

**Les Waters**  
Head of Licensing



Company Secretary  
Network Rail Infrastructure Limited  
Waterloo General Office  
London  
SE1 8SW

**BY EMAIL ONLY**

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### **Network Rail's network licence: definition of "Control"**

1. Following conversations and email exchanges between Michael Chu, Head of Regulatory Compliance & Reporting, and myself, in February, I am writing to confirm that the Office of Rail and Road ("ORR") has updated Network Rail's network licence to correct the definition of "Control".
2. The issue arose because the definition (located in Part 2 of the licence) refers to section 416 of the Income and Corporation Taxes Act 1988 (the "1988 Act"). That section was repealed by the Corporation Tax Act 2010 (the "2010 Act") and largely replaced with section 450 and 451 of that Act.
3. With the 1988 Act repealed, the definition of "Control" in the licence did not work as intended and required correction.
4. The term "Control" is used only in the Schedule to the licence at paragraph 1(d) and is not referenced in Part 3 – Conditions of the licence. Consequently, we could not correct the term under section 12 of the Railways Act 1993, which is how – with Network Rail's agreement – we usually effect modifications to conditions. We therefore, informed you of our intention to correct the term by incorporating a revised definition of "Control" to replace the prior definition.
5. With regard to the drafting, we have used a 'standalone' definition, rather than cross refer to a specific Act. The drafting is largely based on sections (2) and (4) to (6) of section 416 of the 1988 Act (as it was when it was in force) with the modifications set out in the long-enduring definition of Control in the licence. We have made some simplifications and clarifications to help ease of reading - although we acknowledge that making this a 'standalone' definition does import some legalistic wording.
6. We have also taken the opportunity to make a minor correction to another term: we have re-ordered footnotes (3) and (4) in paragraphs 1(c) and (d) of the Schedule to the licence, as they appeared in reverse order. I attach a copy of the licence.
7. I am copying this letter to Carl Davies, Head of Governance, Network Rail Shareholder Team at the Department for Transport.

**Les Waters**

**Duly authorised by the Office of Rail and Road**