



By Appointment to  
Her Majesty The Queen  
Royal Train Operator  
English Welsh & Scottish Railway Ltd  
London

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Dear Andrew,

### **NETWORK CODE PART J - REVIEW OF USE QUOTA AND USE PERIOD**

Thank you for your letter dated 12 March 2008 inviting the comments of English Welsh & Scottish Railway Limited ('EWS') on the above matter:

EWS would wish to see robust evidence that the current values are no longer appropriate before it could support any changes to the Part J Use Quota and Use Period. As EWS does not have any relevant evidence itself that could be used to justify any such changes it, therefore, remains content for the current values to continue to apply.

Whilst the Use It or Lose It ('UIOLI') mechanisms in Conditions J4, J5 and J6 of the Network Code are an essential 'backstop' to ensure that operators do not unreasonably retain access rights and train slots that they are not using and have no reasonable commercial need for, there are other mechanisms that EWS employs that help to avoid the need for Network Rail to resort to issuing UIOLI notices.

Given the considerable amount of time between each Priority Date and the commencement of the relevant Working Timetable coupled with the evolving nature of its customer requirements, EWS regularly reviews the train slots it has been allocated in each Working Timetable to identify those that may no longer be required and, therefore, can be voluntarily surrendered to Network Rail pursuant to Condition J2 of the Network Code. The last such review was undertaken in respect of the current December 2007 Timetable which resulted in EWS voluntarily surrendering over 200 train paths that were no longer required to meet customer requirements. EWS is sure that this process has contributed to the fact that Network Rail has not needed to serve a UIOLI notice on EWS for nearly two years.

EWS wishes ORR to consider whether the Failure to Use mechanisms in Conditions J4 & J5 of the Network Code should be extended to include explicitly Spot Bid Rights, rights obtained through the use of a general approval or indeed train slots in the timetable which have no identifiable rights. It appears to EWS that the UIOLI mechanisms at present only apply to train slots in respect of

<http://www.ews-railway.co.uk>

continued ...

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Quantum Access Rights which encompass Firm Rights, Contingent Rights and Level Three Rights.

To illustrate its concern by way of an example, EWS requested Network Rail to apply the Failure to Use mechanism in respect of another operator's train slot as EWS required the use of that train slot to accommodate a customer requirement. Although the other operator's use of that train slot did not meet the Use Quota or Use Period, EWS was informed that Network Rail could not invoke the UIOLI mechanism because that other operator had, in effect, no Quantum Access Rights in respect of that train slot.

EWS considers that operators should not be exempt from the UIOLI mechanisms in respect of their train slots secured under a Spot Bid Right or general approval. Whilst EWS acknowledges that train slots secured through Spot Bid Rights or a general approval would eventually expire once the relevant time period had elapsed, this may not be soon enough to meet the applicant train operator's customer requirement.

EWS does not support the proposal to widen the scope of the criteria to restrict the type of vehicle to which the Use Quota should apply (for example, only loaded instead of unloaded wagons). The ability to be able to secure and retain train slots for ancillary movements (e.g. empty services) is a crucial part of being able to meet customer requirements. The operation of coal services to a power station would be severely compromised if the train slots required to convey the empty vehicles away for reloading were at risk from UIOLI because such movements are excluded from counting towards the Use Quota.

Yours sincerely,

**Nigel Oatway**  
**Access Manager**