Rail Strategy
Rail Directorate

Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
Direct Line: 0141 272 7432
Steven.McMahon@transportscotland.gsi.gov.uk

CÒMHDHAIL ALBA
TRANSPORT SCOTLAND

Stations and Depots Team
Office of Rail Regulation

stations.depots@orr.gsi.gov.uk

BY EMAIL

Our ref:
NRS12-013

Date:
28 May 2012

Dear Sir/Madam,

Consultation on a Revised Contractural Regime at Stations – Proposed Changes to the Station Access Conditions and Independent Station Access Conditions

Thank you for the opportunity to respond to the above named consultation.

In considering this issue, the ORR should ensure that they apply the Scottish Government's principles of Better Regulation. In this context, and as per our response to the June 2011 consultation, I am broadly supportive of the overarching aim to simplify the station change process. However, rail is in a period of considerable reform and we have still to see the full effect of developments such as alliances. Therefore it is critically important that any changes implemented as a result of this consultation are kept under regular review, with consideration given to further proportionate changes to the Conditions where this represents best value.

I would refer to paragraph 1.16 of your document. Once again this appears to overlook the fact that the responsibility for setting a strategy for rail in Scotland lies with the Scottish Ministers, who have as yet to reach conclusions on the form and function of the next ScotRail franchise. This is disappointing and concerning. As a matter of good practice, I would suggest that the ORR refer to the Guidance from the Scottish Ministers as it develops its approach to issues of regulatory reform and the preparation of the associated documents.

Responses to the specific questions on which we have a view are provided below.

Q1 - Do you agree that we should introduce the concept of "Exempt Activity" and adopt the definition as developed for the proposed Stations Code?

The concept of an "Exempt Activity" would appear to have merit. However, we would expect that this will be clearly defined in order to ensure that all potential parties have clarity on how such provisions will work. We would also welcome confirmation from the ORR on how "an action the proposer is obliged to take under an agreement incorporating the SACs" will be monitored and where necessary enforced.

Q3 - 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?

The level for assessing financial impact should be reflective of the scale of TOC activities. Further clarity is required over what it would mean to give an affected consultee who does not meet the materiality threshold a right to be a party to a Proposal process, but not be given the rights to object or receive compensation.

Q 4 - 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?

There may be a risk that compensation thresholds (at whatever level) are reflected in the bids received for any changes and have an inflationary effect on costs.

Q6 - Do you have any comments on the proposed revised list of valid objections?

The list proposed appears sensible and we would be broadly supportive. We agree with the conclusion at paragraph 6.8, but seek clarification on how this could be enforced.

Q7 – Do you have any suggestions on the terms of the "participation deed" that third party developers should be required to sign?

While we are supportive of third party investment, the long term interests of the railway and its users should be protected. It may be possible to adopt standard investment and construction documentation suites rather than creating bespoke rail-specific documentation which may hinder investment. If there is evidence that current railway approaches stifle investment there would seem to be a good argument to actively look outside current templates and standards for solutions.

Q8 - 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.

All investors have the opportunity to show that their investment is worthwhile i.e. that the rights and benefits they enjoy are those which allow them to fulfil and even exceed their criteria for investment. For a public body this might be to know there will be benefit there for users or the broader economy and for a private investor it is the need to achieve sufficient security to look to make an acceptable return - in principle therefore there is no distinction between public and private.

Q17 – 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.

We are broadly supportive, but the process for dispute resolution should have sufficient regulatory weight to be able to gather the evidence required to reach a balanced and evidenced conclusion.

Q20 – 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.

Any compensation arrangements should have the best interests of the railway and its users at its heart and should not act as a barrier to investment.

In circumstances where a substantial body of evidence would suggest that operators are highly likely to recoup losses from other revenue streams, then it may be appropriate to reduce the levels of compensation payable. However, any such arrangement must be with full agreement of all parties concerned and there should be an appeals process should there be failure to reach agreement.

I hope these comments are helpful and I look forward to receiving feedback on the issues raised in this response and the outcome of this section of the consultation.

Yours sincerely

Steven McMahon
Head of Rail Strategy