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## **Ensuring access rights align with timetables and industry timetable production compliance**

1. Accurate information on rail capacity use ensures that operators, infrastructure managers and funders can efficiently plan the best use of the network, leading to better outcomes for passengers and freight. Where used and unused access rights are not reflected promptly in operator contracts with Network Rail, it can prevent or delay the development and implementation of these and other services for customers.
2. Clarity on capacity use is particularly important for freight and aspirant open access operators to identify opportunities for new services. Retaining access rights longer than necessary is inefficient and complicates the capacity assessments by infrastructure managers and ORR. Furthermore, legislation stops ORR from directing capacity use where to do so would conflict with existing rights, whether in use or unused.
3. ORR has discussed with Network Rail and Department for Transport (DfT) the need for services in the timetable to align with the access rights in contracts. The legislative, contractual and licence compliance for access and timetabling should give all rail users certainty on services in sufficient time for their decision making.
4. This statement updates how we will apply the established regulatory framework for access rights and monitor industry compliance with timetable production. This includes how industry and Network Rail complies with the access and timetable processes which support industry's commitment to provide passengers information twelve weeks in advance of services running ("T-12" or Informed Traveller). It is in line with our published guidance and policies. In summary it sets out:
  - (a) **Industry obligations:** We will monitor Network Rail's and operators' compliance with the relevant obligations of the [Network Code](#), particularly the holding of Regular Review meetings on the use and non-use of access rights. Where necessary we will consider the use of provisions in the Network Code which enable ORR to direct action. We are also monitoring operator and

Network Rail licence compliance with timetable production obligations. We expect Network Rail's capacity allocation policies to be kept up to date; and

- (b) **Access applications:** We may require additional information (economic, operational or performance) analyses to effectively consider applications for capacity, so applicants should consider the necessary evidence early in the process. Operators should provide robust evidence of funded plans for the access sought in their applications, or if objecting to applications by other operators.

### *Context*

- 5. Train service patterns have changed significantly in the last three years, in response to changing passenger and freight customer demands. While the industry has responded to these changing needs operationally, our monitoring of access rights has revealed that some train operating companies (TOCs) and respective Network Rail regions have not ensured that their access contracts are updated to accurately reflect the services they are now operating. These contracts are important because they ensure timetables and services can be relied upon.
- 6. [ORR](#) and [Network Rail](#) have previously written to industry setting out expectations in relation to the use of access rights. More recently, in October 2023, the Industry Timetable Assurance Programme Management Office (PMO) wrote to DfT explaining how alignment of operator's contract rights with the timetable makes planning robust services more straightforward, as well as setting out industry requirements for June and December 2024 timetable changes. This statement updates the ORR position on access rights and informs industry of ORR monitoring to identify any compliance issues with timetable planning obligations in Network Rail and TOC licences.

### *Industry obligations, Network Rail policy and DfT business planning*

- 7. As part of the 2024/25 annual business planning process, DfT will establish the train service requirements for that financial year with those TOCs under its contracts. These service specifications will give greater clarity on access use for those TOCs. We expect all operators to actively consider their obligations under Condition J2 of the Network Code to surrender unused access rights where they have no current or foreseeable ongoing commercial need to hold them.
- 8. Where additional or different rights are needed to meet funder and passenger demands, operators must apply for them as early as possible. This is so they can secure the contractual rights to run trains before the deadline for offering the service to customers (twelve weeks before services commence). Applications submitted after that deadline are at risk of rejection or only receiving contingent rights which can adversely affect the information passengers rely upon for their journeys.

9. Network Rail is responsible for working with industry to manage unused access rights according to the Network Code and ensuring its capacity allocation policy reflects current circumstances. In April 2023, Network Rail wrote to current and aspiring operators explaining its approach to applying the Network Code. We note that Network Rail has challenged operators on the use of access rights, including the roll forward of unused rights, and where operators have objected to a third parties' application. We consider this challenge an important part of Network Rail's role.
10. We recognise that Network Rail has conducted access rights review meetings as set out in condition J9 of the Network Code. However, the intended outcome (the efficient use of capacity and transparent use of access) requires proactive action by Network Rail and operators on keeping access rights up to date. This then provides the opportunity to identify any potential reductions in use of access rights or unused capacity. We expect Network Rail to continue to develop its challenge function on the use of capacity and demonstrate it is based on a systematic evidence-based process across all regions and the System Operator's Freight and Customer Function. We will be monitoring the progress made by each Network Rail region and the System Operator's leadership on this issue.
11. Since DfT's annual business planning process has become established, industry should anticipate when service and rights changes are likely to occur and ensure their contracts are updated accordingly. A more proactive approach by operators will mean they follow the obligations within Part J of the Network Code and avoids Network Rail having to consider issuing a "Failure to Use" notice under condition J4 of the Network Code.

### *Access applications*

12. ORR will continue to determine track access applications from all operators on a case-by-case basis, within the established legal framework for access and in line with our statutory duties. The Railways Act 1993<sup>1</sup> prohibits ORR from directing an access contract that conflicts with rights already held by another operator, even if those rights are currently unused. This means that ORR cannot make valuable unused network capacity available to prospective operators.
13. This year our monitoring has found that many operators have applied for access rights too close to timetable implementation, putting the review process and compliance with Informed Traveller timescales at risk. To ensure non-discriminatory access, we often require capacity, performance, and sometimes business planning evidence or economic analysis to inform our decisions to approve or direct access. These layers of complexity require the planning of resource for all concerned:

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<sup>1</sup> Section 17(1)(b)

Network Rail, applicants, and ORR. We encourage parties to discuss demand modelling or funding evidence requirements with us at the earliest opportunity.

14. Furthermore, we and industry have identified service patterns where there are significant mismatches between access rights and actual service levels. This is inefficient, complicates assessment of the potential impact of applications and acts as a barrier to new service development. Network Rail and operators must have an appropriate access contract in place for services to operate in the timetable. Industry may have become over-reliant on short-term 90-day General Approvals to overcome errors or the lateness of its contract planning which introduces uncertainty into the timetable. We will monitor their use to inform our future policy.
15. To ensure clarity for all operators (including open access and freight) we expect that publicly contracted TOCs provide robust evidence of funder support for the specific rights they are seeking to retain or acquire. This is an important demonstration of the operators' intent and ability to operate the services. Where TOCs plan to phase-in services, we will seek assurances and justification of their plans. In turn, ORR may consider mechanisms, such as dated access rights tables or longstop dates in the track access contract, to ensure the prompt use of rights.
16. The provision of robust evidence also extends to operators objecting to third party applications. It is important for both Network Rail and ORR to be able to assess applications on their merits. Objections lodged without clear evidence of future service operations or of detrimental performance impacts on existing services introduce uncertainty and inefficiency in the process.
17. We encourage Network Rail to continue to work with Freight Operating Companies (FOCs) to explain where the conversion of short-term Train Operator Variation Requests (TOVRs) to firm rights is likely to be constrained by existing, if temporarily unused, access rights held by other operators. This emphasises the importance of sharing information between passenger and freight Rights Review Meetings. It is important that Network Rail and FOCs continue to work together to identify where the best use of capacity can be made, by conversion to firm rights or use of time limited services.

#### *Timetable production compliance*

18. In 2023, Network Rail published its [Calendar of milestones](#) for timetable production for the June 2024, December 2024 and May 2025 timetable changes. It also communicated to stakeholders its plans to achieve compliance with its contractual obligations under the Network Code and its network licence requirement to provide timetable information not less than twelve weeks before the date of a timetable change (which supports TOCs' Informed Traveller commitments).

19. We are monitoring operator and Network Rail compliance with the timetable production milestones; these underpin the Network Code, as well as Network Rail and operator licence requirements. This is consistent with the expectation we set out in our [PR2023 final determination](#). Our monitoring will mean we can identify issues upstream more readily and decide how to use this information in our regulatory roles for capacity allocation and/or protecting consumers.

*Application of this statement*

20. We note that the June and December 2024 timetable changes contain more complex service changes than recent years. The Industry Timetable Assurance PMO set these out in detail in its October 2023 letter to DfT and industry. In the interests of transparency and regulatory certainty, this statement sets out our position of what we expect from industry in preparation for timetables up to and including December 2024. This statement is available on our website and should be considered alongside our guidance on regulating [track access](#). We will review this guidance at the latest following implementation of the December 2024 timetable.

**Stephanie Tbyn**