



FRIENDS OF THE WEST HIGHLAND LINES
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Robert Mills
Office of Rail Regulation
One Kemble Street
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Dear Mr Mills

**Response to ORR Consultation on Schedules
4 and 8 possessions and performance regimes**

Friends of the West Highland Lines wishes to comment only on questions 44 (Consultation Question 7.19) and 45 (Consultation Question 7.20) of the consultation. We have no objection to our response being published.

Summary Question 44 (Consultation Question 7.19)

We do not agree with the proposal not to require Network Rail to provide incident caps, for the following reasons:

- Removing the cap would inevitably cause most operators to cease running charter trains. It would simply not be practical to operate them under conditions of unlimited liability.
- The West Highland Lines and many other lightly used scenic lines throughout Britain receive frequent charter trains. These form a significant proportion of the traffic and their absence could affect the viability of the lines.
- Many such lines run through economically deprived areas. Charter trains bring visitors to these areas and generate essential income for local businesses. By their very nature, many charter trains carry people (and therefore wealth) from population centres to rural areas, thus helping to balance the economy.

- ORR's estimate that £660,000 would have been paid in compensation without the cap is a very small figure relative to the charter trains' benefit to the economy over the same period. Part of ORR's mandate is to protect the taxpayer so it would be counterproductive to cost the economy many times the amount saved.
- The figure of £660,000 is in any case highly misleading because it is (presumably) based on the assumption that the same number of charter trains would have run during the period in question if the incident cap were not in place. **This assumption is clearly false and therefore the figure is invalid.** In reality, the absence of a cap would have meant far fewer trains would have run so the compensation payments would have been lower and, more significantly, track access fee income would have been much less. **It is clear that in practice the net financial cost to Network Rail in CP4 has been far less than the £660,000 quoted; therefore abolishing the cap would bring a very much lower financial benefit.** Indeed, it is quite possible that abolishing the cap could **reduce** NR's net income.

In summary, we feel that by far the best option under 7.14 is option (c), i.e. to continue with the incident cap as at present.

Furthermore, we would like to point out that the consultation document provides insufficient data to allow informed consultation on this proposal. Only a single figure has been quoted and, as mentioned above, this figure is both inaccurate and misleading. Although we hope that the proposals will be dropped completely, if the ORR is determined to proceed we feel it is first essential to publish more detailed figures and thus allow more informed comment.

Specifically, we would suggest that you provide the following data in respect of charter trains:

1. Approximate NR income from charter trains (number of trains, average income per train).
2. Breakdown of the £600,000 estimated compensation (number of charter train incidents for which any compensation is paid, number of incidents affected by the cap, average uncapped compensation payment).
3. Estimated **net** effect on NR income based on different possible resultant falls in charter trains operated (e.g. net effect if abolishing the cap caused charter trains to reduce in number by 10%, 25%, 50%, 90%, etc).
4. Approximate external economic benefit of charter trains in Britain (e.g. number of trains run X average loading X average spend per passenger).

Summary Question 45 (Consultation Question 7.20)

We feel it is unrealistic to expect the private insurance market to provide incident caps, for the following reasons:

- Insurance companies are inherently risk averse and unlike Network Rail they have no mandate to keep trains running. On the whole they are likely to err on the side of caution and either not get involved at all or charge prohibitive premiums.
- Insurance companies may also place excessive conditions on charter operators, e.g. demanding that all trains be double-headed, in case of failure. Such conditions would in turn raise costs beyond what is viable and most charter trains would cease.
- Getting insurance companies involved in this issue would add yet another interface and level of bureaucracy to a business which already suffers from fragmentation, too many interfaces and too many contracts.
- Inevitably insurance companies would get heavily involved in the arguments about assigning blame between the charter operator, other operators and Network Rail. This would lead to more paperwork, wasted time and cost for all parties.

Once again, while disagreeing with the proposal, we also feel strongly that ORR has approached this part of the consultation wrongly. Rather than speculating about what insurance companies *might* cover, ORR should first approach some leading insurance companies for concrete information. If the insurance companies are willing to entertain this business, then ORR should obtain from them:

- A specimen insurance policy schedule and other relevant contractual documents. This would clarify the extent of cover insurers would be willing to provide and what conditions and limitations they would place.
- Guideline cost estimates for the insurance policy.

These documents should then be published for comment, as part of the consultation process.

Yours sincerely,



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