

## Red Tape Challenge: response from Passenger Focus

Text of response to Government's red tape challenge. Original submission via webform.  
<http://www.redtapechallenge.cabinetoffice.gov.uk/rail-transport-fares-and-licensing/>

### General comments:

Passenger Focus recognises the drive towards increasing efficiency. Inefficiency adds to costs and costs are invariably passed back to passengers either in the form of fare increases or in terms of lost investment opportunities. Time and money spent on 'red-tape' means less spent on what passengers want.

However, it is dangerous to view all regulation as being unnecessary simply because it imposes a duty on the industry to do something. Much of rail operates in a monopoly situation – there is little in the way of direct competition between train companies and, when it comes to commuting into central London, little in the way of viable alternative modes of transport. This situation ends in many rail passengers being 'captive consumers' who are not in a position to 'vote with their feet' if they do not like the service being offered. If a market cannot regulate itself then it is right that consumer protection is applied (and enforced) through regulation. This does not have to be legislative, it can come through a licensing regime or via contract (i.e. a franchise agreement) – but the important point is that it is present.

Regulation establishing passenger rights and protections will clearly establish some duties on the rail industry – it would be particularly ineffective if it didn't. It is crucial that this isn't just seen as a cost but that the benefits to passengers, are also assessed. In short, we believe that alongside the regulatory impact assessment should be a passenger impact assessment with the key question being: what will be the effect on passengers of removing the regulation.

### Specific comments on the regulations listed

#### 1. Maintain protection for passengers

There are three documents listed have a direct impact on passengers.

##### **a) National Rail Conditions of Carriage**

While this is owned by the rail industry it is effectively 'signed-off' by the Secretary of State for Transport. This document forms the legal contract between the passenger and the train company – in effect it forms the small-print setting out passengers' obligations and rights.

It is very hard to imagine the industry not having (or wanting) some form of terms and conditions attached to tickets - at the very least companies would wish to set out some exclusions to liability – e.g. limiting liability for delays, not guaranteeing a seat etc. A series of local conditions for each train company would surely just complicate matters

and add to bureaucracy: would the contract be based on who sold you the ticket, would your rights change as you change from train to train, would it result in more complaints being passed from pillar to post? It seems much simpler for a single national set of conditions to remain – especially given that many of the rules/operating procedures still recognise the concept of a national network. If you have a national network then it makes sense to have national conditions.

It might, of course, be the intention to retain a set of national conditions but to remove the involvement of the Secretary of State. This would raise a number of concerns, chief among them being the fact that this gives a monopolistic industry the right to set its own terms and conditions.

The requirement of the Secretary of State to sign-off the conditions currently provides checks and balances against the normal commercial reactions of train companies. Would removing this balance open the conditions to greater challenge under contract law? A key element of such a challenge is the extent to which the consumer is made aware of terms and conditions prior to buying a product and the extent to which these terms might be considered unfair.

On the internet you are required to confirm that you have read and accepted the Conditions before purchasing but there is no such process when buying at the ticket office or from a ticket vending machine (TVM). Is it reasonable or realistic to expect passengers to read a 25 page booklet while a queue builds up behind them? All of which means it is even more important that the terms are deemed fair in the first place. It has been argued that the consent of the Secretary of State is an important step in this judgement and lessens the chance of legal challenge. Removing it would therefore presumably add to the risk and create more uncertainty – something that could hardly be seen as an efficiency gain for the industry.

We believe that it is important that independent scrutiny and approval of the terms contained within the National Rail Conditions of Carriage is retained.

#### ***b) Ticketing and Settlement Agreement***

We agree that there are many aspects of the Ticketing and Settlement Agreement which are unwieldy and which would benefit from reform and updating to reflect advances in ticket retailing. Requiring the Secretary of State's approval, for instance, to create a new fare-flow is unnecessarily long-winded. However, within the 1000+ pages of the TSA there are provisions which do have far reaching consequences for passengers. For example, it is the TSA that lays down the basic requirement to:

- create through/inter-available fares (i.e. tickets that allow you to travel on any operator's services)
- provide accurate and impartial advice when selling tickets
- meet queuing standards when buying a ticket
- Consult rail users over plans to make significant reductions to ticket office opening hours (in many instances ticket office staff are the only staff available at the station)

so this can mean de-staffing a station). When London Midland consulted on proposals to change ticket office opening hours we received around 18000 comments – showing that staffing matters to passengers.

So while there is certainly a case for reform there are aspects of the TSA which can't simply be 'thrown out with the bathwater.' So, as above, we think it right that there is independent scrutiny (and approval) of provisions that provide core passenger protections.

### **c) *Penalty Fare regulations***

Penalty fare schemes operated by train companies are underpinned by statutory legislation. Amongst other things the legislation lays down the amount of the penalty that can be charged and the ability for the Department for Transport to publish 'rules' surrounding the use of penalty fares. Under the current rules any operator wishing to charge penalty fares on all or a part of their network must first submit a scheme to the DfT for approval. These schemes must include an appeal mechanism for passengers who feel they been unfairly issued a penalty.

While there are many aspects of the penalty fare process that we would like to see improved (see our [submission](#) to DfT in January 2010) they do provide protection over and above the bare minimum set out in the National Conditions of Carriage. For example, under Penalty Fare schemes operators are required to put in place a process for dealing with long queues for tickets, including informing ticket inspectors. The Conditions make no specific allowance for this, the only exclusions they allow for boarding without a valid ticket are where there were no facilities to buy a ticket or if you were given permission to board without one. This ignores the fact that not all tickets can be bought from a ticket machine or where exceptionally long queues mean you will miss your train. At such times we believe it is fundamentally wrong to penalise passengers because a train company fails to provide adequate retail facilities.

We believe it is time for a proper, co-ordinated look at this issue. At present there are sanctions under the Conditions (you can be charged the highest price single fare), under Penalty Fares (£20 or twice the single fare to the next station) and under the Railway Byelaws (potential criminal prosecution). Significantly, the latter isn't dependent on there being intent to defraud, the 'strict liability' nature of the byelaws means that a prosecution can be mounted simply for not having a valid ticket and, as we have argued above, there are various reasons why this may be so.

If Penalty Fare regulations are to be addressed as part of the red-tape challenge it is important that they be done so as part of a co-ordinated review which ensures a consistent and fair set of passenger protections exist rather than simply being removed from regulation in isolation.

## **2. European legislation**

A great number of the regulations listed on the website are designed to bring into force

European legislations. If there is a legal requirement to do so then it begs the question of whether they could just simply be removed.

### 3. Legislation granting exemptions

A number of the regulations listed on the website are designed to exempt organisations from specific obligations. There is a strong argument for a more streamlined process for granting derogations in future (i.e. without each derogation requiring actual legislation). However, removing existing legislation which grants exemptions rather begs the question of whether it would simply mean that the original legislation now applies. In other words, would it simply add regulation where it didn't previously exist?

There are two such examples that are of particular interest to Passenger Focus.

a) Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009

This is designed to exempt domestic rail passenger services in Great Britain from certain provisions of European regulation (EC 1371/2007) on rail passenger rights.

If removed, would it mean that the original regulation would be applied in full? Notwithstanding the fact that this is something we would like to see as it provides for a slightly higher level of passenger rights (see our [submission](#) to DfT at the time) we would ask whether this was Government's intention.

b) Railway (Rail Passengers' and Rail Passengers' Committees) (Exemptions) (Amendment) Order 2005

This regulation is specific to Passenger Focus's remit. It has the effect of excluding charter and heritage rail services from our duties – primarily on the grounds that we exist to address the interests of the users of public transport services and that charter/heritage train operations do not fall under this public transport umbrella.

It is of course up to Government to decide whether to extend our remit into this area but we would welcome clarification on this issue.

Passenger Focus  
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