

Will Godfrey
Director, Economics, Finance and Markets



To the addressees set out in the appendix

20 December 2023

Dear Sir/Madam,

Implementation of the 2023 periodic review

I am writing to inform you that the Office of Rail and Road (ORR) has today initiated statutory implementation of the 2023 periodic review of Network Rail (PR23). This follows the publication of our [final determination](#) on 31 October 2023, which set out our overall decisions on PR23.

This letter gives an overview of:

- (a) the formal 'review notices' that we have served today which set out the changes to relevant track and station access agreements, which we expect to take effect on and from 1 April 2024;
- (b) other documents relating to the implementation of PR23, including price lists/schedule of charges published by Network Rail;
- (c) issues relating to the approval of new access agreements and any amendments to access agreements that industry parties plan to make between 20 December 2023 and the date that PR23 is formally implemented; and
- (d) next steps and further work relating to PR23 implementation.

Review notices and the implementation process

PR23 is an 'access charges review' under Schedule 4A to the Railways Act 1993 (the Act). By publishing the review notices and serving them on Network Rail and its customers (in this case, holders of track and station access agreements) as well as the Scottish Ministers, the Secretary of State for Transport and HM Treasury, we are initiating the implementation of our PR23 final determination.

Overall, we have served seven review notices which apply to the following:

- a) **track access agreements** between Network Rail and: public service passenger train operators; open access passenger train operators (excluding those agreements that do not include an access charges reopener provision and which therefore fall outside the scope of PR23); charter passenger train operators; freight train operators; and freight customers;
- b) the **Traction Electricity Rules**, which are incorporated into most track access agreements; and
- c) **station access agreements** at Network Rail 'managed stations' and stations leased by Network Rail to train operators (other than those on a full repair and insuring lease).

The Railways Act 1993 requires that these notices are served in hard copy to the parties outlined above. Train operators will only receive copies of the review notices that are relevant to the access agreements that they hold. However, copies of all notices, minus any confidential information, will be available on our [website](#).

Annex 3 of Part 2 of review notices relating to track access agreements for public service operators and open access passenger operators contain confidential information. This will not be published as each train operator (where relevant) will receive only its own confidential information in its notice. Network Rail, the Scottish Ministers, the Secretary of State for Transport and HM Treasury will receive full unredacted versions. The Welsh Government and concession authorities will receive the confidential information relating to the public service operator/concession that they each oversee.

As required by Schedule 4A to the Act, we must give Network Rail a period of at least six weeks in which it may object to the changes that we propose to be made from 1 April 2024. Network Rail will have until 9 February 2024, to notify us of any such objection.

Provided that Network Rail does not object to our review notices by 9 February 2024, we will then serve and publish a 'notice of agreement' confirming it has not objected. Parties to the access agreements with Network Rail will then have a period of 28 days in which to exercise their statutory right to terminate their access agreements should they wish to do so.

We will then, in mid-March 2024, serve review implementation notices. These will confirm that the changes in review notices served today will take effect on 1 April 2024. They will also direct the parties to the relevant access agreements to make the relevant changes specified in the review notices by entering into a short supplemental agreement, a draft of which we will provide at the time.

Annex D of our [July 2023 Implementing PR23: consultation on drafting changes to access contracts consultation](#) sets out further information relating to the implementation process. It also sets out what would happen if Network Rail was to object to the notices.

Changes to access agreements set out in our review notices

The key areas affected by our review notices are summarised below.

Changes to track access agreements

The main changes to be made to track access agreements include (where relevant):

- a) amendments to the possessions and performance regimes (Schedules 4 and 8), reflecting updates to the parameters in both regimes following recalibration for control period 7 (CP7);
- b) changes to access charges and other payments in Schedule 7 to implement the CP7 charging framework and incorporate the CP7 price lists/schedule of charges; and
- c) other changes that are consequential or expedient to implementing our decisions, such as the commitment to recalibrate Schedule 8 in the passenger regime ahead of year 3 of CP7; and improvements to the drafting of track access agreements following our July 2023 consultation.

In setting out these changes, we have taken account of the responses to our implementation consultation, the positions reached in our final determination and bespoke arrangements in existing agreements identified to us.

Changes to station access agreements

Our stations review notice sets out the changes to be made to the station access conditions incorporated into all affected station access agreements. In particular, it inserts the new stations long term charges (LTC) for CP7 and changes to inflation indexation arrangements as set out in the July 2023 consultation.

Other documentation relating to implementation

Network Rail's price lists/schedule of charges

Network Rail has today published its price lists/schedule of charges for the charges associated with the track and station access agreements. These reflect our final determination.

These price lists/schedule of charges have been subject to a process of review by the industry, following engagement and consultation by Network Rail. These price lists/schedule of charges are now set for CP7.

These price lists/schedules of charges are as follows:

- a) The Track Usage Price List, setting out:
 - (i) variable usage charge (VUC) rates and default charge rates;
 - (ii) electrification asset usage charge (EAUC) rates;
 - (iii) freight specific charge rates (applying to freight traffic transporting electricity supply industry (ESI) coal, spent nuclear fuel, iron ore and biomass); and

- (iv) slot charges for charter operators (recovering those costs incurred by Network Rail in respect of train slots used by charter operators, which are not recovered elsewhere);
- b) the Traction Electricity (EC4T) Modelled Consumption Rates List;
- c) the Schedule of Fixed Charges (for publicly contracted passenger service operators); and
- d) the Open Access Infrastructure Cost Charge (ICC) Rates List.

These are published on Network Rail's [website](#).

New access agreements and amendments to existing access agreements before implementation

We recognise that between the serving of review notices today and implementation on 1 April 2024 (assuming Network Rail does not make an objection), Network Rail and train operators (including freight customers) may wish to make changes to their access agreements or enter into new access agreements.

New access agreements

As any new access agreements entered into following the serving of our review notices will be unable to be amended pursuant to the statutory implementation process, we will need to ensure that suitable contractual provisions are included within these agreements before they are approved so that these agreements will reflect PR23 arrangements (in particular, the new Schedules 4, 7 and 8 of track access agreements). Where this is necessary, we will discuss arrangements with the parties concerned.

In connection with this, Network Rail has agreed not to enter into any new freight or charter track access agreements using our general approvals until after PR23 is implemented (these are the only types of track access agreements that are currently permitted to be made by the general approvals that we have issued). Instead, our specific approval should be sought in respect of any new access agreements during this period.

Amendments to existing access agreements

The review notices include provisions for any changes specifically approved by us under section 22 of the Act between now and 1 April 2024 to take priority over any changes to agreements required by the review notices, should there be any conflict. Industry parties, in considering any amendments in this period, and ourselves in deciding whether to approve these changes, will need to be conscious of the potential for inadvertently overwriting the changes set out in the review notices.

Reflecting this, we have also included provisions in the notices to disregard any changes to access agreements made under a general approval that would conflict with (or overwrite) the changes being made to implement PR23. This affects:

- (a) charter, public service operator and open access passenger track access agreements (in respect of changes to Schedules 7 and 8);
- (b) freight operator and freight customer track access agreements (in respect of Schedule 9; and
- (c) station access agreements (with respect to changes to the LTC provisions).

In respect of the stations LTC, where industry parties seek our specific approval to amend the LTC at a station prior to the start of CP7, the amendment should clearly specify the following:

- (i) the current total long-term charge for the station;
- (ii) the amount of the increment or decrement to be approved;
- (iii) the total long-term charge that will apply up to 31 March 2024; and
- (iv) the total long-term charge that will apply from 1 April 2024.

If you have further questions about making or amending access agreements before PR23 is implemented on 1 April 2024, please contact track.access@orr.gov.uk for track access agreements and stationsanddepots@orr.gov.uk for station access queries.

Next steps and further work relating to track access agreements for PR23 implementation

PR23 Implementation

It is important that our PR23 directions are fully and accurately implemented in track access agreements for CP7. This is a legal requirement.

In March 2024, we will direct parties to relevant track access agreements to amend those contracts, thereby implementing PR23. Consolidated contracts will need to be accurately updated within 28 days of this direction.

Conclusions to our July 2023 implementation consultation on drafting changes to access contracts

In February 2024, we intend to publish responses and conclusions to our July 2023 implementation consultation. This will set out our response to the points raised by stakeholders, set out any particular issues that arose as part of the process to implement PR23 in terms of contractual drafting, and detail how we have taken into account policy decisions made in the final determination in drafting amendments to access agreements.



Network grant documentation

As we set out in our Final Determination published on 31 October, following requests from the governments for CP7, we allowed them to pay network grants to Network Rail in lieu of fixed track access charges paid by operators.

Documentation has now been agreed for England and Wales and Scotland, between the respective governments and Network Rail that sets out, separately for England & Wales and Scotland, how those network grants will be provided to Network Rail and a mechanism allowing for the amounts of network grants to vary from year to year in certain circumstances.

ORR is now to approve the grant mechanism in accordance with Part 3A of Schedule 7 of Track Access Agreements between Network Rail Infrastructure Limited and specified passenger train operators. Following separate discussions with the governments and Network Rail, ORR may also issue revised profiles of network grant payments, varying the profiles assumed in the letter from ORR to Network Rail dated 2 November 2023 as part of our PR23 Final Determination.

Revised documentation for CP7

Assuming Network Rail does not object to our review notices by 9 February 2024, we will publish revised model track access agreements and track access guidance reflecting the CP7 arrangements shortly thereafter.

Yours faithfully

Will Godfrey



Appendix – List of addressees

Charter passenger train operators

Department for Transport

Freight train operators

Holders of freight customer contracts

HM Treasury

Network Rail Infrastructure Limited

Open access passenger train operators (who hold track access agreements that include an access charges reopener)

Passenger Transport Executives / concession authorities

Public Service Operators

Rail Delivery Group

Rail Partners

Scottish Minister for Transport

Secretary of State for Transport

Transport Scotland

Welsh Government