

**Richard Coates**  
**Deputy Director, Planning and Performance**

Jon Haskins  
Head of Regulatory Compliance and Reform  
Network Rail  
1 Eversholt Street  
London  
NW1 2DN

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Dear Jon

**Covid -19: Compliance with regulatory obligations**

Thank you for your letter dated 7 May 2020 providing an update on Network Rail's response to the current challenges. We welcome Network Rail's commitment to providing a service to critical workers and freight users at this key time as well as the intention to comply fully with regulatory obligations.

Your letter flagged certain risks to Network Rail's licence compliance. We recognise the proactive way in which Network Rail has communicated these and its ongoing commitment to transparent engagement with ORR. We expect Network Rail to continue to discuss licence compliance issues with ORR on a regular basis and the derogation and flexibilities set out in this letter are conditional on those discussions taking place openly and in a timely manner. The remainder of this letter addresses the specific points you have raised.

**Continuity of timetable planning outputs (e.g. T-12 compliance and production of the December 2020 timetable)**

*Licence conditions 7.17 - 7.18*

These conditions require the System Operator to provide - to the greatest extent reasonably practicable - appropriate, accurate and timely information on Relevant Timetable Changes to train operators, not less than 12 weeks before the timetable change comes into effect.

We note the current non-publication of the timetable at T-12 and expectation of full recovery by 12 June 2020. We welcome the continuation of regular liaison with ORR on Network Rail's recovery plans, in particular T-12, and expect Network Rail to highlight to ORR, at the earliest opportunity, any changes to the draft plan and expected recovery date.

Network Rail's proposal to provide further information, such as the weekly T-12 reports, is welcomed and ORR colleagues will be in touch to provide details of the recipients for this.

We recognise Network Rail's industry engagement and significant work to date on timetable planning, including the co-ordination for the development to publication of contingency timetables based on Day A for B planning.

We also note the ongoing industry engagement on the retention of the May 2020 timetable change date and current planning in place to safeguard the development and delivery of the December 2020 Working Timetable.

### **Periodic and annual reporting to ORR (including Annual Return & Regulatory Accounts)**

We welcome the continuing engagement with ORR colleagues on the status of regular data reporting. Good progress has been made for the Period 13 data and reports have been prioritised accordingly and data supplied where possible, in line with our discussions.

#### *Licence condition 10.3*

We note that Network Rail expects to provide the majority of Periodic Returns within the required 21-day period and Network Rail does not currently anticipate any delays in the provision of periodic financial information to stakeholders (including ORR, DfT or Transport Scotland<sup>1</sup>). However, there may be some circumstances where a longer time period is necessary. Where this is the case, we would expect any potential risks or delays in data supply to be discussed with ORR and relevant stakeholders as early as possible.

Accordingly, subject to the following paragraph, we consent to a derogation from the requirements of licence condition 10.3 for a period of three months (ending on 31 August 2020). During this time, we expect Network Rail to use its best endeavours to comply with the requirements of the licence condition to the greatest extent reasonably possible.

We will keep the position under review during the period of derogation, in particular to determine whether cancellation of or modifications to this arrangement are necessary. We will also review the position at the end of this three-month period with a view to determining whether a further derogation period is required.

#### *Licence condition 10.5*

We note Network Rail's commitment to publish the Annual Return commentary document by a date, which is not less than three months after the last date to which the Annual Return relates. We confirm your approach for the publication of the

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<sup>1</sup> Network Rail is aware that because Transport Scotland requires financial information for budgetary purposes in advance of the normal reporting timetable after the end of a period, it will continue to use estimates where it does not have data available. Therefore, it does not expect that these issues will delay the provision of information to Transport Scotland.

Annual Return and note that there may be some gaps in the data tables that you will address as soon as reasonably practicable after the publication of the Annual Return.

As above, we would expect you to discuss these issues with ORR colleagues at the earliest opportunity so that we can identify and assess the potential impact on stakeholders.

#### *Licence condition 9.13*

This condition provides for the provision of regulatory financial statements and the accompanying Auditors report and resources statements by 1 July following the end of each financial year. However, the condition also provides for this date to be varied with ORR's consent and we note that you are discussing with ORR finance colleagues whether you will need to request such a consent.

### **Maintenance of appropriate asset information**

#### *Licence conditions 5.7 and 6.7*

These conditions require Network Rail centrally (5.7) and in the geographical business units (6.7) to maintain appropriate information about Relevant Assets including information about their condition, capability and capacity.

We note the risk of non-compliance regarding the frequency of refreshed information on asset condition. We expect Network Rail to anticipate, monitor and record any cases of non-compliance and to discuss these with ORR, ensuring that these are successfully addressed once Network Rail can safely return to 'business as usual.'

To that end, we welcome the proposal for the provision to ORR of a fortnightly high-level central overview covering regional assurance, with specific updates on how Network Rail is maintaining internal levels of assurance to support decision making across the organisation.

Colleagues from our Asset Management team will be in touch to discuss these arrangements and in particular what disaggregated (i.e. region and/or route-level) information is required to maintain compliance with the licence conditions.

### **Longer term business planning**

Whilst we note that you are not seeking derogations in respect of this matter, we acknowledge the difficulties Network Rail faces currently in making informed judgements about likely future traffic volumes. We also note the risks that this creates in the preparation of the 2021-22 Delivery Plan Update and longer term plans as well as the impact on many of the forecasts as set out in the 2020 Delivery Plan Update.

We note that Network Rail is currently working with the regions on these issues and we expect you to provide ORR with regular updates through the existing framework of regular bilateral and other meetings (e.g. the Business Planning Liaison Meeting)

### **Provision of information to passengers during disruption**

Licence conditions 1.5 -1.6 require Network Rail to provide - to the greatest extent reasonably practicable - appropriate, accurate and timely information to passengers, including during disruption.

We note the removal of two hourly reporting and the focus on “by exception” reporting on key issues such as critical freight flows. As you acknowledge, this does raise a significant compliance risk in respect of conditions 1.5 and 1.6, although current traffic volumes and levels of performance may suggest you are nonetheless doing everything reasonably practicable having regard to the relevant circumstances.

ORR considers that the Passenger Information Duty is a key regulatory requirement and it is important to maintain the provision of information to passengers, especially as services enter the “restart” phase. We would therefore agree that regular liaison with ORR on this issue is essential so that we can ascertain whether you are doing everything reasonably practicable having regard to all relevant circumstances. We will be in touch with you shortly to discuss appropriate arrangements.

We also note your continued engagement with Transport Focus on the steps being taken to move towards full T-12 recovery by 12 June.

### **Commitment to transparent engagement with ORR**

We note Network Rail’s commitment to continue to engage with ORR and we expect the regular update meetings to be arranged for the specific areas, as set out above in this letter.

We expect Network Rail to highlight to ORR any changes to plans as early as possible, in particular where these would be classed as ‘Relevant Changes’ under ORR’s Managing Change policy, and to discuss these further with ORR as required.

Yours sincerely

Richard Coates