



OFFICE OF RAIL REGULATION

Connection contracts

A consultation on the model connection contract and
general approval

October 2013

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Glossary

Access Dispute Resolution Rules (ADRR)	has the meaning given in part A of the Network Code.
Adjacent facility	means network situated on the premises of which the adjacent facility owner is the facility owner. The railway lines of which are normally shown coloured purple and/or yellow on the plan. This is usually the party whose network is connected to the NR Network.
Adjacent facility owner	is the person who owns the adjacent facility and whose permission is needed to use that facility. See also facility owner.
Class Representative Committee (CRC)	the CRC is responsible for considering, and where appropriate, approving proposals for change to the Network Code and the ADRR.
Connection contract	an agreement which grants permission for a rail network to be connected to another network, and sets out the rights and obligations of the parties in relation to that connection.
Connected parties	the parties who have entered into the connection contract.
Connecting network	means the part of the NR Network (the network coloured orange on the plan), which is used for the support, guidance and operation of rolling stock to and from the adjacent facility including those items identified in Schedule 1 to the connection contract and, where applicable, any part of the NR Network located on the premises.
Connection point	means the point(s) at which the railway lines of the NR Network and the adjacent facility connect, normally shown marked “C.P.” or “connection point” on the plan.
Criteria and Procedures for the approval of track access contracts (C&Ps)	this document sets out the criteria and procedures we expect to follow in processing applications for track access contracts. See our website at: http://www.rail-reg.gov.uk/server/show/nav.2745 .
Directly connected	means that part of the adjacent facility shown on the plan in yellow. It is the part of that network normally kept to Railway Group Standards.
FAC	facility access contract.

Facility owner	has the meaning given in section 17(6) of the Act. The person who owns the facility, in this instance network, and whose permission is needed to use it.
FOC	freight operating company.
Form F	application form for a freight access contract.
Form P	application form for a passenger access contract.
Network Code	the Network Code is a common set of rules and industry procedures that apply to all parties who have a contractual right of access to the track owned and operated by Network Rail.
Network Rail	Network Rail Infrastructure Limited.
NR network	is the Network Rail network managed by Network Rail Infrastructure Limited.
Passenger service facility	facilities providing services to passenger train operators.
Plan	is either a photographic or diagrammatic visual of the connection point and surrounding area. It shows the connected network, connection point(s), the adjacent facility and any other relevant information.
Premises	means the land shown edged red on the plan which is in the ownership or control of the adjacent facility owner but excluding the connecting network.
Railway Group Standards (RGS)	Railway Group Standards are produced in accordance with the Railway Group Standards Code. The purpose of RGS is to facilitate the management and operation of the shared system that is the mainline railway.
Specific approval	specific approval is required when a contract does not fall under the criteria set out in the general approval. For ORR specific approval the connection contract must be formally submitted under the access provisions of the Act.
The Act	the Railways Act 1993 contains most of ORR's functions and powers.
Void	void contracts are not legally binding in court. In a railway context this occurs when parties have not sought our approval for a contract, where ORR approval is necessary.

More definitions are available on our website at:

<http://www.rail-reg.gov.uk/server/show/nav.001002/chooseLetter0/Show%20all>

Executive summary

We would like your views on how the 2006 model connection contract and corresponding 2009 general approval should be updated. Various developments have taken place in the industry since then which we need to reflect.

Connection contracts are formal agreements between two parties that wish to connect their networks together. Very often one of those parties will be Network Rail. The contract sets out the rights and obligations of the parties for the ongoing maintenance of the connection. New connection contracts do not need ORR specific approval if they are covered by our general approval.

Subject to your views, we intend to publish an updated model connection contract and general approval for use based on industry needs. Connecting parties will have more certainty and less need to seek ORR specific approval for their contracts. The revised general approval will also provide for existing connection contracts, where based on the model, to be updated by connected parties in line with the new provisions. We also want to introduce a new application form for cases where the general approval does not apply.

We do not wish to impose any more regulation than is necessary for the efficient and effective operation of Britain's railways. That includes how we approve connection contracts. Therefore, I look forward to reading your responses. There are several set questions but I encourage you to comment on any relevant matter. The closing date for replies is 31 January 2014. I would be happy to provide you with any additional information you may need about any issues raised in this consultation.

Bill Hammill

Manager, track access

October 2013

1. Introduction

Introduction

About ORR

1.1 The Office of Rail Regulation (ORR) is the independent safety and economic regulator for Britain's railways. We are responsible for ensuring that railway operators comply with health and safety law. We regulate access to the railway network, license the operators of railway assets, and regulate Network Rail Infrastructure Limited's (Network Rail's) activities and funding requirements. We are also the competition authority for the railways and enforce consumer protection legislation in the sector. We must balance a number of statutory duties when exercising our regulatory functions¹.

Connection contracts

1.2 Connection contracts set out the rights and obligations of connected parties in respect of the operation and on-going maintenance of connections between two networks. The parties to such contracts are simultaneously facility owners of their own network and beneficiaries of the adjacent network. Connection contracts are predominantly between Network Rail and owners of connected freight facilities (such as terminals and sidings) or heritage railways but they can also be between Network Rail and owners of passenger service facilities. The party connected to Network Rail's network (NR network) will be identified as the adjacent facility owner in the model connection contract.

1.3 Connection contracts set out the terms of the agreement in relation to payments, termination, liabilities and the obligations of both parties. This includes operating and maintaining the connection with provisions for associated rights of access. Although it is clearly intended that trains will pass over the connection point, a connection contract is concerned with the joining together of two networks and does not normally confer any further rights. The right to run trains over the connection would generally be the subject of a separate track access contract held by a train operator.

¹ See <http://www.rail-reg.gov.uk/server/show/nav.94>.

Furthermore, the adjacent facility owner is not required to run trains or operate the network. These functions can be contracted out to third parties but it will be the adjacent facility owner and Network Rail who enter into the connection contract.

The model connection contract and the general approval

1.4 Our first model connection contract was published in 2005. Some changes were made during 2006 and this is the model contract that is currently in use and is available on our website². The model contract was produced in template format to enable the parties to customise it in certain parts so that it identifies the characteristics of the connection in question, including any signalling associated with it. The model connection contract is explained in chapter 2.

1.5 The general approval, which is discussed in chapter 3, was published in 2009. This provides our prior approval of certain types of customised model connection contracts thereby allowing the parties to enter into them without the requirement to seek our specific approval. For a connection contract to be covered by the general approval it will need to meet all its terms and conditions. Any connection contracts containing deviations from the model connection contract, which are not permitted under the general approval, cannot be entered into without our specific approval. A connection contract or an amendment to an existing connection contract requiring our specific approval will need to be formally submitted to us for our consideration.

1.6 In our experience the general approval is only suitable where a party's network is connecting to the mainline national railway, that is NR's network. Our general approval therefore only applies if Network Rail is one of the connecting parties. In all other cases you will need to apply for ORR specific approval. We have developed a new form C for this purpose, as discussed in chapter 4. You may of course also base such a connection contract on the model contract, overwriting Network Rail's details as appropriate. But it will need our specific approval.

ORR's regulatory role

1.7 Our powers relating to the approval and amendment of access contracts is established in sections 17 to 22A of the Act. For connection contracts our jurisdiction applies to certain connections between existing networks and to proposed connections, as explained later. There are also other important protections in the Act for parties wishing to connect to the NR network. Further, condition 8 of Network

² <http://www.rail-reg.gov.uk/server/show/nav.1833>

Rail's network licence³ (Stakeholder Relations) requires it to treat its stakeholders in an appropriate manner, dealing with them efficiently and effectively.

1.8 Section 18 of the Act enables us to approve agreed new connection contracts submitted to us. These applications represent the most common form of submissions we receive. In making our decision, we may direct the parties to enter into the contract as submitted to us or approve it with modifications under section 18(7) of the Act.

1.9 Section 17 of the Act enables an adjacent facility owner to make its own application to us for a new connection contract when it has been unable, for whatever reason, to agree the terms of that contract with Network Rail. In making our decision in respect of such applications, we have the power to direct both parties to enter into a contract on the terms we specify.

1.10 Existing connection contracts can also be amended by agreement between the parties. ORR only has an approval role in relation to such amendments where we have approved the original connection contracts which are, generally, in the form of the post-privatisation Railtrack connection contract, or our 2005 or 2006 model connection contract. The proposed amendment would need to be submitted to us to informally first. Once we have reviewed it the parties can make the change and submit it to us for our formal approval under section 22 of the Act.

1.11 Section 22A provides for ORR to grant, upon request, amendments to an access contract permitting "more extensive use of the railway facility or network installation" where the parties cannot agree between them. To date, no such application has been made in respect of a connection contract. In practice, this provision more readily lends itself to the circumstances where an operator is seeking to increase the number of trains it runs, such as a train operator on NR's network.

1.12 When an adjacent facility owner wishes to *novate*⁴ its connection contract to a third party, one which is usually taking over as the facility owner, we have the power to approve this 'transfer' under sections 18 & 22 of the Act. To facilitate such arrangements we have created a template novation agreement⁵.

1.13 We have not rehearsed here all the processes and principles surrounding our decision making in respect of the applications made to us. Rather they are set out in our *Criteria and Procedures for the approval of track access contracts (C&Ps)*⁶.

³ <http://www.rail-reg.gov.uk/server/show/nav.141>

⁴ The replacement of one contract by a contract with another party, often used with franchise changes.

⁵ <http://www.rail-reg.gov.uk/upload/doc/novation-template.doc>.

⁶ <http://www.rail-reg.gov.uk/server/show/nav.2745>

Document structure

1.14 The structure of this document is:

[Chapter 2](#) explains the proposed changes to the model connection contract;

[Chapter 3](#) explains the proposed changes to the general approval;

[Chapter 4](#) introduces a new application form for specific approvals;

[Annex A](#) lists our consultees, although anyone is welcome to respond;

[Annex B](#) summarises the consultation questions;

[Annex C](#) lists all the proposed amendments;

[Annex D](#) shows the proposed new general approval;

[Annex E](#) is the impact assessment;

A mark-up showing proposed changes to the model connection is on our website:

<http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-markup.pdf>;

A new connection contract application form, *Form C*, is on our website at:

<http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-form.pdf>.

Your views

1.15 We would like your views on the various changes we are proposing to the model connection contract and general approval. There are specific questions in chapters 2, 3 and 4. At annex B is a summary our questions. If there are any other issues which you would like to raise please do so. At annex E we have prepared an impact assessment demonstrating that our proposals are about increasing efficiency. However if you can provide an estimate of how these changes would affect you, that would be appreciated.

How to reply

1.16 Responses to this consultation should be sent in hard copy or electronic format, to be received as soon as possible, but by no later than **31 January 2014**, to:

Gordon Herbert
Track Access
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

gordon.herbert@orr.gsi.gov.uk

1.17 Please note that when sending documents to us in electronic format, which are routinely published on our website, we would prefer that you email us your correspondence in Microsoft Word format. This is so that we are able to apply web standards to our website content. But if you do email us a pdf document, where possible, please:

- a. create it from the electronic Word file (preferably using Adobe Acrobat), as opposed to an image scan; and
- b. ensure that the pdf's security method is set to "no security" in the document properties.

1.18 Please indicate clearly if you wish all or part of your response to remain confidential. Otherwise, it is expected that all responses will be made available on ORR's website, and may be quoted from by us. Where a response is made in confidence, it should be accompanied by a statement which can be published on our website and quoted from by us, summarising the submission but excluding the confidential information. We may also publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld. Copies of this consultation document will be placed on our website⁷.

Next steps

1.19 After the close of this consultation, we will consider all the responses and decide whether there should be any changes to our proposals. You are very welcome to ask for a meeting if you want one. We intend issuing our conclusions and the revised model connection contract and corresponding general approval in early 2014. Our C&Ps will be updated in due course to reflect any decisions made.

Scotland

1.20 Nearly all the contracts submitted to us by Network Rail are made under English and Welsh law. But contract law is different in key respects in Scotland. Where the connecting parties elect to have their contract covered by Scots law they should make appropriate amendments to the model connection contract. Providing no other changes are made it will be covered by the general approval.

⁷ <http://www.rail-reg.gov.uk/server/show/nav.67>

2. Proposed changes to the model connection contract

Introduction

Background

2.1 Connection contracts come under the access provisions of the Act since one facility owner is granted access to another facility by virtue of them being 'connected'. Such contracts, and amendments to them, need to be specifically approved by ORR, or are given our prior approval under our general approval, before they can take effect. If they are not approved by us, where there is a requirement to do so, then such connection contracts are void. However, our approval may not be required where both the networks concerned are exempt from that requirement, for example, by specific exemption granted under section 20 of the Act or under The Railways (Class and Miscellaneous Exemptions) Order 1994⁸.

2.2 Connection contracts proposed between parties where only one of the networks is exempt from the access provisions of the Act (as mentioned above) will still need ORR approval.

2.3 Connection contracts in place after privatisation and before 2005 were based on a template connection contract developed by Railtrack PLC, the predecessor to Network Rail. However, there were certain shortcomings in its design. For example, there was considerable uncertainty about present and future charges and the liability regime was unclear about the nature of compensation payable for breach of contract.

2.4 In 2004 we consulted on our draft model connection contract and in 2005 published it, as part of our *Model Connection Contract – Final Conclusions*⁹ (our conclusions document 2005). Network Rail has been using our model connection contract for new connections since its inception.

2.5 The principal attributes of the model contract and the advantages it offers to parties who enter into agreements in this form, are:

⁸ This order is explained in our C&Ps <http://www.rail-reg.gov.uk/server/show/nav.2745>.

⁹ <http://www.rail-reg.gov.uk/upload/pdf/242.pdf>.

- (a) simplicity and clarity in the expression of the parties' rights and obligations;
- (b) flexibility from a model that will be applied to a wide range of different types of connection (from complex and well-used connections such as freight terminals, to basic and infrequently used connections such as self-contained heritage railways);
- (c) consistency with track access contracts; and
- (d) time and cost savings.

2.6 In 2006 we undertook a review of our model connection contract after which we republished it in its current format. In 2009 we created a general approval.

The new proposals

2.7 We want to retain all of the model contract's positive attributes and to make it even more robust, efficient and flexible. Annex C sets out, in tabular format, all of the amendments proposed to the model connection contract. The changes themselves are set out using 'track changes' in a separate document on our website¹⁰. Several items in the table are minor or consequential changes and not discussed in detail here. However, your views on them are welcome, of course.

2.8 The issues discussed here were identified as part of an internal ORR review of the model contract and from comments received from industry stakeholders, including freight operating companies (FOCs) and Network Rail. Some deviations from the model have effectively become routine but still require our specific approval.

2.9 The issues we set out below are not necessarily exhaustive and we therefore welcome your views on any aspects. However if you want to suggest any further changes to the model connection contract please give us your reasons.

2.10 Please note that these proposals will enable connecting parties to review the terms of their existing contracts and make changes to them under the revised general approval. It will not automatically apply to those connection contracts entered into after privatisation and before 2005, although those contracts could also be amended by agreement between the parties in order to up-date them. We envisage that our specific approval would be needed in such circumstances.

2.11 The publication of a revised model connection contract will not have any automatic retrospective impact on existing connection contracts where our current model connection contract has been used. The revised model connection contract would be available for use as the basis of new connection agreements, but there

¹⁰ <http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-markup.pdf>

would be no powers for ORR, or anyone else, to require its retrofitting into agreements that have already been entered into. In such cases, it would be for the parties to decide for themselves whether they wanted to amend their existing contracts under our general approval or seek specific approval for the changes required to make it consistent with the revised model connection contract.

2.12 Alternatively, the parties may choose to make no changes and retain the existing provisions, although some of these will be out of date. The parties will need to decide whether making no changes is appropriate or not but we strongly recommend that changes are made to make contracts legally robust. One or both of the parties could seek to terminate their existing connection contract and replace it with one based on the new model connection contract.

Consultation issues

Existing clauses

Default interest rate

2.13 In our existing model connection contract the “default interest rate” is defined at clause 1.1 as “two per cent above the base lending rate of Barclays Bank PLC, as varied from time to time”. The Barclays base lending rate typically follows the Bank of England bank rate. However it is not guaranteed to do so.

2.14 One stakeholder has suggested that this default interest rate is too high given the current economic climate and the fact that interest rates have been low for many years. It suggested that a default interest rate of 0.4% above the base lending rate would be more equitable.

2.15 We have considered this issue previously when making our decision on a section 17 application for access to the Port of Immingham¹¹. At that time (2009), we decided that a default interest rate of 2% above the Barclays base lending rate was appropriate. This was because commercial contracts at that time stipulated that a default interest rate should fall within a range of between two and three per cent above the Barclays base lending rate for similar types of agreement.

Question 1: Is the default interest rate set at an appropriate level? If not, what should it be and why?

Initial condition statement

2.16 One stakeholder has suggested that at clause 1.1 the definition of “initial condition statement” should be clearer in its reference to connecting network and the

¹¹ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10787> 12/11/09.

connection point. The current definition reads:

“Initial Condition Statement” means the statement describing the agreed physical condition of, and the work required to, the Connecting Network, and the Connection Point, as set out in Schedule 1”.

2.17 We consider that this definition creates no ambiguity given the model contract contains additional definitions of connecting network and connection point.

Question 2: Does the definition of initial condition statement need to be improved? If so, how and why?

Termination

2.18 In our conclusions document we said that it was important for either party to be able to terminate the contract on three months’ notice. Therefore, clause 8.2 of the model includes this provision. However, it also states:

“Any notice of termination served by Network Rail under Clause 8.2 shall not take effect at any time in respect of which the Adjacent Facility Owner shall have applied to the Office of Rail Regulation under section 17 of the Act for directions to be given to Network Rail to enter into an access contract which provides for the continued connection of the Adjacent Facility to the NR Network and for so long as that application shall not have been refused.”

2.19 If we did however direct the parties to enter into a new connection contract in response to a section 17 application, no contractual provision exists for the termination of the existing connection contract that Network Rail had originally sought to terminate. This raises the possibility that two connection contracts could be in place at the same time for the one connection. We are not aware of such an instance having occurred, as Network Rail rarely triggers the termination provision. Even so, to address this ambiguity, we propose a new clause which provides a mechanism for the former connection contract to automatically terminate on our issuing of directions to both parties to enter into a new one. The revised provision is in the marked up version of the revised model connection contract. There is no specific question on this change as it is straightforward but do comment if you have any concerns.

2.20 While the revised termination provisions we are proposing will still provide adequate protection for the connected party, there may be exceptional circumstances where a three month termination provision is considered unsuitable. For example, where someone wishes to make a long-term investment in a rail connected facility, the three month termination provision might be considered to be

too little notice and therefore a risk to the project. In these cases, a notice period longer than three months could be the agreed between the parties. But we would expect to be provided with full justification for departures from the model clause provisions. This would however need to be submitted to us for specific approval. Similarly, if agreement cannot be reached by the parties, the adjacent facility owner can still make its own application to us under section 17 of the Act.

Dispute resolution

2.21 In our conclusions document 2005 we set out our proposal to include the dispute resolution mechanism in the model connection contract that had already been incorporated into passenger and freight model track access contracts. However, the Access Dispute Resolution Rules (ADRR) process was changed in 2012 and although the other access contracts were amended to reflect these changes, the model connection contract was not.

2.22 Since October 2012 we have been modifying connection contracts submitted to us to incorporate the current ADRR process. More recently, Network Rail has been routinely including the changes in its new connection contracts anyway. The changes which we now propose to the model connection contract are those we have already been approving. See annex C and the model contract on our website for details¹².

Payment of amount

2.23 In commenting on the definition of the payment of amount in clause 15.1.1, one stakeholder has proposed that it be amended to take into account the costs associated with large renewals and how payments should be made over time. We have considered this and our view is that clause 15.1.1 already provides sufficient flexibility for such costs and payment arrangements. The bracketed section of the provision “[£•]” allows for the insertion of one or several amounts whilst the final section allows for payment to be “annual, six monthly, quarterly or by period” where a period has no time limit.

2.24 We note that Network Rail has routinely been customising clause 15.1.1 to include a reference to “inspection, testing, maintenance and repair” where this has been agreed between the parties. Looking again at this model clause, we do not consider that such a reference is specifically required as clause 5.2.3(b) provides for this. However, we accept that the parties are entitled to agree such wording. We will amend the general approval and model connection contract to allow for this reference to be included, provided both parties agree to it. But it does not have to be

¹² <http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-markup.pdf>.

included. It is therefore presented within brackets in the model.

Adjustment factor formula

2.25 Network Rail has proposed that the adjustment formula factor in schedule 3 is based on a standard formula. It is contended that this would reduce scope for inconsistencies between contracts. Network Rail's proposed formula is:

The Amount shall be subject to variation as follows:
Adjustment factor = $1 + \frac{(RPI(t-1) - RPI(t-2))}{RPI(t-2)} - 0.01$

Where:

- i) t = the relevant 12 month period in respect of which the annual amount is being calculated.
- ii) RPI(t-1) means the general index of RPI (all items) published by the Central Statistics Office under code CHAW for the 12 months up to and including the month of December immediately preceding the relevant 1st April.
- iii) RPI(t-2) means the general index of RPI (as defined above) for the 12 months up to and including the month of December which is 12 months before the month of December which immediately precedes the relevant 1st April.

Question 3: Do you agree with Network Rail's proposed standard formula for use in schedule 3?

New clauses and schedules

Renewals and emergency renewals

2.26 In our conclusions document 2005 we discussed renewals and enhancement costs. We said that it would be beneficial to spread large renewals costs over a long period, whilst recognising it is important to ensure that Network Rail is able to recover its costs and the interest it accrues over a specified time period. It was agreed that costs could be spread over a short time period, or over the life of the assets, depending on what was agreed between the parties.

2.27 Since 2005, some adjacent facility owners have chosen to agree a connection charge that just caters for maintenance of the connection; and to pay for renewals as and when they are required. Other adjacent facility owners have elected to agree a programme of payments which takes into account maintenance *and* renewals costs. Network Rail has routinely offered adjacent facility owners both options and we have been specifically approving section 18 applications with Network Rail's standard form of renewals clauses in them.

2.28 Given that we agree that the model connection contract should provide such flexibilities for the parties we will include these provisions as new clauses 15.1.2 and 15.1.3 with the option under the general approval of replacing the bracketed text with "Not Used".

Variation of amount

2.29 The “variation of amount” provision at clause 16 allows for the amount payable, as at clause 15.1.1, to be reviewed at five year intervals. It sets out the process and procedures for determining whether an adjustment is required, how it is agreed and how this is to be resolved should dispute emerge. A suggestion has been made that the provision is too complicated. On balance, we take the view that clause 16 provides clarity of process and adequately covers all outcomes. Subject to your comments, we do not propose any further changes.

Service of a notice

2.30 Under the model connection contract notices can be served by prescribed methods: by post, facsimile or in person. However, in light of the expanding use and increasing reliability of documents being served electronically, there have been requests to include a reference to email. We agree. We will amend clause 18 to include a reference to service of documents by email. However, a notice will not be considered correctly served if a non-delivery of email notice is returned. This change brings this aspect of the model connection contract into line with equivalent provisions in ORR’s track access contracts.

The plan

2.31 In accordance with our conclusions document 2005 all connection contracts submitted to us must have a plan attached showing the connection points and part (or all) of the land owned by each adjacent facility owner, including boundaries.

2.32 Since 2005 several people have approached us to suggest that the plan be made an integral part of the connection contract instead of being referred to as an appendix to it. It was suggested that the plan forms part of a separate schedule to the model connection contract. One stakeholder suggested the plan should form part of Schedule 1. We have considered the options and propose that, for simplicity, the plan should just be attached to the contract.

2.33 Another stakeholder suggested that the plan should be in photographic format as distinct from a sketch or drawing, as this would make the boundaries clearer in the event of dispute. We are content to leave the development of the plan to the parties involved. However, we reserve the right to reject any plan that is not completely clear. We think there are merits in a plan including a photographic view but this should be in addition to the standard plan format. ORR will not require it as a matter of routine.

Question 4: Do you have any comments on the proposed new clauses and schedules?

3. Proposed general approval

Introduction

Background

3.1 We have powers under sections 18 and 22 of the Act to grant general approvals. Under these provisions, we may give our approval in advance, without the need for specific submission and approval, to:

- (a) the making of access contracts of a specified class or description;
- (b) amendments of a specified description to a particular access contract;
- and
- (c) amendments of a specified description to access contracts generally or to access contracts of a particular class or description.

3.2 In 2009 we published our general approval specifying the terms under which new connection contracts can be entered into, or amendments to existing connection contracts based on the model can be made, by connecting parties with our prior approval. The aim of the general approval was to make it easier for the parties to enter into a connection contract thereby reducing resources and transaction costs.

3.3 As a result of our proposed changes to the model connection contract as set out in chapter 2, we will need to introduce a new, revised general approval to replace the 2009 general approval.

3.4 The issues discussed here are not exhaustive and we would welcome your comments regarding any other permissions that, we should include in our revised general approval.

Consultation issues

Schedule 5 liability cap

3.5 The limit on liability, or liability cap, can be agreed by the parties between £500,000 and £1,000,000 under our general approval. Connection contracts containing liability caps set below or above this range must be specifically approved by us. These values were set by us in our conclusions document 2005 and have not

been reviewed since. This is your opportunity to let us know if the range of values should be revised.

Question 5: Is the range for which the liability cap can be generally approved - between £500,000 and £1,000,000 - still appropriate? If not, please comment on what changes should be made and why.

The charging regime

3.6 In our conclusions document 2005 we noted that consultees had said the charging rules should be clearer. Most consultees felt that the charging level should be set according to the complexity of the adjoining network. As such, the level of charge was initially left open for the parties to agree on. However, the charge was limited to £20,000 for contracts to be covered by the general approval. Connection contracts with an annual charge above £20,000 require our specific approval. This figure can of course be adjusted periodically according to changing circumstances and experience. We want to know your views on whether the ceiling should be raised. Should we increase it, at least, to take account of inflation since 2005?

Question 6: Is the general approval ceiling of £20,000 still appropriate? If not, what should it be and why?

Other changes

3.7 Other changes will be made to the general approval to allow amendments to existing model connection contracts to bring them 'up to date' to incorporate the changes we propose in chapter 2. Your views are welcome on any aspect of these proposed changes. The proposed revised general approval is at annex D. [Some figures in the general approval are subject to this consultation and are marked with an asterisk(*)]. We will also prepare a new explanatory note describing the general approval.

4. Application form for specific approvals

Application form for specific approvals

4.1 To date, we have not developed an application form to accompany applications for ORR approval of connection contracts or changes to them. This is because Network Rail usually provides a standardised submission letter outlining all the significant information. However, the time is right for us to introduce a standard application form consistent with the other types of applications we receive. This should save time and money and as well as making the process more transparent for everyone. Our proposed connection contract application *Form C* is available on our website¹³. *Form C* will only need to be completed when parties seek our specific approval of a connection contract.

4.2 The first part of the application form is to be used pre-consultation. It concerns the details of the parties, the proposed contract and supporting information. This part should be submitted to ORR informally. The second part of the form concerns the feedback from the facility owner's industry consultation and certification by both parties. It is to be used when seeking ORR's formal approval of a contract. The layout is similar to our forms P and F, as used for track access contracts¹⁴.

4.3 We want the application form to be as flexible as possible and we have therefore simply referred to "Facility Owner 1" and "Facility Owner 2". Where "Facility Owner 1" is the party carrying out the consultation, in most cases this will be Network Rail. Where neither party carries out the consultation, say, for a section 17 application, "Facility Owner 1" can be either facility owner.

4.4 In due course our C&Ps will be updated to include connection contract applications. We will update *Form C* again then with references to the C&Ps.

Question 7: Do you have any comments on the proposed new connection contract application form (*Form C*)?

¹³ <http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-form.pdf>

¹⁴ <http://www.rail-reg.gov.uk/server/show/nav.2507>

Annex A – Consultees

<p>Abellio Alcan Aluminium UK Alliance Rail Holdings Amey Rail Arriva UK Trains Associated British Ports ATOC Babcock Rail Balfour Beatty Group Bombardier Bluebell Railway Blyth Harbour Commission BMW UK Manufacturing British American Railway Services British Energy Carillion Construction Castle Cement Clydeport Operations Colas Rail Corus UK DB Schenker Rail (UK) Dean Forest Railway Devon and Cornwall Railways Department for Transport Directly Operated Railways Direct Rail Services Drew Management Consultants DP World East Anglian Railway Museum East Lancashire Railway European Metal Recycling Europorte Eurostar International First Corporate Shipping FirstGroup (UK Rail Division) First/Keolis Transpennine Freight Transport Association Freightliner Geldard Consulting Go! Coop Govia Great Central Railway (Nottingham)</p>	<p>Hall Construction Services Harsco Rail Heathrow Airport Hitachi Rail Europe Hutchison Ports (UK) HS1 INEOS John G Russell Transport Kemira GrowHow UK Key Property Investments (Number Nine) Kier Minerals Kronospan Lafarge Aggregates Legal and General Property Partners (Industrial Fund) Lend Lease Development Locomotive Services London Travel Watch LOROL Lynemouth Power Marks and Spencer MDS Transmodal Merseyrail Electrics 2002 Merseytravel Miller Argent (South Wales) Murco Petroleum National Express Group Nene Valley Railway Network Rail Infrastructure North Norfolk Railway North Yorkshire Moors Railway Passenger Focus Peak Rail Port of Boston Potter Logistics Pre Metro Operations Rail Delivery Group Rail Freight Group Rail Safety Standards Board Renaissance Trains Roadways Container Logistics Royal Mail Group</p>	<p>RTS Infrastructure RWE npower Sainsburys Scottish Power Generation Science Museum Board of Trustees Serco Group Siemens South Yorkshire PTE Stagecoach Group The Malcolm Group Stobart Rail St Modwen Developments Tees Trains Tesco Transport for London The Valley (Pembrokeshire) Transport for Greater Manchester Transport Scotland Tyne and Wear PTE (Nexus) Vale of Glamorgan Council Victa Railfreight Virgin Trains Volker Rail Wales Government West Coast Railways West Midlands ITA (Centro) West Somerset Railway West Yorkshire PTE (Metro) Yeovil Railway Centre</p>
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Annex B – Consultation questions

	Question
1.	Question 1: Is the default interest rate set at an appropriate level? If not, what should it be and why?
2.	Question 2: Does the definition of initial condition statement need to be improved? If so, how and why?
3.	Question 3: Do you agree with Network Rail's proposed standard formula for use in schedule 3?
4.	Question 4: Do you have any comments on the proposed new clauses and schedules [in chapter 2]?
5.	Question 5: Is the range for which the liability cap can be generally approved - between £500,000 and £1,000,000 - still appropriate? If not, please comment on what changes should be made and why.
6.	Question 6: Is the general approval ceiling of £20,000 still appropriate? If not, what should it be and why?
7.	Question 7: Do you have any comments on the proposed new connection contract application form (Form C)?
8.	Are there any other issues you would like to comment on?
9.	Impact assessment – how will these proposals affect you?

Annex C - Table of changes

Location in the draft model connection contract ¹⁵	Change	Why?	Location in this document
Throughout MCC	Reformatting and renumbering where necessary.	For consistency in style.	N/A
Recital and Schedule 2	Change Network Rail address.	Network Rail has a new registered office at Kings Place, London.	N/A
Recital	Replace (C) with "ORR has issued a general approval that permits Network Rail to grant an Adjacent Facility Owner permission to use the Connecting Network on the terms and conditions of this contract"	The previous recital stated that ORR directed Network Rail to enter into the contract which did not entirely reflect the actual position	3.7
Clause 1.1 Definition of "Affected Party"	Amend the definition of "non-affected party" (which is within the definition for "Affected Party") to be bold as on page 41 of the model Freight Track Access Contract.	This change will create consistency between access contracts.	N/A
Clause 1.1 Definition of "Affiliate"	Amend the definition to read "and for these purposes "holding company" and "subsidiary" have the meanings ascribed to them in section 1159 of the Companies Act 2006;"	The Companies Act 2006 replaced the Companies Act 1985.	N/A
Clause 1.1 Definition of "Environmental Damage"	Amend the definition of "Environmental Damage" to "has the meaning ascribed to it in Part E of the Network Code".	This change has been made in other contracts and therefore will create consistency.	N/A
Definition of "Office of Rail Regulation"	New definition that says "has the meaning ascribed to it under Section 15 of the Railways and Transport Safety Act 2003, and "ORR" shall be construed accordingly;"	This is to reflect the status of ORR.	N/A
Definition of the "Plan"	So that it means the plan attached to and submitted with the contract.	Clarity.	2.32

¹⁵ see <http://www.rail-reg.gov.uk/upload/pdf/connection-contract-2013-markup.pdf>.

Clause 8 "Termination"	Change to wording to increase clarity and make it clear that the original contract is terminated if there are directions for a new one.	To make sure that this clause has the flexibility to cover different eventualities.	2.18-2.20
11.1	Adding a provision allowing for contracts to be made under Scots law. Appropriate amendments can be made to the jurisdictional elements of the model contract.	So that the contract can be governed by the law in Scotland, if the parties wish.	1.20
Clause 12 "Dispute Resolution" and consequential changes in clauses 1, 13 and 16	Amendments to dispute resolution provision.	This change is a result of changes to the Access Disputes Resolution Rules.	2.21-2.22
Clause 15.1.1	Include a reference to "inspection, testing, maintenance and repair" in brackets.	Network Rail has routinely been customising clause 15.1.1 to where this has been agreed between the parties. ORR considers it does not have to be explicitly included as it is covered elsewhere. It is therefore presented within brackets in the model	2.24
Insertion of new clause 15.1.2 "Renewals" and 15.1.3 "Emergency Renewals"	These clauses allow renewals charges to be included within the model connection contract where necessary. These clauses have been added to the draft model contract in square brackets. The updated general approval allows these bracketed clauses to be entered in to under the general approval.	ORR has received a large number of contracts which require specific approval to insert renewals provisions.	2.26-2.28
Clause 15.3.3	Replace "Customs & Excise" with "HM Revenue & Customs".	In April 2005 Customs & Excise merged with the Inland Revenue to form HM Revenue & Customs.	N/A
Clause 18.2.2 first line	Change "do not required" to "do not require".	Typo	N/A
Clause 18.4.1b and 18.4.3d "Giving of notices"	Amendment of this clause to allow notices to be emailed. This has been added to clause 18.4.1.	Given the increasing use of email for communication we have included these clauses so that parties can send notices via email.	2.30
Page 44, 18.4.4 "Copyees"	Change title from "Copies" to "Copyees".	Typo, this change has been made in other access contracts and therefore will create consistency between access contracts.	N/A
Schedule 1	Add a reference to the Plan to schedule 1.	For greater clarity.	2.31-2.33
Schedule 2	Put "[AND SOLICITOR]" from "COMPANY SECRETARY AND SOLICITOR" to make it optional. The updated general approval allows these bracketed clauses to be entered into.	Stakeholders have told us that often a solicitor does not look at their connection contract.	N/A

Schedule 2: 1A and 1B	Network Rail's contact details in 1A and 1B will be updated.	This is a minor change to reflect NR's change of address.	N/A
Schedule 3	<p>Insert "The Amount shall be subject to variation as follows:</p> <p>Adjustment factor $= 1 + \frac{RPI(t-1) - RPI(t-2)}{RPI(t-2)} - 0.01$</p> <p>Where:</p> <p>i) t = the relevant 12 month period in respect of which the annual amount is being calculated.</p> <p>ii) RPI(t-1) means the general index of RPI (all items) published by the Central Statistics Office under code CHAW for the 12 months up to and including the month of December immediately preceding the relevant 1st April.</p> <p>iii) RPI(t-2) means the general index of RPI (as defined above) for the 12 months up to and including the month of December which is 12 months before the month of December which immediately precedes the relevant 1st April."</p>	<p>NR proposal to increase consistency. This could replace the current wording subject to comments.</p> <p>Or used as a starting point for an alternative adjustment formula factor needing specific approval.</p>	2.25
Location in the draft general approval, annex D	Change	Why?	Location in this document
2.(1) Definition of connection contract	Amend so that it reads "Connection Contract" means an agreement entered into between Network Rail and an Adjacent Facility Owner setting out the rights and obligations of both parties in respect of the ongoing maintenance and renewals of the Connecting Network."	To make it clear that the contract does include renewals work.	N/A
2.(1) Citation C	Delete (ii) citation (C), which shall instead read "Not used";	The model connection contract will be updated so citation C needs updating.	See changes to the model above

Annex D - Proposed general approval

Railways Act 1993

DRAFT - Connection Contracts General Approval 2014

Made *****2014
Coming into force* ***** 2014

The Office of Rail Regulation, in exercise of the powers conferred upon it by sections 18(1)(c) and 22(3) of the Railways Act 1993, gives the following general approval.

Citation, commencement and revocation

1. (1) This general approval may be cited as the Connection Contracts General Approval 2014.

(2) This general approval comes into force on ** **** 2014.

Interpretation

2. (1) In this general approval:

"Connection Contract" means an agreement which grants permission for a rail network to be connected to another network, and sets entered into between Network Rail and an Adjacent Facility Owner setting out the rights and obligations of the parties in relation to the ongoing maintenance and renewals) of that connection:

(a) which conforms exactly with the terms set out in the Office of Rail Regulation's Model Connection Contract, published on xxx 2014, as amended from time to time by the Office of Rail Regulation and made available on the Office of Rail Regulation's website, with the exception only of:

(i) areas marked by square brackets, which shall be completed as appropriate, and as agreed between the parties; and

(ii) the areas of the Plan, attached to the contract, other than those designated as Adjacent Facility, Connecting Network, Connection Point, Directly Connected and Premises;

(b) where the amount payable by the Adjacent Facility Owner to Network Rail, as set out in Clause 15.1.1., is £20,000(*) or less; and

(c) where the amount inserted in the definition of Liability Cap in paragraphs 1(a) and 1(b)(i) of Schedule 5 of the Connection Contract is between £500,000(*) and £1,000,000(*).

"Consultation" means a consultation of Potentially Affected Parties carried out by Network Rail, in accordance with the terms set out in paragraphs 6 to 8;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587; and

"Potentially Affected Parties" means the Secretary of State for Transport, Scottish Ministers in the case of contracts pertaining to connections in Scotland, all rail freight operators, and any passenger train operators that operate services over that portion of Network to which the Adjacent Facility (as defined in the relevant Connection Contract) is directly connected.

(2) In this general approval:

(a) unless the context otherwise requires, terms and expressions defined in the Railways Act 1993 shall have the same meanings in this general approval;

(b) unless the context otherwise requires, terms and expressions defined in the Office of Regulation's Model Connection Contract published in July 2006, as amended from time to time by the Office of Rail Regulation and made available on the Office of Rail Regulation's website shall have the same meanings in this general approval;

(c) the Interpretation Act 1978 applies to this general approval in the same way as it applies to an enactment; and

(c) unless the context otherwise requires, any reference to a numbered paragraph is a reference to the paragraph in this general approval which bears that number.

Approval

3. The Office of Rail Regulation gives its approval to the matters set out in paragraph 4 below.

4. Network Rail and an Adjacent Facility Owner may, under section 18 of the Railways Act 1993, enter into a Connection Contract, subject to the terms set out in this general approval.

5. Any parties to a connection contract may under section 22 of the Railways Act 1993, amend an existing access agreement between them concerning ongoing maintenance (and renewals) of the Connecting Network so that it conforms with the definition of a Connection Contract subject to the terms set out in this general approval.

Consultation

6. Network Rail and an Adjacent Facility Owner may only act in accordance with paragraph 4 above if a Consultation in respect of that amendment or new contract has been carried out and there are no unresolved issues arising from that Consultation.

7. Network Rail shall be responsible for conducting the Consultation. Network Rail shall inform all Potentially Affected Parties of their intention to enter into or amend a Connection Contract. The Potentially Affected Parties will be given a reasonable opportunity to raise any comments or objections in respect of the proposal. Conducting the consultation, Network Rail shall then make all reasonable efforts to resolve the issues raised in consultation.

8. Network Rail shall make the full terms of the proposed Connection Contract or amendment thereto available to all Potentially Affected Parties, save for any material information which, if made public, would or might in the opinion of Network Rail seriously or prejudicially affect the interests of a party to the Connection Contract or a relevant third party.

XXXXXX

Duly authorised by the Office of Rail Regulation

** ***** 2014

Annex E – Impact Assessment

Section 1: The issue

What is the issue?

Due to recent changes in policy and processes, an increasing number of connection contracts that are not covered by the general approval have been submitted to ORR.

Why are we intervening?

The above-mentioned changes have resulted in a growing number of connection contracts requiring specific approval rather than being covered by our general approval. In practice, almost all connection contracts we currently receive require specific approval. This has led to an increased workload and timescales for industry and ORR.

What is the desired outcome?

The proposed changes will enable parties to enter into regulated contracts more easily as more contracts will fall under the general approval and as a result transaction costs will be reduced.

When will we review the success of the intervention?

We will review the success of the intervention within two years of implementation. We expect to see a marked drop in the number of contracts requiring specific approval.

Section 2: The options

Option 1: Do nothing (specifically approval all connection contracts)

Doing nothing will mean the model connection contract and general approval will become out of date. This may result in more contracts needing specific approvals and/ or delays.

Option 2: Revise the existing policy

Revisions will introduce greater flexibility for connecting parties, reduce their transaction costs and reduce ORR's involvement. ORR will maintain some regulatory oversight while focusing on its critical regulatory responsibilities.

Section 3: The preferred option (Option 2)

Impact on stakeholders

Network Rail and connecting parties

As a result of the changes, we anticipate that Network Rail's workload will reduce since it will not have to submit every contract to ORR for specific approval. This will streamline the application process thereby encouraging Network Rail to introduce more connection points on the network by 'contractualising' those that are currently unregulated.

For all operators there should be a reduction in transaction costs and a speeding up of the connection process where they elect to use the model connection contract.

This consultation only concerns the form of contracts covering connection agreements and does not affect health and safety regulation.

Statutory duties

We think the following statutory duties are relevant to this policy proposal:

- to protect the interests of users of railway services;
- to promote efficiency and economy on the part of persons providing railway services;
- to impose on the operators of railway services the minimum restrictions which are consistent with the performance of its functions.

Overall impact

The revision of the model connection contract and general approval, and the revision to the C&Ps will have the overall impact of:

- reducing resource costs for stakeholders and ORR;
- reducing transactions costs;
- increasing efficiency for stakeholders and ORR;
- increasing competition through greater transparency and flexibility;
- reducing time burden stakeholders; and
- increasing clarity for stakeholders.

Conclusion

We do not consider there to be any significant adverse impact from our proposed changes. Rather it will benefit the industry via an up-to-date policy. We would however welcome any comments on this analysis, particularly any additional evidence of the costs and benefits of the policy.

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