

Andrew Whittington
Track Access Executive
Telephone: 020 7282 3773
Fax: 020 7282 2043
Email:
andrew.whittington@orr.gsi.gov.uk

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Lee Shuttlewood
Customer Manager
Network Rail Infrastructure Limited
Suite 2, Floor 4
Waterloo General Office
Waterloo Station
London SE1 8SW

Suad Chowdhury
Contracts and Partnership Manager
London & South Eastern Railway
Limited
Friars Bridge Court
41-45 Blackfriars Road
London SE1 8PG

Dear Lee and Suad

Approval of the Thirty-Fourth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and London & South Eastern Railway Limited

1 The Office of Rail Regulation (ORR) has today approved the Thirty-Fourth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and London & South Eastern Railway Limited (LSER) (jointly the parties), submitted to us formally on 30 January 2014 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2 The principal purpose of this agreement is to extend the Track Access Contract (TAC) between Network Rail and LSER. The current contract expires at Principal Change Date (PCD) 2014 and this Supplemental Agreement extends the contract until PCD 2015 to allow LSER to apply for the May 2014 and December 2014 timetables. In respect of the High Speed Services the current contract provides for the rights to expire on 31 March 2014 and this Supplemental agreement extends those rights until 12 October 2014.

3 Other minor changes are also made:

- i. Paragraph 3 of Schedule 3 is amended in respect of the Franchise agreement between the Train Operator and the Secretary of State.
- ii. In Schedule 5 amendments are made to the tables as follows:
 - The footnotes in Tables 2.1 and 4.1 are changed to reflect the extension of the dates for the High Speed Services to/from Sandwich, Deal and Ramsgate. As mentioned above these are extended to 12 October 2014.
 - Table 2.2 is amended to remove rights no longer required.

These changes are effected by the replacement of the tables concerned with new tables contained in appendices to the Supplemental Agreement. For completeness Table 2.3 relating to the Passenger Train Slots that are applicable on 26 December each year is also included unchanged as a new appendix thus keeping all these rights together.

- iii. The previous Schedule 11 relating to "Relevant Schedule 8 Modifications" is deleted and replaced with a new Schedule 11 which is inserted for "The Use of Railways Infrastructure Reopener" as required by our letter of 20 December 2013.

Consultation

4 The usual pre-application consultation was carried out for 28 days closing on 15 December 2014. Passenger Focus asked for clarification on four points to which the parties responded. Passenger Focus further asked for confirmation that an extension of the Track Access Contract to PCD 2015 for application for the December 2014 timetable. The parties confirmed that this was necessary. Eurostar sought confirmation on the terms of the application which was given.

ORR review

5 The ORR was copied in to the industry consultation and we sought clarification on the High Speed Service extension period and consideration of the London and South Eastern Route Utilisation Strategy which were resolved in the Form P submitted at informal submission. We also raised a query relating to the funding arrangements for the future of the High Speed Services and this was clarified. A few drafting queries and errors were also resolved at informal submission.

6 When inviting formal submission we asked that the applicants remove references to Peak and Off-Peak in Table 2.2 of Schedule 5 as these terms have no function in relation to contingent rights and also to remove references to Earliest and Latest Passenger Train Slots from Table 2.3 to follow our conclusions of the reform of access contractual arrangements in May 2012. These minor amendments were made in the final document.

7 There were no other issues raised and the proposals have no implications in relation to the Periodic Review process.

ORR's conclusions

8 In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access contract

9 Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

10 Copies of this letter, the approval notice and the agreement will be sent to Ray Harris at DfT. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Jashim Uddin at Network Rail.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Whittington', is written over a light blue horizontal line.

Andrew Whittington