



OFFICE OF RAIL REGULATION

**Andrew Whittington**  
**Track Access Executive**  
Telephone: 020 7282 3773  
Fax: 020 7282 2043  
Email:  
andrew.whittington@orr.gsi.gov.uk

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Nicholas Prag  
Customer Relationship Executive  
Network Rail Infrastructure Limited  
Buchanan House  
58 Port Dundas Road  
Glasgow  
G4 0LQ

Sam Price  
Contracts Adviser  
First ScotRail Limited  
Atrium Court  
50 Waterloo Street  
Glasgow  
G2 6HQ

Dear Nicholas and Sam

## **Approval of the Track Access Contract between Network Rail Infrastructure Ltd and First ScotRail Ltd for the Overnight Services.**

### **Introduction**

1. On 5 March 2015, the Office of Rail Regulation (ORR) issued directions under section 18 of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) and First ScotRail Limited to enter into a new track access contract. This letter explains our decision.
2. This need for this new contract arose from the splitting of the current First ScotRail franchise into two separate franchises for the sleeper services and the daytime services. In addition, the new contract extends the access rights until December 2016 as opposed to December 2015 in the previous contract. This contract is for the overnight sleeper services between London and destinations in Scotland.
3. The new franchise will come into effect on 1 April 2015. On that date this contract will be transferred to the new franchisee, Serco Caledonian Sleepers Limited, under the franchise transfer scheme. The parties also requested the contracts to be in place by 6 March 2015, which is the priority date for the December 2015 timetable, in order to have priority in the timetabling process.



## **Consultation**

4. Network Rail undertook the usual industry consultation which closed on 16 January 2015. Passenger Focus made some comments on drafting and continuity issues and some minor changes were made to the contract to address these.
5. No other issues were raised by any of the consultees.

## **ORR review and issues considered**

6. We had no concerns with the principle of splitting the services, or the one year extension. We identified some minor drafting points which were accepted by the parties.
7. The Fixed Track Access Charge from the previous contract was split between the two new contracts.
8. Appendix 1 of Schedule 8 was also split to reflect the separation of the services. Network Rail submitted a report by its consultants to demonstrate how this had been done but this was submitted too late for us to consider it in time to issue directions in advance of the priority date. We therefore inserted a re-opener clause in Paragraph 17 of Schedule 8 which will allow us to revise the Appendix if we identify any issues following our review.
9. On 4 March 2015 we wrote to the industry explaining that an error had been identified in the model used to calculate the payment rates in Appendix 1 of Schedule 8 for all passenger operators in last year's review of access charges. In order to issue directions on this contract in advance of the priority date, we have used those figures whilst acknowledging that they may need to be amended following our assessment of the scale of the financial impact and our decision on what action, if any, we propose to take.
10. A revised draft contract was submitted to us on 5 March 2015 which we directed the parties to enter into.

## **ORR's conclusions**

11. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

**Public register/administration**

12. The parties are required to execute the contract by 6 March 2015 and send a copy to us within 14 days. In accordance with section 72 of the Act, in due course we will place a copy of the signed contract on our public register.

13. Electronic copies of this letter and the directed contract will be placed on the ORR website, and also sent to Ray Harris at the Department for Transport and Andrew Mackie at Transport Scotland. I am also copying this letter to Madeline Matthews at Network Rail.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Whittington', with a stylized flourish at the end.

**Andrew Whittington**