
Secretariat Memorandum

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Agenda item 9

CA025

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European Union (EU) Rail Passengers' Rights and Obligations 2009 : Department for Transport (DfT) Consultation

1 Purpose of report

- 1.1. To inform the Board of our response to the DfT consultation on EU Rail Passengers' Rights and Obligations Regulations 2009, and DfT's intention to utilise its derogation powers to grant exemptions from some aspects of the Regulation while it considers the results of the consultation.

2 Recommendations

- 2.1 That members note the report.

3 Information

- 3.1 The EU regulation marks the culmination of many years' campaigning by consumer groups across Europe. Initially, the regulation was intended for international rail passengers only, but the European Parliament argued that there should be one set of rights for passengers. The DfT consultation was on whether this regulation is introduced in full, or whether some parts are delayed through the use of derogations on some articles.
- 3.2 London TravelWatch and Passenger Focus have liaised closely on this consultation, but decided to submit separate but complementary responses. Both Passenger Focus and London TravelWatch have taken the view to date that, unless a convincing argument to the contrary is made, there should be no derogations to the introduction of consumer rights that are akin to the rest of Europe in Britain.
- 3.3 As outlined at the last meeting, in November last year, we were asked to provide an initial assessment of the costs and benefits of the regulation. The DfT analysed the initial estimates provided by the rail industry and provided a range of costs for the proposals, although no monetary figure was placed on the benefits. We considered that some of the cost estimates by ATOC overstated likely costs and have challenged these in our response, but also emphasised the benefits. A copy of our response is attached (at Annex A) and takes into account views expressed at the Consumer Affairs Committee meeting on 23 September 2009.

4 Next steps

- 4.1 The DfT started to consult on an instrument implementing the Regulation and on the use of the exemptions on 11 August 2009. The consultation ended on 3 November 2009. DfT concluded that there would not be enough time prior to the coming into force of the Regulation on 4 December 2009 to consider the results of consultation, and to make and implement decisions on the exemptions and other matters covered by the consultation. It has therefore issued a Statutory Instrument exempting domestic services for five years while consideration is given to the consultation. We have been informed that a final decision will be made by the end of this year to enable a further Statutory Instrument to be issued prior to the next election.
- 4.2 Therefore the Regulation only applies in full to international journeys from 4 December 2009 and currently there is no body to enforce the Regulation. At the European Passengers Federation & Eurostar Annual Meeting, Eurostar confirmed that despite this it will implement the Regulation in full from that date. In particular, it is changing its compensation policy so that passengers are compensated irrespective of the cause of the delay, and will be provide cash compensation as an alternative to free journeys.

5 Equalities and inclusion implications

- 5.1. There are no specific implications for equalities and inclusion arising from this report.

6 Financial implications

- 6.1. There are no specific financial implications arising from this report.

7 Legal powers

- 7.1. Section 248 of the Greater London Authority Act 1999 places upon London TravelWatch (as the London Transport Users Committee) a duty to consider – and, where it appears to it to be desirable, to make representations with respect to – any matter affecting the services and facilities provided by Transport for London which relate to transport (other than freight) and which have been the subject of representations made to it by or on behalf of users of those services and facilities. Section 252A of the same Act (as amended by Schedule 6 of the Railways Act 2005) places a similar duty upon it in respect of representations received from users or potential users of railway passenger services provided wholly or partly within the London railway area.

Our Ref: MF/3
Your Ref:

Annex A

3 November 2009

Mr Mike Franklyn
Rail Sponsorship & International
Rail & National Networks Group
Department for Transport
Zone 5/29 Great Minster House
76 Marsham Street
London SW1P 4DR

Dear Mike

Third Railway Package: Regulation (EC) 1371/2007 – Passengers' Rights and Obligations

Overview

London TravelWatch is the official watchdog organisation representing the interests of transport users in and around the capital. As such, its statutory remit includes considering issues relating to the National Rail services within the London area.

Comments on the questions

Question 1: Do you think our proposal to enforce the provisions of the Regulation listed in Schedule II of the draft SI through the licensing and SNRP regime will provide for an enforcement regime that is effective and workable? Do you think there should be other enforcement mechanisms, in addition or in substitution to this? Do you agree with the content of that Schedule, or do you think provisions of the Regulation should be added or taken out? Do you agree with the provisions setting out the obligation to cause certain licensing conditions and SNRPs to be imposed, namely regulations 14 and 15, or do you think they should be more, or less, specific, or that anything should be added to them?

Question 2: Do you agree with the way the Regulations provide details of the process to change existing licences and SNRPs?

London TravelWatch is content that licences are an established method of enforcement on the railway. We are also broadly content with the Schedule as currently drafted.

Question 3: Do you agree with the ORR being the designated enforcement body for the Regulation, and for Passenger Focus and London TravelWatch to handle complaints, and that in matters relating to the Regulation they report to the ORR rather than the Secretary of State? Do you think the ORR powers as an enforcement body under the draft SI are adequate (i.e. neither insufficient nor excessive to enforce the Regulation effectively)?

We are content with this approach. As stated in our initial response in April 2008, “Our initial view is that the enforcement role may be a function best performed by ORR. We consider that such an arrangement would overcome any potential conflict between the DfT’s role in specifying franchises and enforcing passenger rights. In addition, we consider that such an arrangement would potentially be simpler as ORR already has established relationships with the Open Access operators and Network Rail who will be subject to this regulation but are not subject to franchise agreements with the DfT.”

We note that the draft Statutory Instrument establishes Passenger Focus and London TravelWatch as “bodies to whom complaints may be made” relating to the regulation. We agree with this proposal which, in essence, mirrors our existing duty to deal with representations from rail passengers in the London area (including those about existing passenger rights).

We note that the Statutory Instrument also changes the escalatory procedure in that unresolved issues concerning the Regulation would be referred to ORR rather than, as per the 1993 Railways Act, the Secretary of State. We have no concerns with this in principle.

We note that each EC member state will create its own enforcement body and appoint/create a body to handle complaints. This will presumably create a network of passenger complaint handling bodies across Europe. We share Passenger Focus’ concern that this could create issues of jurisdiction regarding the “ownership” of complaints, particularly for international journeys – e.g. do you allocate according to the originating station or according to nationality or citizenship?

We already have complaints from passengers regarding connection issues at Brussels and Paris which are difficult to resolve. As we currently do not engage directly with European operators other than Eurostar, having to do so could clearly have an impact on our complaints handling processes and on our resources.

Question 4: The draft SI currently does not have any provision for the enforcement against ticket vendors that are not railway undertakings. We propose to apply to those vendors enforcement measures similar to those in the Railways Act 1993 for breach of licensing conditions (see section 55 and following). These would consist of a power of the ORR to impose an order to secure compliance, with civil penalties in case of default. Do you agree that the Regulation should be enforced, as against ticket vendors, by provisions similar to those in the Railways Act 1993 for breach of licensing conditions?

We agree with this approach. We recognise that, in the London area, many passengers will purchase tickets from outlets that are not currently covered by the Railways Act 1993. In particular, London Underground stations and all TfL “ticket stops” (e.g. newsagents) retail rail tickets as do internet sites such as Trainline as well as airlines and airport operators.

It appears anomalous that passenger protections should vary between retail outlets. From a passenger perspective it shouldn't really matter whether they bought their ticket direct from a railway undertaking or from another ticket vendor – the rights should ‘follow’ the passenger. So unless there is to be a two-tier system of redress it must follow that there is some means of enforcing these rights regardless of where the ticket was purchased.

Question 5: Do you approve of the way the rights of disabled persons and PRMs will be enforced under the draft SI?

We note that regulations 10 and 11 make provisions in respect of the rights of disabled persons and people with reduced mobility (PRM). To prevent double-regulation, the Regulation disapplies part of the Disability Discrimination Act 1995. Regulation 11 of the EC directive, however, creates a similar right to damages, enforceable in the courts, for breach of the rights of PRM.

We can see the benefits from having a single set of legislation/regulation rather than two pieces of potentially ‘overlapping’ protection. The key point for passengers is that there is no diminution of rights and redress for passengers with disabilities or reduced mobility. Subject to this being the case we have no objection to this proposal.

Question 7: Do you believe the exemptions in Articles 2(4) and 2(5) should be used? If you think the exemptions should be used, please provide details, giving supporting evidence wherever possible. In particular, we would need details of costs and benefits to domestic rail passengers and operators of not receiving the full benefits and burdens of the Regulation.

As far as the Article 2(4) exemption is concerned, we would need this for 5, 10 and 15 years durations respectively. In particular, if the Commission does not object, do you think the exemption in Article 2(4) should be used in respect of charter train operators and other similar services?

Question 8: If the exemptions are used, we will need to define the services to which it applies. If you are of the opinion that it should apply to certain services, do you have comments as to the legal criteria to be used to define the scope of the exemption? For example, in respect of charter train operators, two possible criteria which might be used for the definition are: the fact such services are demand-led, and the fact they are outside published timetables.

Article 2 (4) enables a member state to make an exemption with regard to application to domestic services for a period of no longer than five years, which may be renewed twice for a maximum of five years on each occasion. Article 2 (5) allows a member state to utilise an indefinite exemption in order not to apply the provisions to urban, suburban and regional rail services.

Our concern with exempting one section of passengers from the Regulation is that throughout the country passengers making identical journeys would have varying degrees of consumer protection. It would in effect classify some consumers as more deserving of protection than others and suggest that those on shorter journeys or that do not cross international frontiers are less impacted by delays, require less information, less assistance and a poorer compensation package for delays. As a matter of principle, we do not believe that this is the case.

If domestic services were made exempt for a period of up to 15 years, passengers travelling on international services to intermediate stations between Belfast and Dublin without crossing the border would have fewer rights than those travelling across it. Similarly, a passenger buying a through ticket between Luton and Paris would have different rights from one travelling with separate tickets between Luton and London and London and Paris.

In the event that inter-urban services were subject to the Regulation but urban, suburban and regional services remained exempt – as would be the case after 2024 if the full derogations were utilised – passengers making journeys between London and towns such as Luton, Reading, Peterborough, Slough, Milton Keynes or Colchester could find that their journeys are subject to the regulation on some trains but not on others. The impact would also vary across the country, with the majority of railway passengers in the London area not being

covered by the Regulation while consumers making journeys of a similar distance in other parts of the country would be covered.

If the Department was minded to exercise such derogations, we consider that such distinctions would be a recipe for confusion and would serve only to undermine network benefits. It would be difficult, if not impossible, to explain to consumers their varying rights, and could ultimately lead them to not understanding or exercising them.

We consider that Option 5 - defining all services within Great Britain as urban, suburban and regional services and thereby exempting these services from the non-mandatory elements of the regulation indefinitely - would lack credibility. *Council Directive 91/440/EEC* states that “urban and suburban services shall mean transport services operated to meet the transport needs of an urban centre or conurbation, as well as the transport needs between such centre or conurbation and surrounding areas” and that “regional services shall mean transport services operated to meet the transport needs of a region”. Taking France as an example, this could be interpreted as those services within Paris or serving the *Île de France* (an area of about 50 miles around Paris) together with those local services operated on behalf of the governments of the administrative regions of France. It would not include all express and TGV services linking the main cities and towns of France. We consider that this is how the European Commission intended the definitions to be interpreted and we would challenge any attempt to redefine urban and suburban services in order to exclude passengers in Britain from the rights afforded to their European counterparts.

The Department for Transport report, *Delivering a Sustainable Transport System*, defined a network of 14 national transport corridors connecting the 10 largest conurbations and 17 international gateways which are critical for economic success. This includes routes between London and Gatwick Airport, the Channel Tunnel, Southampton, the South West and South Wales, the West Midlands, East Midlands, Yorkshire, North East, North Wales, North West and Scotland; as well as routes between the South Coast and Bristol to the Midlands; and the Trans-Pennine routes. These strategic routes broadly mirror what were traditionally called the inter-city routes and we consider that it would be inconsistent for these routes to be considered as being of strategic importance to the country but of only regional importance for the purposes of European regulation.

As stated above, we do not consider there is any merit in applying any derogation in principle. However we recognise that delays to the commencement of consultation on this issue mean that full implementation of this

regulation in relation to domestic services in December is no longer possible. We would consider, however, that final decisions in principle should be able to be made on this issue this year and that it should be possible to introduce the EU Regulation in full within this Parliamentary session. Therefore we consider that any derogation should apply for no more than six months, and not five years as currently proposed.

We consider that using derogations to delay the issue until after an election or to exclude some services prior to there being an agreed definition of what constitutes a domestic service; an urban or suburban service or a regional service in the British context would lack credibility and adversely affect Britain's reputation.

We do however believe that there is a strong case for charter train services to be exempt from the Regulation. We consider that the Regulation is designed to address and protect the rights of the users of public transport services. We do not feel that charter train operations fall under this public service umbrella and so should be excluded from the scope of the Regulation. A legal definition of charter trains already exists for the purposes of excluding them from the remits of Passenger Focus and London TravelWatch, viz "railway passenger services which are provided by a passenger service operator which is not required under the terms of its passenger licence to provide through ticketing facilities" (see The Railways (Rail Passengers' Council and Rail Passengers' Committees) (Exemptions) Order 2003).

Question 12: A draft Impact Assessment accompanying this consultation document is at Annex C. This has been prepared largely on cost estimates provided by the Association of Train Operating Companies. Are there any additional costs or benefits that you feel have not been reflected in the draft Impact Assessment? In particular, the Department seeks information from respondents on the potential benefits and costs to passengers so that the Department is able to monetise the benefits and costs.

We are concerned that the Department for Transport appears to have relied too heavily on cost estimates provided by transport operators in assessing the costs and benefits of the regulation. While we welcome that the Department has correctly identified that many of these costs identified by ATOC are not new and could be considered as transfer payments, we are concerned that some of the estimates quoted in the consultation appear to have significantly over-estimated likely costs or to be at best conjecture. We also consider that to date the Department appears to have given inadequate consideration to the potential benefits of implementing the EU Regulation in full – both to passengers and its own reputation.

The benefits of implementing the EU Regulation in full

We have been a consistent supporter of rights for passengers and our view remains that, there is no compelling reason for not implementing the Passenger Rights and Obligations regulation in full. We consider that while much of what is set out in the regulation relating to the provision of information, availability of tickets and compensation levels is already in place or bettered by the *National Rail Conditions of Carriage* or Passenger Charters, the regulation would provide a minimum standard for all operators as well as providing better consumer rights to passengers.

Why is government intervention necessary?

Passenger train services in the UK are, in the main, structured on the basis of franchises awarded by the Department for Transport (DfT) to Train Operating Companies. In addition, a number of services are operated on an 'open access' basis outside the franchise arrangements, while services in Northern Ireland are run by a wholly-owned nationalised company. This structure effectively provides most operators with a virtual monopoly of passenger railway services between their stations for at least five years – and indefinitely in the case of Northern Ireland. As such, if they are provided with poor service, passengers are often unable to “vote with their feet” and change to another operator. While it is sometimes the case that a successful franchisee may grow the business through being responsive to its passengers, others may be fortunate in being located in areas where there is relatively few viable alternatives or where significant growth is planned.

In the second edition (2009) of the *Consumer Markets Scoreboard*, which reports the results of a number of indices of the effectiveness of the markets for goods and services in meeting the needs and expectations of their purchasers (or users), the European Commission found that “the satisfaction data show less satisfaction with services than with goods markets. Services involve more complex contracts and customer relations and a changing consumer environment when markets are liberalised. The consumers using bus and rail transport services experience least satisfaction and most problems: less than half of consumers are satisfied with these services and about one in four experience problems”.

The EU believes that “Empowered consumers are key to the smooth running of markets as they reward suppliers that operate fairly and best respond to consumers’ needs... they know their rights and they exercise these rights. They are willing to pro-actively seek information, to complain when faced by a problem and to seek redress when their rights are violated”. Overall, for all industries, in

the United Kingdom 66% of consumers felt adequately protected by existing consumers measures, 4% fewer than in 2006.

Evidence contained in the research shows that:

- Out of 19 categories of goods and services, users of “extra urban” (i.e. long distance and rural) transport were the most likely to have experienced problems, and users of urban transport were the second most likely to have done so.
- Out of the same 19 categories, users of urban transport were the least likely to be satisfied overall with the service received, and users of extra urban transport the second least likely (these being the only categories in the list of whose users less than half were satisfied)
- But out of the same 19 categories, users of urban transport were the fourth least likely to have discussed their problems with the service provider, and users of extra urban transport the fifth least likely to have done so.
- Yet out of a basket of 11 broad categories of goods and services, transport gave rise to the second greatest number of complaints addressed to third parties (i.e. appeals to bodies other than the supplier).

These findings are wholly consistent with research into consumer satisfaction undertaken in Britain. The broad conclusions of this can be summarised as showing that, compared with users of a cross-section of other paid-for public services, bus and rail travellers

- have a higher than average propensity to have had cause to be dissatisfied with the services they use, but
- have a lower than average propensity to have made formal complaints about the causes of their dissatisfaction, and
- have a higher than average propensity, if they do make a formal complaint, to be dissatisfied with the outcome.

As the European Parliament and the Council of the European Union state in the Preamble to the Regulation, rail passengers are the weaker party to the transport contract, and therefore their rights should be safeguarded. It continues by stating that “strengthened rights of compensation and assistance in the event of delay,

missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers”.

Creating a credible consumer protection policy

We are pleased that, in the consultation document, the Department for Transport reiterated the government’s target for the UK’s consumer regime to be “as good as any in the world”. We endorse this approach and consider that permitting any significant derogation from the Regulation would call into question its commitment and would not be in the long term interests of the rail industry.

As noted in the Department for Trade and Industry’s 2003 report, *Comparative Report on Consumer Policy Regimes*, regarding proposals to strengthen consumer rights, “Businesses tended to react negatively to the introduction of consumer rights and to lobby against proposals for new or stronger consumer protection legislation. This is despite the fact that consumer regimes either explicitly or implicitly protect companies against unfair trading practices by competitors as well as benefiting consumers”.

We recognise that the intention of the legislation is to provide a basic level of consumer rights across Europe. We consider that British consumers should not have their rights deferred or have fewer rights than those given to consumers elsewhere in Europe. Providing a consistent system of rights is more likely to be understood by passengers and applied by train service providers than systems that vary between and within member states.

The UK’s reputation

We understand that many of our European partners including Germany, Holland, Belgium and Sweden are currently intending to implement the Regulation in full. We consider that a last minute change of heart on the part of the government could be interpreted by our European partners as signalling a lack of commitment to consumer rights and would undermine our reputation as a leader in this area.

It could also provide greater credibility to the arguments of those nations or critics who believe that the liberalisation of the rail market has failed to deliver the consumer benefits expected in terms of greater competition and consumer rights. This unfortunate impression could be confirmed if it was demonstrated that consumer rights are being better protected in those countries where there is a dominant state-owned operator and relatively little competition than in a fully liberalised rail market like Britain.

Cash-based compensation

We consider that in considering whether the system of compensation should change it is important to understand the impact of rail delays on passengers and the wider economy and to analyse the effectiveness of the current largely voucher-based compensation system.

1) How much do rail delays cost?

In 2003, the Strategic Rail Authority commissioned OXERA to undertake research on *Passenger Rail Services and Economic Performance*. This study found that the overall impact on individuals, the economy and society in general was equal to around £2.2 to £2.5 billion per annum, which was equal to around two thirds of the total annual ticket sales of the railway. It estimated that the biggest disutility due to poor rail performance of £1 billion was caused to business travellers (equivalent to £6.80 per single journey), followed by commuters with £500 million of disutility (or £1.18 per passenger journey on average) and £650 million of disutility to leisure travellers (or between £1.68 and £1.92 per passenger journey on average).

The Greater London Authority commissioned Oxford Economic Forecasting to produce a report on the economic effects of transport delays in Central London. The report, *Time is Money*, published in 2005 estimated that the underlying costs to travellers of an hour's delay was £11.99 per hour for leisure travellers; £16.18 per hour for commuters and £26.09 per hour for business travellers (on 2004 prices) based on the Department for Transport's Values of Time and Operating Costs criteria. For London alone therefore, rail delays were estimated to cost £265 million per year.

The National Audit Office in its report *Reducing passenger rail delays by better management of incidents* estimated the value of business travellers' time at £41.33 per hour (the cost to their employer's business); commuters' time at £5.64 per hour and other travellers at £4.99 per hour. It then applied the "delay multiplier" factor of three to these values to recognise that unexpected delays are more costly to passengers. Based on an average trainload, they calculated that each minute's delay costs £73.47. Based on the 14 million delay minutes to passenger services recorded in 2006-7, it estimated that the national value of delays to passengers was £1.03 billion.

While there is no consensus, we can see that the cost to passengers and the economy of delays is estimated to be between £1 billion and £2.5 billion – significantly more than is paid in compensation to passengers.

2) What's wrong with the current compensation system?

In 2002, the Strategic Rail Authority found when it carried out research *Towards a transparent and equitable compensation policy* that direct transfer of compensation into a bank account or a rebate by cheque or card was the clearly favoured preference of passengers. While bank transfers were favoured more by commuters, cheque or card rebates were most favoured by business and leisure travellers. More importantly, it was clear that all groups disliked receiving compensation in the form of National Rail vouchers and those leisure travellers on longer journeys, whose compensation would be the greatest, disliked this form of compensation the most.

There are many reasons why passengers would prefer to be compensated in cash. Firstly, there is the ethical case for compensating passengers in cash. We consider that many passengers would argue that, if you pay for a good or service in cash, you should be able to receive compensation for delays in the same medium. Providing cash compensation provides tangible and immediate compensation to the passenger for being inconvenienced, while providing vouchers is akin to promising that you will be compensated at some stage in the future (or in some cases, not at all).

We have evidence from our casework that vouchers are not a suitable form of compensation for all types of passenger or for every type of ticket transaction. For instance, it is not currently possible to purchase train tickets online using vouchers, so those passengers with vouchers are often unable to access the cheapest rail tickets available for any particular journey. Passengers who are used to using Oyster (or, in future, other smartcards) may not know how to use vouchers in conjunction with their cards or may find that ticket office staff are unwilling to assist them in doing so. As rail vouchers have a 12-month expiry date, they can be an unfair and inconvenient form of compensation for leisure or occasional passengers and season ticket holders. In particular, those passengers who purchase tickets infrequently such as leisure travellers, Freedom Pass holders or visitors from overseas, may feel unable to use any vouchers issued to them. Other passengers may simply have lost confidence in their local train operator and may not wish to use its services again.

ATOC in its evidence to the Department for Transport admitted that one train operator had a 35% non-redemption rate for the vouchers it issued. This is truly a damning indictment of the effectiveness of the current system in compensating passengers. If you take into account that only about 30 – 40% of eligible passengers claim, this means that as few as one fifth of passengers who are delayed currently receive the compensation that they are entitled to.

We consider that the amount of unnecessary correspondence with passengers may decline if they are given cash compensation rather than vouchers. We get many appeals from consumers who request cash compensation instead of vouchers and we have often been able to persuade the operator to offer cash compensation instead (albeit on occasion an operator may not be prepared to pay the same cash value as it would in vouchers). Better meeting passenger expectations on this issue would encourage fewer such complaints in the future.

The Preamble to the Regulation states that “rail passengers should be able to submit a complaint to any railway undertaking involved regarding the rights and obligations conferred by this Regulation, and be entitled to receive a response within a reasonable period of time”. We consider that, to reflect this, there is a strong case for enabling claims for delays to be made through the National Rail website with ATOC either dealing with claims on behalf of train operators or seamlessly redirecting passengers to the relevant train operator or its website. An example of how a centralised claim service could work is demonstrated by the commercially-run TrainDelays website (www.traindelays.co.uk). Similarly, individual train operators should be able to act as proxy on behalf of other train operators for compensation claims, and a procedure should exist to ensure that the relevant train operator is compensated.

Transfer of tickets

We consider that, as a matter of principle, there is no reason why rail tickets should be treated any differently from any other retail product. If you purchased a jumper from Marks & Spencer’s for instance, the retailer would have no interest in whether you chose to wear it, give it to a friend or re-sell it. The current legal position means that many tickets and seats on trains often go to waste as passengers who are unable to use them cannot trade them in or re-sell them.

Current legislation leads many rail passengers to break the law unwittingly. The *National Rail Conditions of Carriage* state that tickets can only be used by the person for whom they were bought. Therefore, if you purchase a rail ticket for your own use and pass it on to a friend or relative, you are technically breaking the law. However, except where they are sold to a named individual, or linked to a photocard, operators have no way of knowing for whom the ticket was bought anyway.

In London, the introduction of Oyster means that National Rail operators already accept some transferable tickets. Oyster Pay As You Go has been fully transferrable since it was introduced. This has proved to provide several advantages to passengers and businesses. It enables passengers to share their

ticket with partners and also enables companies to hold a small number of Oyster cards for use by all their staff.

We consider that the Department for Transport should also consider the consistency of the message the government provides on the issue of transferability of tickets. In relation to the entertainment industry, the government has concluded that there is no case for its involvement in preventing the transfer of tickets because the majority of users use tickets as they are intended to be used. This is despite there being greater incentives to transfer tickets in this industry, where demand often outstrips supply for major events.

In February 2009, following extensive hearing by the House of Commons Culture, Media and Sport Select Committee, the Department for Culture, Media & Sport produced a *Consultation on Ticketing and Ticket Touting* investigating the issues relating to the transfer of tickets in the entertainment industry. The consultation states that the Government considers that any new obligations in this marketplace need to avoid restrictions for the consumer. It states that “underlying the objective of a new set of principles is the Government’s stated belief that secondary ticket sales should remain legal. The Government’s view is supported by the most important constituent in this consultation, the consumer, who, generally, feels that once bought, a ticket becomes their private property to be disposed of as they see fit.” It came to this conclusion on the basis that the secondary market provides benefits to consumers by staggering the sale of tickets over time, and offers consumers a means to sell unwanted tickets so that they are not left out of pocket should the primary seller refuse a refund.

We consider that the same considerations apply in relation to the rail industry and that rail passengers are no different from other consumers in sometimes needing to resell their tickets. We believe that passengers break the law unwittingly and that the law is largely unenforced and unenforceable. Therefore there are good reasons to change the current law.

Cost estimates of mandatory elements of the Regulation

ATOC has made the following estimates for the cost of the mandatory parts of the regulation:

ATOC's Estimated Costs for Mandatory Items (per annum)		
<i>Key Concerns (£ per annum)</i>	<i>Low estimate</i>	<i>High estimate</i>
PRM/ Accessibility	£100k	£100k
Liability-Insurance Costs	£1m	£3m
International Distribution of GB Fares	£100k	£100k
More complaints (15%)	£1.5m	£2m
Total	£3m	£5m

We are not party to how this information was compiled and have not undertaken independent analysis of these areas. It is also difficult for us to ascertain whether the additional costs of regulation have already been taken into account in franchise bids submitted over the last five to six years while legislation has been prepared by the EU. Therefore, we can neither confirm nor deny whether these estimates are reasonable. However, we consider that the estimated cost of more complaints is questionable.

Increase in complaints

ATOC has estimated that there will be a 15% increase in complaint volume as a result of implementing the EU directive, based on the experience of the airline industry, and argued that this will increase cost to the industry by between £1.5 and £2 million.

We consider that complaints are a valuable source of information about shortcomings in service standards and delivery in the eyes of those who make them and that the means of registering complaints should be simple, and well publicised. We also consider that organisations which fail to take them seriously, and adequately to address the issues raised, are courting commercial failure.

As such, irrespective of the Regulation, train companies should be welcoming more feedback from their customers. Such feedback, if used well, can be used to improve aspects of the customer experience leading to high customer satisfaction and long term growth in the rail business. As the 1999 White Paper *Modern Markets: Confident Consumers* argues, well informed and active consumers supported by an effective system of law and enforcement can play a significant part in ensuring healthy competition in which responsive and innovative businesses succeed.

Having said that, we are also not persuaded that the introduction of this Regulation will significantly increase complaints volumes. On the contrary, better meeting consumer demands in terms of assistance and information, for instance, may actually reduce complaints. We consider that the rail industry already has well defined complaint mechanisms, established appeal processes and rights to compensation prior to the introduction of this EU Regulation. Indeed, in the case of those train operators utilising the delay repay mechanism, these compensation rights are already higher than the minimum set out in the Regulation. This can be contrasted with air passengers who in the past have not had such a well-defined set of rights and expectations prior to the introduction of the EU Regulation which led to an initial upsurge in complaints in that sector.

Cost estimates for non-mandatory elements of the Regulation

ATOC has made the following estimates of the cost of the non-mandatory parts of the regulation:

ATOC's Estimated Costs for non-mandatory Items (per annum)		
<i>Key Concerns (£ per annum)</i>	<i>Low estimate</i>	<i>High estimate</i>
Abandon Journey	£1m	£9m
Cash compensation	£4.1m	£7m
Assistance if delayed	£6m	£17m
Tickets transferable	£20m	£80m
Other Commercial / TAP-TSI	Minimal	Minimal
Service Quality Measurement	Minimal	£1m
PRM – Multiple Booking	£500k	£500k
Total	£32m	£115m

Again, we have not been party to how this information was compiled. Nor have we been able to ascertain whether the additional costs of regulation have already been taken into account in franchise bids submitted over the last five to six years while legislation has been prepared by the EU. However, we consider that a number of these estimates appear to be much higher than we would envisage.

Abandoned journeys

This part of the regulation enables passengers who are delayed on a train for more than 60 minutes and therefore choose to abandon their journey to seek a refund. The low estimate is based on 15% of those who are delayed for more than an hour giving up and seeking a refund while the high estimate is based on 50% doing so.

These estimates appear significantly higher than we would expect as a similar right already exists. Paragraph 26 of the *National Rail Conditions of Carriage*

states that if the train you intended to use is cancelled or delayed and you decide not to travel and you return the unused ticket to any ticket office, the Train Company responsible will give you an immediate full refund.

Therefore, the only additional cost must be that associated with those passengers who having already started to travel then choose to abandon their journey en route due to delay. Bearing in mind the increased availability of advanced travel information (e.g. train operators' websites and National Rail Enquiries), and the fact that many passengers will not have an alternative mode of transport to complete their journey easily available to them at the time, we consider that relatively few additional passengers would make use of this right.

We would therefore estimate that only about an extra 10% of those passengers delayed by more than 60 minutes may claim. However, as these passengers would have been entitled to claim compensation for their delays anyway (equivalent to 50% of the affected leg) and many would have done so (around 30 - 40%), the additional cost would probably be far lower than £1 million.

Cash compensation

To better understand the cost of moving towards a cash-based compensation scheme, we consider that there is a need to have a greater understanding of the cost of the current scheme.

1) What is the cost impact of the current and proposed compensation schemes?

There is unfortunately no definitive record of the amount of compensation paid to passengers by train operators. However, in response to a request for more information by the House of Commons Public Accounts Committee at its hearing on 4th June 2008, the Association of Train Operating Companies stated that "our best estimate is that the value of the cash refunds, vouchers and goodwill payments amount to around £9 million a year in total". We understand that this estimate includes all compensation and is not restricted only to compensation for delays.

Available details by train operator were:

<i>Train Operator</i>	<i>Value of Passenger Compensation 2007–08</i>
Arriva Trains Wales	£184,600.00
c2c	£110,944.22
CrossCountry ¹	£349,300.95
East Midlands Trains	£448,000.00
First Capital Connect	£333,266.90
Merseyrail	£3,416.67
National Express East Anglia	£1,960,608.77
National Express East Coast ¹	£1,731,480.00
Northern ²	£110,675.00
South West Trains	£299,530.13
Southeastern	£117,738.00
First Transpennine Express	£173,360.47
Virgin Trains	£1,664,571.10

¹ From November 2007 only

² From May 2007 to April 2008

We note that ATOC has substantially revised its estimate of the amount paid in compensation to passengers in its submission to the Department for Transport as part of this review. The high estimate provided by ATOC is that currently £14 million compensation is paid to passengers, which is 55% higher than the estimate provided to the House of Commons Public Accounts Committee a year ago. We find it difficult to understand why there is such a large discrepancy between the previous figures and the ones now submitted to the Department for Transport.

We contend that the former estimate, which includes actual figures supplied by train operators, is likely to be more reliable. Therefore based on the figure of £9 million, if we accept ATOC's assumption that the cost of cash compensation is some 45% higher than providing vouchers, this would suggest that a maximum cost figure of £4 million would be more accurate.

The Department for Transport should also bear in mind that Article 17 (2) states that "compensation may be paid in vouchers and/or other services if the terms are flexible (and only)... paid in money at the request of the passenger". Therefore, it may be that a proportion of passengers will be content to continue to receive voucher-based compensation particularly if such compensation is provided at a more generous level than the cash equivalent. If we estimate that 25% of passengers would be content to continue to receive compensation in vouchers, the cost would be closer to £3m per annum.

We are pleased that ATOC has recognised that the additional costs of administering compensation in cash would be minimal. We are aware that a number of operators have paid compensation through ticket office staff in the past and provide payments by cheque and through bank transfer when necessary. With the advent of smartcards, it may also be possible to follow Transport for London's example of crediting refund payments directly to Oyster cards electronically.

2) How many passengers currently claim compensation?

We are concerned that, even under a relatively user-friendly system of compensation such as "Delay Repay", the majority of passengers are failing to exercise their right to compensation for delays. This is borne out by evidence provided by ATOC to the House of Commons Public Accounts Committee which suggested that, while no data is collected on the proportion of eligible passengers who claim compensation, National Express East Anglia estimates that 30% of eligible passengers do so.

In 2002, the Strategic Rail Authority carried out research *Towards a transparent and equitable compensation policy* which suggested at that time only 40% of rail passengers were aware that compensation was available for their delay, and of those, only half were aware that they had received compensation. The report concluded that awareness of the compensation that exists was limited and that, if rail bodies wished to be seen as being fair to passengers, the issue of compensation needed to be brought to their attention rather than expecting passengers to be proactive in enquiring. Yet, evidence provided by ATOC to the House of Commons Public Accounts Committee suggested that in 2008, only four operators handed out compensation forms on delayed trains to their passengers.

We consider that while it is likely that the main reason that so few passengers claim compensation is that they are not aware that any compensation is available for their delay, some passengers will still not claim compensation because the process of making the claim is too unwieldy or the value of compensation is too low to make it worth their while. For instance, a delay of 30 minutes for a journey for a season ticket holder between Luton and London would typically lead to a compensation payment of £3.00 in National Rail vouchers, which some passengers would consider is outweighed by the time and effort required to make a claim.

The House of Commons Public Accounts Committee report, *Reducing passenger rail delays by better management of Incidents*, argued that "there is no incentive for Train Operating Companies to help passengers claim the compensation for

which they are eligible. The Department does not monitor how much Train Operating Companies pay out in compensation for delays, nor does it monitor how effectively Train Operating Companies advertise their compensation arrangements.”

We consider that the consistent provision of passenger rights, such as monetary compensation and assistance in the event of delay, to all railway passengers should help make operators more responsive to their passengers’ needs and safeguard consumer interests. This is all the more important in view of the virtual monopolies that train companies have in running passenger services.

3) Incentive effect

We consider that the passenger priority for minimal inconvenience and delays, which is reflected by government through regulation, would be reinforced by providing a clear financial incentive for rail operators to improve their punctuality. We consider that, if operators never feel the pain of compensating their passengers, they are less likely to concentrate on reducing the causes of delay.

We consider that the actual cost to the industry of any changes to the compensation regime is likely to be lower than £4 million. This is because we believe that train operators will improve their own performance in order not to incur the additional cost of providing cash compensation. In this way, it will act as an incentive to improve performance.

This effect is demonstrated by the performance incentive scheme provided for under *Section 8 of the Track Access Contract* which incentivises Network Rail to minimise the number and duration of unplanned delays and cancellations. In 2008/9, Network Rail was able to reduce delays by 7% from 2007/8. While reductions in delays are attributed to better track reliability and management by Network Rail, we consider that the existence of a financial incentive to improve performance was key to achieving this. As Network Rail improved performance far more quickly than ORR anticipated, and more quickly than the train operators, the number of delays caused was reduced and it became a net beneficiary of £18m of incentive payments from operators compared to the costs of £14m that it predicted.

Over the next control period, Network Rail in its *Control Period 4 Delivery Plan 2009* currently predicts that delays attributable to it will decline by 20% in the period up to 2013/4. In view of this, we can expect that train company revenues will grow much faster as their services become more reliable and that the amount of compensation paid to passengers will also decline.

While different studies have provided differing estimates of the cost of delays, all agree that the cost of rail delays is largely borne by passengers and the economy at large rather than by transport operators. We consider that in order to reduce the impact of train delays on passengers and the economy, train operators need to be incentivised to reduce delays. If the current cost to the economy of rail delays is between £1 billion and £2.5 billion per year, a 1% reduction in rail delays would deliver benefits to passengers and the economy of between £10 million and £25 million per year.

Assistance if delayed

This relates to the requirement to provide refreshments to rail passengers whose journeys have been delayed by 60 minutes or more. Article 18(2)(a) states that meals and refreshments should be provided if they are available on the train or in the station or can reasonably be supplied. We recognise that some guidance would be required as to the exact definition of what would be supplied, but note that the provision is not absolute and reflects where such provision can be reasonably supplied. This to an extent reflects the policy of many train operators now and the general duty of care outlined in franchise agreements. Some operators have specific statements on this issue. Chiltern Railways for instance states in its Passenger's Charter that "on all trains with catering facilities you will be offered complimentary non-alcoholic refreshments if your train is delayed by 1 hour or more". Southeastern, on the other hand, is proposing to establish standing arrangements to have contingency refreshments on board its longer distance mainline services. However, overall, it is difficult to verify whether train operators have active contingency arrangements to serve refreshments.

ATOC has estimated that the cost of this provision would be between £6m and £17m per year. Based on the impact assessment paper estimate that there are 600,000 people who are on trains that are delayed for more than an hour, this equates to between £10.50 and £28.30 per person. This seems to be a high estimate even taking into account administration costs.

We consider that a more realistic estimate of the cost of provision would be around £2 to £3 million annually. We consider that while the cost of refreshments will vary, many long distance operators (who are subject to the greatest proportion of delays) would be able to utilise existing stocks of sandwiches etc or to come to agreements with station retailers, and that therefore the average cost of provision would be more likely to be around £5 per person. However, we consider that the additional cost would be reduced further by the fact that not all passengers will claim and that not all stations or trains will have refreshment facilities available and that some operators (such as Chiltern

Railways, First Great Western and Virgin Trains) already offer refreshments to delayed passengers as part of their Passenger Charter or franchise agreements.

Transfer of tickets

ATOC argues that the most significant cost of the proposals would relate to the introduction of transferable tickets. This would enable any rail passenger who buys a ticket to re-sell it if they wish unless the ticket was specifically made out in their name. Therefore it argues that all rail tickets except monthly or longer season tickets in the London area would be transferable.

In relation to Off-Peak Returns and Advance Fares, as these tickets are not made out to the passenger concerned, there is nothing to stop passengers transferring the tickets now. Therefore, we do not believe that making tickets transferable will lead to a significant loss in revenue. On the contrary, we consider that passengers may be more inclined to purchase advance purchase tickets if it was made easier to resell them were they unable to use them. As a result, train operators could capture a higher proportion of the leisure market and generate more revenue. We therefore consider that the costs of this change will be neutral or relatively insignificant.

In relation to weekly season tickets, ATOC argues that as much as 10% of journeys made using a weekly season ticket would be made by someone other than the main user. Therefore an additional cost of £53 million would be made to the industry.

We consider that, if it was practical to share weekly season tickets easily, then passengers would probably be doing it now. In the London area, there is no requirement to hold a photocard in order to have a weekly season ticket, and therefore there is no way of knowing whether passengers are currently sharing tickets. Yet there is no evidence of a significant decline in sales or increase in prosecutions to suggest that sharing of tickets takes place.

In practice, we believe that the sheer difficulty of sharing weekly season tickets means that it would be unlikely to happen in large numbers. Most passengers would not buy a weekly season ticket unless they intended to use it themselves at least four days in a week, because otherwise it would usually be cheaper to buy tickets on the day. Therefore, at best, the ticket would usually only be available for sharing with another passenger on one weekday and at the weekend when cheaper tickets are available anyway. Therefore, to share a weekly season ticket, not only would a passenger have to find another passenger who wanted to make the same journey but they would also have to want to travel at different times from each other and find a way of transferring the ticket easily between them. Most people who would consider doing this would want some

recompense for the inconvenience of doing this, meaning that any saving would be minimal.

We therefore totally reject the estimate by ATOC that 10% of journeys made by those using a weekly season ticket would be made by someone other than the main user. Further, if it was to be this high in future, it would probably be close to that level now and therefore the additional cost would be far smaller than this. If the transfer of weekly season tickets really would be used as extensively by passengers as ATOC suggests, we envisage that part-time workers who work two or three days a week would probably “trade up” from buying daily tickets to buying weekly season tickets and therefore this transfer effect would be offset by some passengers spending more on rail travel than before.

We consider that the Department for Transport may wish to clarify the actual terms used within the *CIV Uniform Rules concerning the contract for international carriage* which this is based upon. We note that Article 7 (4) states that “The ticket shall be transferable if it has not been made out in the passenger’s name and if the journey has not begun”. This appears to mean that once a ticket has been used by one passenger, it may not be used by another passenger. If this is the case, the current legal position would be unchanged.

Alternatively, train operators could insist that users of weekly season tickets write their name on the rear of the ticket in the same way that they are required to do currently with monthly or annual season tickets.

I hope that these comments are helpful. Please contact me should you require any further clarification of our views.

Yours sincerely

Bryan Davey
Director, Public Liaison

To recipients of the 11 August
consultation paper

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02 November 2009

Dear Stakeholder

EU REGULATION No 1371/2007 ON RAIL PASSENGERS' RIGHTS AND OBLIGATIONS

This letter is being sent to everybody who received the Department's consultation document of 11 August 2009 about implementation of the above Regulation in the UK.

European Regulation (EC) No. 1371/2007 (the Regulation) is one of a series of measures that form part of the Third Railway Package. It is a mandatory instrument aimed at enhancing the rights of passengers on international and domestic rail services. The policy is aimed at strengthening the rights of rail passengers particularly in the areas of information and ticketing provision, compensation and assistance, and rights for persons of reduced mobility and enforcement of those rights.

The Regulation will ensure that there are minimum levels of compensation in the event of delay, in the event of an accident or death. Persons of reduced mobility will also have enhanced rights in terms of assistance to travel; and provision of information concerning the accessibility of services and rolling stock. There will also be a general regime for the enforcement of rail passenger rights in GB.

The Regulation allows member States to grant exemptions from some of its provisions (the non-core provisions) to domestic services for a maximum period of five years, renewable twice, for a maximum period of five years on each occasion. In addition, it allows member States to grant exemptions to urban, suburban and regional services.

We started to consult on an instrument implementing the Regulation (the implementing instrument) and on the use of the exemptions, on 11 August 2009. The consultation ends tomorrow. It is clear that there will not be enough time between 3 November and that of the entry into force of the Regulation on 4 December 2009 to consider properly the results of consultation and make and implement decisions on the exemptions and other matters covered by the consultation.

Ministers believe that the burdens of complying with the Regulation fully should only be imposed on businesses after consideration of the evidence of the case for complying with the exemptions. From the point of view of passengers, they believe that it would not be desirable to be granted rights only for them to be taken away later if it were decided to grant exemptions to some extent. Finally, a situation where the Regulation is in force, but not the implementing instrument, although permissible from the point of view of European and domestic law, has disadvantages for all those concerned and it is desirable to ensure that that situation applies to the minimum possible range of provisions.

Therefore, Ministers have decided to grant exemptions, to the maximum possible extent, from the entry into force of the Regulation, pending consideration of the results of the consultation, and the finalisation of the implementing instrument. This will be done by making a Statutory Instrument which exempts domestic services from the non-core provisions of the Regulation from its coming into effect on 4 December 2009.

The exemption granted by the Statutory Instrument would, in the absence of any further action, lapse after five years, but the instrument can be amended or revoked by a further Instrument at any time. We hope to reach a decision in early 2010 as to the use of the exemptions in the longer term, taking into account the consultation results, and will then make and publicise the necessary legislative changes, probably as part of the same process as making the implementing instrument. The introduction of the exemption is only a transitional measure, intended to operate until a decision has been taken about the longer term, and implies nothing about what our longer-term decision will be.

If you have any queries about this letter, please do not hesitate to contact me. The original consultation is still available to download at <http://www.dft.gov.uk/consultations/open/passengerrights/>

Yours sincerely,

Sharon Goodsell

The Rail Passengers' Rights and Obligations Regulations 2009 Consultation document

Purpose and Scope

1. The purpose of this consultation is to ask stakeholders for any comments they may have on the proposed draft Statutory Instrument (SI) to:

- Implement Regulation (EC) No 1371/2007 on rail passengers' rights and obligations ("the Regulation").

2. The Government is required to transpose the Regulation's provisions into UK legislation before 4 December 2009. This consultation covers implementation of the Regulation in Great Britain only. The Northern Ireland Department for Regional Development will consult on and enact separate legislation to cover implementation in Northern Ireland.

Introduction

3. The Regulation is a vehicle to introduce enhanced rights and obligations for passengers on rail services. It strengthens the rights of rail passengers, particularly in the areas of information and ticketing provision, compensation and assistance, and rights for persons of reduced mobility (PRM) and enforcement of those rights. It specifically establishes rules concerning:

- Information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and implementation of a computerised information and reservation system for rail transport;
- Liability of railway undertakings and their insurance obligations for passengers and their luggage;
- Minimum obligations of railway undertakings to passengers in the event of delay, missed connections and cancellations;
- Protection of and assistance to persons with reduced mobility travelling by rail;

- Definition and monitoring of service quality standards for services, the management of risks to the personal security of passengers and the handling of complaints; and

- General rules on enforcement.

Background

4. European Regulation No 1371/2007 on passenger rights and obligations, along with Directive 2007/58/EC on liberalisation of international passenger services, and Directive 2007/59/EC on train driver licensing, are collectively referred to as the 'Third Railway Package'. They are the latest in a series designed to revitalise the railways and take forward the creation of an integrated European railway. The Commission's agenda addresses opening up the market for the provision of train services, harmonising regulation of the sector - in particular its technical rules in order to facilitate use of these rights of access and reduce the costs of providing train services - and strengthening customer rights.

5. The Regulation was proposed after there had emerged evidence of problems of poor service quality in certain rail markets, and of difficulties for new entrants in marketing their services effectively. The Commission carried out a wide ranging consultation exercise in the autumn of 2002, and a more focused consultation on a report on delay compensation schemes in 2003. The proposal for a Regulation was adopted and published by the Commission in 2004 and mirrored similar proposals for air passengers.

6. After protracted negotiations between the Council and the European Parliament (EP) political agreement on was reached during the UK Presidency at the Transport Council on 5 December 2005. The text of the Package was officially adopted, and was published in the Official Journal (OJ) of the European Union on 3 December 2007. A copy of the Regulation can be found at **Annex A**.

7. One of the key agreements reached during the negotiations was to allow member States to grant certain derogations. Under Article 2(5), member States may grant urban, suburban and regional routes a derogation from most provisions of the Regulation. This derogation would not be limited in time. However, it cannot be applied to the provisions that grant disabled persons or PRM access to travel by rail, nor to the right of those wishing to purchase tickets for travel by rail to do so without undue difficulty, nor to the provisions on railway undertakings' liability in respect of passengers and their luggage, the requirement that undertakings be adequately insured, and the requirement that those undertakings take adequate measures to ensure passengers' personal security in railway stations and on trains and to manage risk.

8. The other relevant derogation is in Article 2(4). It allows member States to grant a derogation, from the same provisions, for all domestic services, for an initial period of five years, followed by a maximum of two further periods of five years each (making a maximum of 15 years).

Proposals

9. The emphasis of the Regulation on a high level of consumer protection is consistent with the Government's current statements of consumer policy. The Government has said that it wants the UK's consumer regime to be "as good as any in the world" and that it has set itself a "target of reaching the level of the best."

10. Although our draft Statutory Instrument is based on full implementation of the Regulation, no decision has been made on whether or not to utilise the exemptions available under Article 2(4) and 2(5). We are seeking as part of this consultation additional information on the costs and benefits of implementation of the Regulation in order to fully complete our Impact Assessment, which will provide the basis and justification for whether we make use or not of the exemptions available.

11. The draft Statutory Instrument, which will be known as The Rail Passengers' Rights and Obligations Regulations 2009, can be found at **Annex B**. References below to "the Regulations" are to that draft Instrument; each provision of it may be referred to as a "regulation".

Proposed implementation of provisions of European Regulation No 1371/2007

At present, the drafting of the Regulations is mostly based on the law in England and Wales. We intend, however, to ensure that the Regulations have the same effect in Scotland as they have in the rest of Great Britain.

The Regulations first make provisions concerning the relationship between domestic law and the Regulation (Part 2). Then, they deal with the regulatory enforcement of the Regulation (Part 3).

Where this is not incompatible with the Regulation, the United Kingdom continues to have an international obligation to comply with COTIF. By virtue of its direct applicability, and COTIF itself (see its Article 3(2)), the Regulation prevails over COTIF. Regulation 4 provides that the implementing measures under these Regulations also prevail over the measures implementing COTIF where the two are inconsistent.

Regulation 5 provides that the right, under the Civil Liability (Contribution) Act 1978 ("the 1978 Act"), of a carrier found liable for the accident to recover a contribution from those who have also been responsible for the accident does not apply where the right to a contribution is already governed by the Regulation.

The Regulation makes provision for payment of an advance payment, shortly after the accident, to passengers victim of accidents, and their dependents, to cover their short-term needs, even though liabilities have yet to be determined. Regulation 6 sets out the procedural requirements in respect of a claim for breach of the right to an advance payment. These include an obligation to give advance notice to the undertaking, and a right to make the claim by way of application. The regulation also makes provision for the remedies available. Finally, it deals with the relationship between claims for advance payments and claims for an interim payment under Part 25 of the Civil Procedure Rules 1999.

Since the advance payment is not refundable, the railway undertaking making the payment may face a shortfall between the payment it made and the damages for which it is eventually found liable. Regulation 7 makes provision for those liable for the accident to the recipient to be liable for a contribution to that shortfall, in proportion of their liabilities for the accident. If their liabilities to the recipient are high enough to cover the whole shortfall, a share of these is used for that purpose (see paragraph 7(3)). Otherwise, the persons liable for the accident will contribute to only part of the shortfall, that part being equal to their share in the liabilities for the accident compared to that of the railway undertaking (see paragraph 7 (4)).

Regulation 8 and Schedule 1 deal with the relationship between rights under the Regulation and claims under the Fatal Accidents Act 1976 or, in Scotland, the Damages (Scotland) Act 1976, preventing overlaps but leaving rights outside the scope of the Regulation intact.

Under section 2 of the Damages Act 1996 (as amended), in England and Wales, a court may normally order periodical payments to be made in respect of personal injury even when the claimant does not consent, but retains a discretion not to order such payments even where the claimant asks. In Scotland, a court can only order such payments if both parties consent. Regulation 9 prevents conflict between these provisions and Article 30(1) of Annex I the Community Regulation, which is the same as Article 30(1) of Appendix A of COTIF, under which periodical payments must be paid if national law so permits and the claimant so requests. It does so by inserting an amendment in the 1996 Act, providing that it applies subject to that Article.

Regulations 10 and 11 make provisions in respect of the rights, under the Regulation, of disabled persons and PRM. To prevent double-regulation, regulation 10 excludes from the scope of section 19 of the Disability Discrimination Act 1995, on discrimination in the provision of goods, facilities and services, the rights that are governed by the Regulation. Regulation 11 creates a right to damages, enforceable in the courts, for breach of the rights of PRM. That right is similar to that in the 1995 Act (see section 25).

The Regulation requires the designation of enforcement bodies to take the measures necessary for its effective implementation. Regulation 12(1) designates the Office of Rail Regulation (ORR), except for the purposes of handling individual complaints (as to which see below), and paragraph (2) places it under an obligation to ensure the effective application of the Community Regulation. To comply with this duty, the ORR has the powers referred to in paragraph (3). Those powers fall into two categories. The first is the powers it has to exercise its functions under Part I of the Railways Act 1993 and the functions under SI 2005/2005/3050, the Railways Act 2005 that are not safety functions. The second is the powers to modify existing licences, conferred by these Regulations.

Under the Regulation, bodies must be designated to handle complaints for breach of the rights conferred by it. Regulation 13 designates the Rail Passengers' Council (known as "Passenger Focus") and the London Transport Users' Committee (known as "London

TravelWatch"), each within its existing functions – disregarding certain instruments that may have been made to restrict their functions in some areas. The regulation also modifies the legislation applying to those bodies, so that, in matters relating to the Regulation, they report, not to the Secretary of State, but to the ORR, as the enforcement body.

Regulation 14 and 15 provide for enforcement of the Regulation through the railway licensing regimes. They require the Secretary of State or the ORR (as the case may be) to impose on station operators and railway undertakings licence conditions under sections 8 and 9 of the 1993 Act (for station operators) and Statements of National Regulatory Provisions (SNRPs) under the Railway (Licensing of Railway Undertakings) Regulations 2005 (for railway undertakings) sufficient to ensure the effective application of the Regulation provisions listed in Schedule 2. As far as existing licences and SNRPs are concerned, they will have the power to modify them if necessary or expedient.

Regulation 16 concerns the protection of information obtained under or by virtue of these Regulations. It extends to that information section 145 of the 1993 Act, which restricts the use of information relating to an individual or business during the lifetime of the individual or the continuation of the business. It is, however, without prejudice to the duty enforcement bodies have to exchange information under Article 31 of the Community Regulation.

Consultation Questions

12. Consultees' views are sought on the arrangements proposed above and on the draft SI, in particular focussing on the considerations below:

Question 1: Do you think our proposal to enforce the provisions of the Regulation listed in Schedule II of the draft SI through the licensing and SNRP regime will provide for an enforcement regime that is effective and workable? Do you think there should be other enforcement mechanisms, in addition or in substitution to this? Do you agree with the content of that Schedule, or do you think provisions of the Regulation should be added or taken out? Do you agree with the provisions setting out the obligation to cause certain licensing conditions and SNRPs to be imposed, namely regulations 14 and 15, or do you think they should be more, or less, specific, or that anything should be added to them?

Question 2: Do you agree with the way the Regulations provide details of the process to change existing licences and SNRPs?

Question 3: Do you agree with the ORR being the designated enforcement body for the Regulation, and for Passenger Focus and London TravelWatch to handle complaints, and that in matters relating to the Regulation they report to the ORR rather than the Secretary of State? Do you think the ORR powers as an enforcement body under the draft SI are adequate (i.e. neither insufficient nor excessive to enforce the Regulation effectively)?

Question 4: The draft SI currently does not have any provision for the enforcement against ticket vendors that are not railway undertakings. We propose to apply to those vendors enforcement measures similar to those in the Railways Act 1993 for breach of licensing conditions (see section 55 and following). These would consist of a power of the ORR to impose an order to secure compliance, with civil penalties in case of default. Do you agree that the Regulation should be enforced, as against ticket vendors, by provisions similar to those in the Railways Act 1993 for breach of licensing conditions?

Question 5: Do you approve of the way the rights of disabled persons and PRMs will be enforced under the draft SI?

Question 6: Do you have any further comments on the enforcement regime?

Question 7: Do you believe the exemptions in Articles 2(4) and 2(5) should be used? If you think the exemptions should be used, please provide details, giving supporting evidence wherever possible. In particular, we would need details of costs and benefits to domestic rail passengers and operators of not receiving the full benefits and burdens of the Regulation. As far as the Article 2(4) exemption is concerned, we would need this for 5, 10 and 15 years durations respectively. In particular, if the Commission does not object, do you think the exemption in Article 2(4) should be used in respect of charter train operators and other similar services?

Question 8: If the exemptions are used, we will need to define the services to which it applies. If you are of the opinion that it should apply to certain services, do you have comments as to the legal criteria to be used to define the scope of the exemption? For example, in respect of charter train operators, two possible criteria which might be used for the definition are: the fact such services are demand-led, and the fact they are outside published timetables.

Question 9: Do you have comments about the way we intend to deal with the inconsistency between section 2 of the Damages Act 1996 (as amended) and, Article 30(1) of Annex I the Community Regulation?

Question 10: Do you agree with the approach regulation 6 reflects as far as remedies for breach of the right to an advance payment are concerned? In particular, Do you agree with the requirement for the claimant first to approach the railway undertaking, and with the fact that the regulation leaves a discretion to the court as far as remedy is concerned?

Question 11: An alternative to the drafting of regulation 7 would be to leave it to the court's discretion to settle the amount, the court being directed to have regard, in exercising this discretion, to have regard to the amounts for which the parties are liable in respect of the

accident. Do you prefer the Regulation as currently drafted or the alternative approach outlined?

Question 12: A draft Impact Assessment accompanying this consultation document is at Annex C. This has been prepared largely on cost estimates provided by the Association of Train Operating Companies. Are there any additional costs or benefits that you feel have not been reflected in the draft Impact Assessment? In particular, the Department seeks information from respondents on the potential benefits and costs to passengers so that the Department is able to monetise the benefits and costs.

Question 13: What areas of the Regulation do you consider need clarification and you would like to see covered in guidance?

Question 14: Do you have any other comments on the Statutory Instrument?

Question 15: Do you agree with our overall approach for implementation? If not, please explain your concerns.

How to Respond

If you would like further copies of this consultation document it can be found at www.dft.gov.uk/consultations or you can contact Mike Franklyn below if you would like alternative formats (braille, audio CD etc).

You may use the Consultation Response Form at **Annex D** to respond. However, we will also accept responses submitted in other formats if you find this is easier.

The deadline for return of responses is **3 November 2009**. We cannot guarantee that responses received after this deadline will be taken into account.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included at **Annex E**.

The Rail Passengers' Rights and Obligations Regulations 2009 Consultation document

A list of those consulted is attached at **Annex F**. If you have any suggestions of others who may wish to be involved in this process please contact us.

A summary of responses to this consultation will be published on our website: www.dft.gov.uk/consultations/closed after the consultation period has closed.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Responses are welcome via email or post to:

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Background

- 1.1** The European Regulation No. 1371/2007 on rail passengers' rights and obligations is aimed at introducing enhanced rights for passengers on international rail services, with domestic services being made subject to these regulations in due course. It is one of a series of measures that form the ***Third Railway Package***, which are designed to revitalise the railways and take forward the creation of an integrated European railway.
- 1.2** The Passenger Rights Regulation was adopted and published by the Commission in 2004 with political agreement on the regulations being reached on 5th December 2005 during the UK Presidency at the Transport Council. The Council and the European Parliament agreed that the Regulation would not apply to urban, suburban and regional routes and that domestic service could be exempt for a period of 5 years, followed by a maximum of two further 5 year exemption periods.
- 1.3** There are a number of mandatory requirements within the Regulation – covered under Articles 9, 11, 12, 20(1) and 26 - which are applicable to all rail passengers (including urban, suburban and regional routes). ATOC estimate these services will result in an additional cost to TOCs of between £3m and £5m per year, but of these only around £0.5m could be considered as *additional* costs from societies perspective with the remainder representing a *transfer payment*. The estimates are also based on a number of uncertain assumptions which suggest a level of uncertainty. Annex A presents further information.
- 1.4** The UK is legally bound to implement the Regulation but has discretion on whether to use the derogations highlighted in Articles 2(4) and 2(5) of the Regulation.

2. Options for the Regulation

2.1. The Council and European Parliament's agreement to provide derogation from the non-mandatory elements of this regulation to domestic services (for up to a 15 year period) and urban, suburban and regional routes (indefinitely) provides eight policy options:

- Option 1 (Base Case) - apply non-mandatory elements of regulation to all services
 - Option 2 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 5 years
 - Option 3 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 10 years
 - Option 4 – define all services within Great Britain as domestic services and exempt these services from the non-mandatory elements of the regulation for a period of 15 years
 - Option 5 – define all services within Great Britain as urban, suburban and regional services and exempt these services from the non-mandatory elements of the regulation indefinitely
 - Option 6 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 5 years) and some as urban, suburban and regional services (and exempt these indefinitely)
 - Option 7 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 10 years) and some as urban, suburban and regional services (and exempt these indefinitely)
 - Option 8 – define some services within Great Britain as domestic services (and exempt these services from the non-mandatory elements of the regulation for 15 years) and some as urban, suburban and regional services (and exempt these indefinitely)
- 2.2.** Options 2 and 5 provide the two extremities of a range within which the remaining options fall. The benefits and costs of an exemption are the same across the options (compared to the base case) with the coverage and timescale differing.
- 2.3.** It is not clear what the definitions that would be applied to non-domestic services within Great Britain are and thus we do not attempt to consider all the options but focus on

options 2, 3, 4 and 5 and note that the remaining three options will fall within the range of the two extremities.

3. Benefits of a Derogation from the Regulation

3.1 ATOC suggest that subjecting non-international services to those elements of the Regulation that are non-mandatory for non-international services will result in additional costs to TOCs of between £32m and £115m per year . The estimates are based on a number of assumptions - Annex B presents further information.

3.2 However, of these estimated costs, between £25m and £95m per year could be considered as *transfer payments* and thus the *additional cost* to society – and therefore the benefit from derogation – is between £5m and £20m per year.

3.3 The table below shows the benefits in present value terms for the four options in which all non-international services are defined as domestic or urban, suburban and regional.

	Low Estimate	High Estimate
Option 2	£25m	£70m
Option 3	£40m	£120m
Option 4	£50m	£160m
Option 5*	£90m	£265m

*appraisal period for indefinite period is assumed to be 60 years

4. Costs of Derogation from the Regulation

4.1 Passenger Focus and London TravelWatch have suggested that derogation for non-international rail services within the UK would introduce additional complexity and mean that passengers on the same trains but with different destinations or the same destinations but different ticket types may have different rights.

4.2 They also suggest that the aim of the Regulation is to enhance passenger rights and a derogation goes against this aim and would leave non-international rail passengers with less rights.

5. Specific Impact Tests:

5.1 Small Firms Test: There are no anticipated impacts on small firms mainly because the rail franchise market comprises of relatively larger firms.

5.2 Competition Assessment: There are no likely impacts on competition within the rail industry. Because railways are structured on the basis of franchises, there can be no effect on exit and entry.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annex A – ATOC Cost Estimates of Mandatory Elements of Regulation

Table 1 below presents ATOC's cost estimates for the introduction of the mandatory elements of the Regulation to all rail services – international and non-international.

Table 1 Summary of Estimated Costs for Mandatory Items

Key Concerns (£ per annum)	Low Estimate	High Estimate
PRM/ Accessibility	£100 k	£100k
Liability-Insurance Costs	£1m	£3m
International Distribution of GB Fares	£100k	£100k
More Complaints (15%)	£1.5m	£2m
Total	£3m	£5m

(a) Accessibility

- ATOC considers two key potential costs and these pertain to the requirement to provide free telephone numbers for booking assistance and the requirement for train facilities information to be available to customers.
- They also note that under current practice, 50% of TOCs already provide free telephone numbers and thus such costs are likely to be marginal.
- A greater proportion of the costs, however, relate to the provision of information on train facilities. This is mainly due to the fact that current systems do not have the facility to hold such information.
- National Rail Enquiries quoted a price of approximately £500k to add to this option and another £100k per annum for maintaining the system.

(b) Liability

- Whilst Liability issues are being dealt with outside the scope of this document, ATOC have provided very high estimates for the likely increase in insurance premiums.
- Such costs are a result of the need to compensate and make immediate payments to passengers in the case of injury or death regardless of liability.
- One TOC estimated a cost between the range of £1m and £3m per annum, based on a small increment to the level of insurance costs currently paid by TOCs.
- Alternatively, ATOC also considered the statistics on passenger injuries published by the ORR to estimate what the liability would be if compensation were to be paid from

revenue. The figures indicated that approximately 1,400 passengers require hospital treatment annually as a result of incidents. An average payment of between £1k and £2k would thus lead to an annual figure of similar magnitude as the one reported above.

(c) International Distribution of GB Fares

- Basic International fares have previously been subject to the TCV (Tarif Commun Pour Voyageurs- Common Fare to Passengers) which provided a common basis for calculating fares.
- There was initially a high probability that such a system would have to be retained and thus the savings from withdrawing them foregone were included as a cost. Although, the new TAP-TSI has not formally been adopted, such costs have been removed.
- Despite this, the TAP-TSI system has also led to another additional cost burden for marketing domestic fares through other European railways. In the case of where the issuer and carrier are in different countries, there is a prior obligation to use TAP message standards to provide data on fares. The TSI excludes such fares but it is highly probable that the foreign sales obligation would override such a domestic exclusion.
- Converting the current fares to the TAP standards would be problematic for static fares and at the same time, it would be very costly and inefficient for yield managed fares. It may be possible to mitigate costs by licensing a UK domiciled subsidiary of the foreign issuer, but if not, the costs are likely to be in the range of £500k capex and £100k opex.

(d) Increase in complaints

- ATOC estimates a 15% increase in complaint volume as the implementation of the European Air Passenger Rights Legislation led to a similar outcome.
- Three large TOCs (two long distance and one London and South East (LSE) and one major owning group have provided estimates of the costs related to an increase in 15% complaints. Such data is based on their current expenditure on handling complaints.
- These complaints were also normalised for the whole industry based on the complaint rates published in the National Rail Trends, providing an approximate cost of £2m. This was used as a high estimate, where as for a low estimate, an increase in complaints of 10% was assumed. The latter gave an approximate additional cost of £1.5m.

Annex B – ATOC Cost Estimates of Non-Mandatory Elements of Regulation

Table 2 below presents ATOC's cost estimates for the introduction of the non-mandatory elements of the Regulation to all non-international services.

Table 2 Summary of Estimated Costs for Items with Optional Exemptions

Key Concerns (£ per annum)	Low Estimate	High Estimate
Abandon Journey	£1m	£9m
Cash Compensation	£4.1m	£7m
Assistance if Delayed	£6m	£17m
Tickets Transferable	£20m	£80m
Other Commercial/ TAP-TSI	Minimal	Minimal
Service Quality Measurement	Minimal	£1m
PRM-Multiple Booking	£500k	£500k
Total	£32m	£115m

3.8 For cost estimates provided by ATOC covered under the possible exemptions in Table 2:

(a) Abandon Journey

(1) Low Estimate

- This relates mainly to passengers who are delayed on a route for more than 60 minutes and therefore choose to abandon their journey and seek a refund.
- The Low Estimate is based on methodology used by several TOCs to predict costs relating to their individual services. Data on the number of delayed trains is used along with the estimated proportion of current fare revenue which is obtained from the passengers experiencing such delays. The final step in this methodology involves estimating the proportion of passengers who would actually abandon their journey and seek a refund.
- Table 3 provides a breakdown by sector for the different proportion of trains delayed and the average revenue per passenger for such delayed journeys. The total revenue from passengers delayed over 60 minutes is estimated at £6.9m.
- Based on the assumption that only 15% of rail passengers delayed more than 60 minutes would seek a refund, the resulting low estimate is therefore £1m.

(2) High Estimate

- The High Estimate is provided by another Long Distance TOC which predicted that the additional right would result in a cost of £6k for each train delayed over 60 minutes.
- This analysis was based on methodology similar to that of the Low Estimate. However, in this case, the assumption was that 50% of delayed passengers would actually abandon their journey or claim that they had done later.
- Such costs also account for administrative costs such as the need to disapprove fraudulent claims.
- Applying this to all Long Distance sector trains results in a High Estimate of £9m. Although the Long Distance sector obtains the highest amount of revenue from passengers delayed over 60 minutes (as is evident from Table 3), £9m may be considered as a slightly conservative figure as it only accounts for the Long Distance sector.
- It should be noted that neither of these figures take account of cancellations, where the delay could exceed an hour. However, only in cases where no other alternative mode of travel exists does the delay over 60 minutes occur.

Table 3 Revenue Estimates for Passengers delayed over 60 minutes

	Total Passenger Revenue	% Trains Delayed	Revenue -Delayed Passengers
Long Distance	£2036m	0.30%	£6,022,226
London & SE	£2717m	0.30%	£703,468
Regional	£801m	0.02%	£185,340
Total			£6,911,034

In Table 3, Delayed passengers refer to those who have been delayed for 60 minutes or more. Percentages have been rounded off for ease of illustration.

(b) Payment of compensation in cash

- Under the Regulation, the requirement for compensation in cash is only necessary when a specific request is made and for all other circumstances, current vouchers are deemed sufficient.
- The main issues underlying the voucher system are that if vouchers are provided as compensation, there is a possibility that these may never be used. At the same time, some vouchers are generative to the industry. For example, people use them for part payment for journeys they would have otherwise not made.
- Whilst such a compensation system would not be applicable to all TOCs, it is most suitable for the Long Distance sector. This is not only because of the number of delayed trains and the relatively higher average fare, but more so because there may be a higher chance of cash being claimed from rail passengers. With the standard commuter TOCs,

more regular customers may accept the vouchers and use them to renew their season tickets.

- At the same time, TOCs have expressed their concern that this may lead to additional claims. With the presence of websites such as, trindelays.co.uk, many consumers may even be more encouraged to make unnecessary claims.

(1) Low Estimates

- Data on additional costs of issuing compensation has been provided by six TOCs. Such estimates were mainly based on the estimated non-redemption and generation rates on their TOC. The additional administration costs behind such a scheme were expected to be minimal with the assumption that “cash” could be interpreted as cheque or BACs payment.
- The annual complaint rate for each TOC, published by the ORR in the National Rail Trends, was used to estimate proportions for the whole industry. Although not all complaints resulted in compensation, it was assumed that the proportion would be the same across all TOCs. At the same time, it should be noted that estimates for cash compensation have been based on current level of issued vouchers.
- The average additional cost per complaint from the estimates supplied by the TOCs was £6.90 and with the application to the total number of complaints of 600,000, a low estimate of £4m has been derived.

(2) High Estimate

- Several TOCs provided details of the total compensation currently paid out in vouchers and this was normalised for the whole industry based on estimated number of passengers delayed by one hour or more. This gave an estimated total of approximately £14m per annum.
- The highest non-redemption rate was provided by a TOC was 35% and the highest figure for generation amounted to 10%. The High Estimate was therefore calculated from £14m, with the assumption that 45% (35% + 10%) would be lost to the industry if cash was paid. Given this, the High Estimate for compensation in cash is £7m.

(c) Assistance in case of delay

- This relates to the requirement to provide refreshments to rail passengers whose journeys have been delayed by 60 minutes or more. Generally, such refreshments consist of light snacks and beverages but in special circumstances, meals may be provided.

- Currently, the provision of refreshments at railway stations is not common practice though some TOCs provide light refreshments on board in case of a significant delay.
- Additional costs in terms of assistance are expected to be higher if refreshments are provided at the stations as the station retail outlets are independent of TOCs. Besides the basic refreshment cost, administrative costs for the management of such assistance, should be taken into consideration.

(1) Low Estimate

- Average additional cost figures were provided by 6 TOCs and this was normalised to the whole industry using the number of passengers delayed for their journeys. The Low Estimate as a total of £6m.
- Considering that approximately 600,000 passengers travelled on services that were delayed for more than 60 minutes or more, the estimate per person is approximately £10.50

(2) High Estimate

- One Long Distance and one LSE TOC provided data for the estimated cost of the assistance, based on 20% increase in their additional expenditure in the area. Taking the average of these figures by factoring the number of passengers delayed by 60 minutes or more, a High Estimate of £17m was derived.

(d) Tickets Transferable

- Many potential risks were identified with the transferability of tickets such as the risk of passengers sharing season tickets. Furthermore, the outward and return portion of Off-peak tickets could be used by different passengers or tickets such as Advance tickets could potentially be resold. Such risks are present because of the fact that such tickets do not include the passenger's name, especially in the case of the weekly season ticket.

(1) Low Estimate

- The Low Estimate is simply based on 25% of the High Estimate.

(2) High Estimate

- Because the consequences of transferability differ by the type of ticket, the calculation for the High Estimate is based on several different calculations.
- Weekly Season Tickets: Taking weekly season tickets into consideration, the worst case scenario is estimated by a TOC with the assumption that 10% of journeys made using a

weekly season ticket, would be made by someone other than the main user. This would therefore result in lost revenue as a potential season ticket could have been sold.

- Given that the total value of season tickets is £480m and that weekly season tickets offer a discount over 5 daily fares, 10% of this for journeys lost would amount to £53m (i.e. $480 \times 0.1 \times (5/4.5)$).
- Off- Peak Returns: The approximate revenue from Off-Peak returns is £1.5 billion. As a worst case scenario, it is assumed that 1% of this would be lost due to transferability and therefore this would amount to £15m.
- Advance Fares: The total revenue from such fares is £566m and it is assumed that 1% of these are resold in place of more expensive products which would otherwise have been purchased nearer the time and that the alternative fares would approximately cost 50% more. The loss was therefore estimated at approximately £11m (i.e. $566 \times 0.01 \times 2$).
- The High Estimate for Ticket Transferability therefore amounts to a rounded off figure of £80m.

(e) Other Commercial

- This requirement encompasses a number of factors which are discussed below.
- Requirement to certify delay on tickets: On some non-U.K railways, passengers holding train specific tickets are officially required to have a delay to a connecting service certified by a member of staff to be able to use the ticket on a later service in the case of a missed connection.
- At present, in the U.K, this is not a requirement and the staff are able to confirm delays via the information systems. If passengers were to request this facility, there could be significant resource issues at times of major delay. However, since this was considered unlikely and to an extent self-limiting, it has not been estimated.
- Indicate carrier on tickets: This requirement is incompatible with the current system as tickets are interavailable and can be used on any TOC serving that route. At the same time, under the Convention Concerning International Carriage by Rail, it is deemed sufficient to advise customers where carrier details can be found.
- If changes were made that details of the carrier were provided on the ticket, some changes to ticket stock would nevertheless be required. Since these were assumed to be fairly minimal, these have not been estimate by ATOC.
- Informing passengers of their Rights: ATOC have suggested a number of ways by which this could be brought about and some of these include placing posters at stations or providing details on relevant websites. Once again, ATOC has assumed that such costs would be fairly minimal and have not been estimated.

(f) Service Quality Management

- This requirement involves the implementation of a service quality measurement system. Since many TOCs currently adopt certain service standards, these may be sufficient to meet the requirements of the legislation.
- ATOC have however provided figures for a worst case scenario where existing systems do not meet the requirements under the Regulation and these are estimated at £1m per annum.

(g) PRM/ Accessibility

- Such a requirement is additional to the one under the mandatory services as it covers the possible requirement that passengers would be able to make multiple bookings for assistance for repeated journeys.
- Under the current system, passengers have to book each journey manually and at the same time, future bookings cannot be taken into account. Enabling such a facility would involve a major systems upgrade and the estimate for this has been provided by the Rail Settlement Plan for ATOC as £500k.