

FAO: Gerry Leighton
Stations and Depots Team,
Office of Rail Regulation
1 Kemble Street
London
WC2B 4AN020 7620 5154 t
020 7620 5004 f
ateesdale@swtrains.co.uk e

18 June 2012

Dear Gerry,

Re: Proposed changes to the Station Access Conditions and the Independent Station Access Conditions: emerging conclusions (March 2012)

Thank you for again consulting with Stagecoach South Western Trains Limited (SSWT) and East Midlands Trains Limited (EMT) regarding the proposals concerning a revised contractual regime at stations. We are grateful for the opportunity to respond and again welcome any modifications that achieve your objective of simplifying the Station Change process. In general we again support the ATOC response however have provided our own comments below.

Our response set out herein is two fold. Firstly, it is intended to follow up our response to the previous consultation on this subject (Piers Atkinson letter, dated 06 June 2011) which outlined some initial observations in regard to the proposals put forward in your preceding March 2011 consultation, and if and how our comments have been dealt with by ORR. Secondly, it aims to provide a specific response to the direct 'Consultation questions' set out in your paper, wherever SSWT & EMT have a view on said questions.

Section 1

Our previous consultation response highlighted concern that the concept of entering into Co-operation Agreements imposed no incentive on third party proposers to finalise such financial arrangements when they can progress Station Change and proceed with the scheme in the meantime. We acknowledge the objective to isolate and separately resolve financial compensation issues that currently represent a barrier to Station Change closure, and note that entering into a Co-operation Agreement provides a mechanism for resolution of such issues. We interpret that a signed Co-operation Agreement must be a pre-requisite for Station Change approval.

Our other key concern was the financial risk to a TOC should a third party Station Change proposer not undertake or complete the intended proposal. We recognise the proposals put forward in section 9.6 in introducing a 'Relevant Undertaking' which seeks to protect the interests of station users for costs/losses it may incur from an incomplete scheme. However we would draw your attention to our consultee response to question 6.12 for establishing procedures concerning potential financial insolvency of any such third party proposer.

Section 2 – Consultation Questions

It should be assumed that unless a specific response is set out below to the Consultation questions summarised in section 13, then to all other questions not listed below SSWT & EMT have "no comment". That is, we have no particular opinion on the question matter to express in this consultation response and would generally support the industry view.

1.	4.5	<p>Yes.</p> <p>We would comment that the proposed definition could allow a wide range of activities to qualify as 'Exempt Activity', which would help achieve the objective to reduce the sheer number of Station Change consultations for minor works, but may also be too liberally applied by some Station Change proposers in order to avoid due process and additional workload.</p> <p>It is our assumption that the process governing 'Conditions' Change proposals remain unchanged and are not considered applicable to the proposed 'Exempt Activity' clause?</p>
2.	4.21	<p>We have no comment with regard to a £5,000 impact threshold, however agree whatever level is set should be kept under review.</p> <p>In consideration of the proposed Financial Impact Test, the consultation does not specify who initiates this test, though we assume it to be the change Proposer? If so, does the Proposer have an objective view and sufficient knowledge of any likely cost impact on the other consultees? This seems weighted in favour of the Proposer, in that they would potentially be making an assumption that a proposal has a nil impact on another station user and decide that full Material Change is not required, when in fact the proposal may have a material affect on such other user.</p>
3.	4.22	We agree with the approach that all such parties should be consulted as part of a Material Change Proposal, even where only one party 'triggers' the financial impact threshold.
4.	4.23	Could this lead to a situation where consultees may try to manipulate their costs to ensure they achieve the £5k threshold where compensation becomes eligible (i.e. open to abuse)?
7.	6.12	<p>What provisions are there should a third party developer go out of business (etc) during the course of entering a Participation Deed, Co-operation Agreement, Relevant Undertaking or proposing a Station Change?</p> <p>The consultation states that a Participation Deed acquires a third party proposer the rights, obligations and liabilities governed by the SACs, however we remain unclear what legal protection this provides to industry users should a third party 'go under'?</p>
8.	7.18	Our view is that public and private investors should be treated in the same way and subject to the same processes as part of a new Station Change regime. Our view is purely driven by the need to reduce, not create, further doubt or complication on such matters.
9.	7.19 (a)	<p>Yes, there should be one qualifying financial threshold and duration of interest, for the reason stated above. We have no comment with regard to what specific thresholds should be set, but again would suggest that whatever level is set should be kept under review.</p> <p>We also agree with the ATOC position that future consultation with third party funders at a particular station should be limited only to where any such subsequent change proposal is relevant to or has an impact upon, the asset the third party had previously funded.</p>
10.	7.20	A funding third party's interest should be limited to just those stations it has invested in only. For example, on South West Trains network, why should a local authority investment at stations in (say) Surrey, entitle it to rights at stations in (say) Dorset? That would represent an irrelevance and likely just create further administration.
11.	7.21	Our view is that anything other than a defined period of rights granted to a third party investor at a particular station would be a move away from the objective of this consultation to simplify, not complicate the process. We therefore agree that a set duration is most appropriate.

12.	8.10	We agree. It is our assumption that a signed Co-operation Agreement must be in place as a pre-requisite to a Station Change being approved. The parties are then subject to the disputes resolution process set out should financial compensation issues not be resolved.
13.	8.34	Yes.
17.	8.38	We have no particular objection to a developer being allowed to propose "Savings Suggestion(s)" but our view is that a consultee should not be obliged to follow it or implement such suggestions. We agree that the proposer's entitlement to seek information it may require from a consultee should be removed.
19.	8.40	No. It is our view that improvements at individual or isolated stations cannot justify increased fare increases to all passengers on the network.
23.	9.8	We agree that re-instatement of the original position should be considered on a case-by-case basis. We understand that such consideration would take place via a new Station Change proposal as set out in 9.10.
24. 25.	9.9 & 9.10	Agree.
26.	10.8	Whilst we agree that the protections provided to operators must be retained, we have no specific comment on where they should be contained within the new regime.
27.	11.15	We would support a move to allow proposers to obtain ORR approval to a consequential amendment 'in principle', to allow implementation of a scheme to proceed before formal approval is given. The proposer should acknowledge however that it would, prior to formal agreement by ORR, be proceeding at its risk.

We hope these comments are useful and look forward to ORR's final proposals.

Yours sincerely,



Andy Teesdale
Industry Contracts Manager
Stagecoach South Western Trains Limited
East Midlands Trains Limited

Friars Bridge Court
41-45 Blackfriars Road
London
SE1 8NZ

FAO: Gerry Leighton
Stations and Depots Team,
Office of Rail Regulation
1 Kemble Street
London
WC2B 4AN

020 7620 5154 t
020 7620 5004 f
ateesdale@swtrains.co.uk e

18 June 2012

Dear Gerry,

Re: Proposed changes to the Station Access Conditions and the Independent Station Access Conditions: emerging conclusions (March 2012)

Thank you for again consulting with Stagecoach South Western Trains Limited (SSWT) and East Midlands Trains Limited (EMT) regarding the proposals concerning a revised contractual regime at stations. We are grateful for the opportunity to respond and again welcome any modifications that achieve your objective of simplifying the Station Change process. In general we again support the ATOC response however have provided our own comments below.

Our response set out herein is two fold. Firstly, it is intended to follow up our response to the previous consultation on this subject (Piers Atkinson letter, dated 06 June 2011) which outlined some initial observations in regard to the proposals put forward in your preceding March 2011 consultation, and if and how our comments have been dealt with by ORR. Secondly, it aims to provide a specific response to the direct 'Consultation questions' set out in your paper, wherever SSWT & EMT have a view on said questions.

Section 1

Our previous consultation response highlighted concern that the concept of entering into Co-operation Agreements imposed no incentive on third party proposers to finalise such financial arrangements when they can progress Station Change and proceed with the scheme in the meantime. We acknowledge the objective to isolate and separately resolve financial compensation issues that currently represent a barrier to Station Change closure, and note that entering into a Co-operation Agreement provides a mechanism for resolution of such issues. We interpret that a signed Co-operation Agreement must be a pre-requisite for Station Change approval.

Our other key concern was the financial risk to a TOC should a third party Station Change proposer not undertake or complete the intended proposal. We recognise the proposals put forward in section 9.6 in introducing a 'Relevant Undertaking' which seeks to protect the interests of station users for costs/losses it may incur from an incomplete scheme. However we would draw your attention to our consultee response to question 6.12 for establishing procedures concerning potential financial insolvency of any such third party proposer.

Section 2 – Consultation Questions

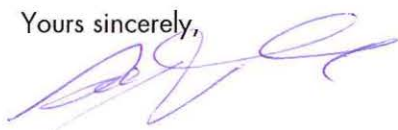
It should be assumed that unless a specific response is set out below to the Consultation questions summarised in section 13, then to all other questions not listed below SSWT & EMT have "no comment". That is, we have no particular opinion on the question matter to express in this consultation response and would generally support the industry view.

1.	4.5	<p>Yes.</p> <p>We would comment that the proposed definition could allow a wide range of activities to qualify as 'Exempt Activity', which would help achieve the objective to reduce the sheer number of Station Change consultations for minor works, but may also be too liberally applied by some Station Change proposers in order to avoid due process and additional workload.</p> <p>It is our assumption that the process governing 'Conditions' Change proposals remain unchanged and are not considered applicable to the proposed 'Exempt Activity' clause?</p>
2.	4.21	<p>We have no comment with regard to a £5,000 impact threshold, however agree whatever level is set should be kept under review.</p> <p>In consideration of the proposed Financial Impact Test, the consultation does not specify who initiates this test, though we assume it to be the change Proposer? If so, does the Proposer have an objective view and sufficient knowledge of any likely cost impact on the other consultees? This seems weighted in favour of the Proposer, in that they would potentially be making an assumption that a proposal has a nil impact on another station user and decide that full Material Change is not required, when in fact the proposal may have a material affect on such other user.</p>
3.	4.22	We agree with the approach that all such parties should be consulted as part of a Material Change Proposal, even where only one party 'triggers' the financial impact threshold.
4.	4.23	Could this lead to a situation where consultees may try to manipulate their costs to ensure they achieve the £5k threshold where compensation becomes eligible (i.e. open to abuse)?
7.	6.12	<p>What provisions are there should a third party developer go out of business (etc) during the course of entering a Participation Deed, Co-operation Agreement, Relevant Undertaking or proposing a Station Change?</p> <p>The consultation states that a Participation Deed acquires a third party proposer the rights, obligations and liabilities governed by the SACs, however we remain unclear what legal protection this provides to industry users should a third party 'go under'?</p>
8.	7.18	Our view is that public and private investors should be treated in the same way and subject to the same processes as part of a new Station Change regime. Our view is purely driven by the need to reduce, not create, further doubt or complication on such matters.
9.	7.19 (a)	<p>Yes, there should be one qualifying financial threshold and duration of interest, for the reason stated above. We have no comment with regard to what specific thresholds should be set, but again would suggest that whatever level is set should be kept under review.</p> <p>We also agree with the ATOC position that future consultation with third party funders at a particular station should be limited only to where any such subsequent change proposal is relevant to or has an impact upon, the asset the third party had previously funded.</p>
10.	7.20	A funding third party's interest should be limited to just those stations it has invested in only. For example, on South West Trains network, why should a local authority investment at stations in (say) Surrey, entitle it to rights at stations in (say) Dorset? That would represent an irrelevance and likely just create further administration.
11.	7.21	Our view is that anything other than a defined period of rights granted to a third party investor at a particular station would be a move away from the objective of this consultation to simplify, not complicate the process. We therefore agree that a set duration is most appropriate.

12.	8.10	We agree. It is our assumption that a signed Co-operation Agreement must be in place as a pre-requisite to a Station Change being approved. The parties are then subject to the disputes resolution process set out should financial compensation issues not be resolved.
13.	8.34	Yes.
17.	8.38	We have no particular objection to a developer being allowed to propose "Savings Suggestion(s)" but our view is that a consultee should not be obliged to follow it or implement such suggestions. We agree that the proposer's entitlement to seek information it may require from a consultee should be removed.
19.	8.40	No. It is our view that improvements at individual or isolated stations cannot justify increased fare increases to all passengers on the network.
23.	9.8	We agree that re-instatement of the original position should be considered on a case-by-case basis. We understand that such consideration would take place via a new Station Change proposal as set out in 9.10.
24. 25.	9.9 & 9.10	Agree.
26.	10.8	Whilst we agree that the protections provided to operators must be retained, we have no specific comment on where they should be contained within the new regime.
27.	11.15	We would support a move to allow proposers to obtain ORR approval to a consequential amendment 'in principle', to allow implementation of a scheme to proceed before formal approval is given. The proposer should acknowledge however that it would, prior to formal agreement by ORR, be proceeding at its risk.

We hope these comments are useful and look forward to ORR's final proposals.

Yours sincerely,



Andy Teesdale
Industry Contracts Manager
Stagecoach South Western Trains Limited
East Midlands Trains Limited