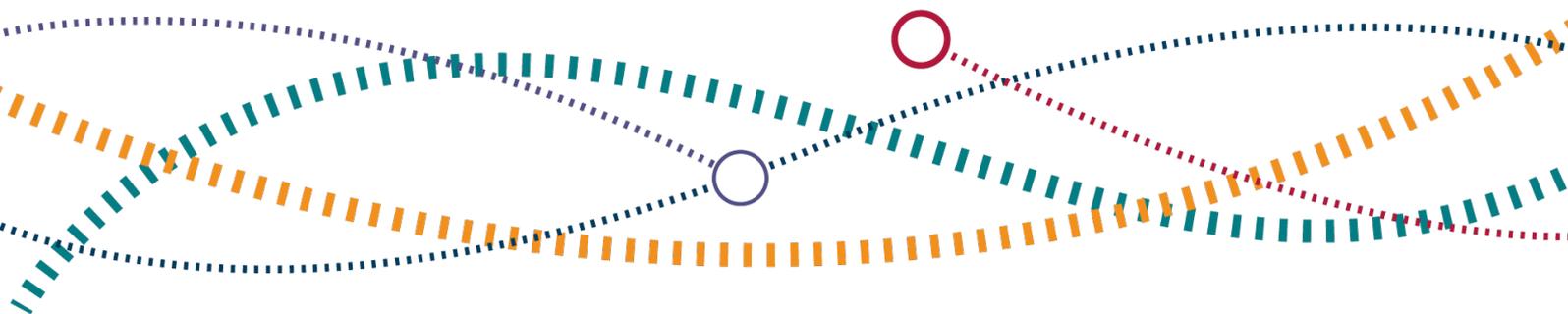




Amendments to the model freight track access contracts

31 January 2024



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Executive summary

1. This consultation proposes an amendment to model freight track access contracts for the Network Rail network and sets out other changes we are making to bring them up to date. This consultation and the changes included herein are separate to the ongoing implementation of the Office of Rail and Road's (ORR's) Periodic Review of Network Rail (PR23) although we intend to include all updates together when we publish the new model contracts before 1 April 2024 in readiness for CP7 Control Period.
2. In addition to changes related to the implementation of PR23 we will also be making two further updates to the freight model track access contracts which we set out in this document for your information

The changes

Changes we are consulting on

3. Paragraph 5 of Schedule 5 was added to the model contracts in 2016 following the move from expressing access rights as 'levels' to 'windows'. It provided a special re-opener provision allowing the re-negotiation of 'window' sizes following a settling in period.
4. The expression of rights as 'windows' is now well established. To the best of our knowledge the reopener has never been used. We consider it is best to avoid special reopener terms, unless there is good reason to have them.
5. We propose to delete the whole of paragraph 5 (Amendment of the Rights Table) of Schedule 5 to all three of the freight track access **model** contracts. As a consequence of this, we also propose to delete the following definitions from paragraph 1 (Definitions) of Schedule 5 as these are only used within paragraph 5 of Schedule 5:
 - (a) "Principal Change Date"; and
 - (b) "Subsidiary Change Date".

Other changes

6. In addition to changes related to the implementation of PR23 we will also be making two further updates to the freight model track access contracts which we set out below for your information.
 - *Amendment to 18.4.2 Right to Modify.* Currently the provision included in the freight contracts only allows for changes to Schedule 1 contact particulars by giving notice to relevant parties. The new wording will allow for name and address details at page one of the contract and at Schedule 1 to be updated by giving notice to relevant parties. This aligns the freight model track access contracts with the passenger track access contract. This amendment is set out in the Annexes to this document.
 - *FOC TAC only:* We are deleting clause 18.8 (Crossrail) and Schedule 11 (Crossrail modifications). This provision was intended to limit any effects that a freight operator's access rights might have on implementation of the Crossrail

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project and detailing a compensation mechanism if invoked. As Crossrail services have been initiated, these provisions are now effectively redundant.

Next steps

7. We would be interested in hearing your views on the proposed change at [paragraph 5](#). The model contracts concerned can be found on our freight track access webpage here: [Access for freight operators | Office of Rail and Road \(orr.gov.uk\)](#)
8. We are seeking responses by 28 February 2024.
9. Responses should be submitted in electronic form to Track.Access@orr.gov.uk. Please include '*Updates to freight model contracts*' in the email header.

Annex A - Changes to the model freight track access contract

18.4.2 Right to modify

Drafting to be updated for consistency across all models and now includes right to modify registered company and address details set out on page one.

Current drafting	New drafting
<p>18.4.2 Right to modify communication details</p> <p>A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:</p> <p>(a) to the other party as soon as reasonably practicable; and</p> <p>(b) to ORR within 14 days of such modification.</p>	<p>18.4.2 Right to modify registered company and communication details</p> <p>A party shall be entitled to modify in any respect:</p> <p>(a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and</p> <p>(b) the communication particulars which relate to it and which are set out in Schedule 1, by giving notice of such modification:</p> <p>(i) to the other party as soon as reasonably practicable; and</p> <p>(ii) to ORR within 14 days of such modification.</p>

Annex B - Changes to the freight customer contract

18.4.2 Right to modify

Drafting to be updated for consistency across all models and now includes right to modify registered company and address details set out on page one.

Current drafting	New drafting
<p>18.4.2 Right to modify communication details</p> <p>A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:</p> <p>(a) to the other party and each Appointed Operator as soon as reasonably practicable; and</p> <p>(b) to ORR within 14 days of such modification</p>	<p>18.4.2 Right to modify registered company and communication details</p> <p>A party shall be entitled to modify in any respect:</p> <p>(a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and</p> <p>(b) the communication particulars which relate to it and which are set out in Schedule 1, by giving notice of such modification:</p> <p>(i) to the other party and each Appointed Operator as soon as reasonably practicable; and</p> <p>(ii) to ORR within 14 days of such modification.</p>

Annex C - Changes to the freight operating company customer contract

18.4.2 Right to modify

Drafting to be updated for consistency across all models and now includes right to modify registered company and address details set out on page one.

Current drafting	New drafting
<p data-bbox="172 750 699 813">18.4.2 Right to modify communication details</p> <p data-bbox="172 887 774 1016">A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 1 by giving notice of such modification:</p> <p data-bbox="172 1084 762 1182">(a) to the other party and the Freight Customer as soon as reasonably practicable; and</p> <p data-bbox="172 1200 703 1263">(b) to ORR within 14 days of such modification.</p>	<p data-bbox="818 750 1406 813">18.4.2 Right to modify registered company and communication details</p> <p data-bbox="818 887 1337 949">A party shall be entitled to modify in any respect:</p> <p data-bbox="818 1016 1406 1214">(a) the registered name and address details which relate to it and are set out on page one of this contract (provided that this modification shall not amount to or purport to be an assignment, transfer or novation of this contract); and</p> <p data-bbox="818 1232 1430 1348">(b) the communication particulars which relate to it and which are set out in Schedule 1, by giving notice of such modification:</p> <p data-bbox="818 1366 1406 1464">(i) to the other party and the Freight Customer as soon as reasonably practicable; and</p> <p data-bbox="818 1482 1353 1545">(ii) to ORR within 14 days of such modification.</p>



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