

Michael Albon
Executive, Access & Licensing
Telephone: 0207 282 3660
E-mail: michael.albon@orr.gsi.gov.uk



1 March 2018

Nicholas Prag
Customer Relationship Manager
Network Rail Infrastructure Ltd
151 St Vincent Street
Glasgow
G2 5NW

David Simpson
Production Director
Serco Caledonian Sleepers Ltd
Floor 3
Tara House
46 Bath Street
Glasgow

Dear Nicholas and David

Directions in respect of a track access contract between Network Rail Infrastructure Limited and Serco Caledonian Sleepers Limited

1. We have today issued directions under section 18 of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) to enter into a track access contract (TAC) with Serco Caledonian Sleepers Limited (SCS) (jointly the parties). The application was submitted to ORR by Network Rail on 23 January 2018. The purpose of this letter is to set out the reasons for our decision.

2. The purpose of this contract is to provide SCS with a new TAC to commence from the date of signature until the Principal Change Date (PCD) in December 2022. Our Directions of the new TAC are under the same terms as the current TAC. A supplemental agreement will be submitted under the General Approval to terminate the current TAC so that the parties will not have the added complications of managing two TACs in the period up to PCD 2018 when the existing TAC is due to expire.

3. Network Rail undertook the usual 28-day industry consultation. One response was received from HS2 who sought clarification on SCS's expansion of rights at Euston. The parties explained that SCS was not receiving any additional rights at Euston but the proposal for contingent rights to Kings Cross was to assist with the delivery of HS2 works at Euston. No further issues were raised.

4. In our review of the new TAC, we noted that the parties sought contingent rights to run 3x services between the Scottish stations and Kings Cross in both directions up to the May Subsidiary Change Date in 2019. In the Form P, the parties explained that the justifications for the inclusion of these rights was to provide for an alternative London

destination when possessions at Euston took place during HS2, in order to mitigate any financial and reputational damage to SCS. We queried this justification with the parties given that the Part D process deals with re-timetabling of services when engineering works take place. We cited that this process had previously been used successfully by SCS. The parties did not provide any further justifications for these rights so they have been removed from the final version of the Contract.

5. We identified a number of drafting issues including formatting, tidying, simplifying and ensuring legal drafting in certain areas was robust. A list of the full drafting issues (with our recommended suggestions) was sent to the parties by email on 26 February 2018. The parties accepted all our comments and provided adequate responses to our queries on 28 February 2018. There were no further issues.

6. In considering the TAC 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 promoting improvements in railway service performance (section 4(1)(b)), 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)).

7. A copy of the Directions and the signed contract will be placed on our public register, copies of this letter and the contract will also be placed on the ORR website. I am also copying this letter to Peter Craig at Network Rail and Steven McMahon at Transport Scotland.

8. Once the agreement is signed, in accordance with Section 72(5) of the Act, you must send a copy to ORR within 14 days.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Michael Albon', written over a horizontal line.

Michael Albon