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Rail Directorate

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Your ref:

Our ref:
NRS11-031

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By email
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Dear Gerry

Consultation on proposed changes to the Station Access Conditions and the Independent Station Access Conditions

Thank you for the opportunity to consider these changes. Transport Scotland broadly supports the principles of the revisions of the Station Access Conditions, in particular simplifying and making more efficient the arrangements, improving quality and reducing the time taken to implement upgrades.

In particular we welcome those changes to the process which should reduce the time to deliver small, but valuable upgrades to passenger facilities. This is particularly useful in a Scottish context where there are a number of small and medium sized stations where the footfall cannot support extended project timescales and costs.

We have a number of comments on some of the specific questions posed in Chapter 6, which I have set out in an attached annex.

I hope you find this useful.

Yours sincerely

Steven McMahon
Head of Rail Strategy

Annex

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Paragraph 6.12

The concept of third party developers is to be welcomed, however it is not obvious whether there would be a difference of experience or approach on the part of Scottish developers, public and private. With a distinct planning and property law in Scotland, it may be useful to know whether there is a Scottish perception or issue distinct from that already discussed. For example in determining whether the distinction between Specific and Strategic is appropriate here in Scotland, we would wish to understand the experience of Scottish investors, including third sector or public investors, on whether £250,000 is the correct level of qualification for a Strategic Contributor. This is of particular importance when we consider that a Specific Contributor (i.e. one between £5,000 and £250,000) loses their right to be consulted on the impact on their investment of future Station Changes once their project is complete - which could see their assets or investments adversely impacted very soon after making what might be for them a significant investment.

While we agree it may be sensible to make this distinction, it may be more appropriate to do so on another basis, such as by considering the nature of the proposal. Strategic projects will likely be, or facilitate delivery of, a strategic objective (for example contained within a national, regional or local strategic development plan) or will have a wider impact than that which it aims to deliver locally.

Paragraph 6.15

One of the proposed improvements to the new scheme is to de-couple the need to reach agreement on the cost/value of a proposed Station Change from the power of the proposer to push on and make the change. In theory this allows the whole process to speed up, which we welcome. However the way this is achieved is by having the proposer give the other impacted users the comfort of a guarantee to meet any and all proper cost consequences of the change. Though this also appears to be sound in principle, we have concerns about how likely in practice any proposer is to develop a proposal unless the price is actually properly quantified and tested against that proposer's business case before the work/change occurs. The sort of "emerging costs" approach created is unlikely to be attractive to third party public sector or third sector investors whose funding might be based on fixed or capped grants. As such we are unsure of the extent to which this approach will in fact unblock investment hurdles.

Paragraph 6.16

It seems appropriate that station change proposals can cease to be effective if not implemented. However referring to our comment above on the likelihood of a change actually going ahead pending resolution of costs (and in particular one where a third party funder is involved) it will be important that this creation of an end-date does not serve to artificially block progress or discourage a would-be investor, for fear on the part of the investor of the need to re-commence a complex and involved Change process.

Paragraph 6.26

There may be a need, before allowing recovery of additional accommodation costs, to ensure that no element of current accommodation can be viewed as being provided at below-market cost to the beneficiary. If there is such an element, it will be important to reflect properly the

actual value to the occupant of their current accommodation and to offset this against the new costs incurred.

Annex B

ATOC letter, Appendix 5, section 2

We would agree with ATOC's assessment of the types of change and their impacts, particularly where it is stated 'we do not believe it is necessary to introduce new administrative procedures to cover changes that can be made without the need to follow any formal procedure currently.' This appears to apply in particular to changes that would now be classed as Notifiable. The Contract Reform Task Group identified from the outset that implementing a change under the current regime is too complicated, and the introduction of procedures where there were none before, particularly for 'low value and impact' changes, seems to be counter to the aim of simplification.

Annex G

The Co-operation Agreement for Scotland at 13.2 provides that the responsibility for a third party investor to NR or a franchisee for the consequences of Station Change exists only until the end of a franchise or the Control Period. This makes sense for the franchisee and, based on the current process, is how NR funding works. We note that the drafting gives Scottish Ministers the power to leave this responsibility outside subsequent franchises, leaving the third party investor responsible for the long term cost impacts of their investment on station operation.

For NR however the power to leave third parties liable is vested in ORR, not Scottish Ministers. In considering this, we expect that the ORR will be mindful of the Scottish Ministers' policies and priorities for Scotland. This is particularly important when one considers how long guarantees and bonds from developers and third party funders to NR should be, compared to how long they will be if there is a general belief that Scottish Ministers will ultimately take on board operational costs.