interest. We suggest that the threshold should be set at, at least £150 000, even at this level a duration of interest of 5 years is hard to justify.
- 7.20 If the concept of Strategic Contributor is retained, the interest should only be at those stations the contributor has invested in and not across the particular network.
- 7.21 If an alternative method of determining the duration of a third party's "interest" is to be considered, we think this should be proportionate to the level of investment, but it would be important to understand the detail of any alternative proposal before commenting further.
- 8.10 We support the position of the unresolved compensation issues being dealt with through the dispute resolution process and a Station Change being allowed to proceed whilst the financial compensation issues are resolved.
- 8.34 Loss of revenue should be included as part of any compensation claim if demonstrated that the Material Change has impacted on an operators business in this way.
- 8.35 The payment of compensation is a matter for both parties to agree whether that is by a fixed sum payment or instalments.
- 8.36 If a consultee wishes to request payment by way of a fixed sum payment the parties should:  
(a) negotiate appropriate timescales for the request to be made,  
(b) the time limit should be appropriate to the scale and phasing of the project.
- 8.37 An appropriate maximum period of reimbursement of costs for a franchised operator should be until the end of the Franchise Agreement, however the ORR may wish to consider the impact on future franchise value and how this would be addressed.
- 8.38 We do not agree that the suggested provision in respect of developers' money saving proposals should be retained. The SACs already contain an obligation to mitigate costs, which could be taken to dispute in the event it was believed that an operator was not meeting. Any further obligations are unnecessary.
- 8.39 The cap on a developer's liability should realistically reflect the damage they would inflict on the railway both in the station and operationally and the operators' revenue. Currently we believe this liability should remain uncapped. Risk is about both consequence and likelihood, whilst an uncapped liability may be perceived as a potentially catastrophic consequence, it should encourage developers to put proper risk mitigation measures in place, appropriate to the environment of the operational railway.

- 8.40 It is unclear whether this refers to increased revenue from increased numbers of passengers or from actual increases in fares. If it is the latter then the scope for fare rises are extremely limited due to fares regulations and the impact of increases on passenger demand.
- 8.41 This is a reasonable proposition subject to an appropriate dispute mechanism.
- 8.42 We agree that the payback period of overpaid compensation should be free of interest as long as it is paid back within a defined period of time and agree that 28 days is an appropriate period for payback.
- 8.53 We have no specific comments to make on this question.
- 9.8 We agree that reinstatement of the original position should be considered on a case by case basis.
- 9.9 We agree that:
- a) the introduction of a Relevant Undertaking in which a proposer must undertake to compensate station parties for costs/losses that they might incur if the development is not implemented in accordance with the terms of the original Station Change proposal,
  - b) affected parties should be able to object to the terms of the relevant undertaking.
- 9.10 We agree that an incomplete scheme should be subject to a new Station Change.
- 10.8 The protections which are contained in Part G should be retained in Part G.
- 11.15 We welcome the proposal that following agreement of a Station Change by the parties, that ORR will approve in principle any consequential amendment (to a Station Access Agreement) to allow registration and implementation to proceed before formal section 22 approval of an amendment.
- 14.5 We have no further comments that we wish to raise as part of this consultation.

Yours faithfully

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The Go-Ahead Group plc

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