



Bill Hammill
Manager, Track Access
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
LONDON
EC1N 2TQ

Your Ref :
Our Ref : RFM014008/ORR/0008/EE
Tel : 0141 333 3100
Fax :

By e-mail to: bill.hammill@orr.gsi.gov.uk
Confirmed by post

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Dear Mr Hammill

CRITERIA AND PROCEDURES FOR THE APPROVAL OF PASSENGER TRACK ACCESS CONTRACTS: THIRD EDITION – A CONSULTATION DOCUMENT

I refer to the consultation document which the Regulator issued in December 2002 under the above heading. This letter constitutes Strathclyde Passenger Transport Executive's [SPTE's] response.

Overall, SPTE welcomes the update of this useful document and the opportunity to comment on it in draft form. SPTE's specific comments are relatively few, and are offered against the relevant paragraph numbers in the consultation document.

Paras 2.15-19 – The Strategic Rail Authority

It is appreciated that this section is written from the perspective of the Regulator's statutory duties in terms of Section 4 of the Railways Act as amended. Nevertheless, it might be helpful for prospective applicants to be reminded that the SRA is not the sole funder of network passenger and freight services, and in particular that the Scottish Executive has important devolved powers in relation to the Scottish railway network and cross-border services. Some of these powers are exercised by means of directions and guidance to the SRA, others directly. In addition, the separate powers and duties of the PTEs in relation to the specification of fares and the level and quality of passenger train services in their areas could usefully be acknowledged.

Paras 2.35(a); 4.35; 4.43

Again, for completeness the document should reflect the statutory position within Passenger Transport Areas which have been designated under the provisions of the 1968 Transport Act. Within these areas the PTEs are currently co-signatories of relevant Franchise Agreements together with the SRA, and contractually are the Relevant Authorities for passenger service requirement matters. In addition, it is the intention that the Merseytravel PTE should be the sole public authority signatory of the

new Merseyrail Electric franchise, and the SRA's latest Strategic Plan signals the possibility of its future withdrawal from other franchises covering PTE areas.

The statement in para. 4.43 is only correct in relation to non-PTE franchises in England and Wales. Where a PTE is co-signatory of a franchise agreement, the SRA is unable to vary franchise obligations unilaterally, and within Scotland it is the Scottish Executive which specifies the non-PTE element of the passenger service requirement for domestic passenger services.

Para 2.48m - Contracts (Rights of Third Parties) Act 1999

As part of its previous submissions to this consultation exercise SPTE welcomed the Regulator's acceptance that third parties should have specific enforceable rights. However, at that stage SPTE indicated that the proposals did not go far enough to protect the interests of revenue-risk bearing PTE's and funding bodies within the industry.

However, it is noted that the position with the Draft Model Passenger Access Contract specifically excludes the rights of third parties under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract.

Whilst it is appreciated that the Network Code will be incorporated into the Contract, and there may be reference to consultation rights, since (to use SPTE as an example) the PTE is not a party to the contract or the Network Code, there would appear to be the potential that it would not even be able to enforce those rights included within the Network Code.

In addition, there are some slight differences under statute and common law in relation to the position with regard to third party rights under contracts. In view of the recognition of the differences in legal systems, this should be accommodated within the Draft Model Passenger Track Access Contract.

Para 3.30 – Consultation and hearings

SPTE welcomes the Regulator's commitment to consult any PTE which is likely to have an interest in any application. It would probably also be appropriate for him to consult the Scottish Executive in relation to any matter relating to Scotland.

Paras 4.3; 4.26-7 – Capacity allocation; capacity choices and criteria

See comments above against paras 2.15-19 about the separate locus and funding interests of the Scottish Executive in relation to railway matters within Scotland. While it is to be expected that the SRA will develop any application of its Capacity Utilisation Study in Scotland in close consultation with the Scottish Executive as the prime funder of the Scottish network, in terms of the process outlined in paras 4.26-7 it might also be appropriate for the Regulator to consult directly with the Scottish Executive on those capacity allocation matters where it was likely to have an interest.

Para 4.63 – Quantum or expression of rights

The caveat about ongoing availability of rights within the context provided by the EU Infrastructure Package is noted. However, that package has been developed in order to assist the achievement of high-level policy objectives in relation to modal share, economic efficiency and environmental sustainability. SPTe would therefore be extremely concerned if the implication of para 4.63 was that access rights which the relevant public authority considered necessary for the attainment of these high-level objectives could be eroded over time or even entirely set aside in pursuit of intermediate objectives such as facilitation of a single market in railway services. It therefore trusts that the Regulator's own view of his public interest responsibilities will allow him to strike an appropriate balance in circumstances where the continuation of existing rights was essential to deliver passenger service requirements which the appropriate territorial public authority considered necessary for policy reasons or to discharge statutory duties.

I trust that these comments will be of assistance, but if any aspect requires clarification or amplification please do not hesitate to contact either myself at the address or telephone number above, or Hazel Martin, head of rail franchise management, on 0141-334 3742. I confirm that this response can be made publicly available by the Regulator and may be quoted from if required.

Yours sincerely

A handwritten signature in black ink that reads "Malcolm Reed". The signature is written in a cursive style and is positioned above a horizontal line.

Malcolm C Reed
Director General