

Track Access Options

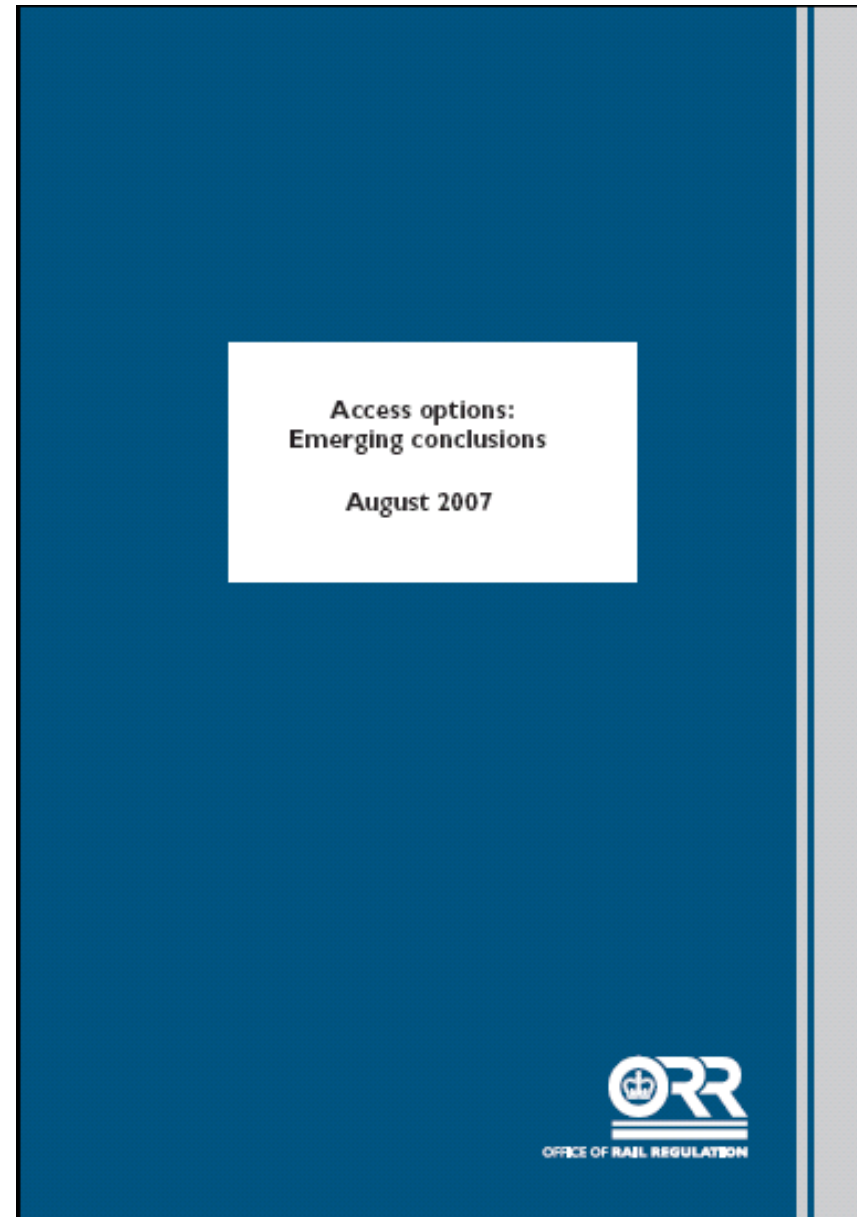
Use It Or Lose It (UIOLI)

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Introduction

- Network Code Part J
- Six key principles for AO UIOLI
- The processes
 - initial 'draw down' of rights
 - ongoing surrender process
 - third party interest
- Option Holder's ongoing need
- UIOLI consultation questions
- Questions / Comments



Network Code Part J

- Generic UIOLI for train operator track access rights
- ‘Failure to Use’ mechanism to prevent unused or underused rights being held
- Current grounds for objection:
 - reasonable ongoing commercial need (ROCN) for Freight
 - ‘Franchised Services’ for passenger operators and certain concessions
 - access rights relate to an enhancement funded through access charges paid (both)
- Part J not applicable to Access Options (AOs)
- UIOLI applies to Long Term Access Contracts so should apply to AOs

Six key principles for AO UIOLI

- ‘Stabilisation period’
- Option Holder, at commencement of Track Access Contract (TAC):
 - surrenders, for a defined period, AO rights not ‘drawn down’; or
 - demonstrates ongoing need to retain undrawn rights; and
 - planned utilisation beyond the proposed surrender period
- Network Rail may seek surrender of undrawn AO rights at any time after the end of the ‘stabilisation period’
- if parties agree, rights surrendered upon joint notification to ORR
- ORR determines disputes
- No compensation for surrendered rights

Initial 'draw down' of rights

- AO rights drawn down into track access contract at commencement of services or on renewal
- Option Holder must concurrently surrender any undrawn rights for a defined period
- Supporting evidence required for any AO rights not surrendered for the full length of TAC
- If Network Rail disagrees it must propose alternative surrender arrangements
- Parties meet to resolve differences
- Issue determined by ORR if required
- Rights surrendered from AO upon notification to, or determination by, ORR

Ongoing surrender process

- Only after ‘stabilisation period’
- Network Rail can seek the surrender of ‘undrawn’ or ‘unsurrendered’ AO rights.
- Surrender might be for any period up to the expiry of the AO
- Option Holder can object to surrender but must provide evidence of intended utilisation
- Parties meet to resolve differences
- Issue determined by ORR if required
- Rights surrendered from AO upon notification to, or determination by, ORR

Third party interest

- Third party access might be prevented because of ‘undrawn’ and ‘unsurrendered’ AO rights
- In line with Part J – Network Rail would have to seek surrender if requested
- Only applicable after ‘stabilisation period’
- Same process as ‘ongoing surrender’
- Enforceable by ORR under Contracts (Rights of Third Parties) Act 1999
- No surrender where Option Holder can demonstrate need to retain

Option Holder's ongoing need

- Grounds for objection to provide Option Holders with necessary regulatory protection, including
 - the utilisation is supported by a socio-economic case
 - there is a reasonable prospect of the Option Holder utilising any undrawn right
 - TOCs running the services will have the necessary resources to make ongoing use of the equivalent right, and that there is a reasonable prospect that they will do so

UIOLI consultation questions

- Do industry parties:
 - agree with the key principles?
 - consider that the third party and associated ORR enforcement safeguards are sufficient or necessary?
 - consider that the grounds for objection are appropriate, or are there others to consider?
 - <http://www.rail-reg.gov.uk/upload/pdf/334-accopt.pdf>

Any Questions / Comments?