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17 June 2019

Company Secretary
West Coast Railway Company Limited
off Jesson Way
Crag Bank
Carnforth
Lancashire
LA5 9UR

E-mail and post

Dear sir/madam,

Notice of statutory consultation on changes to licence conditions - RSSB membership and safety and standards of the non-passenger train operator licence held by West Coast Railway Company Limited (“WCRC”)

ORR hereby gives notice under Section 12(2) of the Railways Act 1993 of its proposals to modify WCRC’s non-passenger train operator licence as listed in Annexes of this notice.

Effect of and reasons for Proposed Modifications

In connection with our 2018 periodic review of Network Rail’s outputs and funding (“PR18”), ORR modified Network Rail’s network licence at the start of control period 6 (“CP6”), on 1 April 2019. Some of the conditions we changed also appear in licences for operators of trains¹, stations, light maintenance depots and other networks. This statutory consultation is in relation to Condition 8 membership of the Rail Safety and Standards Board (“RSSB”) and Condition 9 safety and standards, currently headed Railway Group Standards, of the non-passenger train operator licence held by WCRC.

On 26 February 2019, we launched our statutory consultation² proposing changes in licences issued under the Railways Act 1993. These relate to membership of the Rail Safety and Standards Board (“RSSB”) (usually Condition 8 in licences) and safety and standards (usually Condition 9 in licences). WCRC’s non-passenger licence was omitted from the list of licence holders. We are therefore conducting a separate statutory consultation requesting your consent to modify the non-passenger licence with these changes.

¹ For holders of EU train operator licences, the conditions appear in their corresponding Statements of National Regulatory Provisions (SNRPs).

² See <https://orr.gov.uk/rail/consultations/open-consultations/statutory-consultation-on-changes-to-licence-conditions-relating-to-rssb-membership,-safety-and-standards,-and-disabled-peoples-protection-policies>



RSSB

With regard to RSSB, in the same way that we changed Network Rail's network licence, following consideration in our PR18 process, we propose to continue to require licence holders to be a member of RSSB, but to modify the condition to reflect that it may discontinue membership with ORR's approval. The effect of this modification would be that licence holders could, with ORR's approval, cease RSSB membership without being in conflict with their obligations. This aligns with the provisions in RSSB's constitution, which allows members to leave in some circumstances.

Standards

With regard to safety and standards, as with Network Rail's network licence we propose to modify the condition to require the licence holder to comply with applicable Rail Industry Standards or to consult with affected parties where it proposes to depart from a Rail Industry Standard (in full or in part) and to deploy equally effective means of achieving its purpose.

The effect of this modification would be that Rail Industry Standards are recognised in addition to Railway Group Standards, but that there is the potential to depart from their content in particular cases. This was developed with the support of RSSB's Industry Standards Coordination Committee to recognise the introduction of Rail Industry Standards, which define functional or technical requirements for railway compliance where there is no application of Railway Group Standards.

We propose to make this modification with the intention of reflecting the development of the railway technical standards regime since this condition was first put into place, clarifying the status of Rail Industry Standards as accepted best practice and more accurately reflecting the licence holder's safety management duties to identify and apply a broader range of relevant technical and operational standards than just Railway Group Standards.

Our proposed changes to the existing text of Condition 8 and 9 of WCRC's non-passenger licence are shown in red at Annexes A and B.

We request the written consent of the licence holder in order to make the modification. Alternatively, any representations or objections, should be sent by 15 July 2019, addressed to:

Licensing Team
Office of Rail and Road
One Kemble Street
London
WC2B 4AN
licensing.enquiries@orr.gov.uk

This Notice is also being published on our website.

A handwritten signature in blue ink that reads 'Les Waters'.

Les Waters



Information provided to us may be subject to publication or disclosure in accordance with the access to information regimes. Any personal data you provide will be used for the purposes of this statutory consultation and will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

If you wish any information you provide to be treated as confidential, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you prefer to make a response in confidence, please annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or the OpenDocument Text (.odt) format.

Annex A: Proposed Modification relating to RSSB Membership

We propose to make the changes shown in red to the current text below:

Condition 8: RSSB membership

1. If the [SNRP or licence] holder's annual turnover has never exceeded £1 million and the [SNRP or licence] holder is not a franchise operator, paragraphs 2 and 3 shall not have effect until the [SNRP or licence] holder's annual turnover exceeds £1 million for the first time. The [SNRP or licence] holder shall provide ORR with such information in respect of its annual turnover as ORR may from time to time require.
2. With effect from the date of the coming into force of this [SNRP or licence], **except where ORR consents otherwise**, the [SNRP or licence] holder shall:
 - (a) become and thereafter remain a member of RSSB;
 - (b) comply with its obligations under the Constitution Agreement and the articles of association of RSSB; **and**
 - (c) exercise its rights under the Constitution Agreement and the articles of association of RSSB so as to ensure that RSSB shall act in accordance with the Constitution Agreement. **;~~and (d)~~**
3. **With effect from the date of the coming into force of this [SNRP or licence], the [SNRP or licence] holder shall** comply with the Railway Group Standards Code prepared by RSSB.
4. When [a SNRP or licence] holder first becomes subject to the obligations in paragraphs 2 and 3 his rights, obligations and liabilities associated with such membership shall commence on the same day, and the [SNRP or licence] holder shall complete the formal and legal documentation associated with such membership within three months of that date.
5. In this condition:

“franchise operator”	includes an operator of last resort, under section 30 of the Act.
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Annex B: Proposed Modification relating to safety and standards

We propose to make the changes shown in red to the current text below:

Condition [9 or 7]: ~~Railway Group Standards~~ Safety and standards

1. The [SNRP or licence] holder shall comply with:
 - (a) ~~the~~such Railway Group Standards **as are** applicable to its licensed activities~~;~~ **and**
 - (b) **subject to paragraph 2, such Rail Industry Standards (or parts thereof) as are applicable to its licensed activities.**
2. **The [SNRP or licence] holder is not required to comply with an applicable Rail Industry Standard (or part thereof) where:**
 - (a) **it has, following consultation with such persons as it considers are likely to be affected, identified an equally effective measure which will achieve the purpose of the standard; and**
 - (b) **it has adopted and is complying with that measure.**

3. In this Condition:

“Railway Group Standards” means standards authorised pursuant to the Railway Group Standards Code prepared by RSSB; **and**

“Rail Industry Standards” **has the meaning set out in the Standards Manual, established by RSSB.**