

# Responses to consultation on changes to operator licences – Published 1 May 2020

1. Arriva UK Trains
2. First Group plc
3. London Underground (LUL)
4. MTR Elizabeth Line
5. Rail Express Systems Limited
6. Rail for London
7. Serco UK & Europe
8. Transport Focus
9. Transport for London (TfL)

Dear [redacted]

Many thanks for your letter dated 22 October 2019. We welcome the opportunity to present comments on proposed license modifications in relation to the Rail Passengers' Rights and Obligations Regulation.

Whilst we believe the drafting of the conditions is clear, we have concerns regarding the construction of a number of articles which would become effective as a result of the insertion or changes to the conditions. This relates either to where the drafting and meaning is unclear and would therefore lead to uncertainty around what would be compliant, or where the Article wording would mandate change that we believe might be unintended (for example Article 29).

If you have any questions regarding our response or would like to discuss any area further, we would be more than happy to do this.

Passenger SNRP holder	
Comments on PRO changes	
Condition 3 – Passenger rights, through tickets and network benefits	<p>Whilst the drafting of the condition is clear, we have concerns regarding the drafting of three articles for which we believe insufficient detail is included in order for us to comply:</p> <p>Article 5 – clarity is not given as to whether this applies to all services, or whether as is common practice we would be able to continue the practice of restricting the carriage of bikes on peak services due to the restricted space available on board during these times. More specifically, it is not clear what “<i>if this does not adversely affect the specific rail service</i>” means.</p> <p>Article 28 – could you please specify the meaning of the acronym ‘ERA’. We note that there does not appear to be any reference to this data published by any other country on <a href="https://www.era.europa.eu/">https://www.era.europa.eu/</a> (insofar as we could ascertain).</p>

Arriva plc  
 Lacon House  
 6<sup>th</sup> Floor  
 84 Theobalds Road  
 London WC1X 8NL

Tel +44 (0) 20 38 882 0400

[www.arriva.co.uk](http://www.arriva.co.uk)

	<p>Article 29 – could you please confirm your intention that ORR’s contact details would be required to be displayed at points of sale. Currently we publish the addresses of Transport Focus and London Travelwatch.</p>
Condition 5 – Accessible Travel Policy	<p>Whilst the drafting of the condition is clear, we have concerns regarding the drafting of two articles for which we believe insufficient detail is included in order for us to comply:</p> <p>Article 21 – could you please review whether the article in its current wording would apply to operators with dispensations for non PRM TSI rolling stock</p> <p>Article 24 – this article appears to have been written for stations which are staffed. We are unclear as to how compliance would be possible at unstaffed stations.</p>
Condition 6 – Complaints handling	<p>Whilst the drafting of the condition is clear, we have concerns regarding the drafting of one article for which we believe insufficient detail is included in order for us to comply:</p> <p>Article 27 – could you please clarify whether there would be a requirement for each TOC to publish an annual report, or to annually submit data to the ORR for subsequent publication.</p>
<b>Other comments on the drafting</b>	
We have no additional comments on the drafting.	

<b>Station licence holder</b>	
<b>Comments on PRO changes</b>	
Table of contents	We have no comment on the drafting of the table of contents.
Condition 3 – Passenger rights	Whilst the drafting of the condition is clear, we have concerns regarding the drafting of one article for which we believe insufficient detail is included in order for us to comply:

	<p>Article 29 – could you please confirm your intention that ORR’s contact details would be required to be displayed at points of sale. Currently we publish the addresses of Transport Focus and London Travelwatch.</p>
<p>Condition 5 – Accessible Travel Policy</p>	<p>Whilst the drafting of the condition is clear, we have concerns regarding the drafting of two articles for which we believe insufficient detail is included in order for us to comply:</p> <p>Article 21 – could you please review whether the article in its current wording would apply to operators with dispensations for non PRM TSI rolling stock</p> <p>Article 24 – this article appears to have been written for stations which are staffed. We are unclear as to how compliance would be possible at unstaffed stations.</p>
<p><b>Other comments on the drafting</b></p>	
<p>We have no additional comments on the drafting.</p>	

I am content for this response to be published on the ORR website. (delete as appropriate)

Name: Mary Hewitt, Strategy and Policy Director

Organisation: Arriva UK Trains

**From:** Andrew Levy [redacted]

**Sent:** 20 November 2019 15:51

**To:** Licensing Enquiries

**Subject:** Licence Modifications: Rail Passengers' Rights and Obligations Regulation

Dear Sir

I refer to the attached letter from [redacted] dated 22 October 2019. I am submitting this response on behalf of First Group's train operating companies.

I confirm that we do not have any comments on the proposed drafting modifications. We are content for this response to be published on the ORR website.

Kind regards

**Andrew Levy**  
Legal Director- Rail  
FirstGroup plc



22 November 2019

Office of Road and Rail  
One Kemble Street  
London  
WC2B 4AN

**By post and email**

[licensing.enquiries@orr.gsi.gov.uk](mailto:licensing.enquiries@orr.gsi.gov.uk)

London Underground  
11<sup>th</sup> Floor  
Palestra  
197 Blackfriars Road  
London SE1 8NJ

[www.tfl.gov.uk/tube](http://www.tfl.gov.uk/tube)

Dear

**LICENCE MODIFICATIONS: RAIL PASSENGERS' RIGHTS AND OBLIGATIONS REGULATION**

**1 Background**

1.1 Thank you for your letter of 22<sup>nd</sup> October 2019 (the "**Letter**"). I write for and on behalf of London Underground Limited ("**LUL**"). The proposals of the Office of Rail and Road ("**ORR**") relating to Licence Modifications: Rail Passengers' Rights and Obligations Regulation set out in the Letter are noted. However, LUL does not consider this approach to be correct for the reasons set out below. In the letter, the ORR notes:

- 1.1.1 the Rail Passengers' Rights and Obligations Regulation (Regulation 1371/2007/EC) (the "**European Regulation**") are effectively implemented in Great Britain through the Rail Passengers' Rights and Obligations Regulations 2010 (the "**RPRO 2010**");
- 1.1.2 the current domestic exemption in place for all but the core obligations of the European Regulation will expire on 3 December 2019;

- 1.1.3 the ORR proposes to modify certain licence conditions of those station licence holders granted licences under the Railways Act 1993 (the “**Act**”) at which passenger SNRP holders provide passenger train services, including LUL’s station licence granted by the Secretary of State for Transport (“**SoST**”) and dated 31 March 1994 (the “**LUL Station Licence**”);
  - 1.1.4 its proposed modifications to the LUL Station Licence are set out in Part 3 of Annex A of the Letter (the “**Modifications**”); and
  - 1.1.5 the ORR claims it is making the Modifications in order to meet obligations under the European Regulations and has indicated it is able to do so without the consent of licence holders under the RPRO 2010.
- 1.2 The Modifications would have a number of practical impacts on LUL, through the application of a number of provisions of the European Regulation. If implemented, LUL would be required (in accordance with Article 18 of the European Regulation) to offer “assistance” to passengers at those LUL-operated stations which are also used by European-licensed passenger rail operators. Of course, as a reasonable customer service organisation, LUL does support and offer assistance to its customers. However, in the case of delays of more than 60 minutes to other operators’ services which call at stations managed by LUL to which the LUL Station Licence applies, LUL may become obliged to pay for:
- 1.2.1 meals and refreshments;
  - 1.2.2 hotel or other accommodation, and transport between the station and place of accommodation; and
  - 1.2.3 transport (such as taxis) to a passenger’s final destination.
- 1.3 Any such delays to other operators’ services are unlikely to be within the reasonable control of LUL: either Network Rail or those other operators’ will be responsible. In the absence of a contractual mechanism with the relevant operator (which has not been proposed by the ORR) LUL would be unable to recover those costs from the relevant operator or Network Rail. Essentially, LUL could have significant costs imposed upon it through no fault of its own and without any budget for such costs, nor the ability to recover from the responsible party. This, in our view, is patently unfair and unreasonable. Whilst we understand and acknowledge the good reasons for applying the European Regulation, the Modifications would impose a disproportionate impact on LUL.
- 1.4 Whilst the purpose of the Letter was to invite views on the drafting of the Modifications (which we set out in the Appendix to this letter on a without prejudice basis), we have fundamental concerns in relation to the ORR’s proposal to impose the Modifications on LUL at all. We firmly believe that the ORR’s proposal would be contrary to the established legal position, outside of the powers given to the ORR and irrational.

## 2 Executive summary

2.1 In summary, our view is that:

- 2.1.1 LUL is excluded from the requirement to hold a licence under the Railway (Licensing of Railway Undertakings) Regulations 2005 (the “**Licensing Regulations**”);
- 2.1.2 the European Regulation therefore expressly does not apply to LUL;
- 2.1.3 the ORR would be acting outside of the powers granted to it under RPRO 2010 if it chose to impose the Modifications on LUL; and
- 2.1.4 in any event, the Modifications would have a disproportionate impact on LUL in the absence of the ability to recover the costs of implementation from the responsible party and accordingly it would be irrational to impose them in the form proposed.

## 3 Statutory context and non-application to LUL

### *Exemption and exclusion from the 2005 Regulations*

- 3.1 As you will be aware, LUL is the operator of the stand-alone London Underground network and operates urban and suburban railway services in and around the Greater London area. LUL is a wholly-owned subsidiary of Transport for London (“**TfL**”). Under The Railways (London Regional Transport) (Exemptions) Order 1994 (the “**Order**”), every “TfL company” is granted an exemption from the requirement under section 6 of the Act to be authorised by licence to be the operator of any station on the TfL network (paragraph 3(b) of the Order). This is except where regular scheduled railway passenger services are provided to that station by someone other than by a TfL company or any ELR concessionaire or both. Accordingly, the SoST granted LUL the LUL Station Licence for the small number of stations operated by LUL where regular scheduled railway passenger services are provided by other train operators.
- 3.2 LUL is also excluded from the requirement to be licensed under the Licensing Regulations and from certain provisions of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the “**2016 Regulations**”). This is because LUL operates rail passenger services on local and regional stand-alone railway infrastructure and its activities are limited to the operation of urban or suburban rail passenger services (paragraphs 4(2)(a) and (b) of the Licensing Regulations and regulations 4(7)(a) and (b) of the 2016 Regulations).
- 3.3 “urban or suburban rail passenger services” means “*transport services whose principal purpose is to meet the passenger transport needs of an urban centre or conurbation, including a cross-border conurbation, together with transport needs between such a centre or conurbation and surrounding areas*” (regulation 4(3)(a) of the 2005 Regulations). The services operated by LUL clearly meet this definition, as their principal purpose is to meet the passenger transport needs of London, together with transport needs between London and surrounding areas. London is



undoubtedly an “urban centre or conurbation”. This position was confirmed on behalf of the SoST when the 2016 Regulations were implemented<sup>1</sup>.

- 3.4 The non-application of the European Regulation to services such as LUL’s is no mere aberration. Recital 26 of the European Regulation itself recognises that urban, suburban and regional rail passenger services are different in character from longer-distance services.
- 3.5 Of course, whilst LUL is excluded from the requirement to be licensed under the Licensing Regulations, it remains subject to the LUL Station Licence issued under the Act.

#### *European Regulation*

- 3.6 The European Regulation does not apply to “railway undertakings and transport services which are not licensed under Directive 95/18/EC” (Article 2(2)).
- 3.7 Directive 95/18/EC related to the licensing of railway undertakings. It was implemented into English law under the original version of the Licensing Regulations. A number of amendments were made to Directive 95/18/EC, which were also implemented in England by amendments to the Licensing Regulations. Eventually, the Directive was “recast” under Directive 2012/34/EU. The “recast” was implemented in England through amendments to the Licensing Regulations made under the 2016 Regulations. The Licensing Regulations, as they currently stand, are clear that references to a “European licence” mean a licence granted either under the “1995 Directive” (i.e. Directive 95/18/EC) or the “2012 Directive” (i.e. 2012/34/EU). From a practical perspective, the European Regulation must also apply to railway undertakings licensed under Directive 2012/34/EU, which replaced 95/18/EC. Otherwise, no railway undertaking issued with a European licence since the 2016 Regulations came into effect would have to comply with the European Regulation.
- 3.8 LUL is not required to be licenced under the Licensing Regulations or the relevant European Directives. It does not, in fact, hold a licence under the Licensing Regulations. Accordingly, the European Regulation expressly does not apply to LUL.

#### *RPRO 2010*

- 3.9 The ORR’s power to impose modifications or new licence conditions in station licences (including the Modifications) is granted under Regulation 14(2) of RPRO 2010. The power is expressed as being one which may be exercised “*to ensure that the licence holder complies with the provisions of the European Regulation specified in the Schedule that apply to station managers*”.
- 3.10 Put simply – and as noted in paragraph 3.8 above – the European Regulation expressly does not apply at all to LUL. As LUL is not required to comply with the European Regulation, the ORR has no legal power to impose the Modification on LUL. To attempt to do so would exceed the statutory power given to the ORR under

---

1

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535142/guidance-on-the-scope-of-the-recast-first-rail-package-transposition-regulations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535142/guidance-on-the-scope-of-the-recast-first-rail-package-transposition-regulations.pdf)

the RPRO 2010 and therefore would be ultra vires. It would also contravene the European Regulation which expressly states that it does not apply to railway undertakings or transport services which are not licenced under the relevant legislation.

#### 4 **Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018**

4.1 For completeness, we have reviewed forthcoming amendments to the RPRO 2010 being implemented as a consequence of the United Kingdom's withdrawal from the European Union. These will be implemented under the Rail Passengers' Rights and Obligations (Amendment) (EU Exit) Regulations 2018 (the "**Brexit Regulations**"). We accept these are not currently in force, but we thought it helpful to consider them for two reasons:

4.1.1 given the interplay between different European Directives, which will no longer directly apply in the United Kingdom following withdrawal, we thought they may offer clarity on how the European Regulation, the Licensing Regulations and RPRO 2010 should be interpreted. This in the context of a stated government intention that no amendments are being made to the legislation, it will simply be an application of the existing legislation directly in English law; and

4.1.2 whether the position does in fact remain the same following withdrawal from the European Union.

4.2 In fact, the Brexit Regulations further support LUL's position set out in this letter that the requirements of the European Regulation do not apply to LUL. Article 2 of the Brexit Regulations makes clear that the European Regulation will continue to apply only to railway undertakings to which regulation 5 of the Licensing Regulations apply. As set out above, the Licensing Regulations do not apply to LUL. Therefore, nor does the European Regulation, neither now nor after the United Kingdom has withdrawn from the European Union.

#### 5 **The Rail Passengers' Rights and Obligations (Exemptions) Regulations 2014**

5.1 The Letter refers to the expiry of certain exemptions under the Rail Passengers' Rights and Obligations (Exemptions) Regulations 2014 (the "**Exemption Regulations**"). The Exemption Regulations will expire on 3 December 2019.

5.2 As the European Regulation does not apply to LUL, LUL does not rely upon the Exemption Regulations. Our view is that the expiry of the exemptions thereunder is not relevant to LUL.

#### 6 **Example**

6.1 We recognise that the purpose of the European Regulation and the RPRO 2010 is to afford a number of protections to passengers. Many of the obligations are imposed on SNRP holders as the relevant counterparty with whom passengers travel and it is those SNRP holders who, in our view, should be responsible for their passengers.

- 6.2 LUL operates Amersham station, at which an SNRP holder's services call. In this example, the SNRP holder cancels its last service of the day to Aylesbury. The reason for the cancellation is a Network Rail cause. There are a number of passengers at Amersham station who had intended to travel to Aylesbury.
- 6.3 If the Modifications were to be imposed on LUL, LUL may be obliged to pay for:
- 6.3.1 meals and refreshments;
  - 6.3.2 hotel or other accommodation, and transport between the station and place of accommodation; and
  - 6.3.3 transport (such as taxis) to a passenger's final destination.
- 6.4 Those costs would be incurred by LUL without any ability to recover them from the SNRP holder or Network Rail (who was ultimately at fault in this example). This would appear to be both unreasonable and irrational. We contrast the position at Network Rail managed stations where Network Rail could have the option to recover such costs from station users as part of the station charging regime (in particular, qualifying expenditure). As LUL is not an SNRP holder (and there is no suggestion that it should be) LUL would not be able to offset any such costs against those which it may otherwise have incurred where other station managers are responsible for LUL passengers. Where an SNRP holder operates trains and manages stations, there may be some ability to do this offsetting. The Modifications therefore have a disproportionate and potentially very significant impact on LUL – particularly where it is clear that the European Regulation does not apply to LUL.
- 6.5 It would seem appropriate that, notwithstanding all of the above, if these obligations were to be imposed on station managers, that compliance should be conditional upon the relevant SNRP holder agreeing to reimburse the costs incurred by the station manager. In the example above (and entirely without prejudice to LUL's position set out in this letter), this would mean LUL would be reimbursed for all of the costs it incurs. A formal agreement to pay LUL's costs would be required from the SNRP holder. The SNRP holder would then need to exercise its rights under its track access contract with Network Rail (which may include under the Schedule 8 mechanism) to be compensated for its losses, including costs it has been required to pay out to LUL.
- 6.6 In effect, LUL's view is that the obligations should be for SNRP holders to discharge where, like here, the station manager does not fall within the scope of the European Regulations. The SNRP holder may then choose to discharge its obligations through entering into a contract with the station manager – or this could even be included as an exclusive station service in the existing station access arrangements.

## 7 Conclusion

- 7.1 LUL expressly falls outside the scope of the European Regulations and the ORR's powers under RPRO 2010 do not extend to making the Modifications. This is particularly the case in light of assurances given on behalf of the SoST that LUL does not fall within the scope of the Licensing Regulations 2005 and accordingly the

European Regulations. LUL has acted in accordance with these assurances. To seek to impose the Modifications risks the ORR acting unlawfully. Moreover, were the ORR to decide to impose the Modifications, there is good reason to suggest that it would be acting so unreasonably that it would be an irrational decision.

- 7.2 If the ORR nevertheless proceeds with the Modifications, we believe amendments are required to the ORR's proposed approach. We have set out below two proposed alternatives as follows (in descending order of preference):
- 7.2.1 require LUL to *assist* European-licensed operators with fulfilling *their* obligations under the European Regulation, subject to such operators paying all of LUL's costs ("**Alternative A**"); or
- 7.2.2 include the proposed Modifications with a further, express, provision that the obligations imported as part of the Modifications only apply to the extent that the European Regulation applies to LUL and only in relation to the passengers of European-licensed operators calling at LUL's stations ("**Alternative B**").
- 7.3 Suggested drafting for each of Alternative A and Alternative B is set out in the Appendix. These alternatives are being provided to assist the ORR's deliberations and should not be construed as being an acceptance by LUL that the ORR would be acting lawfully were it to impose the Modifications. Notwithstanding the provision of these alternatives, LUL reserves all of its rights in relation to the subject matter of this letter.
- 7.4 We would be grateful for a discussion as soon as possible and in any event prior to any purported modification of the LUL Station Licence. Please contact me or a member of my team at the address set out above to arrange a discussion or if you have any initial questions.
- 7.5 We confirm that we do not consider any part of this letter to be confidential and are content for it to be published on the ORR's website.

Yours sincerely,



Managing Director

**Appendix**  
**Suggested Alternative Drafting**

**Alternative A**

The following modifications are to be made to **London Underground Limited's** station licence:

- 1 In the Table of Contents, insert a new Condition 14, after the entry for "Information As To Stations Of Which The Licence Holder Is The Operator" as follows:

"Passenger Rights"

- 2 In Part II (Interpretation), paragraph 1, insert the following new definitions after the definition of "licensed activities":

"Other Passenger Operator" means an operator of passenger rail services other than the licence holder:

(a) to whom the PRO Regulation applies; and

(b) whose services call at any of the stations of which the licence holder is the operator pursuant to this licence;

"the PRO Regulation" means Regulation (EC) No.1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations."

- 3 Insert a new Condition 14

as follows: "Condition 14:

Passenger Rights

1. Subject to paragraph 2, at the request of an Other Passenger Operator, the licence holder shall provide reasonable assistance at any of the stations of which the licence holder is the operator pursuant to this licence, to aid such Other Passenger Operator's efforts to comply with articles 18 and 29 of the PRO Regulation.

2. Nothing in this Condition shall oblige the licence holder to do anything in circumstances where the Other Passenger Operator has not agreed (to the licence holder's reasonable satisfaction) to pay all of the licence holder's costs of providing such assistance."

### Alternative B

The following modifications are to be made to **London Underground Limited's** station licence:

- 1 In the Table of Contents, insert a new Condition 14, after the entry for "Information As To Stations Of Which The Licence Holder Is The Operator" as follows:

"Passenger Rights"

- 2 In Part II (Interpretation), paragraph 1, insert the following new definitions after the definition of "licensed activities":

"Other Passenger Operator" means an operator of passenger rail services other than the licence holder:

(a) to whom the PRO Regulation applies; and

(b) whose services call at any of the stations of which the licence holder is the operator pursuant to this licence;

"the PRO Regulation" means Regulation (EC) No.1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations."

- 3 Amend Condition 4 (Accessible Travel Policy), paragraph 2, as follows:

"2. In establishing the Accessible Travel Policy and in making any alteration to it, the licence holder shall have due regard ~~to~~:

(a) to the code of practice published by the Authority pursuant to section 70 or section 71B of the Act. and

(b) (to the extent (if any) that the PRO Regulation applies to the licence holder) to articles 19(1), 21, 22 and 24 of the PRO Regulation, in relation to the passengers of Other Passenger Operators."

- 4 Insert a new Condition 14 as follows: "Condition 14: Passenger Rights

At any of the stations of which the licence holder is the operator pursuant to this licence, the licence holder shall (to the extent (if any) that the PRO Regulation applies to the licence holder) comply with articles 18 and 29 of the PRO Regulation in relation to the passengers of Other Passenger Operators."

**From:** Mark Eaton [redacted]  
**Sent:** 18 November 2019 17:40  
**To:** Licensing Enquiries  
**Cc:** [redacted]  
**Subject:** Licence Modifications: Rail Passengers' Rights and Obligations Regulation

Dear Sir

I refer to the letter received from [redacted] dated 22 October 2019 regarding licence modifications to reflect the expiration of the domestic exemption relating to certain provisions in the Rail Passengers Rights and Obligations Regulations.

I confirm that MTR Corporation (Crossrail) Limited has no comments to make on the proposed amendments to cater for the domestic exemption coming to an end.

Kind regards

Mark

**Mark Eaton**  
**Concession Director**  
MTR Elizabeth line

63 St Mary Axe, London, EC3A 8NH

**mtr**Elizabeth line | 



**Response proforma**

<b>Passenger SNRP holder</b>	
<b>Rail Express Systems Limited</b>	
<b>Comments on PRO changes</b>	
Condition 3 – Passenger rights, through tickets and network benefits	Rail Express Systems Ltd (“RES”) is a bespoke charter operator which has no direct contractual relationship with the passengers conveyed on its services. As such it is unclear how or whether the proposed licence modifications could apply to RES. RES would appreciate further dialogue with the ORR, in much the same way that the Accessible Travel Policy has been discussed, to better understand the implications for both it, its customers (the charter train promoters) and its passengers (the customers of the charter train promoters).
Condition 5 – Accessible Travel Policy	RES has been in discussion with the ORR, along with a number of other “bespoke” operators, regarding its ATP. RES would appreciate further advice on how or whether certain elements of the ATP will apply to it, given that it has no direct relationship with its passengers, and that discussions with the ORR’s Railway Markets & Economics team are ongoing.
Condition 6 – Complaints handling	We note the requirement to establish a complaints handling process with customers, but would point out that passengers on our services are not our customers, as noted previously. We would appreciate advice on how this change to our licence would be effected in practice.
<b>Other comments on the drafting</b>	

<b>Station licence holder</b>	
<b>Comments on PRO changes</b>	
Table of contents	
Condition 3 – Passenger rights	
Condition 5 – Accessible Travel Policy	
<b>Other comments on the drafting</b>	

I am/~~am not~~\* content for this response to be published on the ORR website. (delete as appropriate)

Name: Stewart Smith, Industry Contracts Manager

Organisation: DB Cargo (UK) Ltd (for Rail Express Systems)

**Annex D – Response proforma**

<b>Passenger SNRP holder</b> RAIL FOR LONDON LTD	
<b>Comments on PRO changes</b>	
Condition 3 – Passenger rights, through tickets and network benefits	NO COMMENTS
Condition 5 – Accessible Travel Policy	NO COMMENTS
Condition 6 – Complaints handling	NO COMMENTS.
<b>Other comments on the drafting</b>	
NO OTHER COMMENTS	

<b>Station licence holder</b> RAIL FOR LONDON LTD	
<b>Comments on PRO changes</b>	
Table of contents	NO COMMENTS
Condition 3 – Passenger rights	NO COMMENTS
Condition 5 – Accessible Travel Policy	NO COMMENTS
<b>Other comments on the drafting</b>	
NO OTHER COMMENTS	

I am/~~am not~~ content for this response to be published on the ORR website. (delete as appropriate)

Name: ALAN SMART

Organisation: TRANSPORT FOR LONDON

**From:** McGuigan, William [redacted]  
**Sent:** 02 December 2019 17:17  
**To:** Licensing Enquiries  
**Cc:** [redacted]  
**Subject:** licence Modifications Rail Passengers' Rights and Obligations Regulation

Serco Business

[redacted]

I am supporting the Caledonian Sleeper team relating to the changes being made to Passenger statements of national regulatory provisions **SNRPs**. Please can you help with the following questions?

Article 15 - (liability for delays, missed connections and cancellations).

Does the ORR have any guidance on the expected scope of this article? There is some uncertainty as to the extent of providing *reasonable* compensation for missed connections and *reasonable* consequential losses.

For instance in arriving at what is *reasonable* (e.g. a missed flight connection to a long haul destination) are we liable to compensate no matter the price or distance of a connecting journey? Should that compensation also cover cancelled accommodation, alternative accommodation and cancelled booked travel activities? And does the *reasonableness* depend at all on our prior knowledge (foreseeability) of that connecting journey, in which case would this necessitate us to collect that information at the time of booking (by phone, online, and to what extent we could know about this if a ticket were booked at a train station booking office?) We are keen to understand the ORR's view on where liability ends in respect of missed connections. Please can you let me know your availability over the next two weeks to have a call to discuss this point?

Article 18 - Assistance (duty to offer a hotel or other accommodation and transport).

We note that this obligation applies to TOC's where a stay of one or more nights becomes necessary or an additional stay becomes necessary, and that this obligation is qualified to where and when it is physically possible to do this. As Caledonian Sleepers operate an overnight service with our guests paying for both travel and accommodation, in instances of an unplanned or last minute service disruption it is not always likely to be physically possible to source hotel accommodation. In such circumstances our present response is to invite guests to remain on the train as their overnight accommodation, in line with their travel booking. Whilst this may be palatable to guests booked into a room we are keen to have your advice about this in respect of all of our guests and in particular about adopting this approach with our seated guests.

The ORR's guidance on the points raised would assist us to manage the operational impact in these changes.

Thank you and kind regards

William McGuigan  
Legal & Contracts Analyst  
Serco Caledonian Sleepers  
Serco UK & Europe  
[redacted]

**From:** Mike Hewitson [redacted]

**Sent:** 18 November 2019 17:48

**To:** Licensing Enquiries

**Cc:** [redacted]

**Subject:** Licence Modifications: Rail Passengers' Rights and Obligations Regulation

Thank you for your letter re 'Licence Modifications: Rail Passengers' Rights and Obligations Regulation'

We note the fact that the PRO regulations will come into force on 3 December and that this will necessitate changes in SNRP and station licences. Transport Focus has no objections or comments to make on the proposed form of words used.

Regards

Mike Hewitson

**Mike Hewitson**

**Head of Policy**

Transport Focus (London office)

**From:** Smart Alan [redacted]  
**Sent:** 14 November 2019 14:12  
**To:** Licensing Enquiries  
**Subject:** Licence Modifications: Rail Passenger Rights and Obligations Regulation

Dear [redacted]

Please find attached TfL's response to the ORR's extant consultation on the Licence modifications required by the withdrawal of the exemptions to the Rail Passenger Rights and Obligations Regulation. This response has been made on relation to the Rail for London Licences only. London Underground will be responding separately regarding the changes proposed to their station licence.

Regards,

**Alan Smart**

Principal Transport Planner | Public Transport Service Planning  
Pod 10G4, Floor 10, Palestra, 197 Blackfriars Road, London, SE1 8NJ  
Email: [redacted]

