

## Periodic Review 2013: Office of Rail Regulation Consultation on the variable usage charge and on a freight-specific charge May 2012 ~ Response from Campaign for Better Transport

Campaign for Better Transport welcomes the opportunity to respond to this consultation. Our interest is in ensuring the conditions are in place for increasing rail's mode share of freight and passenger travel, as part of a broader sustainable transport policy.

Our starting point for this response is the list of statutory duties for the ORR in the 1993 Railways Act, as amended. These are quoted in the consultation at para 4.7 and include:

- (a) To promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent which it considers economically practicable;
- (b) To contribute to the achievement of sustainable development;
- (c) To enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

We note that the duties also include

- (e) To have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railway services

We are concerned that in this consultation this duty has been given primacy over the other duties.

The consultation proposes increased charges for some railfreight traffics, on the basis that the market for this traffic is relatively inelastic and could therefore bear some increase. This raises a number of issues

1. **Policy aims and objectives** Para 4.42 suggests that even with a cap on the increased charges a loss of 10% of these railfreight traffics could occur. We are unclear how planning for such a loss is consistent with the duties of the ORR set out above. It does not seem to us to be an appropriate interpretation of the duties set out above. The argument is advanced that this is "within the normal range of fluctuations of traffic lifted". This is irrelevant. The fluctuations occur for exogenous reasons to do with the wider economy, whereas this reduction of 10% would be the result of a deliberate policy decision. We are concerned at the impact that this approach could have if applied to other rail traffic and other policy decisions, for example on fares or service frequency and quality for passenger traffic, and charges/access for open access passenger operators. We therefore disagree with this approach and believe that ORR in this and other decisions on PR13 should show explicitly that it has given due weight to all its duties, not just to those relating to funding, economy and efficiency.
2. **Impact on other traffic:** The consultation implies that the selected traffics can bear increases in charges while others cannot. However, freight traffics are not segregated on the railway or in operator accounting in this way, so increases in costs and reductions in volume in some traffics will have impacts on the costs for other traffics where demand is more elastic.

3. **Certainty and transparency:** the consultation refers to other changes to the charging regime which will impact on railfreight. We have not seen evidence that the ORR has carried out an assessment of total and cumulative impact of these various changes on railfreight. As a result this appears to run counter to the duty (c) above in terms of providing certainty for future business. It also reduces transparency of charging for railfreight and results in more complex cost structures than those offered by road freight, which has simple fuel and annual vehicle duties at present. This is particularly the case given that in para 4.46 it is suggested that the annual charge could increase to if traffic fell to keep charge income stable. This will further undermine certainty.
  
4. **Consistency with guidance from the Secretary of State:** In the guidance to the ORR published on 16 July 2012 from the Secretary of State for Transport, paragraphs 32-3 say: "The Government wishes to facilitate the continuing development of a competitive, efficient and dynamic private sector rail freight industry and is committed to ensuring that policies and regulations should work to this end and should not create unnecessary transactional costs or other obstacles to the achievement of these objectives and future growth. In an industry where planning and operational decision-making are increasingly devolved, the Secretary of State wishes ORR to have regard, in exercising its statutory functions, to the importance of sustaining efficient and commercially predictable network-wide freight operations, including in decisions about access rights and charging structures." We do not believe that this consultation is consistent with these points, in that it risks creating "unnecessary transactional costs" and other obstacles to growth, and that it will not support "commercially predictable network-wide freight operations".

We therefore suggest that this proposal should be reviewed in the context of:

- The statutory duties of the Office of Rail Regulation
- The recent guidance from the Secretary of State
- The full range of charges for freight traffic

with the aim of ensuring a predictable, transparent and consistent freight charges regime that attracts and retains freight traffic on the railways.

August 2012

Stephen Joseph  
Campaign for Better Transport

Campaign for Better Transport's vision is a country where communities have affordable transport that improves quality of life and protects the environment. Achieving our vision requires substantial changes to UK transport policy which we aim to achieve by providing well-researched, practical solutions that gain support from both decision-makers and the public.

16 Waterside, 44-48 Wharf Road, London N1 7UX  
Registered Charity 1101929. Company limited by guarantee, registered in England and Wales: 4943428