

**Southeastern response to the ORR consultation on a revised contractual regime at stations - Proposed changes to the Station Access Conditions and the Independent Station Access Conditions**

Southeastern have reviewed the proposed changes to the Station Access Conditions and have the following comments.

**General Comments**

1. We agree that station change process needs clarifying and simplifying but do not agree the revised processes within the proposal achieve this.
2. We have concerns over various timescales within the document; especially given the specialist nature of the work and the limited number of staff with that speciality and have provided more detail on this within our response.
3. We welcome third party involvement in station development but do not agree that the SACs are the right place to introduce third party rights.
4. It is our view that Station Change provides a protection for TOCs and our passengers which is not found in many of the other essential approvals and consents and we wish to retain these protections.

**Comments on the Specific Questions within the Consultation**

6.1 Noted.

6.2 Noted.

6.3 Noted.

6.4 Noted.

6.5 Southeastern believe the retention of a voting process for changes to the national template SACs and the 80% threshold for approving a change proposal is appropriate. Southeastern have no issue with the removal of the requirement to hold Station Meetings, although in our experience it is good practice for all parties to meet to discuss major changes to stations.

***Categorisation of Station Change proposals in Part C***

6.6 *The proposed modification divides Station Change proposals into four types: Exempt, Non-discretionary, Notifiable and Material.*

Southeastern have concerns regarding the timescales provided to respond to changes and feel that these should be standardised to 28 days. Given the specialist nature of some changes and the differing internal approval processes of companies we do not feel the proposed timescales in relation to Notifiable and Material changes are sufficient. Southeastern further believe that, under a model where the differentiation is financial only, a Notifiable change should require approval in line with material changes. These changes have the potential to have a significant impact on passengers but cannot be stopped and Southeastern do not agree this is appropriate.

6.7 *Is the £5,000 threshold proposed in the definition of "Financial Impact Test" for assessing materiality the correct threshold?*

Southeastern broadly support the ATOC view on this point and accept that £5,000 would be an acceptable threshold for defining the difference between Notifiable and Material change. However, we strongly believe that additional factors should be considered when defining this difference as not all effects can be financially calculated. It is our view that the scale or duration of impact on passengers or service should also be considered when assessing the differences between Notifiable and Material changes.

In addition we seek clarity on how the £5,000 is calculated and what is included in the calculation of this figure.

- *Is there an alternative practical method of assessing materiality which respondents would favour?*

Southeastern fully support the ATOC response on this point.

6.8 *We invite respondents to set out their comments on whether it would be appropriate to allow operators to make representations (or even objections) in relation to an Exempt Activity, and/or to receive compensation in relation to the same.*

Southeastern agree there are actions on stations which should not require detailed station change but share the concerns raised by ATOC.

Southeastern consider notification of exempt activity should be required. In practice, notification of these types of works already takes place through the ISP and we would support the formalising of this process rather than the creation of an additional burden on either TOC or NR.

We note that the benefit of this category is weighted in favour of NR as TOCs will still be completing processes such as Landlords Consent.

- *Would respondents benefit from Network Rail producing guidance in relation to what is covered by its proposed definition of “Exempt Activity”?*

Southeastern feel this would be a benefit to the process, perhaps in the form a decision flow chart.

### ***Direct involvement of third party developers***

The SAC form a contract between NR and TOCs and while Southeastern welcome industry moves to increase third party involvement we do not believe this is the correct place to introduce third party rights.

6.9 *The proposed change process provides for certain categories of third party developers to be allowed to propose station change schemes in their own name, without needing to persuade an industry party to do so on their behalf (as is the case under the current SACs).*

Southeastern do not support this proposal and do not believe it to be in the best interests of third parties or the rail industry. Southeastern would prefer to see third parties work alongside a Rail Industry sponsor to introduce changes. We believe third parties may not always have a full appreciation of the potential impacts of their proposals on railways operations and working with a rail sponsor would address any issues in advance of spending both time and money drafting the proposal.

6.10 Noted. Please see our responses at 6.12

6.11 Southeastern do not agree with the proposal that Strategic Contributors should be consulted on all station changes. Nor do we agree that there should be no end timescale on consultation of Strategic Contributors. We recognise investment on the scale being proposed for a strategic contributor does merit continued involvement but consider this is most appropriately dealt with on a case by case basis through the funding agreement, as is the case presently. We further have concerns regarding the timing of the start of a Contributors right to be consulted on proposed changes and suggest this needs further clarity and consideration.

6.12 *Is the direct contracting with third party developers satisfactory?*

No. We believe this introduction imports serious risk into the business of a TOC and has serious potential to impact passengers. The protection afforded to NR far outweighs that to TOCs as NR still have a Form A/B process which allows them a measure of control over 3<sup>rd</sup> party involvement, however TOCs will not have similar protections.

We have concerns the introduction of direct involvement of third parties will make the process of consultation on Station Changes far more complicated and lead to complications surrounding the management of the consultee lists. We believe that there is a risk that this proposal will increase the resource requirements in the industry if it encourages parties with little understanding of the operation of a railway environment to submit a poor quality of station change submissions. Southeastern feel that this change does not promote closer working relationships between third parties and the rail industry in the way that joint working between an interested third party and a rail industry sponsor would.

- *Is the distinction between the **type** of developer who can qualify as a Specific and Strategic Contributor appropriate?*

Southeastern object to the principle but, if implemented, accept this distinction.

- *Are the proposed qualification thresholds appropriate?*

Southeastern feel the figure of £50,000 is not sufficient to qualify as a specific contributor and feel this figure ought to be calculated in a way that excludes the normal investments made by retail and other tenants at stations.

***Grounds for objecting to a Material Change Proposal (C4.7 of the proposed SACs and 10.7 of the proposed ISACs)***

6.13 Southeastern consider there should be grounds for objection on Notifiable and Material changes and that the limited grounds proposed are not currently sufficient. Please see expanded response at 6.15

6.14 Please see expanded response at 6.15. In addition, Southeastern are unclear how dispute resolution will work in practice if there is direct involvement of third parties as they are not part of the ADC.

6.15 *Are the grounds of objection as drafted sufficient?*

Southeastern broadly support the ATOC response on this point and would fully support the retention of the grounds for objection as drafted within the Station Code. We believe that the grounds for objection as drafted in this proposal are insufficient and these grounds are too heavily weighted to the financial implications. A consultee should be able to object if they feel that the impact on passengers, staff or their business will be disproportionately negative.

- *Is this separation of financial compensation (and the provision of alternative accommodation) from the list of valid objections appropriate?*

Southeastern broadly support the ATOC response on this point but wish to highlight their concern at the removal of the full indemnity. The separation into a distinct process of financial compensation and related concerns is acceptable but this financial process must also be resolved before implementation can proceed. In our experience this is essential to protect TOC and passenger interests.

We believe that accommodation issues should be included within the main grounds for objection, especially in relation to accommodation for operational staff. There are a number of elements, for example a change of location affecting walking times, which have the ability to impact the operation of the railway and as such should be included within the list of valid objections.

### **Registration and implementation of a proposed Station Change**

6.16 *Respondents are requested to submit their comments on the proposal that Station Changes should be registered with ORR.*

We agree that Station Changes should continue to be registered with ORR and fully support the introduction of implementation notices.

- *Respondents are requested to submit their comments on the proposal that registered Station Changes cease to be effective if not implemented within a set period after registration.*

Southeastern support this proposal but feel consideration as to the start point of the time frame should be given to avoid delays in registering Station Changes.

### **Proposed deletion of Condition G6 (Condition 47 in the ISACs) - wayleaves**

6.17 Southeastern understand this point and fully support the ATOC response.

### **Costs issues in the Co-operation Agreement**

Southeastern broadly support the ATOC responses to the points raised but feel that further information on co-operation agreements is required to allow full appraisal of the potential impacts on our business. Southeastern feel clarity on how the co-operation agreement fits with the timescales and implementation of proposals is required.

Southeastern support the idea of an agreement formalising the principles upon which the proposer and consultee will work together throughout a scheme.

6.18 Southeastern support this retention.

6.19 Noted.

6.20 Noted.

6.21 See 6.22 below.

6.22 *Are the alternative ways of compensating Material Change Consultees sufficient?*

Southeastern support the ATOC response on this point. We are concerned that this change increases industry cost and may actually slow the process down. Our understanding of the current drafting would mean that there are significant portions of costs not covered by this agreement which would lead to TOCs bearing increased costs from projects which may give them little or no real benefit. The introduction of the co-operation agreement rather than a full indemnity will likely increase costs related to evaluating a proposal as there will be significant work required to assess costs both at the stage of the proposal and during work to reach agreement on the co-operation agreement.

- *In instances where part of a fixed sum is to be returned by a consultee because a Material Change has not been completed, is the addition of interest appropriate?*

Southeastern support the ATOC response on this point and do not believe the inclusion of interest would be appropriate.

- *If a Material Change once-commenced is left incomplete (for any reason), should there be provisions for reinstating the original position (which might lead to consultees incurring further costs)?*

Yes - Southeastern fully support the ATOC response on this point.

### ***Provision of Alternative Accommodation in the Co-operation Agreement***

6.23 Southeastern support the ATOC response on this point.

6.24 Southeastern support the ATOC response on this point.

6.25 Southeastern support the ATOC response on this point.

6.26 *Respondents are requested to submit their comments on the appropriate terms for the provision of alternative accommodation.*

Southeastern fully support the ATOC response on this point.

### **Additional modifications**

6.27 Noted.

6.28 *Respondents are invited to provide any comments or observations they may have on these proposed additional modifications.*

Please see our general comments at the start of the document.