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Deputy Director, Consumers



14 December 2017

To those licencees within scope and
to respondents to the consultation
[by email]

Dear Stakeholder,

Scope of regulation with regard to CHPs and DPPP's for certain categories of licence holder – conclusions

1. In October 2016 we published a stakeholder consultation¹ on our proposals for amending the scope of our regulatory oversight of licensed operators whose operations are limited to stations or to non-scheduled passenger services (the latter sometimes referred to as charter services) in relation to their licence obligations to have a Complaints Handling Procedure (CHP) and a Disabled People's Protection Policy (DPPP).
2. The options we considered were:
 - To keep these categories of licence holder within the full scope of regulation;
 - To remove the conditions relating to either or both of CHPs and DPPP's from the operating licences, where this is unlikely to impact on consumer protection; and
 - To retain the conditions but to adopt a proportionate approach to the approval of CHPs and DPPP's and in the monitoring of continuing compliance. We invited comments on what a proportionate approach to approvals and monitoring might look like.
3. We thank the 24 organisations² and individuals who responded. We list these at Annex C and have published the responses on our website.
4. This document summarises the views of those who responded to our consultation and sets out our response and our policy in this area going forward.

¹ <http://orr.gov.uk/rail/consultations/closed-consultations/consumer-consultations/consultation-on-licence-outliers>

² Plus three incomplete responses which did not provide sufficient detail to be considered



5. In summary we have listened to what consultees have told us and have decided that:

- Station licence holders and charter services will remain within the scope of regulation i.e. will retain the obligation to have and remain compliant with a DPPP and CHP;
- We will retain a proactive approach to monitoring for compliance with the policies; but
- We will develop a proportionate approach to what these policies need to contain and how we monitor for compliance in particular in the type and periodicity of the data we collect.

Station licence holders

6. In this category we include licence holders who hold only station licences³. In our consultation document, we explained that Network Rail and London Underground have significant interaction with passengers at their managed stations, and with the mainline network with their stations forming an integral part of the passenger end to end journey. For this reason we consider it appropriate for both organisations to have policies and for us to monitor compliance with those policies.
7. In our consultation document, we explained that we were minded, subject to views of consultees, to leave station licence holders in the scope of regulation but to adopt a proportionate approach to approvals and monitoring.
8. All but one respondent (Nexus) agreed that stations should be kept within the scope of regulation and retain CHPs and DPPPs. Nexus told us that it *“does not agree with ORR’s proposed option and instead proposes that the conditions relating to DPPPs and CHPs should be removed from the station licence for the 11 stations operated by Tyne & Wear Metro.”*
9. In terms of our monitoring approach, out of those who responded to this question, seven (London TravelWatch, Stobart Rail, Transport for All, DfT, Transport Focus, and two individuals) thought that our approach to monitoring should be proactive with only four (Eurostar, Merseyrail, North Yorkshire Moors Railway, and DPTAC) considering there to be a case for being more reactive.

³ See Annex A for a list of those licensees within scope

10. Transport for All told us that they saw an issue with using the number of complaints to measure the quality of service (as a reactive approach). Its experience was that many of the disabled or older users who contact its helpline have given up on the complaints process altogether, or did not realise they were able to raise a complaint due to lack of clarity around their rights and the complaints process.
11. Although the respondents did not generally provide views on what that proactive stance should look like, we acknowledge that in the spirit of good regulation there is a case to make that proactive monitoring should be proportionate to the business. We note, for example, Nexus's concern about having to develop systems to comply with data requests.
12. In the consultation, we asked whether there should be a further option to remove some of these operations from regulatory scrutiny entirely by virtue of footfall and if so, what threshold value we should apply. Only Stobart Rail and Glasgow Prestwick Airport thought that a threshold based on footfall would be an alternative approach to whether or not stations should be regulated. Due to the lack of support for this approach, we will not be pursuing it, therefore, at this time.

Decision: We intend to keep Station Operators who hold only a station operating licence within the scope of regulation, i.e. they will retain the requirement to have and to remain compliant with a CHP and DPPP. We will, however, take a proportionate approach to approvals, for example alternatives to being a party to Passenger Assist. We will continue to take a proactive approach to monitoring for compliance but will be developing with those operators a proportionate approach to doing this and have set out some thoughts at paragraphs 22-26.

Charter operators

13. In this category we included licence holders who run non-scheduled passenger services.⁴ In our consultation document, we explained that we were minded, subject to views of consultees, to remove all but one operator (West Coast Railway Company (WCRC)) from the scope of regulation. This is because WCRC's interaction with mainline services is potentially greater than those charter operations that offer one off journeys – for example, WCRC operate seasonal scheduled services (although not in the national timetable). Additionally, at least some of the services on offer are intended to form part of an interconnecting or end to end journey for the passenger.

⁴ See Annex A for a list of licensees within scope

14. Other than from the charter operators themselves, there was no wholesale support for removing charter operations from the scope of regulation. A key exception to this was the charter operator, Railway Operations Group, who found the process of approval to be helpful. It told us that, *“as one of the operators who has undergone approval of DPPP/CHP, we feel that (whilst the process was protracted and sometimes painful) we have benefited from exploring these issues in depth.”*
15. The Department for Transport was concerned that once protections were removed, they would prove difficult to reinstate should they subsequently be required. We agree that this is an important consideration.
16. There was more support, however, for taking a proportionate approach to regulation⁵ though little by way of detail of what this might look like - although the point made by Transport for All in terms of the risks of taking a reactive approach that relies on complaints is relevant here also.
17. In our consultation, we asked whether there was merit in taking a decision on de-regulation at a later date when we would have more evidence of how these operators are performing in these areas. There was some support for taking a decision about removing these operators from the scope of regulation at some later time. Four of those who responded to this question (Railway Operations Group, Transport for All, DPTAC and an individual respondent) supported revisiting a decision on de-regulation in the future although there was no consensus on the timing of this. Two respondents (London TravelWatch and North Yorkshire Moors Railway) did not support revisiting this, and three respondents (Eurostar, Merseyrail, and Stobart Rail) expressed no preference.
18. Railway Operations Group point out, for example, that this process is new for some charter operators and engaging with them during the approvals process will give us more insight into how they will respond to and engage with complaints and assisted travel. This insight could then be used to develop our thoughts on the scope of regulation in the future rather than now.
19. In terms of DPPP, DPTAC considered that over time charter operators will inherit access to RVAR-compliant rolling stock which will help bridge the gap in terms of consistency across the rail network. But DPTAC said that in the meantime there is a

⁵ Option 3 – to retain regulation but keep a proportionate approach – was supported by Eurostar, London TravelWatch, Merseyrail, Railway Operations Group, DPTAC, Department for Transport and an individual respondent

case for us to maintain a watch on all station licence holders and charter operators to ensure they are fulfilling their duty to promote equality of access to disabled passengers. Though they consider this could be done by way of complaints we tend to the view of Transport for All that this may not be sufficient at least for the short term.

20. In our consultation, we asked whether there are any gaps in passenger protection not covered by existing legal provisions and where regulation might, therefore, be necessary. All of those who responded to this question considered there to be no obvious gaps in statute in terms of ensuring complaints are dealt with appropriately and the needs of passengers who need assistance are met. However, Transport for All considered that regulation helps to provide clarity that is in the interests of the passenger. Transport Focus was also concerned that if regulation were to be removed then there should be a residual obligation on operators to notify consumers of alternative sources of protection, and that passengers would need much better signposting to what other legal provision was available.
21. South West Trains put forward the view that it should not be subject to a different set of obligations toward charter service passengers than the Charter Operators themselves particularly given the use that Charter Operators make of stations. It, therefore, argued for Charter Operators being kept within the scope of regulatory requirements for CHPs.

Decision: We are mindful of the cost to the Charter Operator of the approval process and ongoing compliance monitoring. North Yorkshire Moors Railway estimated, for example, that compliance costs in the region of 20% of a full-time post. This is significantly less than our own estimate of compliance and we consider there to be a case, on the basis of the responses to our consultation, to continue to keep these operations within the scope of regulation but, as with our conclusions on stations operations above, to take a proportionate approach to approval and ongoing compliance monitoring.

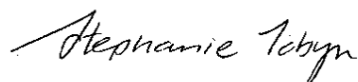
A proportionate approach to regulation - Core data requirements

22. We have set out in Annex B the core data requirements which we believe would be appropriate for licensees within scope of regulation. Our intent is to balance the need for data to inform our monitoring activity whilst minimising the burden on licensees of collecting and reporting that data. As noted above, Nexus told us of its concern about having to develop systems to comply with data requests. We have developed our proportionate approach with this concern in mind.
23. Therefore we have opted to apply certain core data indicators which in our opinion will provide us with information sufficient to adequately monitor and assess whether a licensee is meeting its obligations under the terms of its licence. It is important to note

that under this approach we will still retain the option of asking for additional information on an *ad hoc* or exceptional basis if we identify a need to delve deeper into particular areas of interest or concern as they arise.

24. We have also reduced the frequency of reporting this data to us, but have retained the periodicity of Rail Periods for consistency.
25. We may use this data to provide an overview of how the industry or an individual licensee is performing in our Annual Consumer Report – Measuring Up.
26. The next step in this process is for us to send each licensee a reporting template⁶ (in Excel format) which they are required to populate and return to us in line with the requirements set out in Annex B. We will also include detailed guidance notes with the reporting template, to provide additional explanation as to what data should be reported to ensure optimal data quality.

Yours sincerely

A handwritten signature in black ink that reads 'Stephanie Tobyn'.

Stephanie Tobyn

⁶ The complaints reporting guidance and template is published on the ORR website:
<http://orr.gov.uk/statistics/published-stats/complaints-data>

Annex A: Licensees within scope

Station operators

1. Ashford International
2. Glasgow Prestwick International Airport Ltd
3. Stobart Rail Ltd (Southend Airport)
4. Tyne and Wear Passenger Transport Executive

and any other new licensees in the future that hold only a station licence.⁷

Charter operators

1. Direct Rail Services Ltd
2. GB Railfreight Ltd
3. Locomotive Services (TOC) Ltd
4. North Yorkshire Moors Railway Enterprises plc
5. Rail Express Systems Ltd
6. Rail Operations (UK) Ltd
7. West Coast Railway Company Ltd

and any other new licensees in the future that hold a passenger licence and do not offer regular timetabled passenger services and/or have significant interaction with mainline services.

⁷ In our consultation, we included Pre Metro Operations Ltd within this category but in fact this was an error as they do not hold a station licence. As set out above, we will retain full regulation of Network Rail and London Underground in this area.

Annex B: Proportionate core data requirements for station and charter operators

CHP Indicator	Regulatory obligation	Comments
Total number of complaints received	CHP guidance – section 4.1, ORR’s monitoring approach	Data is collected on a periodic basis, reported to ORR twice yearly and published by ORR
Percentage of complaints responded to within specified targets	CHP guidance – section on response times, para 3.31 and 3.32	Data is collected on a periodic basis, reported to ORR twice yearly and published by ORR
Total number of complaints received by complaints category	CHP guidance – section 4.1, ORR’s monitoring approach	Data is collected on a periodic basis as per licensee’s categories, but must include a category for accessibility complaints and a category for complaints about the complaints handling process. Reported to ORR twice yearly and published by ORR
Continuous improvement in complaint handling	CHP guidance – para 1.7 and 1.8 regarding continuous improvement. Requires evidence of a good complaints handling procedure that leads to continuous improvement so that in the medium term the root causes of complaints are addressed and systemic solutions are put in place	Data on the top five causes of complaints (i.e. what passengers complained about) is collected on a one-off annual basis and reported in section E of the reporting template

DPPP Indicator	Regulatory obligation	Comments
Staff who have received relevant disability awareness training or disability equality training	DPPP guidance – para D6 on staff training	This data is collected on a one-off annual basis and reported in section F of the reporting template
Assisted journeys	DPPP guidance – para C2 on assistance for passengers	<p>The number of requests (booked or unbooked where they are relevant to the licensee) made for assisted travel received by the licensee. It will also require them to report on the number of these assisted travel requests that have been met (delivered). Where an assistance request has not been met the licensee will also have to explain the number of instances in which this has occurred and the reasons for each failure.</p> <p>Data is collected on a periodic basis and reported to ORR twice yearly and published by ORR.</p>

Notes:

1. Periodic reporting: Periods 1-7 and 8-13, disaggregated by Period
2. For Tyne and Wear Metro where 11 of its stations are within regulatory scope, we would prefer that the data only reflects these stations if possible.

Annex C: Respondents to the consultation

1. Alzheimer's Society
2. Barry Knock (individual)
3. David McGowan (individual)
4. Department for Transport
5. Disabled Persons Transport Advisory Committee (DPTAC)
6. Eurostar
7. Glasgow Prestwick Airport
8. London Midland
9. London TravelWatch
10. Merseyrail
11. Network Rail
12. Nexus (Tyne & Wear Metro)
13. North Yorkshire Moors Railway
14. Rail Delivery Group
15. Rail Express Systems (DB Cargo (UK))
16. Rail Operations Group
17. ScotRail
18. South West Trains
19. Stobart Rail (Southend Airport)
20. Transport Focus
21. Transport for All
22. Transport Scotland (including Mobility and Access Committee Scotland)
23. Virgin Trains (West Coast)
24. West Coast Railway Company

There were 3 additional responses to the online survey which were incomplete to the extent that we were unable to take them into account.