



OFFICE OF RAIL REGULATION

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Dear colleague,

Review of ORR's Criteria and Procedures for the Approval of Track Access Contracts - Phase 1 update

The purpose of this letter is to update the industry on progress with implementation of the first phase of our review of our criteria and procedures for the approval of track access contracts (C&Ps) following the publication of our Way Forward document in July 2007¹.

Background

On 20 February 2007 we published our consultation document² on our wider review of our C&Ps seeking the views of interested stakeholders on:

- (a) the arrangements proposed for handing greater responsibility to the industry for its contractual arrangements; and
- (b) the proposals for reviewing and restructuring the C&Ps.

Our proposals were generally well received with everyone agreeing in principle to our approach and the main issues identified, subject to satisfactory transitional arrangements being put in place.

In our Way Forward document, we proposed a three-stage programme of work for taking the review forward and setting out how we saw the industry's role and participation. We

¹ *Review of ORR's Criteria and Procedures for the Approval of Track Access Contracts: The Way Forward*, Office of Rail Regulation, London, July 2007, available at <http://www.rail-reg.gov.uk/upload/pdf/331-CandP.pdf>.

² *Review of ORR's criteria and procedures for the approval of track access contracts – a consultation document*, Office of Rail Regulation, London, February 2007, available at <http://www.rail-reg.gov.uk/upload/pdf/315.pdf>.

promised to update the industry on where we are and what remains to be done, particularly in relation to those workstreams under the first phase, which we were aiming to complete by 1 October 2007.

We received seven responses to our Way Forward document, all of which were supportive³. All the substantive points either have been taken on board or will be referred to the Industry Working Group (IWG) for further consideration.

Phase 1

Paragraph 3.7 of our Way Forward document set out the actions we intended to complete by 1 October 2007. A detailed progress report is available at Annex 1, but briefly, we either have achieved our targets or are very close to doing so.

Next steps

Paragraph 3.8 of our Way Forward document set out our aspirations for Phase 2 of the work. This is a vital stage of the review, at the end of which we expect the industry to be taking more responsibility for its contracts. We also expect the track access processes to be considerably more transparent, clear and straightforward. For our part, we will be taking a more focused and therefore a more effective and efficient approach to our consideration of track access applications, thereby reducing the regulatory burden.

In August 2007, we wrote to representatives from the industry inviting their participation in IWG. In doing so, we made sure that each class of operator and each owner group was included in our invitation, to ensure, as far as possible, full cross industry representation. We have now established the IWG, and its membership and draft remit is at Annex 2. Further details on IWG's role and immediate actions are set out in Annex 1.

Yours sincerely

Michael Lee

³ The responses are available at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.8888>.

Annex 1

Review of ORR's Criteria and Procedures for the Approval of Track Access Contracts - Phase 1 progress report

Passenger Access (Short Term Timetable and Miscellaneous Changes) General Approval 2007

On 1 October 2007 we introduced a new general approval that, in addition to permitting additional contingent rights for passenger operators for a period of up to 90 days, permits amendments that provide for:

- the use of additional routes in Schedule 2 for up to seven days (subject to rolling stock being cleared for the route in question);
- the use of additional rolling stock that has been cleared under the Part F Network Code process;
- disapplication of the Schedule 8 performance regime for passenger services that operate in the early hours of New Year's Day; and
- the permanent amendment of Schedule 5 to include a contingent right to run 'special' or 'seasonal' services.

A copy of the general approval is available on our website at <http://www.rail-reg.gov.uk/server/show/nav.202>.

Freight Short Term Track Access General Approval 1995 (STAGA)

In our consultation document, we asked for industry views on our proposal to revoke STAGA. English Welsh & Scottish Railway Limited (EWS) expressed concern, arguing that in the absence of STAGA, flows would have to cease if Section 22 applications were not agreed and approved within six months. Consequently, in paragraph 2.28 of our Way Forward document, we said that we would not revoke STAGA until we had reviewed the situation described by EWS. We invited EWS to provide further information on the issue it described, particularly in terms of examples where this had created a problem. We also wrote to freight industry stakeholders inviting final views on our proposed revocation.

Again, only EWS responded, reiterating the requirement for STAGA due to difficulties it might face in securing longer-term or firmer access rights prior to the six months spot bid rights expiring. If it was able to make an application under section 22A of the Act (for 'more extensive use' of the network), it believed that ORR would not complete its approval

process by the end of the six month period. EWS referred to Network Rail's refusal to agree to changes to firm rights to reflect the Anglo-Scottish coal timetable (implemented into the December 2006 Working Timetable) as it wanted to review the timetable after a trial period of operation.

Having considered EWS's views further, we see no justification for changing our intention to revoke STAGA. Indeed, its response only confirmed our initial view that any such problems arose because the parties are being dilatory in formalising contractual arrangements. Despite EWS's concerns about securing access, STAGA has not been used since 2004 and no STAGA was requested for the examples given. In any event, there are existing industry mechanisms to tackle such situations. It is worth reiterating that one of the aims of the C&Ps review is to make the industry more responsible and more responsive to its business needs.

However, we do believe that there is a strong case for a more wide-ranging freight general approval, similar to the one for passenger operators, and we will be producing proposals and a draft general approval for consultation later this month.

Industry processes and arrangements

We have held initial discussions with Network Rail on how track access processes may be better aligned with other industry processes. We are preparing a paper for consideration by IWG of what is required to ensure both a cross-industry understanding of what the new arrangements will entail and a smooth transition to those new arrangements. This will include such issues as accountability, due diligence, risks, migration, industry relationships, training, implementation and timescales. In our initial discussions with Network Rail, we agreed that this paper would concentrate on the workstream of delivering the smooth transfer of responsibility for the arrangements in the new C&Ps. The work looking at bringing more alignment to the Part D timetabling processes will become a separate workstream. This is because it is closely linked to other ongoing related work, including systems improvements, currently taking place within the industry and it is sensible for that work to take place in parallel.

C&Ps document

We have been working on a first draft of a document showing what the restructured C&Ps document would look like. That is, a single document containing our guidance on freight and passenger track access, with improved guidance on completing the model track access contracts. This is very much a work in progress, and we have focused on the structure of the document rather than, at this stage, ensuring the content is completely accurate. A great deal of detailed drafting and checking will be required before it can be issued as the new C&Ps to replace the current documents.

We intend to issue a draft structure later this month to enable discussion on the document with IWG. We will be looking for IWG's views on whether the draft structure is user friendly and whether we need to make changes before producing the detailed and fully updated document. In particular, we will be looking to make the improvements suggested by consultees.

We will also make this document available on our website so that any industry party can view it, should they wish to do so⁴. The industry will be consulted on the more detailed draft that comes about following discussion with IWG. However, should anyone who views the first draft have fundamental concerns on its structure and format, or on any areas that they believe have been overlooked, then it would be helpful if they would advise us of their concerns. Any such comments should be sent to Richard Gusanie at richard.gusanie@orr.gsi.gov.uk.

It should also be noted that on 19 July 2007 we published an updated model passenger track access contract⁵. For the most part, this version was produced to reflect changes that have taken place within the industry in recent years and to correct some typographical errors. However, it also incorporates, following extensive discussions with the industry, a more significant amendment to the provisions in Schedule 4 relating to compensation for Significant Restrictions of Use. A similar exercise has now started to update the freight model contract.

Proportionality criteria

We have produced the first draft of the proportionality criteria for the level of scrutiny that we would expect to apply to different types of application. This criteria document goes to the heart of what we are trying to achieve and will play a major role in enabling us to adopt a more proportionate approach in our scrutiny of track access applications. It will establish those areas where we will particularly focus our scrutiny, and will inform Network Rail and operators of the particular issues with which we are likely to be concerned. This will enable the industry to take steps to mitigate any regulatory issues before applications are brought to us, thus reducing application periods and fostering greater industry co-operation.

The criteria will shortly be sent to the IWG for it to review before we seek comments from the wider industry.

⁴ It will be placed on our Criteria and procedures review page, at <http://www.rail-reg.gov.uk/server/show/nav.1656>.

⁵ Available at <http://www.rail-reg.gov.uk/server/show/nav.202>.

Consultation code of practice

As with the proportionality criteria, a first draft of a consultation code of practice has been produced. As this will become an industry document that will need to be incorporated into industry processes, we have asked Network Rail to conduct an initial review to see how this might be achieved. Following this, we will send it to IWG for review and comment.

Performance regime parameter changes

On 3 August 2007, we consulted the industry on proposed changes to our policy on Schedule 8 performance regime parameters to improve the clarity and transparency of our requirements and to reduce the regulatory burden. This consultation is now complete. In the next week we shall issue a letter explaining our views on the responses we received, along with updated versions of the C&Ps and associated application forms reflecting the changes.

Industry Working Group (IWG)

As indicated above, IWG will be involved in the development of many of these proposals. By getting together an experienced group of industry practitioners who are directly involved with and understand track access issues, we hope to avoid unnecessary and abortive work and ensure that what we eventually put out to the wider industry for consultation is fit for purpose. As we explained in the Way Forward document, some of the issues raised are specific to freight and we will be having separate discussions with interested stakeholders to develop these proposals, but reporting back to IWG for review and agreement.

ORR

We will continue with our policy of streamlining our own processes, particularly in relation to the level of regulatory scrutiny that we apply in considering all track access applications, as set out in paragraphs 2.8 to 2.10 of the consultation document.

Annex 2

Draft remit of Review of Criteria and Procedures Industry Working Group (IWG)

Aim

To review the processes and arrangements proposed under the Review of the Criteria and Procedures (C&Ps) with the goal of enabling the industry to take greater responsibility for the efficient and effective delivery and robustness of their contractual arrangements.

Purpose

The purpose of IWG will be to:

- review and advise on:
 - the Code of Practice for the Network Rail-led consultation for track access contracts and amendments;
 - the proportionality criteria for the level of scrutiny applicable to different types of application;
 - the restructured C&Ps; and
 - any proposals for extending the scope of general approvals.
- aim for processes that:
 - are effective, efficient and fit for purpose;
 - add value; and
 - reduce as far as possible the regulatory burden within the statutory framework.
- consider what can be done to align the track access and timetabling processes.
- offer advice and guidance during the transitional period and participate in both stages of the post implementation review (post May 2008 and post December 2008).

Outcomes

To be satisfied that:

- the new C&Ps set out clearly and transparently the rights and obligations of each party;
- the appropriate skills, resources and industry processes are in place, and that they are clearly understood and recognised by all;
- the revised processes provide efficient and effective protections for train operators whilst maintaining the commercial balance between them and Network Rail;
- an efficient and effective Network Rail-led consultation process is in place; and
- the processes are aligned as far as possible with the industry's existing other processes.

In doing so IWG should have regard to:

- the statutory framework;
- ORR's Way Forward document published on 18 July 2007; and
- the ongoing work of the Industry Steering Group.

Process

The IWG will as far as possible deal with matters through correspondence meeting only when required on an ad hoc basis.

Membership

ORR	Network Rail	Train operators
David Robertson (Chair) Richard Gusanie Gary Taylor - Secretary	John Boon Juliet Brilliant Stephen Knightley	Chris Dellard - Arriva Trains Wales Nigel Oatway - EWS Rob Holder - First Greater Western Michael Leadbetter – Freightliner Group Mike Vila - Londonlines David Walker – New Southern Railway Niel Wilson - Northern Rail Jim Goodhead – South West Trains Robert Hodgkinson - West Coast Trains Mary Bonar - WSMR/Renaissance Trains

An observer from the Department for Transport will be invited to attend