

6 November 2015

To: all FOCS, Freight Customer Track Access Contract holders and potential holders of such contracts, Network Rail Infrastructure Limited, TOCs and RDG's CRRWG by e-mail

Improving Schedule 5 of the Model Freight Track Access Contract

1. We are consulting you on some changes we propose to make to Schedule 5 and the associated Rights Table in the model freight track access contract (the Contract). The changes are identified in [Annex A](#) to this letter. A revised version of Schedule 5 is at [Annex B](#) and of the Rights Table at [Annex C](#). Consequential changes to Schedule 4 of the Contract are in [Annex D](#).

2. Please email your views on these proposals to Track.Access@orr.gsi.gov.uk by **Friday, 4 December 2015** so that we are able to take them into account when considering the changes discussed herein. Timescales for responding are shorter than usual because many of the proposed changes have been discussed and agreed recently, in particular by Rail Freight Group's CRRWG Freight sub-group (the sub-group). The proposed changes are also relevant to applications for new access contracts we have received and which we are considering; we refer to these below.

Schedule 5

3. The most significant change agreed at the sub-group meetings is a move away from referring to access right 'Levels' and instead to refer to origin and destination timing windows for services. Windows removes the need for flex arrangements so paragraph 3.1 of the Contract has also been removed (this limited Network Rail's ability to move Level 1 access right services when timetabling by no more than 30 minutes within the +/- 30 minute flex provision). The descriptors relating to 'Levels' in Schedule 5 have also been deleted.

Rights Table

4. During sub-group meetings, Freight Operating Companies (FOCs) agreed to the removal of several columns in the Rights Table thereby reducing some current timetabling constraints on Network Rail. This included the removal of Intermediate Point Timings. Also, the column relating to the requirement for Electricity for Traction has been agreed to be removed as the FOCs consider that Network Rail can decide that requirement by reference to the Timing Load which identifies the class of traction used for the service.

5. Additionally, it was agreed that it was important to make a distinction in the Rights Table between Firm Rights and Contingent Rights which had previously been established through 'Levels'. It was proposed each type of access right was identified in the Rights Table as either "F" for Firm Rights or "C" for Contingent Rights. We have considered this further and our proposed amendments to this approach are provided below.

6. Also during the sub-group discussions it was proposed that certain rows within the Rights Table spreadsheet could be populated with information by a FOC so that Network Rail's timetablers could take it into account when constructing new timetables. It was envisaged that this information might include, for example, the importance of meeting terminal timings or crew/loco change locations. The Rights Table attached at [Annex C](#) provides an example of a hidden row – row 8 – for such use. It was envisaged that this information, “Non-contractual Comments”, would not form part of the Contract thereby having similar status to Columns 1 – 3 of the Rights Table. Paragraph 4.3 of the revised Schedule 5 refers. Alternatively, the same information could be included in a FOC's Priority Date Notification Statement. FOCs can choose which approach they prefer but we suggest that they make this clear to Network Rail.

Window sizes

7. Agreement of the window size was acknowledged by Network Rail and FOCs as being a key issue. It still remains an issue as FOCs are seeking smaller windows than Network Rail wish to agree to for certain types of freight. As a result, those FOCs seeking a new Contract from PCD 2016 have either made an application to us under section 17 of the Railways Act 1993 (the Act) or are considering making such an application.

8. Where we have received a section 17 application, we are either undertaking the consultation processes in Schedule 4 of the Act and evaluating responses received which means we have yet to decide them. Applicants have incorporated into their applications the latest version of the developing Schedule 5 and Rights Table. It is becoming clearer that we will need to determine the size of the origin and destination windows in our section 17 decisions given the continuing impasse over them which exists between the FOCs and Network Rail.

Consequential changes to Schedule 4

9. Schedule 4 of the Contract provides for compensation, under certain conditions, for FOCs whose services are affected by Restrictions of Use. The provisions refer to “Level One” and “Level Two” access rights and so we have amended them to take into account the interaction of Schedule 4 with the new Schedule 5 definition of “Freight Access Rights” relating to Firm Rights. Copies of the appropriate sections of the amended provisions are attached at [Annex D](#) which are ‘marked-up’ against the current Schedule 4.

ORR's recently proposed changes

Schedule 5

10. During our process for making agreed changes to Schedule 5 and the Rights Table, we recognised that we had an opportunity to simplify and give greater clarity to the provisions within Schedule 5. We have therefore made those proposed changes and these are identified in our Changes List at [Annex A](#) alongside those which were agreed under the sub-group workstream.

11. We have proposed a new provision at paragraph 5 of Schedule 5 which will enable the FOC or Network Rail to initiate a formal process to propose changes to

timing windows in the Rights Table. We anticipate that such a process would only be triggered by one of the parties where the usual negotiations to identify and agree changes to access rights have been fruitless. We envisage that the process might be initiated, for example, by Network Rail where it has encountered difficulties in achieving the best timetabling solutions year on year and it considers that certain access rights need more 'flex'. It could be possible that FOCs might initiate it to seek smaller or more dynamic windows to meet more demanding customer delivery requirements or shorter journey times to achieve greater operational and cost efficiencies. In either case, in the event of an unresolved dispute under the process over a change, ORR will decide it. This provision may only be triggered by either party to give effect to it from PCD 19 up to when we consider that a 'proving period' for the origin and destination window will have been established. The lead-in times contained within the process are designed to provide sufficient time for decisions by ORR for the relevant timetable development period.

Definitions

12. Where possible, many of the definitions contained in the current Schedule 5 have been moved into the Rights Table. We have proposed this to assist both its completion and agreement by the parties and to aid Network Rail's timetablers in constructing new timetables. We have also taken the opportunity to revise some of the definitions to make them more meaningful. [Annex A](#) attached provides details of the changes to definitions imported into the Rights Table. However, because of the volume of text contained in the definitions of "Y Path" and "Y Path Options" a move to the Rights Table is not practical and so these have been introduced into Schedule 5. Their inclusion was previously optional under our Freight Access (Track Access Contracts) General Approval 2012. We have proposed a small amendment to each definition.

Identifying Firm Rights and Contingent Rights in the Rights Table

13. We have addressed this issue above but we are now proposing further changes to the sub-group's approach to identifying Firm Rights and Contingent Rights in the Rights Table. We acknowledge that the vast majority of access rights held by FOCs are Firm Rights and that very few are Contingent Rights so we have proposed that only Contingent Rights are identified in the Special Terms column in the Rights Table as "Contingent" which means the default position for rights without such an indicator will always be Firm Rights. The definitions in Schedule 5 have been amended to reflect this approach which we consider will reduce administrative burdens.

Model Freight Customer Track Access Contract and model Freight Operating Company Track Access Contract

14. We acknowledge that similar changes to the Freight Customer Track Access Contract and the associated Freight Operating Company Track Access Contract will need to be made to reflect those which are now being made to the Contract. Once those changes have been agreed, we will update these model contracts. We anticipate that this will be early in 2016. At this point in time we do not believe we need to consult on those changes given that they will mirror substantially those we are consulting on today.

Other matters

Part J of the Network Code: "Changes to Access Rights"

15. We have considered whether there is a requirement to make any change to Part J of the Network Code to take into account changes to the expression of access rights in the Rights Table proposed as part of this consultation and we have concluded that there is not. Part J makes no reference to "Levels" of access rights, preferring instead to refer to Quantum Access Rights which will capture Freight Access Rights for the purposes of changes to access rights. As such, no change is needed.

Freight Access (Track Access Contracts) General Approval 2012 dated 9/2/2012

16. This General Approval (GA) provides for changes to the current Rights Table, under certain conditions, in relation to both "Level 1" and "Level 2" access rights. Given the changes now being proposed to the expression of access rights in the Rights Table, we intend to review and revise our GA. We will consult on such revisions to it once we have finalised and published the new Contract. Consultation on the revised GA will take place early in 2016.

17. Meanwhile, the current GA may still be used where appropriate. However, we suggest that no new access contracts containing "Level 2" or "Level 3" access rights should be entered into under the GA given the proposed changes to the Contract. This is to ensure consistency of access terms between FOCs.

Track Access Guidance (ORR's Criteria & Procedures for the approval of track access contracts)

18. Once we have agreed and published our proposed changes to the Contract, which should be later this year or early in 2016, we will then include them in our Track Access Guidance document modules (which are replacing the current Criteria & Procedures document). We envisage that this will provide guidance on the level of prescription we would expect to see in applications for new access rights in the Rights Table or amendments to existing access rights.

Current access contract application approval timescales

19. Given that nearly all of the FOCs holding Firm Rights will need a new track access contract to be in place by the Priority Date (March) 2016 for the 2016/17 timetabling process, we intend to direct Network Rail to enter into contracts with FOCs which contain the new Schedule 5 and Rights Table in early 2016.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Hammill', written over a light blue horizontal line.

Bill Hammill