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18 March 2014

To the recipients set out in the Annex

Dear sir/madam

Implementation of the 2013 periodic review: Issue of review implementation notices

1. We have today issued review implementation notices under schedule 4A to the Railways Act 1993 (the Act) in respect of the 2013 periodic review (PR13). These confirm that the proposed changes set out in the review notices¹ that we issued on 20 December 2013 are to take effect on and from 1 April 2014. They also direct the parties to track and station access agreements to enter into supplemental agreements to give effect to these changes.

Background

2. On 20 December 2013, we issued review notices setting out the relevant changes that we proposed to make to track and station access agreements and Network Rail's network licence in connection with the implementation of our decisions on PR13². Network Rail then had until 7 February 2014 to object to these changes.

3. On 11 February 2014, we issued notices of agreement confirming to train operators that Network Rail had not objected. Train operators then had 28 days in which to give notice that they wished to terminate their access agreements. That period has now elapsed and no train operator has issued a termination notice.

4. The issue of review implementation notices today marks the final stage of the implementation process for PR13, and confirms that control period 5 (CP5) will commence on 1 April 2014.

Direction to Network Rail and train operators

5. The review implementation notices direct the parties to relevant access agreements to amend those agreements so that the relevant changes that were specified in our review

¹ The review notices are available at <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/how-we-regulate-network-rail/periodic-review-2013/pr13-publications/pr13-legal-notices>.

² As set out in our final determination issued on 31 October 2013.



notices shall come into effect on and from 1 April 2014³. The notices require the parties to each relevant access agreement to do this by entering into a supplemental agreement, appended to the notice. MS Word versions of these draft supplemental agreements are available alongside the pdf versions of the review implementation notices⁴.

6. Network Rail and train operators should therefore enter into these agreements as soon as practicable following the receipt of the relevant review implementation notice. The draft supplemental agreement specifies that the effective date of the changes will 02:00 hours on 1 April 2014 notwithstanding the date that it is actually entered into.

7. Amongst other things, it will be important to enter into these supplemental agreements ahead of 1 April 2014 to avoid any adverse interaction with changes being made by other supplemental agreements around the same time. For example, some train operators are seeking to make amendments to the new CP5 provisions as soon as these become effective (for example, to implement on-train metering of traction electricity). For these parties, it will be necessary to enter into the PR13 supplemental agreement before 1 April 2014 to avoid any ambiguity as to when the CP5 changes are effective and which terms are being revised (e.g. by the on-train metering amendments).

8. In line with section 72(5) of the Act, the facility owner to each supplemental agreement should send one copy to us for the public register within 14 days of that agreement being made. For track access agreements, please send these to Ian Williams (manager, track access) and, for station access agreements, to Gerry Leighton (head of stations, depots & network code).

Route-level efficiency benefit sharing mechanism – operators’ right to opt-out

9. The new model Schedule 7 provisions for open access passenger, freight and franchised passenger operators include the new route-level efficiency benefit sharing mechanism (REBS). As set out in our final determination, this provides for train operators to share in any financial outperformance or underperformance by Network Rail on relevant routes. The purpose of this is to provide an incentive for train operators to work with Network Rail to reduce costs and improve efficiency.

³ Please note that for the linked licence changes relating to the network licence, we do not need to give a direction.

⁴ <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/how-we-regulate-network-rail/periodic-review-2013/pr13-publications/pr13-legal-notices>.

10. Train operators may elect to opt-out of REBS and so not receive any payments from (or, in the case of underperformance, make payments to) Network Rail in each relevant year of CP5. **Where any train operator wishes to opt-out for the entirety of CP5, it must serve notice on Network Rail (copied to ORR) before 1 July 2014.** A template opt-out notice is set out in Schedule 7 to each relevant track access agreement⁵.

11. In addition to the information in our final determination on REBS, we have prepared a short guide to assist train operators in deciding whether to participate in REBS. This also explains the other circumstances during CP5 when a participating operator may opt-out. This will be published with the CP5 regulatory accounting guidelines on 31 March 2014⁶.

Model contracts and criteria and procedures

12. We will shortly be reissuing our model access contracts and our criteria and procedures for the approval of track access contracts, reflecting the changes brought about by PR13 in CP5.

Next steps

13. We look forward to receiving signed supplemental agreements from Network Rail and station facility owners in due course. Should you have any questions relating to any matter referred to in this letter, or any other aspect of the implementation process, please contact my colleague Richard Gusanie (020 7282 2065 / richard.gusanie@orr.gsi.gov.uk).

14. I would like to take this opportunity to thank all stakeholders for their engagement with us on PR13 over the last few years and I look forward to working with you during CP5.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John Larkinson', is positioned above the printed name.

John Larkinson

⁵ For franchised and open access passenger track access agreements, see Appendix 7B of Schedule 7. For freight operator track access agreements, see Appendix 2 to Schedule 7.

⁶ The guide will be published at <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/how-we-regulate-network-rail/periodic-review-2013/pr13-publications>.

Annex – List of recipients

Addressees

Charter passenger train operators

Crossrail Limited (holder of a freight customer track access contract)

Franchised passenger train operators

Freight train operators

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

Department for Transport

HM Treasury

London TravelWatch

Passenger Focus

Passenger Transport Executives

Rail Delivery Group

Rail for London Limited

Transport Scotland

Welsh Government