



FINAL

Consultation Response

**Office of Rail Regulation – proposed
changes to the Station Access
Conditions**

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1. Introduction

- 1.1. **pteg** represents the six English Passenger Transport Executives (PTEs) which between them serve eleven million people in Tyne and Wear ('Nexus'), West Yorkshire ('Metro'), South Yorkshire, Greater Manchester, Merseyside ('Merseytravel') and the West Midlands ('Centro'). The PTEs plan, procure, provide and promote public transport in some of Britain's city regions, with the aim of providing integrated public transport networks accessible to all. Leicester City Council, Nottingham City Council, Transport for London (TfL) and Strathclyde Partnership for Transport (SPT) are associate members of **pteg**, though this response does not represent their views.
- 1.2. This response represents the collective views of **pteg** and has been consulted on with the PTEs.

Background

- 1.3. The Office of Rail Regulation has issued a consultation on revised contractual regime at stations – proposed changes to the Station Access Conditions (SACs) and Independent Station Access Conditions (ISACs).
- 1.4. The National Station Access Conditions (SACs) are the standard rules that govern the relationship between all contracting parties at a station. They cover matters such as the process for agreeing changes to a station, charging for access and the remedies available when things go wrong. There are separate conditions for the stations managed by Network Rail called the Independent Station Access Conditions (ISACs). These broadly follow the same format as the SACs. There are further Scottish variations of the SACs and ISACs.
- 1.5. A replacement for the SACs was developed and published July 2006 as the Stations Code. Ultimately the rail industry told the ORR that the Stations Code was not appropriate as a replacement. Network Rail was tasked to work with the industry to develop proposals for reform of the current contractual regime at stations.
- 1.6. Particular areas for change were:
 - Facilitating effective partnership working between Network Rail and the train operators (building on work of the local delivery groups (LDGs) established as part of the National Stations Improvements Programme (NSIP))
 - Clarifying and simplifying the split of maintenance, repair and renewal
 - Simplifying and speeding up the process for station change
 - Facilitating third party involvement in stations

Position at start of consultation

- 1.7. The Network Rail response submitted to ORR was not the joint proposal that had been hoped for. There were areas of disagreement between Network Rail and ATOC and some areas were incomplete or lacking. A further iteration has produced a Station Change process that ORR considers satisfies their requirements although ATOC have raised some objections. It is this document that is available for consultation.

- 1.8. The single model proposed for clarifying and simplifying the split of maintenance, repair and renewal responsibilities is considered by ORR as not necessarily providing a solution to the fundamental issue around a default split of responsibilities at stations.

The Consultation documents

- 1.9. The Consultation papers are a covering report from ORR together with a number of annexes. Particularly relevant annexes to PTE organisations are as follows:
- Annex B - The Network Rail response. Included within the Network Rail response is the response from ATOC
 - Annex C - A link to the proposed revised SACs (about 180 pages in total)
 - Annex D - A link to the “comparite” version of the revised SACs
 - Annexes E and F - Ditto ISACs
 - Annex H - Additional modifications to the SACs and ISACs
- 1.10. Annexes E and F refer to Liverpool Lime Street, Birmingham New Street, Manchester Piccadilly and Leeds in the PTE areas. Annex G relates to the Scottish variants and their documents are not discussed here.
- 1.11. Annex H, the additional modifications, highlights the historical changes such as Railtrack to Network Rail and the changes from Franchising Director to Secretary of State rather than the “SRA” as shown in the proposed revisions with the tracked changes.

Potential Impact

- 1.12. The proposed modifications are designed to clarify, simplify and speed up what is a complex and unwieldy station change regime.
- 1.13. The broad areas subject to modification are as follows:
- Different categories of station change (Exempt, Non-discretionary, Notifiable and Material). See Appendix 1.
 - Modifications proposed to grounds for objecting to what is now a Material Station Change proposal. Financial compensation will be addressed through a Cooperation Agreement and will not be a valid ground for objection.
 - Modifications are proposed to allow third party developers to make Material Change Proposals in their own name.
- 1.14. This latter area could have the most impact for PTEs and also for external commercial developers such as those developing Liverpool Central Village around the station of the same name.
- 1.15. The document does not make specific reference to emerging ideas around devolving responsibilities to local transport authorities on the railway. We envisage that the need for processes to consistently deal with changes will be even more relevant in a new style localised railway. A robust process that is the industry standard applicable across the country will therefore be necessary.

List of Questions

- 1.16. The ORR Consultation has a list of questions in section 6 and there is a narrative preceding each question. The questions are recorded in Appendix 2 to this report together with comments relevant to PTEs on each.

2. Appendix 1 –

Different categories of proposed station change

Exempt Activity	Notifiable Change	Material Change	Non-discretionary Change
<p>Objective – can be undertaken without the requirement of a burdensome administration process</p>	<p>Objective – the proposal has created a change impacting on the station. The proposal has a minor financial impact of £5k or less but sufficiently important re the station operation that it should be notified to the other party – otherwise formality is limited.</p>	<p>Objective – Provide for compensation agreement to deal with the impact of the change but can proceed unless the other party is put in breach of a legal requirement, franchise agreement or licence. It cannot prevent the change on grounds of financial impact alone.</p>	<p>Objective – To allow change where this is required to comply with legislation or safety is required obligations of law or safety needs</p>
<p>1 Activity that does not fit within the categories of Notifiable Change or Material Change</p> <p>2 The materiality benchmark of the impact of the works for them to fit within Notifiable Change or Material Change to be Station Change is not satisfied for example</p> <ul style="list-style-type: none"> • By replacement in modern equivalent form or • works of a routine or operational nature • The performance of obligations not expressed in the SACs to require Station 	<p>1 A financial impact limit (£5k pa on the costs and profit of the impacted party) and fit also within one of the following categories:</p> <ul style="list-style-type: none"> • Changes to the Station Lease of SACs (but not whole template changes – See Part B) • Matters that would have been a Material Change Proposal i.e. materially impacting upon the condition standard and quantum of Common Station Amenities or Services 	<p>1 A financial impact above the £5k on the costs and profit of the impacted party and also either:</p> <ul style="list-style-type: none"> • Changes to the Station Lease or SACs (but not whole template changes – see Part B) • Matters that would have been a Material Change Proposal or Major Change Proposal <p>2 Details offered with compensation agreement.</p> <p>3 Objections on information issues or breach of legal requirements licence or franchise is the only</p>	<p>1 To capture changes to stations to accommodate Law Change, Directions of Competent Authorities and Safety Obligations.</p> <p>2 No Compensation.</p> <p>3 Notification but no objections can be lodged to prevent change.</p>

<p>Change compliance</p> <ul style="list-style-type: none"> Where the works are performance or repair of renewal obligations imposed in the SACs <p>3 Where there is more than one activity related to the project then the impacts are considered as a single change in relation to the impact of all activity</p> <p>4 Not recorded in annexes etc</p> <p>5 No compensation</p> <p>6 Not notified to other party but if categorisation under question, Non Materiality notices to confirm the position.</p>	<ul style="list-style-type: none"> Matters that would have been a Major Change Proposal i.e. material impact on the operation of trains to or from the Station or ability for passengers and others to reach trains <p>Where there is more than one activity related to the project then the financial limit and impacts are considered in relation to the impact of all activity.</p> <p>2 Excluded equipment change not subject to the £5k and matters in the nature of G6 e.g. Concessions dedications and easements in either case where instigated by Network Rail.</p> <p>3 No compensation but must notify</p> <p>4 Notified to the other Party who may suggest it is a Material Change Proposal when it must either be treated as such or determined by the disputes resolution process.</p> <p>5 Change cannot be stopped.</p>	<p>mechanism to stop proceeding but not compensation. Plus special grounds in relation to third party proposals to protect current rail industry operations and future plans.</p>	
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3. Appendix 2 –

Responses to List of Questions (and certain sections of narrative) in Section 6

Differentiating between proposed changes to the national template SACs and specific Station Change proposals

6.5.1 Q - The retention of a voting process for changes to the national template SACs, and whether the 80% threshold for approving a change proposal is appropriate.

A – Consideration of Liverpool Lime Street, Manchester Piccadilly, Leeds and Birmingham New Street is ignored in this response because they are Network Rail Managed Stations and the influence of the respective PTEs is limited, although often present through good personal contacts.

The TOC operated large stations in which PTEs have interest, such as the historic main city stations of Newcastle Central and Sheffield Midland, can have up to five TOCs present so 80% would require 4 TOCs to support proposals. Stations with 4 TOCs or fewer would require support from all operators to exceed the 80% threshold. Most other (local) stations in PTE areas have only a single operator.

The 80% threshold is considered appropriate.

6.5.2 Q - The deletion of the need to hold Station Meetings (as currently defined).

A – PTEs have a good working relationship with all TOCs and would discuss proposals with them all. It is expected that TOCs and SFOs will discuss proposals with them in return. There are often regular meetings between the PTEs, TOCs and Network Rail although these may not be formally defined “Station Meetings”. However the requirement for Station Meetings should be retained.

Categorisation of Station Change proposals in Part C

6.6 Narrative - The proposed modification divides Station Change proposals into four types: Exempt, Non-discretionary, Notifiable and Material.

Comment – The basic principle of different types is accepted however in Annex D (the “comparite” version of the SACs) it is clear that PTEs are only involved in the Material type of station change. This is considered as poor representation of the PTEs. It is considered that PTEs should also be at least informed as part of the process for all other types of Station Change. It is understood that the Station Change system is to be made electronic therefore it would be particularly easy to include PTEs in the consultation process. In the initial stage there will also be a need to link the PTEs into the electronic system irrespective of the types of station change to be consulted upon so that efficient and timely responses can be made.

6.7.1 Q – Is the £5,000 threshold proposed in the definition of “Financial Impact Test” for assessing materiality the correct threshold?

A - This is a matter for the TOCs to determine but would seem reasonable.

6.7.2 Q – Is there an alternative practical method of assessing materiality which respondents would favour?

A - This is a matter for the TOCs to determine.

6.8.1 Q – We invite respondents to set out their comments on whether it would be appropriate to allow operators to make representations (or even objections) in relation to an Exempt Activity, and / or to receive compensation in relation to the same.

A – Broadly speaking, an Exempt Activity is a proposal with an impact less than £5k and not likely to be sufficiently important to be notified to the other party. In this regard this is a matter for the TOCs to determine.

6.8.2 Q – Would respondents benefit from Network Rail producing guidance in relation to what is covered by its proposed definition of “Exempt Activity”?

A – Guidance would assist. However there should be a mechanism by which this can evolve in the light of experience (particularly in the early days when experience is being gained and case studies become established) to the satisfaction of the greater rail industry and partners.

Direct involvement of third party developers

6.9 Narrative – The proposed change process provides for certain categories of third party developers to be allowed to propose station change schemes in their own name, without needing to persuade an industry party to do so on their behalf (as is the case under the current SACs).

Comment – What would be the process for developers to know about the Station Change requirements? There would still presumably need to be a Sponsor from Network Rail / SFO to protect their asset and to ensure that rail standards are maintained. This would require an agreement of some kind such as an Asset Protection Agreement. The third party developers in the list of consultees that appear to have an interest in such matters are significant national organisations. What has been the response from smaller, regional and local third party developers who are potentially in a position to make significant changes to station environments in provincial cities and towns? Would they consider such agreements as bureaucratic and burdensome beyond any existing discussions they may have with the rail industry?

6.10 Narrative – In the proposed modification, in order to qualify as a Specific Contributor (with rights to make proposals for a station change), a third party developer must meet a Relevant Contributor’s Qualification of £50,000; a statutory authority, agency or local authority with responsibilities to promote or facilitate the use of public transport may qualify as a Strategic Contributor if it meets a Relevant Contributor’s Qualification of £250,000.

Comment – Titles of Specific Contributor and Strategic Contributor are very similar and could lead to confusion. Alternatives suggested are “Development Contributor” and “Regional or Public Contributor”.

A Specific (Development) Contributor is likely to be dealing with one station in the locality of the development. A Strategic (Regional or Public) Contributor is more likely to have an

interest in a number of stations along a route or district. In the case of PTEs this is assumed to be the whole network of stations within the metropolitan areas and associated fringe stations.

The benefits of a Specific (Development) Contributor triggering a station change process are not clear. The implication is that this party would lead the proposals for station change. Is this a task that developers would wish to take on? Local and regional house builders? Retail park and commercial office developers? Retail developers such as the supermarkets or other regional developers? Anecdotal comment suggests that these private sector companies are facing increasing procedures, reports, studies, assessments and the like. To add responsibility for dealing with station change is not likely to find favour with them.

The figure of £50,000 for these contributors, whilst appearing balanced against the wider interest of the Strategic (Regional or Public) Contributors such as PTEs, would typically buy one waiting shelter at a railway station. This is a paltry amount of investment in the rail industry in view of costs of even a modest development that would trigger third party station change. The figure should be balanced against investment through Section 106 processes for works on the highways and the like. Whilst the figure of £50,000 is considered paltry to instigate a station change process it is accepted that the interested parties of the rail industry could object en masse to inappropriate / naive proposals from these inexperienced developers so that the 80% threshold in 6.5.1 above is not crossed and the station change does not proceed.

It is not clear in the documentation if the Strategic (Regional or Public) Contributor contribution of £250,000 is per station (e.g. one shelter and DDA toilet and CIS summary and NTI screens) or an aggregate of a larger programme at a number of stations (say 5 stations each with one shelter). Furthermore, in the current economic climate, funding for Strategic (Regional or Public) Contributors, such as PTEs, could be an issue despite having historic and future long term interest in the rail network. Consequently, defining level of third party interest by monetary value for this group of third party developers is flawed. Strategic (Regional or Public) Contributors have an interest in station change for the community benefit.

6.11 Narrative – There is no end timescale to a Strategic Contributor’s interest, since this reflects its continuing interest and investment in the station portfolio. It also provides some comfort that where it has invested so substantially in the past, it will continue to have an interest once its funded works have been completed.

Comment – This implies that there needs to have been an interest in the station by way of a financial contribution of at least £250,000. Such financial investment will then entitle the Strategic (Regional or Public) Contributor to continue with the interest indefinitely.

However with the community interest that these contributors have, and with evidence of decades of inward investment elsewhere on “their” networks, it follows that many stations that have not been subject to investment are actually high on the list of desirable priorities for Strategic (Regional or Public) Contributors. In the current economic climate, maintaining levels of inward investment is proving difficult to achieve. But it is believed that this lack of contribution should not deny the opportunity for Strategic (Regional or Public) Contributors to be involved in station change processes.

There is no reference in the document to any changes in the rail industry as a consequence of devolution of rail responsibilities, i.e. as recommended by the McNulty Value for Money Study.

6.11 Narrative – In contrast, the nature and scale of a Specific Contributor’s interest is considered to be more appropriate to a one-off involvement. Such funders are likely to have a limited interest in future changes to the station.

Comment – This is accepted. It is likely that Specific (Development) Contributor will see investment in rail assets as a similar “burden” to the provision of Section 106 contributions on the highway. The provision of investment should be maximised to the benefit of the community in either (any) form of transport to provide a sustainable and integrated network. There may be pressure from Specific (Development) Contributors to try and play off the Section 106 to local planning authorities against the Specific (Development) Contributions to the rail industry through this process.

6.12.1 Q – Is the direct contracting with third party developers satisfactory?

A – The opportunity is welcomed but the current arrangements would require agreements between the third parties and the rail industry. It is known that third party developers see the existing processes as confusing, complex, unnecessary and bureaucratic. Therefore it is unlikely they will be any happier with the new proposals than with the existing.

6.12.2 Q – Is the distinction between the type of developer who can qualify as a Specific and Strategic Contributor appropriate?

A – Yes, but with different names such as Development Contributor and Regional or Public Contributor respectively.

6.12.3 Q – Are the proposed qualification thresholds appropriate?

A – No. See comments to 6.10 and 6.11 Narratives above.

Grounds for objecting to a Material Change Proposal (C4.7 of the proposed SACs)

Respondents are requested to submit their comments on the proposed grounds of objection. In particular, we would welcome comments on the following points:

6.15.1 Q – Are the grounds of objection as drafted sufficient?

A – The proposals suggest that failure to reach agreement on an appropriate level of compensation is not a ground for objecting to a Material Change Proposal. The intention of this is that affected operators will not be able to delay works from proceeding simply in order to seek higher amounts of compensation. All parties have the right to refer disagreements on compensation to dispute resolution.

6.15.2 Q – Is this separation of financial compensation (and the provision of alternative accommodation) from the list of valid objections appropriate?

A – This is a matter for the TOCs to determine.

Registration and implementation of a proposed Station Change

6.16.1 Q – Respondents are requested to submit their comments on the proposal that Station Changes should be registered with ORR.

Registration, or some form of central database, would provide a useful benchmark for future station change developments or in cases of dispute. It would allow the process to evolve and more clearly define the boundaries between the four types of station change, particularly where they are currently subjective. However the process should not be excessive or expensive.

6.16.2 Q – Respondents are requested to submit their comments on the proposal that registered Station Changes cease to be effective if not implemented within a set period after registration.

This is entirely reasonable. Any published times scales should relate to any existing processes within the rail industry or to equivalent situations in other planning legislation and practices.

Proposed deletion of Condition G6 – wayleaves

6.17 Narrative – The existing G6 (Wayleave grants) has been deleted because this now falls within the procedure for a Notifiable Change. Since it only applies to Network Rail it has been deleted to avoid duplication and potential confusion in the treatment of the grant of wayleaves and easements.

Comment – This is accepted in that the provisions within Notifiable Change (Conditions C3) appear to be sufficient to deal with wayleaves and easements.

Costs issues in the Co-operation Agreement

6.22.1 Q – Are the alternative ways of compensating Material Change Consultees sufficient?

A – The open ended time limit within which an MCC (Material Change Consultee) may serve notice on the Proposer is not accepted. However the method of a single payment or payments by instalments appear entirely reasonable.

The process does not allow the proposer to adequately close out the accounts for a project and would thus require an insurance fund or allowance in case such claims arose. Irrespective of that timescale, the process, 40 business days for the Proposer to serve notice accepting or rejecting such offers should be reasonable. Failure to respond should not be acceptable.

6.22.2 Q – In instances where part of a fixed sum is to be returned by a consultee because a Material Changes has not been completed, is the addition of interest appropriate?

A – Yes.

6.22.3 Q – *If a Material Change once-commenced is left incomplete (for any reason), should there be provisions for reinstating the original position (which might lead to consultees incurring further costs?)*

A – Provision should be made for reinstatement in such cases. The cost of that reinstatement should be borne by the project client / sponsor.

Provision of Alternative Accommodation in the Co-operation Agreement

6.24 Narrative – *Network Rail considers the proposed clause is a more onerous obligation on a Station Change proposer than is currently provided for within SACs.*

Comment – This is a matter for the TOCs to determine.

Additional modifications

6.27 Narrative – *At Annex H we have set out a number of proposed additional modifications to the SACs. The purpose of these modifications is to ... take account of the new dispute resolution process that came into effect on 1 August 2010.*

Comment – These twelve pages have not been considered in any detail but appear to be a matter for the TOCs to determine.