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24th May 2012

Dear Sir

**Response to ORR Consultation on a revised contractual regime at stations -
Proposed changes to the Station Access Conditions and Independent Station Access
Conditions: emerging conclusions**

I write on behalf of Northern Rail Limited in response to the above consultation, which was circulated in March 2012.

It is recognised that there are a number of problems with the existing Station Access Conditions and that the system should be simplified to enable a quick, fair and time-bound resolution to change proposals. Whilst the proposals made in the consultation document do offer some steps forward, there are a number of points on which Northern Rail do not agree.

I have set out Northern Rail's response below to the questions in the order as they appear in the consultation document.

Response to Consultation Questions

	Paragraph	Question
1	4.5	Do you agree that we should introduce the concept of "Exempt Activity" and adopt the definition as developed for the proposed

		Stations Code?
		Northern Rail continues to question the need for an additional "Exempt" activity and believes that the current SACs provide a suitable mechanism for separating relatively routine changes from more significant changes
2	4.21	Do you have any views on the alternative proposals dealing with the circumstance when a single change proposal has a material impact on one station party, but not on another?
		Accepted
3	4.22	Do you agree that we should introduce a separate minimum compensation threshold (set at the same level as the Financial Impact Test of £5,000) to determine the point at which consultees are eligible to receive compensation for a Material Change Proposal? Under this arrangement, a consultee must incur costs of £5,000 or more in its own right before compensation becomes payable. Once the threshold has been met, all compensation becomes payable for the affected consultee. Parties whose costs do not meet the £5,000 threshold will receive no compensation. We consider that this would make financial compensation arrangements consistent with other parts of the Station Change regime.
		Accepted
4	4.23	We would be interested in your views on how to deal with the situation where a series of Change proposals are made at separate stations, which individually do not meet the Financial Impact Test threshold but when taken together do and could have a material impact on a consultee.
		It remains Northern Rail's view that the single financial impact threshold as proposed is not workable. The size and complexity of stations varies enormously and those TOCs on a management style franchise agreement are likely to take a different view of an appropriate threshold than those who take revenue risk. Both types of TOC call at some stations
5	4.24	Do you have any comments on the proposed revised list of valid objections?
		Northern rail believes that where a series of changes are proposed there should be an ability to package them together thereby ensuring the financial impact is considered as a whole and the ability to claim costs should not be diminished in these circumstances
6	5.8	Do you have any suggestions on the terms of the "participation deed" that third party developers should be required to sign?
		Northern Rail supports the position proposed by ATOC
7	6.12	Should there be a distinction between public and private investors at all or should they be treated in the same way? Please explain the reasons for your view.
		Northern Rail is content with the proposed drafting issued as Annex C to the consultation document

8	7.18	<p>If public and private investors are to be treated in the same way:</p> <p>(a) should we have one qualifying financial threshold and duration of interest and at what level should those be set?; or</p> <p>(b) should we retain two financial thresholds and two different duration of interest time limits (to distinguish between the scale of different levels of investment) both of which can apply to a private or public investor?</p>
		Northern Rail would recommend that there is no distinction between public and private investors of over £50,000. This should ensure that investment in the railways by private investors becomes a more attractive proposition providing a level of protection for the investment
9	7.19	<p>If we retain the concept of Strategic Contributor with spending at a strategic spread of stations, should that entitle it to an interest just at those stations it has invested in or to all stations on that particular network?</p> <p>There should be a qualification of a minimum investment of £50,000 but there should be no distinction between public or private</p>
10	7.20	<p>Are there other ways that a third party's "interest" in a station could be determined e.g. the length of interest to be determined by the life of the asset(s) that their investment has funded?</p> <p>The interest for a Strategic Contributor should be restricted to those stations where it has invested</p>
11	7.21	<p>We asked in our earlier consultation whether respondents agreed that:</p> <p>(a) unless the parties agree otherwise, unresolved financial compensation issues should be dealt with via the dispute resolution process?; and</p> <p>(b) an otherwise agreed Station Change should be allowed to proceed while the financial compensation issues are resolved?</p> <p>Northern Rail would not support any other determination of interest</p>
12	8.10	<p>We have set out above why we consider this approach is to be preferred, but if you do not agree,</p> <p>(a) please explain your reasons why; and</p> <p>(b) please provide your suggestions for dealing with this situation.</p> <p>Northern Rail agrees with the proposal</p>
13	8.34	<p>Should loss of revenue (in addition to loss of profit) be capable of being included as part of any compensation claim?</p> <p>Loss of revenue should be included as part of any compensation</p>

		claim
14	8.35	<p>Do you have any comments on the proposal that no party can insist on compensation being payable by way of fixed-sum payment(s)? Rather this should be an issue for the parties to negotiate and agree, but ultimately it is for the proposer to decide if it wants to pay a fixed-sum compensation amount (whether by a single upfront payment or by instalments).</p> <p>This should be an issue for the parties to negotiate</p>
15	8.36	<p>If a consultee wishes to request payment by way of fixed-sum payment(s), do you agree:</p> <p style="padding-left: 40px;">(a) that the request should be made within a defined period, and not at any time during the project? and</p> <p style="padding-left: 40px;">(b) if you do agree, what should the time limit be?</p> <p>Northern Rail agrees that any fixed sum payments should be made during a defined period and that the time limit should be limited to the period of time for regulatory process to be completed</p>
16	8.37	<p>As currently drafted, the Co-operation Agreement envisages reimbursement of costs to the end of an operator's franchise. As highlighted in paragraph 8.21 above this may not be appropriate for all consultees. What period of reimbursement do you consider would be appropriate?</p> <p>Northern Rail would propose that the reimbursement period would be continue for the full life span of the asset when introduced by a third party investor</p>
17	8.38	<p>Do you agree that we should retain the provision for a developer to propose "Savings Suggestions" that can be taken to dispute if the parties cannot reach agreement on their terms? Do you agree with our preference to remove the proposer's entitlement to seek any information it requires?</p> <p>Northern Rail agrees that the provision for a developer to propose "Savings Suggestions" should be retained and if the parties cannot reach agreement that it can be taken to dispute. Northern Rail agrees however that the proposers entitlement to seek any information should be removed</p>
18	8.39	<p>We are keen to hear your views, and the reasons for your views, on:</p> <p style="padding-left: 40px;">(a) whether a developer's liability should be uncapped;</p> <p style="padding-left: 40px;">(b) whether the introduction of a liability cap would be appropriate; and</p> <p style="padding-left: 40px;">(c) the level at which any liability cap should be set.</p> <p>Northern Rail believes that a developers liability should be uncapped</p>
19	8.40	Should operators be able to recoup money from passengers e.g.

		by way of increased fares that are justified on the basis of an improvement resulting from a Station Change, in the same way that Network Change is drafted?
		Operator should have the ability to recoup money from passengers
20	8.41	In assessing the amount of compensation payable, is there any reason why it is not acceptable to net off the likely ability of an operator to recoup money from its passengers or other sources of revenue?
		It is acceptable to net off the likely ability of an operator to recoup money from passengers and other sources
21	8.42	We propose that the payback of overpaid compensation should be free of interest as long as it is paid back within a defined period of time, otherwise interest becomes payable, backdated to the date of the payment request: (a) Do you agree with this approach? (b) Is 28 days an appropriate period for payback? (c) If you do not agree either with the approach or with the payback period, please provide your alternative suggesti
		Northern Rail agrees with the approach to compensation repayments being free of interest provided it is paid back within a defined period of time
22	8.53	Paragraph 8 of Annex 1 to the revised SACs sets out a list of Core Facilities at stations. We propose that the provision of alternative accommodation in the revised SACs should extend beyond those "Core Facilities" and seek your views on what those additional facilities should include (e.g. the "Station Facilities" as set out in paragraph 10 of Annex 1 to the current SACs, or something wider).
		Northern Rail would suggest that the provision of alternative accommodation should include all "Core" facilities as well as all "Station Facilities" to the extent that they exist unless reasonable alternative provision can be made (for example if the station is to close for the project suitable alternative arrangements would need to be provided for alternative means of transport
23	9.8	Do you agree that re-instatement of the original position should be considered on a case by case basis?
		Northern Rail agrees that the re-instatement of the original position should be considered on a case by case basis
24	9.9	Do you agree: (a) with 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; and (b) that affected parties should be able to object to the terms of the relevant undertaking?

		Northern Rail agrees with the introduction of a Relevant Undertaking as described and also agrees that affected parties should be able to object to the terms of the Relevant Undertaking
25	9.10	Do you agree that an incomplete scheme should be subject to a new Station Change proposal so that the optimum outcome can be negotiated between the parties?
		Northern Rail agrees that any incomplete scheme should be subject to a new Station Change so that an optimum outcome can be negotiated between the parties
26	10.8	Do you think that that the protections contained in Part G: (a) should be incorporated into the proposed new "Notifiable Change" process?; or (b) should remain in Part G of the revised SACs, separate from the Station Change provisions?
		Northern Rail would prefer for the protections contained in Part G to remain separate from the Station Change provisions
27	11.15	We will consider whether it is appropriate that, following agreement of a Station Change by the parties, ORR approval to any consequential amendment (to a Station Access Agreement) might be obtained 'in principle', to allow registration and implementation to proceed before formal section approval of an amendment to an access agreement is given. We invite comments on this suggestion.
		Northern Rail believes that it is appropriate for "in principle" approval from ORR, to any consequential amendment, be given allowing registration and implementation to proceed before formal section22 approval is given
28	14.5	We wish to hear from respondents on what (regulatory) impact – positive or negative - you believe that the proposed changes will have on you.
		Northern Rail believes that the impact of the proposed changes will be minimal although positive
29	14.5	While we have raised specific questions, summarised in chapter 13, we equally welcome respondents' views on any aspect of the proposed modifications, including if respondents consider we could go further in stream-lining the process.
		Northern Rail has no further comments to register other than to question the timing of any significant change to process at a time when more significant changes to station leases (Full Repairing 99 year station lease) are being trialled in the industry. Should the 99 year station lease become the accepted standard for the industry it would then be appropriate to review all regulatory process controlling the way that Station Changes are developed, proposed, implemented and regulated under the new lease regime.

I trust the representations made in this letter in response to the consultation document will enable ORR to reach a considered conclusion in making any subsequent changes to the SACs.

Yours faithfully

On behalf of Northern Rail Limited

A handwritten signature in black ink, appearing to read 'JS' followed by a flourish.

Jonathan Stewart
Commercial Director

