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

**New General Approval for freight track access contracts**

1. We are consulting you on a proposal for a new General Approval for freight track access contracts (**GA**). This is based on the existing Freight Access (Track Access Contracts) General Approval 2012, dated 2 February 2012 (**2012 GA**). The updates reflect changes in industry processes and the model freight track access contracts (**model freight contracts**), and modifications to make the GA shorter and easier to use. Both the proposed GA and 2012 GA are attached to this letter.
2. Please email your views on these proposals to [Track.Access@orr.gsi.gov.uk](mailto:Track.Access@orr.gsi.gov.uk) by **11 November 2016** so that we are able to take them into account when considering these changes.

*Schedule 5*

3. The most significant differences from the 2012 GA reflect the move in the expression of access rights from “levels” to “windows”. This change is outlined in the Access Rights Policy and was implemented by us in Schedule 5 of our model freight contracts, after a consultation in November 2015<sup>1</sup>. We noted in our consultation letter that the 2012 GA would need to be reviewed in the light of the changes.
4. The changes we made to implement the new Schedule 5 are:
  - Replacement of references to “Level One”, “Level Two” and “Level Three” access rights with “Freight Access Rights”, which are “Firm Rights” and “Contingent Rights”;
  - Removal of paragraphs relating to Cordon Caps;
  - Removal of paragraphs relating to the definitions of “Train Operator Variation Services” and “Y Path” as these are now included in the model freight contracts; and
  - Removal of the paragraph limiting access rights to two years only as this was to allow for the future reform of access rights<sup>2</sup>, which has now been completed.

*Window sizes*

5. We propose that departure and arrival windows of between four hours and twenty four hours will be able to be approved under the GA. This is more specific than under the 2012 GA, which limits the access rights that can be approved, based on our decision

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<sup>1</sup> The consultation and conclusion letters can be found at: <http://orr.gov.uk/what-and-how-we-regulate/track-access/projects/industry-reform>

<sup>2</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0004/5458/freight-study-letter-120711.pdf](http://orr.gov.uk/data/assets/pdf_file/0004/5458/freight-study-letter-120711.pdf)

that existing Level 2 Rights would become firm rights with twenty four hour windows<sup>3</sup>, to firm rights with twenty four hour windows or contingent rights only.

6. We propose this range as it gives Network Rail and the freight operator some extra flexibility in what window sizes they can agree for access rights without requiring our specific approval, while at the same time retaining our oversight of narrower windows that could impact on capacity and performance. The requirement for industry consultation for such access rights reduces the potential for conflict with existing access rights. Access rights which are intended to operate over declared Congested Infrastructure are excluded from being generally approved regardless of the size of window.

**Q1. Is the proposed range of the arrival and departure windows that can be generally approved useful? Should this range be broader or narrower, and if so, why?**

*Amendments of access rights to reflect changes in the Working Timetable*

7. Annex D of the 2012 GA allowed for the amendment of the departure and arrival windows and dwell time at an Intermediate Point of an access right held by the freight operator in the Working Timetable (**WTT**), if the single or multiple amendments together do not alter the departure or arrival window by more than thirty minutes in any timetable period.
8. We are considering opening up this provision to allow amendments through the GA of more than thirty minutes. In the 2012 GA, amendments of less than thirty minutes did not need to go out to industry consultation. In the revised GA, all changes to windows and dwell times to reflect the WTT would now need to go out to industry consultation, even if it was for less than thirty minutes.
9. This would allow for more amendments to be generally approved, as the amendment of access rights to reflect the WTT is one of the most common changes proposed in the section 22 applications which we receive. The requirement for industry consultation should reduce the risk of the departure and arrival windows moving and then conflicting with other existing access rights.

**Q2. Should the provision for amending access rights to match the WTT be expanded, subject to successful industry consultation?**

*Reduction of access rights*

10. Paragraph 4 of Annex D now allows parties to reduce access rights as well as deleting access rights, without requiring industry consultation. This can be used to hand back capacity to Network Rail, such as when partial use is discovered after a failure to use challenge under Part D or J of the Network Code, and can be used by the parties to keep the rights table up to date.

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<sup>3</sup> [http://orr.gov.uk/data/assets/pdf\\_file/0006/21579/s17-colas-rail-limited-decision-letter.pdf](http://orr.gov.uk/data/assets/pdf_file/0006/21579/s17-colas-rail-limited-decision-letter.pdf)

### *Indemnity Incident Cap and Liability Cap*

11. The “Indemnity Incident Cap” and “Liability Cap” paragraphs have been updated. This reflects the change in the minimum amount these caps can be under the access charges review known as the Periodic Review 2013 and that clause 11.6.5 of the model freight contracts no longer needs to be replaced.

### *Office of Rail and Road*

12. We have updated references to “Office of Rail Regulation” to “Office of Rail and Road” throughout the GA. This reflects our change of name, which came into effect in October 2015.

### *Annex D*

13. We have updated Annex D to cover changes to existing freight customer track access contracts and freight operating company track access contracts, as we no longer maintain separate “marked-up” versions of these contracts. The annex is now split into two sections that group together those changes which do not require consultation and those which do. This should help users of the GA to see if they need to consult on their proposed changes more quickly.

### *Public register*

14. The paragraph in the explanatory notes regarding the Public Register requirement in the 2012 GA is now clause 13 of the GA. This is to emphasise the need for parties to send to us a copy of all contracts entered into under the GA.

### *Refinement of definitions*

15. Definitions given in the Interpretation clause as being the same as in the Network Code and model freight contracts have been removed to reduce the number of definitions in the GA itself. The new paragraph 4 states that all terms used which are defined in the Act, Network Code and model freight contracts have the same meaning in the GA.

### *Explanatory notes*

16. We removed the explanatory notes as they did not, in our view, add any value to the GA, and would expect applicants to refer to our guidance<sup>4</sup> when using the GA.

**Q3. Do you have any comments on the above proposed changes to the GA, or any amendments we have not included which you think we should consider?**

**Q4. We are required to review the impact of any regulatory changes. How will a revised GA impact on your business?**

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<sup>4</sup> <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

*Consultation period*

17. We have decided to run this consultation for six weeks, closing at **5pm on 11 November 2016**. Timescales for responding are shorter than usual because many of the proposed changes are based on PR13 and our update of Schedule 5 earlier this year, which were consulted on. The new freight track access contracts with windows will also go live on 11 December 2016, and therefore increase the need for a revised GA to amend these contracts as necessary.
18. Consultees should also be aware that information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004. Please see our consultation webpage for further information<sup>5</sup>.

Yours sincerely,

A handwritten signature in black ink that reads "K. Goulding". The signature is written in a cursive style and is underlined with a single horizontal line.

**Katherine Goulding**

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<sup>5</sup> <http://orr.gov.uk/consultations/open-consultations/new-general-approval-for-freight-track-access-contracts>