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To charter train operators holding European passenger licences and SNRPs:

Direct Rail Services Ltd
GB Railfreight Ltd
Locomotive Services (TOC) Ltd
Rail Express Systems Ltd
Rail Operations UK Ltd
Vintage Trains Ltd
West Coast Railway Company Ltd

Cc: Department for Transport, Transport Scotland, Transport for Wales, Transport Focus, London TravelWatch, Rail Delivery Group, Transport for London, Rail North, CAHA Registrar, Eurostar

Licence Modifications: Rail Passengers' Rights and Obligations Regulation

We wrote to you and other stakeholders 22 October 2019¹ about the drafting of amendments of certain conditions in each passenger statement of national regulatory provisions ("SNRP") issued under the Railway (Licensing of Railway Undertakings) Regulations 2005 and station licences (issued under the Railways Act 1993 ("the Act")).

Such changes are required by law following the expiry of the domestic exemption on 3 December 2019, from certain obligations in the Rail Passengers' Rights and Obligations Regulations 2010² (the "RPRO 2010"). Notwithstanding that implementation is mandatory, we asked for comments on the drafting of the proposed SNRP and station licence amendments.

Rail Express Systems Limited ("RES") raised a point relating to its provision of services which we wanted to consider further. RES was concerned as to the effect the RPRO 2010 modification would have in the situation where a passenger SNRP holder provides 'traction-only' services for a client. We therefore held off modifying any charter operator SNRPs while we considered this point.

An example of 'traction-only' operation would be where a charter train operator is hauling trains under its passenger SNRP on behalf of a third party tour operator. In this scenario, the SNRP holder would have no direct contractual relationship with the passengers carried on the carriages it hauls. As a result, the proposed modifications could mean that the charter train operator may be exposed to passenger compensation costs arising from the RPRO 2010 obligations, without having received income from passenger fares. Furthermore, the charter operator may have little or no interaction with the passengers at all, whether on the train or at the station.

We have considered RES's representation and understand the concerns it has raised. However, the RPRO 2010 is clear that it applies to such traction-only train

¹ https://orr.gov.uk/data/assets/pdf_file/0007/41938/consultation-letter-to-passenger-snrp-holders-october-2019.pdf

²

http://www.legislation.gov.uk/ukxi/2010/1504/pdfs/ukxi_20101504_en.pdf



operators. The RPRO 2010 utilises the definition of a “railway undertaking” as set out in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, which means:

“any public or private undertaking licensed according to the Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only” (emphasis added).

As such, a SNRP holder, even if it provides traction-only services, is subject to those RPRO 2010 obligations we set out previously in our letter of 22 October 2019. If this has cost implications for any railway undertaking, we consider that they may best be addressed on a bilateral basis between relevant parties. There is no scope in either the RPRO 2010 or the European Regulation³ which it implements that would allow ORR to amend or mitigate the effects of the relevant articles through SNRP conditions.

We therefore intend to implement the requirements of the RPRO 2010 through the modifications as proposed in our letter of 22 October 2019.

We will write to you again shortly with the modification notice. If you would like to contact us, please email licensing.enquiries@orr.gov.uk by 10 July 2020.

Yours faithfully

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

Les Waters

³ The Rail Passengers' Rights and Obligations Regulation (Regulation 1371/2007/EC) - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1371&from=EN>