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Dear Colleague,

ORR CRITERIA FOR APPROVAL OF CHANGES TO THE DELAY ATTRIBUTION GUIDE

1. The purpose of this letter is to inform the industry of our conclusions on the introduction of criteria that establishes our information requirements to support proposed amendments to the Delay Attribution Guide (DAG) that are submitted to us for approval.

Background

2. On 3 September 2007¹ we carried out an industry consultation seeking views on the proposed introduction of a criteria that will provide greater:

- (a) clarity on our information requirements in respect of proposed amendments to the DAG submitted for approval; and
- (b) transparency of our requirements and encourage high quality proposals aimed at improving the delay attribution process.

3. Having considered the three responses we received to this consultation,² we consulted again on revised criteria on 22 April 2008.³ We received three responses to this latest consultation.⁴ In summary:

¹ Available at <http://www.rail-reg.gov.uk/upload/pdf/dag-changes-approval.pdf>.

² Copies of all responses can be found on the ORR website at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.8940>.

³ Available at <http://www.rail-reg.gov.uk/upload/pdf/dag-criteria-consultation-220408.pdf>.

⁴ Copies of all responses can be found on the ORR website at <http://www.rail-reg.gov.uk/server/show/ConWebDoc.9155>.



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- **West Coast Trains Limited** indicated that it is content that the revised criteria addressed the issues raised in connection with the original consultation.
- **First Group** considered that the criteria should also:
 - recognise that the DAG gives effect to the delay attribution principles set out in Schedule 8;
 - set out how ORR will evaluate identified financial impacts in its approval deliberations, and what the mechanisms for addressing such impacts will be;
 - address the possible implications of DAG amendments in respect of performance as measured under the benchmarks and targets set by the Department of Transport and Transport Scotland in Schedule 7 of an operator's Franchise Agreement;
 - provide an assurance that any approval of changes to the DAG which have a financial impact or an impact on performance measures would only occur to a timescale which allowed the required changes or recalibrations to neutralise the impacts to be put in place and approved first; and
 - explicitly incorporate an appeal mechanism for dealing with disputes over proposed commercial solutions.
- **Network Rail** considered that:
 - a full impact assessment need not be provided alongside a change proposal submitted to the Delay Attribution Board (DAB) at the outset of the process. It considers that this is something that ORR can request if necessary, once it has evaluated consultation responses which may indicate a potential financial impact to operators;
 - it would be inappropriate for the DAB to comment on any commercial impact or the possible solution(s), including whether or not to postpone changes until the next ORR access charges review. Network Rail considered that this was the role of ORR; and
 - "commercial solutions" should only be proposed where the financial impact of a proposed change is significant.

Conclusion

4. Whilst we are grateful for the comments received on our proposals, it is important to reiterate the purpose of the criteria that we have developed. Our original September 2007

letter stated that the criteria were intended to 'provide greater clarity on our requirements'. This was in light of our undertaking to the industry, given when approving Proposal for Change to the Network Code number 36 (pfc36),⁵ that we would indicate whether we approved a proposal within 14 days of receipt, where reasonably practicable. The purpose of the criteria, therefore, was to set out clearly the information that we require to be submitted in order that our deliberations can be taken forward in an efficient and expeditious way. The intention was not to set out how we would arrive at any decision.

5. This being the case, we consider that the comments made by First Group, which relate specifically to the mechanisms of evaluating and implementing the impacts associated with a proposed DAG change, fall outside of this review. We do recognise, however, that these are important issues that this office would take into account through its normal decision criteria when evaluating any such proposals / solutions. We have reviewed, therefore, the criteria and removed any wording that might have led to such a misunderstanding (such as references to our decision making criteria and suggestions that the criteria sets out how ORR will deal with any applications).

6. Similarly, the comments made by Network Rail, in terms of the impact assessment and scale of any commercial solutions, relate to issues that arise at the front end of the process, i.e. the submission of the proposal to the DAB. As we set out in our April 2008 letter, any Proposal for Amendment, in accordance with paragraph 1.6.1 of the DAG, must include details of any other implications and proposed remedy associated with a suggested change. Implications in this respect would include any perceived commercial impacts (and suggested solutions) associated with a proposal. It will therefore be for the change sponsor to decide on the scope of impact assessment and appropriate commercial solution, on which industry parties will be subsequently able to comment as part of the DAB consultation process.

7. In terms of the DAB commenting on any commercial impact, the criteria as drafted does not require it to venture any opinion to us on such matters as part of its submission. The April 2008 letter did recognise, however, that due to the constituency of the Board, commercial impacts arising from proposed changes might have an influence on whether individual members are content for the change to proceed. Any dissent, where the proposed change is not unanimously agreed will need, of course, to be identified by the DAB as part of its submission to us in accordance with Condition 2.7.1(c) of the Network Code.

⁵ This can be found on our website at <http://www.rail-reg.gov.uk/upload/pdf/netwkcode-changeppsal36-030306.PDF>.



8. In view of the above, ORR has decided to implement the attached criteria, which has been considered and agreed by the DAB, with immediate effect. A copy of this letter, and the criteria, will be published on the ORR website. We will now work with the DAB and the industry to develop any amendments that are required to the Network Code to formalise, to an appropriate degree, the processes outlined in the criteria.

Yours sincerely,

A handwritten signature in blue ink. The signature is cursive and appears to read 'Colin Greenslade'. The first letter 'C' is large and loops around the first part of the name.

Colin Greenslade

ORR Criteria For Processing Proposals for Amendment to the Delay Attribution Guide

Words and phrases defined in the Network Code have the same meaning in these criteria.

Purpose

1. Condition B2.7.2 of the Network Code says that Proposals for Amendment to the Delay Attribution Guide (the Guide) only have effect when approved by the Office of Rail Regulation (ORR).
2. This note outlines how applications proposing amendment of the Guide should be submitted to both the Delay Attribution Board (DAB) and ORR for approval.

Information Requirements

3. Proposals submitted to ORR for approval should contain the following information:
 - Name of the original sponsoring organisation(s);
 - DAB unique number/reference;
 - Details and reasons for changes;
 - Marked up version of the changes to the Guide (electronic version only);
 - An assessment of any impact such a change might have, and a proposed solution, produced by the sponsor, where applicable;
 - Details of the results of the DAB consultation process and copies of individual consultation responses in accordance with Condition B2.7.1(b) of the Network Code; and
 - DAB considerations and decision on proposal.

These areas are considered in more detail later in this document.

Sponsorship Details

4. The DAB will formally sponsor proposals submitted to ORR. ORR also needs to know who the original sponsor was, or, in the case of proposals that have been merged, the full list of original sponsors.

Numbering of Proposals

5. Proposals should have a unique number allocated by the DAB.

Details and Reasons for the Changes

6. The DAB submission should outline:
 - (a) the details of the submitted changes, including references to the sections of the Guide to be amended; and
 - (b) the reasons for the proposal.

Marked Up Version of the Guide

7. In order to assist clarity, ORR should be provided with an electronic version of the Guide highlighting the changes proposed.

Consultation Details

8. In respect of the consultation, ORR requires the following information to be submitted by the DAB alongside any proposed changes:
 - (a) the list of consultees;
 - (b) details of the results of the consultation; and
 - (c) copies of any representations received that have neither been accepted by the DAB or withdrawn by the consultee.

Impact Assessment

9. ORR recognises that the role of the DAB is to manage and oversee the effective and accurate attribution of delay. The DAB does not have the resource or remit to consider the detailed commercial impact of proposed amendments to the Guide.
10. However, in considering whether to approve proposed changes, ORR will need to understand:
 - (a) if the proposed changes are likely to have a material financial impact on Train Operator performance regimes;
 - (b) if proposed changes affect the incentives on Network Rail and Train Operators to work together to improve performance;
 - (c) if proposed changes have a material impact on expected cash flows for Network Rail; and

- (d) whether any industry parties affected by the proposed change:
 - (i) consider that any monetary value associated with the change requires neutralisation; and
 - (ii) whether solutions to neutralise the financial effect of the change have been proposed and agreed.
- 11. To address these issues, the proposal sponsor must, as part of its submission to the DAB, and in accordance with paragraph 1.6.1 of the Guide, set out any wider impacts (including financial) that the proposed amendment might have, and suggest a proposed approach to addressing these areas.
- 12. To also inform this process industry parties should, as part of the consultation process, be specifically invited to set out within their response:
 - (a) whether they accept the proposed change to the Guide and why;
 - (b) any commercial impact that the proposed change is likely to have on their business; and
 - (c) whether they are content with any solution proposed by the change sponsor as part of the Impact Assessment; or
 - (d) details of any alternative solution they may propose to address the commercial impact; and
 - (e) whether such an alternative has been discussed and agreed with Network Rail and/or a potentially affected Train Operator.

DAB Considerations and decision on proposal

- 13. In order to fully understand any DAB decision to approve a proposed change, ORR should be provided with the following details as part of the submission required under Condition B2.7.1 of the Network Code:
 - (a) why the DAB considers that the proposed changes to the Guide are necessary, and how they will improve the industry delay attribution process;
 - (b) what, if any, changes were made to the original submissions following consultation responses, and why they have been accepted;
 - (c) the reasons behind the DAB not including suggestions made by consultation responses;

- (d) details of where a number of proposals put forward to the DAB have been merged; and
- (e) where a proposal for change has been agreed, but not unanimously, the reason for any dissent by any DAB member.

Process & Timescales

14. The DAB will consult the industry on proposed changes to the Guide. This will normally last 30 days. ORR should, at the same time, be provided with a copy of the consultation in order to conduct an initial review of the proposals. Following this review, and prior to the formal DAB meeting to consider consultation responses, ORR may convene a meeting with the DAB Secretary and offer a view as to the possible suitability of the proposals and the anticipated timescale for its decision.
15. The DAB will review the consultation responses and decide on what proposals (and any non-material amendments) are to be forwarded to ORR for approval. Following this decision the DAB Secretary will formally submit the proposals to the ORR.
16. In accordance with part B 2.7.2 of the Network Code, ORR will either accept or reject an application made by the DAB. In order to reduce the risk of proposals being rejected the DAB is encouraged to engage in informal discussions with ORR, prior to formal submission.
17. ORR will normally be able to reach a decision within 14 days on the proposal. If the proposals are more complex and likely to take more than 14 days for approval, ORR will inform the DAB Secretary at the earliest opportunity.