

To all Network Rail customer teams and train operators

27 January 2023

Dear Sir /Madam,

Periodic Review 2023 (PR23) implementation and your track access contract

This letter sets out what you will need to do before 14 April 2023 to ensure that your track access contract contains the right provisions from the start of the control period 7 (CP7), which will begin on 1 April 2024.

Background

In October 2023, we expect to publish our PR23 final determination. This will set out the amount of funding that Network Rail can recover from its customers during CP7, as well as the charging and incentive framework that will apply. We will then need to implement our decisions. In particular, this will involve us issuing legal notices which begin the process of amending track access contracts to reflect the final determination. The timetable for this process is set out in the appendix at the end of this letter.

This amendment work will mainly involve replacing existing Schedules 4, 7 and 8 (where these exist) with new standard CP7 versions of these schedules and making any consequential amendments to Schedules 9 and 10. However, a number of train operators have bespoke provisions in their contracts. For example, some contracts contain additional charges in Schedule 7 and some have bespoke Schedule 8 provisions (such as particular peak/off-peak definitions). Some of these will need to be carried over into CP7, while others will not. Our legal notices will need to reflect this.

As such, there needs to be a process to:

- identify what bespoke provisions exist in Schedules 4, 7, 8, 9 and 10 in your track access contract(s) (and in the front end of the contract where these interact with Schedules 4, 7, 8, 9 and 10); and
- decide whether these provisions should continue to apply in CP7.

How this process will work

We have discussed with Network Rail how this process should work. We have agreed that Network Rail will work with each of its customers to identify any bespoke



provisions and then make a joint submission to us outlining these provisions and whether the provisions should be retained or removed for CP7 (setting out the reasons for this). A template for this exercise is attached to this letter.

We will then consider each submission and make a decision on whether to adopt the proposal. If we disagree with the proposal we will give the parties the opportunity to make further representations before we make a final decision. Similarly, if Network Rail and its customer were unable to agree among themselves, we would consider their respective arguments and then determine whether the provisions in question should be rolled forward. This may involve us asking for further information from either party.

It is important that each train operator fully identifies their bespoke provisions and considers from its perspective whether any bespoke aspects of its contract(s) need to be rolled forward into CP7. As such, it is important that each train operator engages with its Network Rail customer team on this promptly; **if we do not receive requests and reasons for bespoke terms to be carried forward into CP7, by the deadline we have set, our assumption will be that we can direct changes to the contracts using standard CP7 model terms.**

For previous periodic reviews we have assumed that some contracts (e.g. Charter operator contracts) do not have any bespoke provisions in them, unless we were notified otherwise. We will **not** be assuming this in PR23 and, as such, **we will expect a submission in respect of all passenger, freight, freight customer and charter contracts.**

Related work

We expect to consult on our draft determination in June 2023. Shortly after this, in July 2023, we will consult on the specific changes we propose to make to Network Rail's track and station access agreements to implement the conclusions of the 2023 periodic review. Following our final determination in October 2023, and having considered consultation responses on the draft new schedules, we will finalise the new CP7 provisions and include them in our review notices in December 2023. At this point, we will also reflect the outcome of the process to identify the bespoke provisions.

Timetable and next steps

The high-level timeline for this activity is set out in the appendix to this letter. We would be grateful if you would provide your joint submission to us by no later than **close on Friday 14 April 2023**. It is important that, if you are in a position to provide your joint submission earlier than this, you do so, as this will benefit all parties in this process.

[Redacted].



This letter has been copied to colleagues at the Department for Transport, Transport Scotland, Welsh Government, Merseytravel, South Yorkshire Passenger Transport Executive, NEXUS and Transport for London for information.

Thank you for your time in considering this matter.

Yours faithfully

Emyl Lewicki

Appendix: Timetable for identifying bespoke provisions

Date	Activity
From now until March 2023	Network Rail and train operators meet and seek to agree what bespoke provisions should and should not roll-forward.
By Friday, 14 April 2023	<p>Network Rail and each train operator submit a jointly signed letter to us setting out their view to us on what provisions should be rolled forward into CP7 and what provisions can be dropped (along with their reasoning for this).</p> <p>Where the parties cannot reach agreement, the joint submission could set out the points of disagreement or the parties could provide separate submissions to ORR (which they should copy to each other).</p> <p>We will begin the review process immediately upon receipt of any early returns.</p>
June 2023	ORR consults on its draft determination, on what Network Rail should deliver in CP7 and the funding it should have for this, as well as the overall incentive framework.
July 2023	<p>Following its review of submissions, ORR will respond to Network Rail and each train operator, giving its proposed decision for each contract.</p> <p>Where the parties cannot agree, ORR may either set out its 'minded to' view or seek further information.</p>
July 2023	ORR consults on the drafting to implement its proposed determination (i.e., the new track access contract schedules for CP6)
September 2023	<p>Deadline for any further representations by Network Rail and beneficiaries on ORR's proposed decision.</p> <p>Alternatively, where there remains an outstanding disagreement between Network Rail and a train operator, ORR will set out the process for resolving this.</p>
31 October 2023	ORR publishes its final determination on PR23
20 December 2023	ORR publishes, despatches and issues review notices, setting out the changes that would be made to individual track access contracts to implement PR23 from 1 April 2024

PR23 IMPLEMENTATION: List of bespoke provisions

NB. This table should be accompanied by a signed letter from both the Network Rail customer team and the train operator / beneficiary confirming whether they have agreed the proposed list of provisions that they consider should (or should not) be rolled forward into CP7 as part of PR23 implementation. Where the parties do not agree, they may send a joint response that highlights where they disagree, or submit separate responses to ORR setting out their different views.

Please send the letter and this completed template by 14 April 2023 to ORR.

Name of train operator / beneficiary			
Network Rail lead			
Train operator / beneficiary lead			
Date of track access contract (TAC) (When TAC was entered into)			
Date the TAC was last consolidated by Network Rail			
Type of TAC			
Are there any bespoke provisions that you wish to be carried forward into CP7		Have both Network Rail and the train operator agreed this submission?	

Section of contract with bespokeing relevant to Schedules 4 (Possessions), 7, (Track charges) 8 (Performance regime), 9 (Limitation on liability) and 10 (Traction Electricity Modifications) (please delete any unused tables)

Front end of contract

Front end of contract, where relevant to Schedules 4, 7, 8, 9 and 10 (clause, paragraph references)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Schedule 4

Schedule 4 (please reference the paragraph and relevant part)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Schedule 7

Schedule 7 (please reference the paragraph and relevant part)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Schedule 8

Schedule 8 (please reference the paragraph and relevant part)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Schedule 9

Schedule 9 (please reference the paragraph and relevant part)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Schedule 10

Schedule 10 (please reference the paragraph and relevant part)	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

Miscellaneous (please use if there are any other bespoke parts of the contract that you consider relevant to PR23 implementation)

Schedule and paragraph reference	Description of the bespoke drafting and proposed approach for CP7 (with reasoning)

High-level guidance – what does not need to be identified as bespoke

For all operators

There is no need to identify contractual changes that will result from PR23 policy changes.

For regular scheduled passenger operators:

The train operator specific values/information in Schedules 4 and 8 do not need to be specified as bespoke, as the corresponding entries for CP7 will be included in contracts as part of the implementation process or rolled forward (as appropriate). These include

- in Schedule 4:
 - the Sustained Planned Disruption thresholds in paragraph 1.1 of part 3 (set according to the size of the train operator);
 - the estimated bus miles payment rates in paragraph 4.2 of part 3;
 - the annexes to part 3: A (Notification Factors), B (Lookup Table for EBM Weights), C (Payment Rate per train mile) and D (Defined Service Group Revenue); and
 - part 5 (access charges supplements); and
- in Schedule 8, appendices 1 and 3.
- Similarly, in Schedule 7 – we expect to roll-forward the following:
 - Appendix 7C (setting out train consist data); and
 - Appendix 7D (list of metered trains)

For freight operators: The list of metered trains in Schedule 7, appendix 3 does not need to be identified as bespoke. Nor do the Network Rail and train operator caps in Appendix 1 of Schedule 8.