

Carl Hetherington
Deputy director, Railway markets and economics

20 December 2018

To the addressees set out in the Appendix

Dear sir/madam

Implementation of the 2018 periodic review

1. I am writing to inform you that the Office of Rail and Road (ORR) has today formally initiated the statutory implementation of the 2018 periodic review (PR18). This follows the publication of our final determination on 31 October 2018¹, which set out our overall decisions on PR18.
2. This letter gives an overview of:
 - (a) the formal 'review notices' that we have issued today which set out the changes to relevant track and station access agreements, which we expect to take effect on and from 1 April 2019;
 - (b) other documents relating to the implementation of PR18, including price lists/schedules 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 2018 and the date that PR18 is formally implemented; and
 - (d) next steps and further work relating to PR18 implementation.

Review notices and the implementation process

3. PR18 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, Secretary of State and HM Treasury, we are initiating the implementation of our PR18 final determination.

¹ PR18 is the process through which we determine what Network Rail should deliver in respect of its role in operating, maintaining and renewing its network in control period 6 (CP6, which will run from 1 April 2019 to 31 March 2024) and how the funding available should be best used to support this. Our final determination documents are available [here](#).

4. Overall, we have issued seven review notices which apply to the following:
 - (a) **track access agreements** between Network Rail and: franchised passenger train operators; open access passenger train operators²; charter passenger train operators; freight train operators; and freight customers;
 - (b) the **Traction Electricity Rules**, which are incorporated into most track access contracts; 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).
5. Train operators will only receive copies of the review notices that are relevant to the access agreements that they hold. However, copies of all the notices will be available on our [website](#).
6. Some of the review notices contain confidential information in Part 2 of Annex 3³. This will not be published and each train operator (where relevant) will receive only its own confidential information in its notice. Network Rail, the Scottish Ministers, the Secretary of State and HM Treasury will receive full unredacted versions. The Welsh Government and concession authorities will receive the confidential information relating to the train operator franchisee/concession that they each oversee.
7. 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 2019. We are giving Network Rail until 7 February 2019 to notify us of any such objection.
8. Provided that Network Rail does not object to our review notices by 7 February 2019, we will then issue a ‘notice of agreement’ confirming it has not objected. Network Rail’s train operator customers 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.
9. We will then – around mid-March 2019 – issue review implementation notices. These will confirm that the changes in the review notices issued today will take effect on 1 April 2019. 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.

² This excludes those track access agreements that do not include an access charges reopener provision (which therefore fall outside the scope of PR18).

³ These are the review notices relating to franchised passenger track access agreements, freight operator track access agreements and open access passenger track access agreements.

10. Further information relating to the implementation process is set out in Appendix B of our July 2018 consultation on implementing PR18 (implementation consultation)⁴. This also sets out what would happen if Network Rail were to object to the notices.

Changes to access agreements set out in our review notices

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

Changes to track access agreements

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

- (a) amendments to the possessions and performance regimes (Schedules 4 and/or 8). These mainly reflect updates to the parameters in both regimes following an industry-led recalibration process;
- (b) changes to access charges and other payments in Schedule 7 to implement the CP6 charging framework and incorporate the CP6 price lists. For franchised operators, there are also changes to how the network grants and fixed track access charge arrangements work⁵; and
- (c) other changes that are consequential or expedient to implementing our decisions.

13. In setting out these changes, we have taken account both of responses to our implementation consultation and also of bespoke arrangements in existing agreements.

Changes to station access agreements

14. 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 CP6 and changes how this charge is indexed (so that it uses the Consumer Prices Index instead of the Retail Prices Index).

Other documentation relating to implementation

Network Rail's price lists/schedules of charges

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

16. These lists have been subject to a process of review by the industry, following engagement and consultation by Network Rail. These price lists are now set for CP6.

⁴ Implementing PR18: consultation on changes to access contracts, ORR, July 2018, available [here](#).

⁵ As set out in our PR18 final determination, the fixed track access charges included in the access agreements are net of the network grants that will be provided by the Secretary of State and Scottish Ministers. The amounts of these network grants are consistent with the statements of funds available (SoFAs) (these are available here: [Secretary of State's SoFA](#); and the [Scottish Ministers' SoFA](#)).

17. These price lists/schedules of charges are as follows⁶:
- (a) The Track Usage Price List, setting out:
 - (i) variable usage charge rates and default charge rates;
 - (ii) electrification asset usage charge rates for freight and passenger operators;
 - (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 Modelled Consumption Rates List;
 - (c) the Schedule of Fixed Charges (for franchised passenger train operators); and
 - (d) the Open Access ICC Rates List (for the infrastructure cost charge).
18. These are published on Network Rail's [website](#).
19. There is one outstanding schedule that remains to be published. This is the Schedule of Baseline Timetabled Traffic, which relates to the provisions for annual adjustments to the fixed track access charge for franchised train operators. The track access agreements for these operators provide for Network Rail to establish the baselines by 31 July 2019 (this will be subject to our approval)⁷.

New access agreements and amendments to existing access agreements made following service of review notices but before implementation takes effect

20. We recognise that between the serving of review notices today and implementation on 1 April 2019 (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

21. As any new access agreements entered into following the issue 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 PR18

⁶ Network Rail has also published lists of the Franchised Station Long Term Charges and Managed Station Long Term Charges, Schedule 4 Access Charges Supplements and Distribution System Loss Factors for traction electricity. All these charges/numbers are included in the relevant review notices.

⁷ Further information on this is available in our '2018 Periodic review final determination: Supplementary document – Charges and incentives: Infrastructure cost charges conclusions', October 2018, available [here](#).

arrangements (in particular, the new Schedules 4, 7 and 8 of track access agreements). Where this is necessary, we will discuss this with the parties concerned.

22. In connection with this, we have asked Network Rail not to enter into any new freight or charter track access agreements⁸ using our general approvals until after PR18 is implemented. It has agreed not to do so. Instead, our specific approval should be sought in respect of any new access agreements during this period.

Amendments to existing access agreements

23. The review notices include provisions for any changes specifically approved by us under section 22 of the Act between now and 1 April 2019 to take priority over any changes in 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 notices⁹.

24. 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 PR18. This affects:

- (a) franchised/open access passenger track access agreements (in respect of changes to Schedules 7 and 8); and
- (b) station access agreements (with respect to changes to the LTC provisions).

25. 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 CP6, 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 2019; and
- (iv) the total long term charge that will apply from 1 April 2019.

26. If you have further questions about making or amending access agreements before PR18 is implemented on 1 April 2019, please contact:

- (a) for track access agreements, Ian Williams (ian.williams@orr.gsi.gov.uk) or Gordon Herbert (gordon.herbert@orr.gsi.gov.uk); and
- (b) for station access, stations.depots@orr.gsi.gov.uk.

⁸ These are the only types of track access agreement that are currently permitted to be made by the general approvals that we have issued.

⁹ For example, changes to Appendix 1 of Schedule 8 made before CP6 begins could conflict with (or overwrite) the new version of Appendix 1 that will take effect on 1 April 2019.

Next steps and further work relating to track access agreements for PR18 implementation

Conclusions to our July 2018 implementation consultation

27. In January 2019, we will publish our conclusions to our July 2018 implementation consultation. This will set out our response to the points raised by stakeholders and also set out any particular issues that arose as part of the process to implement PR18 in terms of contractual drafting.

Consultation on implementing infrastructure cost charges for open access operators

28. We are currently consulting on arrangements relating to the implementation of infrastructure cost charges for open access operators (the consultation closes on 14 January 2019)¹⁰. In particular, this covers

- (a) the definition of the interurban market segment;
- (b) the definition of a substantial modification to access rights held by existing open access operators; and
- (c) related changes to the 'not primarily abstractive' (NPA) test.

29. We expect to conclude on this by 1 April 2019.

Network grant agreements

30. The governments and Network Rail have said that they are aiming to have finalised the grant agreements that set out how the network grants will be provided to Network Rail in January 2019.

Other outstanding matters to be determined

31. As we approached the deadline for issuing review notices, there were a few areas relating to particular train operators/aspects of track access agreements that could not be finalised in time (in respect of relatively minor contractual matters). We have therefore included provisions in the agreements (via the notices) for these to be determined later. We have drawn this to the attention of the affected operators and will discuss this with them further in January 2019.

¹⁰ Open access infrastructure cost charge implementation, ORR, December 2018, available [here](#).

Revised documentation for CP6

32. Assuming that Network Rail does not object to our review notices by 7 February 2019, we will issue revised model track access contracts and track access guidance reflecting the CP6 arrangements shortly thereafter.

Yours faithfully

A handwritten signature in black ink that reads 'Carl Hetherington'.

Carl Hetherington

Appendix – List of addressees

Charter passenger train operators

Holders of freight customer contracts

Department for Transport

Franchised passenger train operators

Freight train operators

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

Rail Delivery Group

Scottish Ministers

Secretary of State

Transport Scotland

Welsh Government