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27 November 2018

To Network Rail and all its train operator customers

Dear colleague

Contingency arrangements for a delay to the statutory implementation of the 2018 periodic review (PR18)

Following earlier consultation, this letter asks you to enter into our proposed contingency arrangement to deal with the scenario of a delay to the statutory implementation of PR18.

Background to contingency for a delay in the statutory implementation of PR18

In our July 2018 consultation on our proposed changes to access contracts to implement PR18, we set out a contingency arrangement¹ to cover the scenario where there is a delay to the statutory implementation of PR18.

A delay to implementation might arise if, for example, Network Rail subsequently objects to our PR18 review notices (to be issued on 20 December 2018). This might lead to us referring our final determination to the Competition & Markets Authority (CMA) for it to decide the matter. Track access charges for CP5 will expire on 31 March 2019, so a delay to implementation would mean that Network Rail would quickly run out of funding and not be able to continue to operate.

The contingency arrangement

As we said in July 2018, the contingency provision would (in the event of a delay) provide for:

- (a) track access contracts to apply ORR's proposed changes² (i.e. the ones that Network Rail had objected to) on an interim basis; and
- (b) once the periodic review process has been duly concluded and formally implemented (e.g. following a reference to the CMA), the final set of changes to track access contracts (including access charges) would take effect and either confirm or supersede the interim arrangements.

¹ See chapter 2 of Implementing PR18: consultation on changes to access contracts, ORR, July 2018 available [here](#).

² As set out in our review notices.



There would then be a retrospective adjustment so that the final set of changes to access contracts would be applied from the beginning of the new control period (including any access charges). Network Rail and train operators would therefore end up in the same financial position as they would have been in had the final settlement been applied in the first place.

This approach is essentially the same as that used in PR08 and PR13.

Outcome of the consultation

There were no objections to our proposal, though two points were raised by respondents:

- it was queried whether the protections in franchise agreements (e.g. under Clause 18.1/ Schedule 9) would apply if the contingency arrangement was triggered. We can now advise that the Department for Transport and Transport Scotland have confirmed to us that they would apply the protections; and
- it was suggested that we should include a dispute resolution provision to allow the train operator to contest the amount of any adjustment payment following the implementation of the final set of access charges. We have revised the drafting of the contingency arrangement to include such a provision (using the wording of an existing provision for this).

We are therefore now asking Network Rail and train operators to include the contingency arrangement in their track access contracts. (No industry consultation is required for this.)

Next steps

Template supplemental agreements for Network Rail and each train operator to use to include the contingency arrangement within their track access contracts are available on our website [here](#). As some passenger track access contracts currently contain the contingency provision relating to PR13 (which is now defunct), the template supplemental agreement provided for those contracts provides for the deletion of this clause if required.

We would be grateful if Network Rail and each train operator would enter into the supplemental agreement **by the end of December 2018**, ahead of Network Rail's decision on whether to accept or object to our PR18 final determination and review notices. We intend to approve all the supplemental agreements together following this.

I have copied this letter to DfT, Transport Scotland, the passenger transport executives, RDG, Transport for London and the Welsh Government.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Richard Gusanie', with a stylized flourish at the end.

Richard Gusanie