



15-25 Artillery Lane,  
London E1 7HA.

**Telephone:** 020 7983 5174

**Facsimile:** 020 7983 5171

**Mobile:** 07818 421220

**E-mail:** [ian.kapur@gbraillfreight.com](mailto:ian.kapur@gbraillfreight.com)

Paul Stone.  
Access Executive,  
Office of Rail Regulation,  
One Kemble Street,  
London,  
WC2B 4AN.

17<sup>th</sup> April 2012

Dear Paul,

**GB Railfreight Ltd. (GBRf) response to ORR's consultation on Reform of Access Contractual Arrangements (response to second part of consultation):**

It's not an exaggeration to say that the process by which a Freight Operating Company (FOC) gains access to the network, secures a clearly defined, robust, path for its flows, then keeps defined paths through the length of its contracts, is probably the most important issue to face GB Railfreight and other freight companies today. Stability and proper regulation of this process is paramount as, the paths that are offered to FOCs, from one timetable to another and throughout the life of a commercial contract, dictate how a FOC must use its locomotive, wagon and train crew resources.

Quite simply, the timetable and its guaranteed length of stability, directly drives the costs and, therefore, viability of a Freight Operating Company. Between one year and the next, it can directly undermine current rail freight investment decisions and risk losing any future rail freight investment due to the uncertainty of desired access over a given period of time.

Many parts of rail freight are time sensitive and, although current FOC rights are not as prescriptive as those in passenger track access contracts (e.g. TOC +/- 3 mins. or very tight journey time guarantee), the +/- 30 minutes in the current model FOC track access contract already presents a risk to FOCs' resourcing over the course of their track access contracts. In an ideal world, a +/- 15 min. flex would limit a FOC's exposure to procuring additional train crew, locos or wagons for a flow, purely down to a relatively minor change to a pathway.

I must stress, once again, that any proposal to now restrict a FOCs' track access rights, for new or amended services, to Level 1 rights as far as December 2013 but then only Level 2 beyond, would create such uncertainty in a FOC's ability to deliver its freight services, over the period of that contract (typically 5-10 years), both it and the end customer would have real difficulty in committing to any new rail flow at a robust price. The idea that, from December 2013, a new service might have the cost of another set of wagons, an extra locomotive or several train crew inserted into its cost base because a flow's return path might have altered in the timetable by many hours, would shoot down the whole idea of running any new freight on the railways in the UK. Any possible restriction on granting Level 1 Rights to FOCs, for the length of their current contract rather than just to December 2013, needs to be dismissed as being far too damaging to current freight contracts (some already in excess of 2016), any future rail freight growth and future investment in any rail freight terminals.

For the optimum use of capacity on the network, GB Railfreight believes that TOCs' track access contracts should have a greater level of flex (or more relaxed journey time protections) so that a better timetabled combination of passenger and freight services can be properly produced.

GB Railfreight strongly believes that, although contractual protections currently in place mean TOCs do not require the level of Schedule 5 specification they currently enjoy, this is not the case for FOCs. The Level 1 Right detail, in Schedule 5 of the model freight track access contract, is the only real protection a FOC has in trying to secure optimum paths for its traffic. Without it, there are no real protections or guarantees.

In response to ORR's further specific questions relating to the reform of access contractual arrangements, GBRf can offer the following answers but ORR needs to bear in mind that this is a particularly large, all-encompassing and detailed consultation on access to the network and what's shown below is, by no means, the full picture.

More detailed answers to the consultations questions are:

Question 6: If ORR is suggesting that, the inclusion of RT 3973 operating details into a FOC's track access contract means that Network Rail must continue to provide that clearance, GBRf supports this. However, given then that, contractually, Network Rail would need to continue to provide said clearances, surely the Sectional Appendix would then need to be updated with RT3973 details so maintenance to standard is continued? More debate is required here.

Question 7: Firstly, to emphasise a point in paragraph 4.28, freight operating companies do not make access proposals at the priority date only using rights previously secured. They also make many new access proposals using the freight spot bid provision.

As far as properly aligning the access approval and timetabling processes for passenger TOCs, SPOTS, or even another process, could form a basis for resolving this misalignment and there's a definite requirement for resolution. Without this, there will continue to be very late proposals for supplemental agreements to passenger track access contracts leading to network capacity issues being raised very close to a timetable change. This then puts pressure on other TOCs/FOCs to accept sub-standard applications as it's close to a timetable start date. Ideally, access rights for passenger services need to be approved prior to the Priority Date.

However, GBRf needs to be clear how it would use the current Part D process, after a timetable is published, to contest a new proposed right. Where is the visibility for FOCs nationwide? FOCs cannot be expected to trawl through a nationwide timetable assessing proposed rights and paths. SPOTS & Quantum Access Rights might work but there'll need to be transparency and clarity of path so that other TOCs/FOCs can properly access the impact on its rights.

Question 8: In general, GB Railfreight would want access applications, that need to go to the ORR, to be approved and in place in no more than 6 weeks from the date of submission to Network Rail.

GBRf is clear that it definitely wants ORR to remain very much part of the process for applications that involve a dispute between the applicants and a third party arising from pre-application consultation. This mainly occurs where there's an obvious issue with providing capacity for current and future freight services along with any changes to rights for passenger services. Broadly speaking, FOCs cannot always rely on Network Rail to tease out these capacity issues at the pre-application stage.

An example of where this process has not worked is the recently proposed and approved London Eastern Railway's 34<sup>th</sup> Supplemental Agreement. GB Railfreight, along with other FOCs, could not support the pre-application proposal as the new rights for new passenger services did not permit current freight rights to run to their maximum loads (i.e. the available freight slot along the Lea Valley route only worked with a much lower trailing load) and also stopped any compliant freight paths being made available on the section of route from South Tottenham to Stratford.

These were pointed out to the relevant Network Rail Customer Relationship Executive very soon after the process was started, about 7 weeks before the start of the timetable that was to incorporate these new rights and paths. There was little movement in the process and, eventually, the new passenger services were incorporated into the timetable, with the FOCs' issues having not been resolved.

The whole process should have started much earlier than 7 weeks before the relevant timetable and the very legitimate concerns for current and future freight traffic resolved before rights for the new passenger services were granted.

As timetables get re-written, and even more so with new franchises being let over the next few years, GBRf wants the ORR to be closely involved with ensuring that capacity isn't just allocated fairly but also allocated *efficiently*. Non-efficient allocation leads to sub-standard, barely complaint, freight paths being entered into the working timetable, with the issues that brings to performance and trying to get future freight traffic into the timetable.

Question 9: GBRf definitely does not want the ORR to step back from applications where there are obvious network capacity issues (e.g. the many applications for new services on the East Coast Main Line). This is far too important an area for freight and one where effective and efficient use of the network is often sacrificed for swift approval of passenger supplemental applications. Amazingly, this is often the case even where a route has been upgraded signalling wise and/or gauge enhanced – a better railway is unveiled and then FOCs find there are no compliant paths for additional stock / freight services as a passenger timetable has been incorporated inefficiently with regard to capacity allocation.

There needs to be a robust mechanism to ensure that Network Rail does not approve supplementals when there are clear capacity issues to be resolved. Where third parties don't support supplemental agreements and discuss these with Network Rail, it may be that, to ensure ORR is aware of the issues, it gets copied into all the responses requiring attention. While Network Rail may, itself, be responsible for giving approvals to the supplementals, if it's clear ORR is aware of the contentious issues as and when they occur, Network Rail may take greater care in its view of the approval process. GBRf does not believe that Network Rail always knows how to decide how to allocate capacity effectively and making best use of the network. It's an area that needs more thought.

Question 10: The point ORR raises, in paragraph 4.55, is valid and a very real current issue for FOCs. As mentioned in question 9, the ability for a badly considered TOC supplemental approval to sterilise a route for freight capacity is quite straightforward and has occurred in recent months (e.g. the original LER 34<sup>th</sup> Supplemental Agreement). In many cases, it's just too important for ORR not to be involved, especially as part of its role is to ensure capacity is allocated on a fair and non discriminatory basis.

In general, GBRf has no issues with the idea of extending the scope of general approvals, for Sections 18 and 22, as long as there is still the option for a TOC / FOC to choose not to use the general approval route. General approval will be useful for minor alterations to Schedule 5 (e.g. for timetable change detail updates) but the issue of what TOC supplementals might do to the freight timetable, now and in the future, is a concern.

Question 11: The reverse is probably true. GBRf wants the independent ORR view to remain for all manner of applications, especially as the long term view of what's required of the railway network is not always apparent to consultees. How much freight capacity and capability is required, as laid down in the established Route Utilisation Strategies, is one such important example of what needs to be accounted for at the point of supplemental approvals.

Question 12: Given that movements on to and off depots have large peaks throughout a 24 hour period, GBRf is keen that Network Rail and ORR ensure that defined freight paths, for future growth as much as anything else, are not eroded and removed from the timetable, on lines close to depots (e.g. Orient Way/Stratford). The establishment of some strategic freight paths will take care of part of this requirement but care needs to be taken that the rest of the capacity is not allocated ineffectively.

Question 14: There is often a need for an independent assessment of the actual capacity of freight yards, leased by one freight operator, for when another freight operator wishes to gain access to it for commercial purposes. Although aspects of this particular issue are being investigated as part of the on-going ORR consultation on access to rail freight sites in Great Britain, this is based on a voluntary code of practice and is already falling behind schedule. There are already too many occasions when the true capacity of freight yards is being masked by various wagon movements that frustrate new business from taking roots.

Question 16: GB Railfreight has no particular issues with Part C of the Network Code but would like the timescale for decision making for proposed changes to be much speeded up. A recent example is the Part J review which will have taken almost one year (hopefully no more) from when the first consultations with TOCs/FOCs took place to when it becomes encompassed in the Network Code.

Question 17: Part F of the Network Code needs reviewing and greatly simplifying. From a FOC perspective, the Service Plan Review process, between a FOC and the relevant Senior Route Freight Manager(s), is usually the first way forward for dealing with an existing flow that needs to run with a longer trailing load or heavier trailing weight, on a trial basis over a fixed amount of time. This tends to work very well, with the route freight managers knowing the capability of their patch in detail.

For this scenario, and also the introduction of brand new vehicles onto the network, ROGS puts the onus for the verification of safe and proper running of an operation on to the TOC/FOC and this should now be the way forward. Part F, duplicating part of ROGS, is the sure sign that Part F needs to be greatly reduced in scope. As well as ROGS, operating companies' own safety certificates may well allow them to operate more freely. GBRf's safety certificate already permits it to use any traction which it can demonstrate it is competent to operate.

Part F is becoming more superfluous as time goes on and, at the very worst, a general approval by Network Rail should cover the changes described above, with input from the various route managers as appropriate. At best, Part F is removed from the Network Code.

Question 18: Part G of the Network Code needs reviewing as it falls down as some many stages. GB Railfreight is supportive of a full review of issues of process, timescales throughout the dialogue of Part G processes and the functionality of Part G. For a Part G Industry Working Group, GBRf suggests 1 TOC and 1 FOC representative, with Jason Bird from Freightliner Group being the ideal person to represent FOCs.

Every single one of the scenarios on the "Part G Issues List" has applied to GB Railfreight when managing the Part G process and I can endorse the list as accurate and, regrettably, regular. Specific examples of Network Change process issues that need highlighting, again, are as follows:

- a) There's huge variation in the amount and quality of detail provided in a Network Change for TOCs/FOCs to assess the effects of the proposal. This goes across the whole spectrum from just sparse detail initially being provided through to real change and negative effects being hidden in signalling scheme plans which often need to be prised out of Network Rail's hands.
- b) Work having already been carried out without a Network Change having been established. Retrospective Network Changes have also been issued.
- c) The issuing of a Network Change proposal should really be the end of the consultation process and not the beginning. There needs to have been detailed discussions between Network Rail (not its contractors) and operators to tease out the issues then resolve them so that there's nothing unexpected when the Network Change is issued. This does already occur, on occasions, and, in my view, the recent Peterborough Station Enhancements Network Change is a good example of how the process should work. There were very few questions to ask once issued.

- d) When Network Rail doesn't get the response it would have liked from the FOC representative tasked with dealing with Network Change, it has tried coercing company Managing Directors to overrule the FOC decision at the time.

It may be that a Part G Code of Practice, with response times included, needs to be produced and encompassed into the Network Code.

Question 19: GBRf has no issues with the current Part H of the Network Code and doesn't think it needs much of an update.

Question 20: GBRf thinks that Part K of the Network Code does add value to the contractual regime and it should be retained.

Question 21: GBRf feels that, with the many recent performance initiatives now being undertaken, time should be taken to update and refresh Part L of the Network Code with relevant and up to date information.

Question 22: Anything that holds Network Rail to account on all aspects of its assets is welcome. The addition of network availability into the Network Code would be a big step towards the 7 day railway concept being taken even more seriously by all parties. Our customers, also, would see that FOCs and Network Rail are serious in endeavouring to have more of the railway open for longer periods throughout the week.

Question 23: There may well be other parts of the Network Code that need some revision but those mentioned in detail in previous parts of this consultation are now, probably, the most urgent items. It is probably wise that the new Industry Working Group (IWG), once finished with revising Part G of the Network Code, moves on to other parts of the code identified as requiring work.

Question 24: GBRf believes that the new application forms, P & F, are simpler and not as repetitive as the previous forms. One thing that does need to be made clearer, towards the beginning of the form, is whether the application is being made under Section 17, 18, 22 or 22A. This seems to get hidden away in various texts and it needs to be clearer to the reader at the beginning.

Question 25: The ORR access web pages are now clearer and it's easier for users to quickly get to the intended information, which is usually current and previous consultations. As these are so important to TOCs / FOCs, on a continuous basis throughout the year, I'd like to see a "one click" option from the homepage straight into current consultations.

Question 28: Recent experience of the whole Network Rail internal sign-off process goes from one extreme to the other. GBRf's most recent supplemental agreement (8<sup>th</sup> Supplemental) took its 3-4 weeks of internal sign off whereas there have been occasions where difficulties have been encountered (7<sup>th</sup> Supplemental) and the process has taken 2 years. Clearly the former is far better than the latter which is totally unacceptable, under any circumstances. GBRf would like to see internal NR sign off in no more than 14 days and then the whole approval process take no more one month.

Question 29: Taking into account the detail of Section 23 of the Railway Infrastructure (Access & Management) Regulations 2005, there are now several parts of the network and sections of route that should have been declared congested infrastructure. An example of this is the East Coast Main Line, between Peterborough and Doncaster (post May 2011 timetable) where there are no spare paths in the northbound direction between 09:00 and 21:00 (approximate times). In GBRf's view, Network Rail does not declare sections of route "congested" because many of its operational planning team do not know or understand the Access & Management Regulations and/or Network Rail doesn't want to have to deal with the work that then follows from implementing Sections 24 and 25 of the Access & Management Regulations. This needs to change and Network Rail made to comply with all of the regulations. It then needs to analyse routes and declare more as congested infrastructure, when right

to do, followed by implementing Sections 24 and 25 of the regulations. An example of a piece of line still, I believe, labelled as congested infrastructure but no longer congested is the Gospel Oak to Barking route which, now having been re-signalled, has planning headways down to 5 minutes or less through most of the route. With this and other additions in mind, there needs to be an easily accessible list of all congested infrastructure on the network.

It also needs to be made clear how proposed supplemental agreements, that include congested infrastructure, are to be dealt with by Network Rail's internal consultation and the ORR. These shouldn't be penalised with an extended consultation timescale.

Yours sincerely,

**Ian Kapur.**  
**National Access Manager.**