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21 July 2014

To the addressees listed at Annex 1

## **OFFICE OF RAIL REGULATION'S DECISION TO MODIFY THE NATIONAL STATION ACCESS CONDITIONS 2013 FOR ENGLAND & WALES AND SCOTLAND**

### **Introduction**

1. On 8 May 2014, we consulted you on a proposal that we modify the National Station Access Conditions 2013 (England & Wales) and the National Station Access Conditions 2013 (Scotland), together the "NSACs". The purpose of the modification is to rectify a drafting error contained in the NSACs. The relevant modification provisions are contained in Condition B6 of the NSACs.

2. The consultation closed on 4 July 2014. We received four responses, representing views from Network Rail, Transport Scotland and three train operating companies. We are grateful to those who responded.

### **Decision**

3. After careful consideration we have decided to modify the NSACs to rectify the drafting error contained in them. The modification notice to give effect to the changes is attached at Annex 2.

### **Background**

4. On 20 December 2013, ORR began the formal implementation of the Periodic Review 2013 ("PR13"). We did this by serving review notices and publishing them on our website pursuant to paragraph 4 to Schedule 4A to the Railways Act 1993.

5. The PR13 review notice for stations directed a number of changes to be made to the Station Access Conditions, including changes to the NSACs. In particular, Appendix A to Annex 4 to the stations review notice directed changes to Part F of the NSACs to amend the indexation provisions.

6. We subsequently noted an error in Appendix A to Annex 4 of the stations review notice; Condition F11.2.1(ii) in the notice reads as follows:

*“ (ii) in relation to any relevant year (including, where applicable, the relevant year commencing on 1 April 2014) in which the value specified in paragraph 3 of Annex 9 is altered, otherwise than as a result of a review notice given by ORR under paragraph 42.4.1.2 in respect of the value to apply from 1 April 2014, St shall have the value specified in paragraph 3 of Annex 9 (as so altered) and in relation to the next following relevant year St-1 shall have the same value.”*

7. The cross-reference in Condition F11.2.1(ii) to “paragraph 42.4.1.2” (highlighted above) is incorrect. It should have read “Condition F11.4.1.2”.

8. We proposed to correct the error and so undertook a formal consultation under Condition B6.3.1 of the NSACs to seek your views on the modification ORR proposed to make. A revised draft of Condition F11.2.1 of the NSACs was provided with the consultation. A comparative version showing the modification was also provided.

### **Consultation responses**

9. We received responses to our consultation from Network Rail, from Transport Scotland and from three train operating companies. All were supportive of our proposals and agreed that we should make the modifications to the NSACs as set out in our consultation document.

### **Reasons for our decision**

10. In deciding whether to make a modification to the NSACs, ORR must be satisfied on reasonable grounds that either or both of the following conditions has been satisfied:

- (i) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the [Railways] Act [1993]; and
- (ii) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

11. We consider the correction satisfies the following Section 4 duty in particular:

*Section 4(1)(g) – to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.*

12. We also consider the correction meets the test in accordance with NSACs condition 6.2.2(b), outlined in paragraph 10(ii) above. This is because failure to rectify the drafting error in the NSACs would prevent ORR from being able to issue a review notice to initiate the implementation of an access charges review in respect of the NSACs. This would be contrary to the intended purpose of Schedule 4A of the Railways Act 1993 and would have the effect of preventing a review of the arrangements under the NSACs, and any agreement incorporating them, in relation to:

- (a) the amount of the station Long Term Charge;
- (b) the manner in which, and the dates by which, the Long Term Charge shall be payable; and
- (c) its allocation amongst the Station Facility Owner and any beneficiaries.

13. If we did not correct the error, the station Long Term Charges for those stations governed by the NSACs, established during PR13 and effective from 1 April 2014, would continue without review indefinitely. In addition the amount of those Long Term Charges would continue unaltered, save for uplifts in accordance with RPI and any specific amendments to those station Long Term Charges agreed between the parties and approved by ORR.

14. We do not consider such a situation to be acceptable and the lack of a provision to initiate an access charges review in relation to NSACs stations has the potential to unfairly prejudice the interests of funders, Network Rail, Station Facility Owners and any beneficiaries. Further, we consider that the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.

### **Modification to the NSACs**

15. The modification notice is attached to this letter at Annex 2.

16. This modification of the NSACs by ORR under Condition B6 cannot take effect until a period of at least 180 days has elapsed from the date we approve the modifications.

17. The modifications shall take effect on 19 January 2015.

Yours sincerely

A handwritten signature in black ink, reading 'Robert M. Plaskitt'. The signature is written in a cursive style with a large, looping initial 'R'.

**Rob Plaskitt**



## Annex 1

Abellio Greater Anglia Limited  
Access Disputes Committee  
Arriva Trains Wales / Trenau Arriva Cymru Limited  
Association of Train Operating Companies  
Bombardier Transportation UK Limited  
c2c Rail Limited  
DB Reggio Tyne & Wear Limited  
DB Schenker Rail (UK) Limited  
Department for Transport  
Direct Rail Services Limited  
East Coast Mainline Company Limited  
East Midlands Trains Limited  
Eurostar International Limited  
First Capital Connect Limited  
First Greater Western Limited  
First ScotRail Limited  
First/Keolis Transpennine Limited  
Freightliner Heavy Haul Limited  
Freightliner Limited  
GB Railfreight Limited  
Glasgow Prestwick International Airport Limited  
Grand Central Railway Company Limited  
Heathrow Express Operating Company Limited  
Hitachi Europe Limited  
HS1 Limited  
Hull Trains Company Limited  
London & Birmingham Railway Company Limited  
London & Continental Railways Limited  
London & North Western Railway Company Limited  
London & South Eastern Railway Limited  
London Overground Rail Operations Ltd  
London Underground Limited  
Merseyrail Electrics 2002 Limited  
Network Rail Infrastructure Limited  
North Yorkshire Moors Railway Enterprises plc  
Northern Rail Limited  
Rail Delivery Group



Rail Express Systems Limited  
Rail Freight Group  
Southern Railway Limited  
Stagecoach South Western Trains Ltd  
Stobart Rail Limited  
The Chiltern Railway Company Limited  
Transport for London  
Transport Scotland  
Venice Simplon-Orient-Express Limited  
Welsh Government  
West Coast Railway Company Limited  
West Coast Trains Limited  
XC Trains Limited  
Advantage West Midlands  
Ashwell Property Group plc  
Ask Developments  
Ballymore Group  
Bridgend County Borough Council  
British Land Company plc  
Centro  
Chelsfield plc  
Cibitas Investments Limited  
County Councils Network  
Cross London Rail Links Limited  
Delancey  
Derbyshire County Council  
East Sussex County Council  
Eversholt Rail  
Gloucestershire First  
Grainger plc  
Hammerson plc  
Hertfordshire County Council  
Hines  
Home Builders Federation  
John Laing plc  
JPM Parry & Associates  
Kenmore  
Kier Property  
Local Government Association  
London TravelWatch  
Merseytravel



Metro  
MTR Corporation Ltd  
Muse Developments  
Neptune Developments Limited  
Nexus  
Northgrove Land Limited  
Nottinghamshire County Council  
Passenger Focus  
Passenger Transport Executive Group  
Peel Holdings Limited  
PMG  
Pre Metro Operations Limited  
Railway Forum  
Railway Industry Association  
Sellar Property Group  
SLC Rail  
South Yorkshire Passenger Transport  
St Mowden Properties plc  
Stanhope plc  
Strathclyde Partnership for Transport  
Targetfollow  
Taylor Wimpey plc  
Terramond  
Transport for Greater Manchester  
Westfield UK

## Annex 2

### NOTICE OF MODIFICATION TO:

#### A. THE NATIONAL STATION ACCESS CONDITIONS 2013 (ENGLAND AND WALES)

#### B. THE NATIONAL STATION ACCESS CONDITIONS 2013 (SCOTLAND)

1. This notice is issued in accordance with:
  - (i) Condition B6.1 of the National Station Access Conditions 2013 (England and Wales) (“the NSACs”);
  - (ii) Condition B6.1 of the National Station Access Conditions 2013 (Scotland) (“the NSACs”).
2. This notice specifies modifications to be made to the NSACs, as set out in Annex A to this notice following a consultation on proposed changes to the NSACs.
3. The procedural requirements set out in Condition B6.3 of the NSACs have been followed.
4. In deciding to issue this modification notice I am satisfied that Conditions B6.2.2(a) and B6.2.2(b) of the NSACs have been satisfied.
5. In accordance with Condition B6.4 of the NSACs:
  - a) the modifications shall not take effect earlier than 180 days after the date of issue of this modification notice, issued today 21 July 2014,
  - b) the modifications shall become effective on 19 January 2015.

**Rob Plaskitt**  
Duly Authorised by the Office of Rail Regulation

A handwritten signature in black ink that reads 'Robert M. Plaskitt'.

Date: 21 July 2014



## Annex A

### **National Station Access Conditions 2013 (England and Wales) and**

### **National Station Access Conditions 2013 (Scotland)**

Condition F11.2.1(ii) of the above Station Access Conditions shall be deleted and replaced with the following:

“(ii) in relation to any relevant year (including, where applicable, the relevant year commencing on 1 April 2014) in which the value specified in paragraph 3 of Annex 9 is altered, otherwise than as a result of a review notice given by ORR under Condition F11.4.1.2 in respect of the value to apply from 1 April 2014, St shall have the value specified in paragraph 3 of Annex 9 (as so altered) and in relation to the next following relevant year St-1 shall have the same value.”