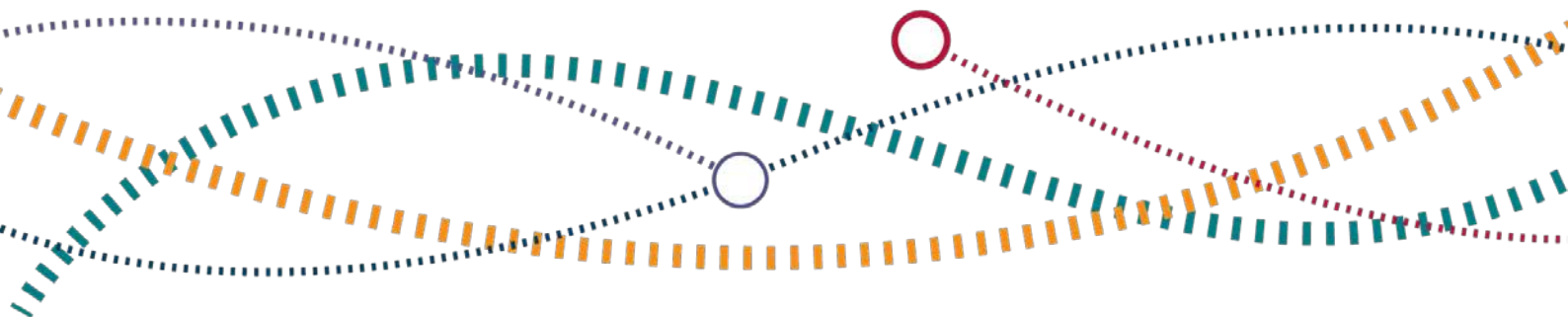




The expression of access rights

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Introduction

When directing or approving new or amended access contracts, we aim to ensure that they are as clear and robust as possible and strike the appropriate balance between certainty for the train operator and flexibility for Network Rail to accommodate the needs of all other passenger and freight train operators. It is important that the expression of access rights is clear and accurate so that ORR, Network Rail, operators and consultees can understand the access rights that have been agreed and those that are being sought.

What are model contracts?

Section 21 of the Railways Act 1993 allows ORR to prepare and publish model clauses for inclusion in access contracts and to encourage or require their use. We first introduced model clauses in the early 2000s. Since then, in consultation with the industry we have developed model clauses covering all areas of access contracts and combined them into model contracts. Our model contracts contain standard clauses and tables setting out how access rights should be contractualised. They are extremely beneficial in maintaining standardised terms and conditions and a standard expression of access rights. We therefore strongly encourage, and in most cases, require use of the relevant model contract by Network Rail and train operators.

Network Rail's access rights policy

Prior to 2014 access rights were quite highly specified and often closely aligned with the timetable operating, or planned to operate, at the time. For passenger operators this included: the daily number of services from point of origin to destination; intermediate station calls; the rolling stock to be used; intervals between services; maximum journey times; fastest journey times; turnaround times; and where trains would be stabled.

For freight operators, access rights were divided in to 3 categories. Level 1 rights were firm to a daily quantum of services and timings at departure, arrival and some intermediate points, Level 2 rights were firm to a daily or weekly quantum without timings, and Level 3 were contingent rights.

In 2014, following consultation with the industry and funders, Network Rail adopted a policy of much more flexible access rights. Network Rail's aim was to provide more flexibility in the timetabling process to allow best overall use to be made of scarce capacity on an increasingly busy network. Network Rail's access rights policy, which in general we support, can be found on its [website](#).

When negotiating access rights for passenger services Network Rail's starting position is to agree what it refers to as 'quantum rights', i.e. the daily number of services from point of origin to destination; intermediate station calls; and the rolling stock to be used. Any additional characteristics, such as journey time or service interval protection will only be agreed by exception and must have strong justification.

When negotiating access rights for freight services, Network Rail's approach is to agree rights with arrival and departure time windows. Windows can be anywhere between 1 and 24 hours depending on the business need of the operator and the flexibility Network Rail requires in order to make the best use of capacity.

Our model contracts

Prior to 2014 our model contracts reflected the relatively high level of specification of access rights. Following Network Rail's change of policy in 2014 we amended the freight contract Schedule 5, in particular to reflect the move from level 1 to 3 rights to departure and arrival time windows. We did not amend the passenger contract but noted that additional characteristics above 'quantum rights' would be included by exception only.

In April 2019, we published revised model contracts to reflect changes made through our 2018 periodic review of Network Rail's access charges. At that time, reflecting that additional characteristics above 'quantum rights' in passenger contracts have rarely been used since 2014, we removed the paragraphs and tables relating to those characteristics from the standard templates. They are still available as model clauses should, in exceptional circumstances, they be required.

In addition to model contracts for regular scheduled passenger operators and freight operators we have published model contracts for charter operators and freight customers.

Our model contracts, and guidance on completing them, can be found on our [website](#).

Firm and contingent rights

The access rights set out in Schedule 5 to the track access contracts are the key description of what the train operator is buying from Network Rail. They are therefore a vital part of each contract. Access rights are given effect in the timetable through the timetabling process set out in Part D of the [Network Code](#).

There are generally two types of access rights: firm rights and contingent rights. In the timetable development process, if a train operator asks for a train slot to be included in the timetable (an access proposal) by the Priority Date ('D-40' – forty weeks before the timetable begins) using a firm right, Network Rail must comply with it when compiling the timetable. However, firm rights are subject to:

- the applicable Engineering Access Statement (EAS) and Timetable Planning Rules (TPR);
- Network Rail's rights to flex an access proposal within the terms of the contract; and
- the operation of any other provisions of the Network Code.

Contingent rights are subject to additional factors outside the operator's control – normally other operators' firm rights but also the Decision Criteria. While Network Rail should try to accommodate access proposals underpinned by contingent rights, this may not always be possible. If Network Rail cannot accommodate all requests for train slots in the working timetable, firm rights (if exercised by the Priority Date) take priority over contingent rights. Under the Decision Criteria¹ Network Rail could, for example, refuse a request to use a contingent right if it felt the impact on performance would be unacceptable.

¹ The Decision Criteria contains a number of 'Considerations' which Network Rail must take into account in order to compile a timetable which shares the available capacity in the most efficient and economical manner, in the overall interest of users and providers of railway services.

Train Operator Variation Services

The freight market requires a more dynamic approach to planning services than the passenger market. In order to be able to respond quickly to requests from customers the model freight contract gives the operator contingent rights to run Train Operator Variation Services for up to twelve months without specific rights in Schedule 5. These are services for which the operator has made a Train Operator Variation Request in the timetable process under Condition D3 of Part D of the Network Code and Network Rail has included them in the timetable. This allows the services to be introduced quickly and gives time for the operator to negotiate longer-term access rights to be included in the Rights Table in Schedule 5.

Flex

“Flex” is the term used to describe the flexibility Network Rail has to adjust a train operator’s access proposal when including a train slot in the timetable. An example would be a freight operator with a firm right to a departure window of 2100 - 2159. The train operator may ask for the service to depart at 2130 but Network Rail could, subject to the Decision Criteria in Part D of the Network Code, flex the departure to any time within that one hour window.



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