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Dear Rob,

Consultation on ORR's guidance on the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016

This letter sets out TfL's responses to the questions raised in the ORR's consultation on their guidance on the application of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. TfL is content for its responses to be published and shared with third parties.

Q1. Is there value in ORR providing guidance on these regulations; is there an alternative to ORR providing guidance?

There is certainly value in the ORR providing guidance on these regulations. The ORR should take the lead on this as they are the body with primary responsibility for enforcing them.

Q2. Does the guidance help you understand the impact of the 2016 Regulations?

The guidance is helpful to TfL in this respect.

Q3. Is it clear what your rights and obligations are?

This is generally clear. Please note that TfL considers all infrastructure associated with the London Underground and the ELL Core (the section of Railway between Dalston Western Junction and Old Kent Road Junction / New Cross Gate station and New Cross station) to be exempt from the requirements of The Regulations 2016, by virtue of their sole use for urban or suburban passenger services.

Q4. Is it clear how and when to appeal to ORR?

This matter is clear in TfL's opinion.

Q5. How can we improve the guidance? What areas need to be developed, if any?

The guidance could also be improved by redrafting the section which covers the right to refuse access. Initially this appears to suggest that access can only be refused when a viable alternative exists. However, there are a number of caveats to this including the fact that facility owners are not obliged to invest to create additional capacity to enable access requests to be granted. This information could perhaps be presented more clearly in a flowchart, with the following decision points:

1. Can the access request be fulfilled using spare, available capacity?;
2. If not, is there an economically viable alternative?;

If no such alternative exists, then are there extenuating circumstances which mean that the access request can be refused e.g. the need to invest to create additional capacity, the need to displace existing operations, etc.

Yours sincerely,


**Principal Planner – Rail Development,
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