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**NORTH YORKSHIRE
MOORS RAILWAY**

Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

21 June 2010

Dear Sir/Madam,

**The Railways and Guided Transport (Miscellaneous Amendments)
Regulations 2010 Consultation**

I am aware that the date for consultation has now passed, but a matter has recently arisen of concern to this railway, which could be impacted by the scope being considered for these regulations. I would be grateful, therefore, if you would consider this late submission.

We have been in discussion with the Department of Transport in relation to the proposed Train Driver Licences and Certificates Regulations 2010 (TDLCR) which, if applied to the North Yorkshire Moors Railway, would create considerable difficulty in terms of compliance given the unique and unusual nature of our operations. Since TDLCR are being introduced to achieve compliance with EU Directive 2007/59/EC in relation to harmonisation and freedom of movement of train crew across the EU, they will we understand exclude heritage operations. Unfortunately there is no proposal to exclude from their application heritage operations such as ours which captures all operators on Network Rail that are required to hold a Railway Safety Certificate.

NYMR is continuing to press for provision to be made for direct exemption from the application of TDLCR, however, it has now been suggested by DfT that one possible solution to this problem might be to revise the exclusions under ROGS to exempt the North Yorkshire Moors Railway from the requirement to holding a Railway Safety Certificate for that part of our operation that takes place over Network Rail (limited to Battersby - Grosmont - Whitby) since it is this that triggers application of TDLCR.

The Railway Safety directive does permit governments to set out rules that would facilitate our type of operation although currently the UK has not taken such a step, and this provision is currently catered for in the The Railways and Guided Transport (Miscellaneous Amendments) Regulations 2010 Consultation, Question 1 in Annex A.

As you are no doubt aware NYMR's operations are solely those of a heritage train operator, with trains operated entirely by heritage traction for the benefit of tourists. The element of operation over the national network amounts to

considerably less than 5% of the total NYMR rail activity in train mileage terms, taking place over a route of low density and low speed. It is also of note that the route from Battersby to Whitby is part of a Community Rail Partnership line, emerging from the former Strategic Rail Authority's policy to facilitate and simplify the operation of lightly used rural railways, including among other objectives, reduction in the level of regulation.

NYMR is already a holder of a Railway Safety Certificate, and has experienced no particular problem in complying with this requirement. Nevertheless, given the restricted and unique nature of our operations on Network Rail infrastructure, we believe there is a strong case for exempting us from this requirement, given that the nature of such operations is similar to our other, already exempt, operations on our own infrastructure.

I am copying this letter to Julia Christie in your office and Mike Franklin at DfT.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Philip Benham', with a long horizontal flourish extending to the right.

Philip Benham
General Manager

Cc: Julia Christie, ORR
Mike Franklyn, DfT