

Process for the ORR periodic review of HS1 Ltd 2019 (PR19) – Responses to February 2019 consultation

<https://orr.gov.uk/rail/consultations/policy-consultations-by-topic/economic-regulation/process-for-the-orr-periodic-review-of-hs1-ltd-2019-pr19>

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2. DB Cargo (UK) Limited – 13 March 2019
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4. Southeastern – 13 March 2019
5. Network Rail (High Speed) Ltd – 12 March 2019
6. HS1 Ltd – 5 March 2019



Department
for Transport

Dan Moore
DIRECTOR, RAIL EU EXIT
DEPARTMENT FOR TRANSPORT
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LONDON
SW1P 4DR

Graham Richards
Director, Planning and Performance
Office of Rail and Road

Web Site: www.dft.gov.uk

Sent by e-mail

14 March 2019

Dear Graham,

Further to my colleague Arthur Borkwood's letter of 13 March 2019 regarding the request from Eurostar International Limited (EIL) to delay the periodic review of route charges (PR19), I am writing to supplement that response from an EU Exit perspective.

During the course of the EU Exit process, the Government has benefited from close and effective working with a range of rail industry stakeholders, including EIL and HS1. However, I wanted to highlight the role of EIL, which, as you know, is particularly impacted by EU Exit. It has worked highly constructively with Government and continues to devote considerable effort to ensure the continuation of critical cross-border services and, more generally, to be prepared for all EU Exit scenarios. This has involved, and continues to involve, detailed work on train driver licensing, detailed work with EPSF to ensure appropriate licensing and certificates are in place, significant internal changes to ensure appropriate regulatory arrangements and considerable work on border preparedness, including effective work to mitigate potential risks of disruption at St Pancras in the event of a no-deal EU Exit; indeed, I understand that EIL has around 100 workstreams in place to prepare for EU Exit. I am very conscious of the support that the ORR itself has provided with this work.

Given the vital importance of this work in preparing for all scenarios and the particular circumstances EU exit creates, we consider that it is vital that EIL's focus remains on this issue in the short term, both before Exit day and to deal with any immediate issues which follow it.

While the EU Exit position does continue to evolve, the Government would advocate the ORR giving positive consideration to EIL's request for extension to the consultation, which we support in the current circumstances. We understand the ORR with HS1 and colleagues from Arthur's team continue to discuss and develop options for consideration in response to EIL's request. We recognise and accept that this would have implications for later stages of the process, which we know the ORR will carefully consider, with DfT providing whatever support is necessary (including to ensure effective alignment of timescales); in doing so we very much recognise that the interests of broader stakeholders, including HS1 should be considered. I also recognise that, notwithstanding



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the uncertainty around aspects of the EU Exit process, such an extension could only be granted one time.

We consider that such an approach would be entirely consistent with the highly positive way in which the ORR has worked to support Government and the rail industry through preparations for EU Exit, recognising the particular circumstances that it creates.¹

We would be very happy to discuss this issue further.

Yours faithfully,

Dan Moore
Director, Rail EU Exit

Cc: John Larkinson, Chief Executive, Office of Rail and Road
Daniel Brown, Director of Policy and Strategy, Office of Rail and Road
Arthur Borkwood, Deputy Director, Market Lead, East Coast and HS1, DfT
Andrea Pearson, Head of International Rail, DfT

¹ Such an approach is also consistent with the Secretary of State's statutory guidance to the ORR, at paragraph 10 regarding supporting the Government to support the process of leaving the European Union.



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DB Cargo (UK) Limited
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Nigel Oatway
Access Manager

13 March 2019

Dear Graham,

OFFICE OF RAIL AND ROAD PERIODIC REVIEW OF HS1 LIMITED (PR19)

Thank you for your letter dated 27 February 2019 setting out ORR's current thinking in respect of the request by Eurostar International Limited ("Eurostar") to suspend the start of the Five Year Asset Management Strategy ("5YAMS") consultation stage of the HS1 PR19 process for two months.

DB Cargo (UK) Limited ("DB Cargo") appreciates and sympathises with the position Eurostar finds itself in being heavily engaged in the Brexit process. As an operator of international freight services through the Channel Tunnel, DB Cargo is also deploying significant resources at putting in place various contingency measures that will be required in the event of a 'No-Deal' Brexit. These cover such issues as Train Driver Licences, Safety Certification, Operating Licence and customs arrangements.

However, that said, DB Cargo is a minority operator of services on HS1 in terms of train numbers when compared to Eurostar and its involvement and level of resource employed to participate in the HS1 PR19 process is consequently much smaller. Consequently, DB Cargo would have no objection to either of the two options set out in your letter.

Yours sincerely,

Nigel Oatway
Access Manager



Department
for Transport

Arthur Borkwood
Deputy Director – Market Lead, East Coast & HS1
Passenger Services
Department for Transport
Great Minster House
33 Horseferry Road
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13 March 2019

Graham Richards
Director, Planning and Performance
Office of Rail and Road
One Kemble Street
London WC2B 4AN
By Email: PR19@orr.gov.uk

Dear Graham,

Department for Transport periodic review of HS1 Ltd 2019 (PR19)- Response

Thank you for your letter dated 27 February, seeking views on a request from Eurostar International Limited (EIL) to delay the periodic review of route charges (PR19).

The DfT has looked at its published Timetable for the Periodic Review and believe there may be the opportunity to vary the activities whilst maintaining the commencement of the Control Period 3 in April 2020. However, we believe this would only benefit stakeholders were the ORR timetable also change to maintain alignment and the revised timetable is agreed with HS1.

In 2017, the Concession Agreement was amended to reflect changes agreed by all Stakeholders, that aligned the ORR and DfT's Periodic Review timetable. This change was made so that all Stakeholders would be able to review their costs for both Route and Stations concurrently, to minimise the demand on resources and enable greater alignment of responses. The DfT believe this rationale and the benefits for all concerned has not changed and are therefore keen to keep both reviews aligned.

The DfT will review responses to our stakeholder letter regarding Eurostar's request and welcomes further discussions with the ORR and HS1 on this issue.

Yours sincerely,

Arthur Borkwood

Deputy Director, Market Lead, East Coast & HS1.

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Sent via email to PR19@orr.gov.uk

13 March 2019

Dear Graham

Southeastern response to ORR's consultation on periodic review of HS1 Ltd 2019 (PR19) – Eurostar International Ltd

Thank you for the opportunity to review the above consultation.

Southeastern acknowledges the potentially difficult situation that Eurostar finds itself in as a result of circumstances around the United Kingdom leaving the European Union.

The current Southeastern franchise is due to expire on 23rd June 2019 which means that the next few months is an extremely busy period for us. Any delay in the PR19 process may have a detrimental impact on our ability to process the required end of franchise activities and therefore, whilst the proposal by Eurostar to delay the consultation process is understandable, it is not one which we can support.

If, however, it is nonetheless determined to delay the PR19 process, all parties will need to be clear as to which element of the process is to be shortened to accommodate the final approval stages, which we believe would have to remain as planned.

A potential solution could be to extend the consultation period of the draft 5YAMS by 2 weeks to the end of April with the commitment to revisit the PR19 process after this period has concluded as all parties should then have a greater understanding of the impact of leaving/not leaving the EU on 29th March 19.

Yours sincerely



Susan Ellis

[Access Contracts Manager](#)



Let's talk

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Delivered by email only

12th March 2019

Dear Graham

ORR Periodic Review of HS1 Ltd (PR19)

Thank you for your letter dated 27th February 2019, which also enclosed the letter from Eurostar International Limited ('Eurostar') dated 15th February, in relation to the PR19 process for HS1 Ltd Control Period 3.

Network Rail (High Speed) Ltd ('NR (HS)') fully appreciates the position of Eurostar in that there are complex activities in relation to the impact of Brexit as we too have engaged with multiple stakeholders to develop plans that are able to respond to certain operational events should they arise. We acknowledge this this must be a particularly complex process for Eurostar given the multiple infrastructures on which they operate.

Your letter sets out your understanding that Eurostar is not seeking to delay the start of the next control period, NR (HS) agrees that this is not desirable, practical or compatible with the arrangements that we have in place with HS1 Ltd.

We note that should HS1 Ltd delay the process and submit the final 5YAMS to the ORR at the end of July, following a two-month extended period for Eurostar to engage in the process, the ORR does not have the resource to compress its activities into a shorter time period without varying the latter stages of the process.

As you may be aware the CP3 renewals work bank increases significantly from the previous control period, and requires detailed planning given that high speed renewals to this scale have not been undertaken in the UK to date, therefore funding certainty, market engagement and other activities such as securing access, plant and resources are critical to the

successful delivery. For this reason, NR (HS) would not support extending the latter stages of the process in terms of draft and final determination beyond those set out in the timeline.

The option for an additional step in the process however seems sensible in that it would provide Eurostar with an opportunity to make any representations later than is currently planned, but still within the period available such that HS1 Ltd & the ORR can consider them in parallel without amending the dates of the draft and final determination, noting that all stakeholders have a further opportunity to respond during the public consultation in September 2019.

If NR (HS) can support the revised arrangements through further engagement sessions, then please advise me and I can ensure that resources are allocated accordingly.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely,



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By email: PR19@orr.gov.uk;

5 March 2019

Dear Graham and Arthur,

Periodic Review of HS1 Ltd 2019

Thank you for your letters of 27 February and 28 February respectively, seeking views on a request from Eurostar International Limited (**Eurostar**) to delay the periodic reviews of route and station charges (**PR19**). HS1 Ltd (**HS1**) is responding to both letters jointly, on the basis that we consider the timetables for the reviews should remain aligned.

HS1 sets out its position below regarding: (1) the request by Eurostar for a two-month suspension of the timetables for PR19 and (2) ORR's suggested alternative of an additional step in the route periodic review process to allow Eurostar to make representations on the 5YAMS at a later stage.

Background

Eurostar is a key customer for HS1, and we are sympathetic to the issues raised in its letter of 15 February. We fully appreciate the time and effort it has taken for Eurostar to prepare for Brexit, having made our own preparations for Brexit in partnership with them.

HS1 is committed to working with Eurostar and our other customers throughout the PR19 process and has demonstrated we have been proactive and transparent in our approach. Some of the initiatives we have undertaken with our customers to date include:

- regular and transparent communication and engagement over the last 18 months regarding key issues in the PR19 process, including HS1's proposed approach in respect of long-term renewals as part of the 'progressive assurance' approach agreed with the ORR; and



- the engagement of additional internal and external resources to support our customers in the lead-up to PR19, including detailed financial modelling and engineering analyses regarding HS1's long-term renewal annuity charge.

We have also procured additional resources to manage and respond to some of the emerging Brexit risks. This includes:

- expedited enhancements to St Pancras International to improve the resilience and capacity of Eurostar's operations;
- analysis over the last 6 months regarding how we can incentivise growth on the network for Eurostar in the post-Brexit environment; and
- convened multi agency workshops for Day 1 Brexit readiness.

It is within this context we consider the ORR's proposals.

1. Two-month suspension of the timetable

HS1 would prefer to maintain the existing timetable rather than suspending the process for two months but we are prepared to be flexible if this is in conjunction with other stakeholders to accommodate Eurostar's request. In order to do this, we would need agreement with the DfT to waive the provisions set out in the Concession Agreement.

The ORR notes in its letter, the Concession Agreement was amended in December 2017 to ensure a process that was fit for purpose for PR19 and to ensure timescales for all parties to engage sufficiently. A reduction in timescale moves away from that principle and would limit HS1's ability to fully consider matters that will affect our core business. These consequences would also arise if there was any suspension to the timetable for the stations periodic review.

In its consideration of the issue, the ORR should be aware that HS1 has structured its regulatory, legal, financial and other resources in such a way as to comply with the well-established timescales for both the route and stations periodic review. HS1 has competing demands for resource, including preparing to support the mobilisation of two franchises during the same period. A change to the timescales for one or both periodic reviews could undermine the robustness of PR19 and cause significant expense, including potentially the need to engage additional resources. We would expect any costs driven by the delay to be allowed by the ORR and by the DfT.

HS1 would be concerned if the proposed two-month suspension period affects the existing implementation periods between the Final Determination by the ORR and DfT respectively and the start of CP3. HS1 would be required to implement key activities during this time including:

- updating our contractual documents (e.g. track access agreements) and key regulatory information (e.g. Network Statement consultation);



- mobilising our delivery plans, ensuring that we and our supply chain (Network Rail High Speed, Mitie, and UKPNS) make good on the commitments we have made to stakeholders, the ORR and DfT; and
- reviewing our business plans to reflect the outcome of PR19, in conjunction with our shareholders.

Maintaining the implementation periods also ensures every party concerned with the outcome of the regulatory process has time to consider their position and exercise their rights in an appropriate timeframe.

HS1 notes that there is ongoing uncertainty as to the actual 'Brexit date'. We note that the Government plans crucial votes on Brexit in the week commencing 11 March 2019, including a potential vote on 14 March to extend the Article 50 notification period. This raises the prospect of PR19 timescales being moved to accommodate a date and process which itself is subject to future change. Our concern is that this could lead to further pressure to delay the process in the coming months.

While we understand that Eurostar needs to be operationally ready by 29 March whether Brexit is delayed or not, we expect that in any scenario where there is a delay to the Brexit timetable, the need for a delay to the PR19 process will no longer be necessary.

2. ORR's suggested alternative

HS1 notes the ORR's proposal for an additional step in the route related periodic review process to allow Eurostar to make representations on the 5YAMS at a later stage, which the ORR suggests might be in mid-June 2019. HS1 notes that this proposed step would follow after HS1 produces and submits the Final 5YAMS to the ORR on 31 May 2019.

HS1 is concerned that this alternative may affect the procedural integrity and fairness of the consultation process, by providing one stakeholder with additional time and, potentially, access to the other stakeholders' submissions and the Final 5YAMS if these were made public.

We are also concerned that this additional step may affect the status of the Final 5YAMS, given that it would be subject to subsequent representations by a key stakeholder. This may also in turn require significant additional work to be undertaken by the ORR and HS1 in the period between May to September 2019 and by HS1 in the period between 1 October and 30 November 2019 in revising the Final 5YAMS.

Notwithstanding these issues, HS1 would prefer this proposal in the spirit of being flexible. However, HS1 requests clarification as to how the above issues will be managed and the opportunity to provide further comment.



Next steps

We acknowledge the issues facing Eurostar and wish to work constructively with the ORR, DfT and stakeholders on an approach which ensures that CP3 will be a success. We have planned for both Brexit and PR19 for the last two years and have put in place several initiatives to support our customers through this busy time. We would ask for the opportunity to be consulted further before any decision is made which departs from the current published timetable.

Yours sincerely,

A handwritten signature in black ink that reads 'Dyan Crowther'. The signature is written in a cursive style with a large, sweeping 'D' and 'C'.

Dyan Crowther
Chief Executive Officer