

Gordon Herbert
Executive, Track Access
Telephone 020 7282 3964
E-mail: track.access@orr.gsi.gov.uk

15 December 2014

All access agreement stakeholders

Dear stakeholder

Connection contracts: amending our general approval to include novations
Conclusions

Decision

1. On 30 September 2014 we started a consultation on a proposal to extend our connection contracts general approval to include the novation of certain connection contracts¹.
2. Three responses from train operators were in favour: Govia, First Greater Western and Freightliner. The Rail Freight Group had no objections. However, Network Rail Infrastructure Ltd did raise concerns². I am very grateful to everyone who took the time to consider the issues. We have decided not to implement the proposal.

Our position

3. The Office of Rail Regulation (ORR) is the economic regulator for GB's railways. We have a specific role in approving access agreements under sections 17-22A of *The Railways Act 1993* (the Act) and an appeal role under *The Railways Infrastructure (Access and Management) Regulations 2005*. This is explained in our previous consultations.
4. New connection contracts and substantive amendments to existing ORR approved contracts generally need approval from us or they are void, that is not enforceable in court. That includes changes in the parties to a contract. Our general approval provides assurance that where certain criteria are met, approval is automatic. In other cases the parties must apply for ORR specific approval. We would prefer to concentrate our efforts on cases where issues are raised, where agreement cannot be reached, or where they fall outside the general approval.

¹ <http://orr.gov.uk/consultations/policy-consultations/open-consultations/connection-contracts-amending-our-general-approval-to-include-novations>

² See the responses at the weblink in footnote 1:

Network Rail's response

5. Network Rail's position is particularly important as it would always be one of the parties involved. Network Rail noted that the consultation requirement could be seen as burdensome and extend the current processes. This would involve contacting all the potentially affected parties. It said it was unclear how ORR would resolve any objections. Presumably this is because the only matter being changed would be the Adjoining Facility Owner and it would be difficult to see why other people might be aggrieved, or how their objections might be resolved.

Analysis

6. Our experience is that most connection contract novations do not cause any regulatory issues requiring ORR's intervention. They are also quite common, for example when franchises change. However there have been instances where issues have been raised. Connection contracts can impact other parties, including where third parties run services over the connections. We cannot guarantee that novations will be free of controversy in every case. ORR approval is a statutory requirement and we believe in transparency for such decisions. Having considered the issues and for these reasons, we are reluctant to allow automatic novation without either third party consultation or ORR scrutiny. In our proposal, use of the general approval was therefore subject to conducting a consultation with relevant parties, as already exists with other types of amendment.

Conclusion

7. Given that Network Rail did not support the proposal and its concerns over extra burdens, we have decided not to extend the general approval. We will leave the current approval system in place. All novations will continue to require specific individual ORR approval. Applicants must apply directly to us. You should allow sufficient time for us to consider your application. If we consider that issues might be raised, we will review these and conduct our own consultations as necessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gordon Herbert'.

Gordon Herbert