

Will Godfrey
Director, Economics, Finance and Markets

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Dear Stakeholder,

Consultation on improvements to the drafting of Schedules 4, 7 and 8 of model track access contracts

Train operators wanting to access the national rail network need a track access contract with Network Rail, and such a contract must have ORR's approval. We have published model contracts that set out standard terms for such access, including each party's rights and obligations relating to charging and the rights to run services. We expect Network Rail and train operators to use these model contracts.

The purpose of this letter is to invite suggestions for improvements to the drafting of Schedules 4, 7 and 8 of the model freight¹, passenger, and charter track access contracts ('model contracts'). We welcome proposals from current or prospective passenger (including charter) operators, freight operators, freight customers, Network Rail, and others.

The existing charging and incentives regimes are set out in Schedules 4, 7 and 8 of model contracts. As part of our 2023 Periodic Review (PR23), we have been reviewing the charging and incentives frameworks currently in place between Network Rail and train operators. We have confirmed a number of policy changes we intend to make to these frameworks for CP7, and we will conclude on the remaining policy areas in due course.

The purpose of this consultation is to provide an opportunity to improve the clarity and consistency of the contractual drafting in these model contracts. **Our policy on charges and incentives, and how this is implemented in the model contracts, are outside the scope of this consultation.**

What we are seeking views on

We are seeking views on specific proposals for how the existing drafting of Schedules 4, 7 and 8 of model contracts could be improved to address any:

- uncertainty or ambiguity in the drafting;
- aspects of the contractual drafting which stakeholders consider do not reflect the established policy intent;

¹ This includes freight, freight customer and freight operating company customer model contracts.

- inconsistent wording within contracts;
- opportunities for simplification of the drafting, while retaining the established policy intent; and
- suggestions for new wording to reflect other relevant developments, such as technological improvements in billing processes, or possible improvements to processes associated with Schedules 4, 7 and 8.

We are **not** seeking feedback on the following:

- the substance of our PR23 policy development relating to charges and incentives, and any contractual changes required to implement this²; and
- any potential changes which may arise, or which require change to contracts, as part of the UK Government's rail reform programme³.

Responding to this consultation

We invite responses to this letter by **Thursday 15 December 2022**. Please send responses to PR23@orr.gov.uk. In providing your response to this consultation, **please complete the table in [this pro-forma](#) with your suggestions**, ideally supported with marked-up contractual drafting.

The model contracts are available on the ORR website ([Passenger services](#), [charter passenger services](#) and [freight services](#)).

Publishing your response

We plan to publish all responses to this consultation on our website. Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR,) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will

² As noted above, we have separately consulted on changes to the [charges](#) and [incentives](#) frameworks for CP7.

³ This programme is ongoing. We published our [response](#) to the Department for Transport's (DfT) consultation on Legislation to Implement Rail Transformation in July 2022.

take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, please annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

In responding to this consultation, you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Next steps, and how we will use your input

Using the responses to this consultation, we will consider how we can improve the drafting of Schedules 4, 7 and 8 of the model contracts and look to implement these improvements.

We intend to issue a full consultation on our proposals for updating model contracts next summer, shortly after our PR23 Draft Determination. This will cover any changes required to implement all policy decisions on charges and incentives, as well as the potential drafting improvements that we identify through this consultation.

Yours faithfully,



Will Godfrey