



15-25 Artillery Lane,
London E1 7HA.

Telephone: 020 7983 5174

Facsimile: 020 7983 5171

Mobile: 07818 421220

E-mail: ian.kapur@gbraillfreight.com

Paul Carey.
Office of Rail Regulation,
One Kemble Street,
London,
WC2B 4AN.

30th September 2011

Dear Paul,

GB Railfreight Ltd. response to the ORR consultation document

"Review of Part J (change to access rights) of the Network Code – emerging conclusions":

GB Railfreight (GBRf) very much welcomes the opportunity to further comment on this consultation and is clear that some major changes are required to Part J of the Network Code to ensure it is fit for purpose for the current day commercial railway. The conclusions of this review also need to be implemented as soon as possible.

As well as answers to the questions raised in this document, there are also specific points in this consultation that require further comment.

Condition J2 – Voluntary surrender and adjustment of access rights:

Paragraph 2.5: In dealing with the fear that voluntary surrender of freight access rights and paths might result in capacity being lost permanently to passenger operators, GBRf suggests that, where current access rights are for busy routes with little room for growth, these surrendered access rights and corresponding paths are kept by Network Rail as strategic freight paths ("QJ" paths) and kept validated through the normal timetable process. That vital freight capacity will then be kept and this can kick start the populating of strategic freight paths in the timetable as recently incorporated into Part D of the Network Code.

Question in paragraph 2.10: *Do consultees agree that ORR's role should be reduced as outlined in paragraph 2.9 above?* As part of the on-going process for ORR only to approve quality adjustments, GBRf is content that ORR's role is reduced, as stated.

Question in paragraph 2.15: *Do consultees agree with the removal J3.13?* GBRf is content with this change.

Condition J4 – Failure to use – application by Network Rail:

In today's fast moving railway business, there needs to be a clear and easily applied process for serving a failure to use notice seeking surrender of unused access rights. More importantly, the applicant needs to be sure that an application will be successful so as to be able to immediately serve the end customers' needs. GB Railfreight, therefore, strongly supports the proposed changes for Condition J4.

Combined with the revised Condition J5, these will give far more certainty to a freight operating company (FOC) that a correctly served failure to use notice will result in a positive outcome. GBRf believes that Level 2 and 3 rights should be included in the new proposal as there have been many occasions when paths with Level 2 rights, not having met the use quota, would have been successfully transferred for a FOC's additional traffic.

In order to speed up the process and make Condition J4 more effective, GBRf believes that current J4 response times, shown to be within 10 working days, should be altered to be within 5 working days. The process is, currently, too long and any speeding up of timescales is much required.

GBRf believes the use quota of 1 in 91 days is adequate and acceptable.

Paragraph 2.28: In almost all cases when Condition J4 is used, a new operator already has business to move and needs to make quick use of the specific access right and path(s) in the J4 notice. GBRf is firmly of the view that said new operator should have priority in using the access right and path(s) even if the incumbent operator has firm expectation of future business for the specific train slot. The failure to use is concerned with what occurred in the past, not what might occur in the future. This has been borne out by the recent GB Railfreight appeal in respect of timetable dispute reference ADA05.

GB Railfreight does not want to offer any alternative suggestion as the proposal, as written, is clear, unambiguous and reduces any room for dispute.

Condition J5 – Failure to use – third party application:

Everything stated, above, for Condition J4 is applicable to Condition J5 therefore GBRf wants all the points, above, raised to be included in Condition J5.

The two conditions should not be combined, even though much of the content will be similar. That way, each condition will be clear and unambiguous. The current J5 response times, shown to be within 10 working days, should also be altered to be within 5 working days. The process is, currently, too long and any speeding up of timescales is much required.

GB Railfreight is clear that Network Rail must have a supervisory role in the alteration to Part J transfers, FOCs' rights and Schedule 5 rights tables.

Condition J7 – Freight transfer mechanism:

Condition J7 is intended to provide a smooth transfer of rights, both Level 1 and 2, when a FOC wins existing traffic from an incumbent FOC. The reality is often anything but. As stated in the document, the complication of Y paths (with or without rights) that have been woven through various parts of a required train path, supported by an access right, is a very big issue to GBRf. It stops a smooth transfer of rights / train paths when business has transferred from one FOC to another. It's this specific issue that needs to be unravelled and proposed in such a way that transferred business can easily use transferred paths.

Condition J12 – Reasonable on-going commercial need (ROCN):

GBRf agrees with the proposal to remove Condition J12 from the Network Code as "reasonable on-going commercial need" criteria have been constantly used to frustrate the process of transferring rights between FOCs.

If the condition or the separate document "criteria for interpreting the expression reasonable on-going commercial need" are to remain in the Network Code, GBRf believes it is absolutely essential that the current four elements of ROCN remain in their current state.

The three tests looking forward and one looking backwards need to be individual tests in their own right. Importantly, the "acceptable reason for non-use" needs to be kept as a specific test. Once again, the whole timescale for disputes needs to be shortened as much as possible.

Once again, GB Railfreight welcomes this thorough review of Part J of the Network Code. Please contact me if there are any further questions or most detailed answers required.

Yours sincerely,

Ian Kapur.
National Access Manager.