

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

Date:
29 January 2016

Emailed response via: [PR18.Schedules4and8](#)

Dear Sir or Madam

Stakeholder engagement on Schedules 4 and 8

Thank you for the invitation to input into your preparation for the review of Schedules 4 and 8 of track access contracts as part of the 2018 Periodic Review (PR18) process.

This letter sets out Transport Scotland's response. It includes some general observations on the possessions and performance regimes as well as some more detailed comments.

General observations

Transport Scotland was involved in the review of charges exercise coordinated by the Rail Delivery Group (RDG) which included findings specific to these regimes. The analysis and evidence produced as part of this exercise provides a helpful basis for the PR18 process.

We would agree that compensation regimes form an important part of the current regulatory framework, particularly in terms of the certainty they provide to passenger and freight operators. The Scottish Government – through Transport Scotland – funds and specifies the activities and services to be delivered through Network Rail Scotland and the ScotRail and Caledonian Sleeper franchises. Operationally and commercially it is therefore vital that Network Rail and all operators (including other cross-border and freight) are sufficiently incentivised to minimise disruption, improve the reliability of journeys, and ensure full support for the Scottish Government's rail objectives and broader economic and social ambitions set out in our Economic Strategy.

It is, however, equally important that the regimes are able to evolve and develop in line with emerging industry structures and the potential for further devolution of responsibilities. The ScotRail Alliance – now unique in GB railways - is bringing infrastructure management and service delivery together to support a whole-industry approach and help support transformative change in the quality and provision of services by placing the needs of customers at the centre of thinking and decision making.

Accordingly, we remain supportive of any opportunities for more bespoke, local arrangements within the ScotRail track access contract that might strengthen incentives to better manage

disruption but can still provide the same levels of stability and certainty to the Caledonian Sleeper and other secondary operators.

Additionally, any work on the Schedule 4 and 8 regimes must also be consistent with developments expected as part of the broader PR18 programme.

Purpose of the regimes

A key point raised within the RDG work was the need to be absolutely clear about the purpose of both regimes (what they are and aren't intended to do) before considering options for detailed reform. This is a position Transport Scotland fully supports.

Of particular note, Transport Scotland is aware of concerns that the current Schedule 8 regime does not give the right incentives for operators to work closely with Network Rail to mitigate the impact of delays, primarily due to the full compensation principle that applies.

We would therefore expect the ORR to review the incentive properties within the regimes with a view to ensuring that the best interests of passengers and freight users are protected whilst ensuring best value for the Scottish Government.

Payment rates

Clearly payment rates determine the amount of compensation paid by Network Rail and operators when they cause lateness. It is vital that the methodologies used to determine the Schedule 8 payment rates are robust, not least because of the impact they have upon the calibration of payments under Schedule 4. This was subject to considerable discussion as part of the PR13 process but the conclusion at that time was that further evidence was required to support reform. Early work in this territory will therefore be required to ensure that rates are set at the right level, reflecting local revenue effects.

Network Rail benchmarks

Transport Scotland's position remains the same as that communicated as part of the PR13 process – that the ORR should ensure that benchmarks remain transparent and offer the right balance of incentives to Network Rail and rail operators.

Sustained poor performance (SPP)

We note that the provision of compensation for sustained poor performance (SPP) remains a key part of the current Schedule 8 regime, allowing operators to claim compensation beyond the core formulaic process. The principles behind this are understood but it is vital that the ORR continues to review arrangements to ensure they are not unduly affected by short term variations.

Sustained Performance Disruption (SPD)

Transport Scotland is aware of concerns raised by operators that the thresholds for receiving Sustained Performance Disruption (SPD) do not always result in them receiving sufficient compensation to mitigate against disruption caused by engineering works. We would therefore expect the ORR to review the thresholds for SPD as part of the PR18 programme.

Closing remarks

In summary, Transport Scotland recognises the importance of the Schedule 4 and 8 regimes but there clearly remains scope for refinement and improvement. We look forward to working with the ORR through the PR18 process to help achieve this.

Yours sincerely

Steven McMahon
Head of Rail Strategy & Funding