



Rail Users Consultative Committee *for Western England*

15 February 2000

Mr.S.Gupta, .
ORR,
1, Waterhouse Square,
138-142 Holborn,
London EC 1 N 2 TQ

Dear Mr.Gupta,

Re: Consultation, on Model Clauses for Track Access Agreements

Apologies for the delayed response: I trust that you will find the comments from Members of the West of England RUCC helpful.

Yours sincerely,

J A Main
Assistant Secretary

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*Part of the RUCC network - the statutory watchdog protecting
and promoting the interests of rail passengers*

Chairman: Kevin Small Secretary: Sean O'Neill

Consultation on modal clauses for track access agreements

Members look positively on this idea, as it is far easier to work from a standard model rather than to have to try and see where possible agreements may be similar.

Specific comments were made to the specific questions for consultation as listed below: in addition some other comments were made.

Regulator's Foreword

9 Section 21 Model clauses for access contracts are *essential*

Introduction and Process

1.5 Review of access contracts for stations and LMDs are in need of a greater priority.

1.6 Part E need reform due to new liabilities

1.18 Should the Regulator be able to take the initiative under Section 17?

1.22 Access contracts need standardisation.

1.27 The legal competence of TOCs and Railtrack has been very poor re rights and obligations. So many in management still act as if the old BRB system was still the norm.

Consultation questions from Chapter 2

2.11 Q1 Yes
Q2 Yes
Q3 Operative provision, aid to interpretation, objective reference point
Q4 No

2.14 Q1 Yes
Q2 Not adequate
Q3 Yes

2.18 Q1 Yes
Q2 Yes - it should not be easy to change the Rules of the Route except in the case of sudden emergency such *as a* temporary speed limit. There is a need for additional protection for train operators against amendment of the Rules without agreement.
Q3 Yes (very definitely)
Q4 Yes - triennial review, especially when the constraints affect the public interest.
Q5 Changes without agreement should only be permissible when they enhance the public interest

- Q6 Railtrack should NOT have a right to add pathing or other allowances - if Railtrack want to alter the timings they should only do so when making the contract.
- Q7 There should be a limit to the ability of operators to have rights over and above what is agreed - a type of "use it or lose it" arrangement - if they have not taken advantage of any window of opportunity within a certain time they should lose it.
- 2.22 Q1 No
 Q2 Yes
 Q3 Universal
 Q4 No; Yes; Yes
 Q5 Completely revamp Part G procedure
 Q6 No; No; Encourage TOC usage of procedure
 Q7 No; too weak; inhibit; no
 Q8 No; TOCs don't take advantage of legal opportunities open to them
- 2,28 Q1 Yes
 Q2 weighted towards contractual enforcement
 Q3 multi-lateral contact via part G; TOCs need to seek remedies via ATOC
 Q4 No; by precise specification
- 2.29 Q1 long-term operational material regularly updated, with clear, accurate information on charges
 Q2 supplied under different standards under commercial purpose provision
 Q3 No
 Q4 TOC aspirations in commercial confidence.
- 2.34 Q1 No
 Q2 deliverance assurances with strengthening of schedule srights
- 3.2 Q1 No
 Q2 Yes; via commercial purpose provision
- 3.4 Q1 Full liability; Full liability; all breaches to be covered
 Q2 Yes
 Q3 N/A
 Q4 Yes
 Q5 Yes - unlimited liability for wilful misconduct specified in commercial purpose provisions.
- 3.8 Q1 Yes
 Q2 "early warning mechanism" when serious breach likely,; yes
 Q3 Yes; no
- 3.10 Q1 No; yes; yes
 Q2 Railtrack default protection for TOCs under franchise; different
 Q3 Yes; legal implications on own licence; yes

