

12 May 2022

To consultees:

British Transport Police Authority	Rail Freight Group
Colas Rail Limited	Rail Safety and Standards Board
DB Cargo (UK) Limited	Transport Focus
Department for Transport	Transport for London
Direct Rail Services Limited	Transport for Wales
Freightliner Group	Transport North East
GB Railfreight Limited	Transport Scotland
London TravelWatch	Tyne and Wear Passenger Transport Executive
National Assembly for Wales	
Network Rail Infrastructure Limited	
Rail Delivery Group	Also published on the ORR website

Initial consultation on a network licence for the operator of the Metro Shared Network

The Tyne and Wear Passenger Transport Executive (trading as “Nexus”) is a passenger transport executive and a public body corporate established pursuant to, and obtaining its powers from, the Transport Act 1968 (as amended), which works to create better transport networks in Tyne and Wear. Nexus is accountable to the North East Combined Authority (“NECA”) and the North of Tyne Combined Authority (“NTCA”) and acts as a delivery agency and officer of the North East Joint Transport Committee of the NECA and NTCA (which is responsible for transport policy and delivery) for the area covered by the five local authorities in Tyne and Wear. It has applied for a network licence to operate a newly-aligned and merged track network between Pelaw Junction and Jarrow Oil Terminal.

This letter sets out the background to the transfer, the regulatory framework, and our views on the proposed form of the network licence to be granted to Nexus. We are seeking views on this proposal by 9 June 2022, before we issue a formal statutory consultation on the proposed licence.

Background

The Tyne and Wear Metro is a light rail rapid transit system for Tyne and Wear, owned and operated by Nexus. Nexus provides passenger services serving 60 stations.

There are three short single-track sections on the Nexus network where trains must use the same line in both directions: between Pelaw and Hebburn (800m), Hebburn and Jarrow (1.4km) and Jarrow and Bede (600m). The sections create traffic bottlenecks and hence capacity problems for Nexus.

Nexus proposes to remove the bottlenecks by dualling the three single-track sections with the adjacent track, a freight line (the Jarrow Branch Line) owned by Network Rail, some 5.95km in length. Currently, DB Cargo UK Limited (“DBC”) runs 1-2 trains a week on the branch line to the Prax Petroleum oil terminal at Jarrow. The proposed divestment of this line to Nexus will facilitate the merging of the lines and the creation of a twin-track alignment (“the Metro Shared Network”, hereafter the “MSN”). Following the transfer of the Jarrow Branch Line, Nexus will take over operating the MSN. Infrastructure works required to create the

twin-track alignment are planned to start in September 2022. Once completed, freight train operators would share the merged infrastructure with the Nexus Metro passenger trains.

The regulatory framework

The Railways Act 1993 (“the Act”) sets out the regulatory framework for licensing under sections 6,7 and 8, and access agreements under sections 17,18, 22 and 22A. For access appeals that are not covered under sections 17 or 22A, *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (“the 2016 Regulations”) can be utilised.

We have held discussions with Nexus and freight representatives. Nexus has outlined the proposition that it is a service provider under the 2016 Regulations rather than an infrastructure manager. It considers that the MSN does not constitute “railway infrastructure” (within the definition stated in the 2016 Regulations), as this network would be “*reserved mainly for local, historical or touristic use*”.¹

The MSN will be unusual in that there will be a shared use of a metro system where part of that network is covered by the access provisions of the Act and part is exempted under a Statutory Instrument: *The Railways (Class and Miscellaneous Exemptions) Order 1994* (“the CMEO”). To explain how we will apply the established legal and contractual framework to regulation in the specific circumstances of the MSN, once constructed, we are also publishing a regulatory statement setting out our position. A copy of this can be found on our website.²

Licensing policy

Under the CMEO, most of the existing Nexus network is exempt from licensing. However, where Nexus shares the Network Rail line (from Pelaw to Sunderland) we issued Nexus with a passenger train licence and a station licence in March 2002. Certain facilities are also exempted under the CMEO from access requirements.

The extra track that Nexus would add to its network following transfer of this from Network Rail to Nexus would not be covered by the CMEO. For Nexus to operate the track, it will need either a network licence granted in accordance with section 6 of the Act, or an exemption from the requirement to hold a licence granted in accordance with section 7 of the Act. Once formed, the MSN will serve a mixture of Metro passenger services and freight operations and will comprise exempt and non-exempt track. For this novel situation it seems more appropriate for a network licence to cover the merged track to bring uniformity to the mixed activity of licensing arrangements.

Section 10 of the Act also gives scope for conditions to cover all the mixed activity of the MSN. To maintain the benefits of the licensing system it is proposed that section 10 would be included as part of the scope for the network licence, as it will apply to exempt activities (in addition to the non-exempt activities).

We have discussed this with Nexus and freight operators. Nexus applied for a network licence on 25 March 2022, and we consider this the most appropriate way to license the MSN. Should Nexus wish to extend the scope of its licence in the future, it may require a modification of the licence, in accordance with the provisions of the Act.

¹ See Interpretation Section under Regulation 3 of the 2016 Regulations.

² Available at [Approach to regulation of the Tyne and Wear Metro Shared Network \(orr.gov.uk\)](https://www.orr.gov.uk/Approach-to-regulation-of-the-Tyne-and-Wear-Metro-Shared-Network).

A map, picture and schematics of the current and proposed network is at Annex 1.

Form of network licence

A network licence can help protect users of railway services from unfair or discriminatory behaviour by a network operator. We consider each network licence application on a case-by-case basis. In considering the nature of the network licence to be granted to Nexus, we have considered a range of factors, including what other protections users of the network will have, the size of the network and needs of current and future operators on that network. We have also looked at the types of network licences we have granted in respect of other networks.

Our starting point is to refer to our model network licence. There are relatively few conditions in this type of licence and we would expect to add conditions to this as required to reflect the specific circumstances of the network in question. The model licence is available on our website ³ and contains clauses which would require Nexus to:

- act in non-discriminatory way;
- hold appropriate insurance;
- comply with arrangements relating to claims allocation and handling;
- comply with railway industry safety and standards;
- inform ORR of a change in control;
- establish a policy to protect the environment;
- ensure access can be granted in an emergency; and
- pay fees to ORR.

There are a number of network licences in existence, the most prescriptive of which is held by Network Rail. A key function of Network Rail's network licence is that it supports our setting of charges and enforces the deliverables set in a periodic review. Like most other network licence holders, Nexus will not be subject to a periodic review under the Act. This is discussed further below.

Other protection for users of the MSN

When considering the network licence for the MSN, we have reviewed the protection that users are also granted through other means. We have set this out in this consultation in the following ways: the regulatory statement mentioned earlier; under the Act; and the 2016 Regulations, as appropriate. Of particular importance is ORR's appeal role under Regulation 32(1) of the 2016 Regulations.

Also of note are the requirements in the 2016 Regulations which require Nexus to grant access in a non-discriminatory manner. In addition to this we note that ORR will approve access contracts, where applicable, that are entered into between Nexus and an operator under the Act. Nexus is discussing the terms of the access contracts with DBC, including details of charging and performance regimes that it proposes will apply.

Proposed network licence for Nexus

Having considered the issues and the protections for users outlined above, we propose that the network licence for Nexus should contain the conditions set out in Annex 2. This includes a reference to all the conditions in the model licence and some conditions common to the

³ Available at https://www.orr.gov.uk/sites/default/files/om/lic-nwk_lic.pdf

network licences issued to Network Rail and Seilwaith Amey Cymru / Amey Infrastructure Wales Limited for the Core Valley Lines. In addition to this we will also include a reference to section 10⁴ of the Act, due to the mixed nature of the MSN.

We do not propose that replicating all of Network Rail's licence is necessary for Nexus' operation of the MSN. We consider the network licence we issued to cover the Core Valley Lines to be more similar to Nexus' proposals, so the conditions we are considering for the Nexus licence are very similar. The MSN will be a largely self-contained network, expected to provide services for the Nexus Metro and with one freight operator that runs 1-2 services a week. So, in addition to the conditions contained in a model network licence, we consider that extra conditions relating to network management; timetable planning and capacity allocation; restricted use of protected information; and information for ORR, should also be included. This will ensure that the protections afforded to freight operators in Network Rail's network licence are continued post-transfer to Nexus, as well as ORR's ability to request information in support of our regulatory role.

We will not include some key conditions that Network Rail has in its network licence relating to asset management responsibilities, land disposal or financial ring-fencing. These are not applicable to Nexus' operations and are not requirements for the majority of network licence holders.

Responding to this consultation

We would welcome your views on this initial consultation, especially on:

- the conditions we are considering to include in the licence, as shown in Annex 2; and
- whether any other obligations should be included.

Please send your responses, preferably by email, to licensing.enquiries@orr.gov.uk. Alternatively, you can send a hardcopy response to:

Licensing Team
Office of Rail and Road
25 Cabot Square
London, E14 4QZ



Les Waters

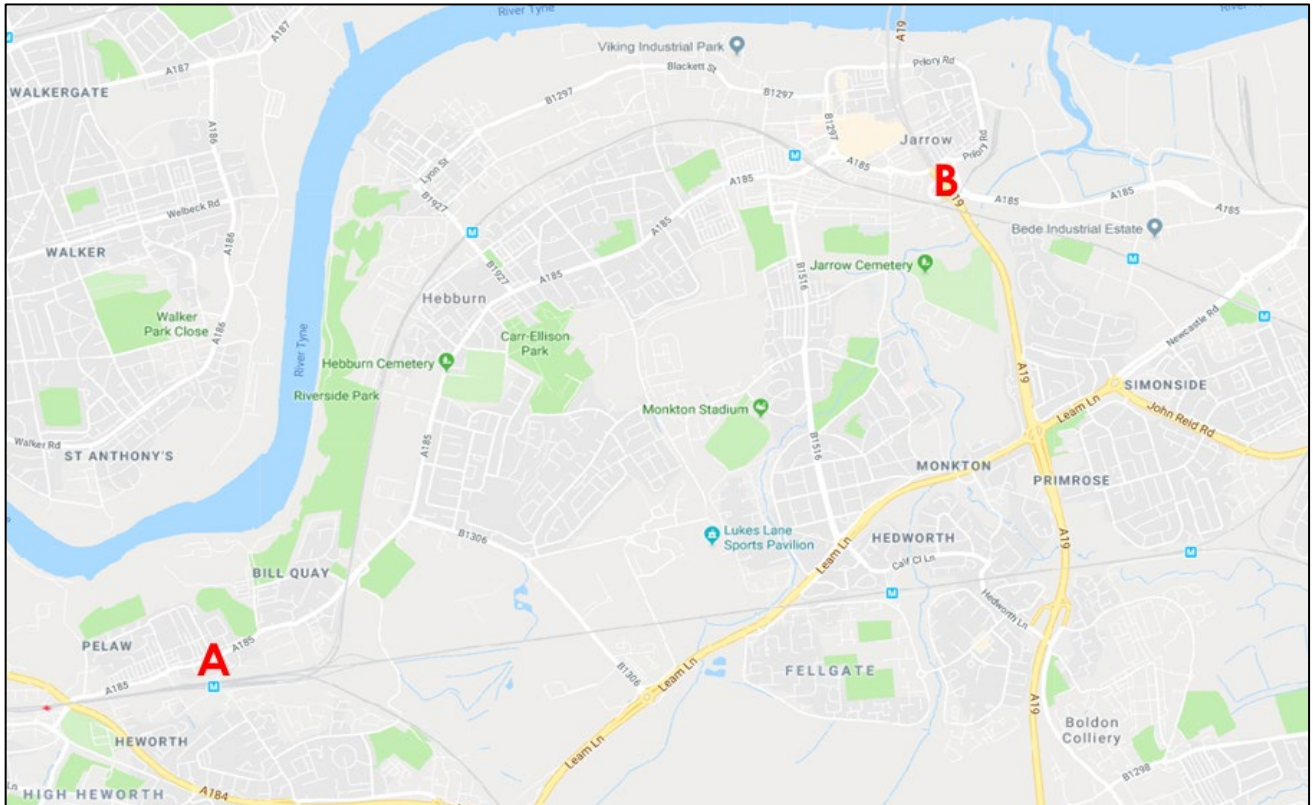
⁴ Relating to conditions in licences of mixed licensed and licence exempt activity.

Information provided, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information to be treated as confidential, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation - but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

We will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. Files in the OpenDocument format are platform independent and do not rely on any specific piece of software.



Map showing the Pelaw-Jarrow Branch Line between points A and B.



Metro bottleneck + parallel freight line

Figure 1. Current freight-only line (top, blue) and adjacent passenger line (bottom, yellow).

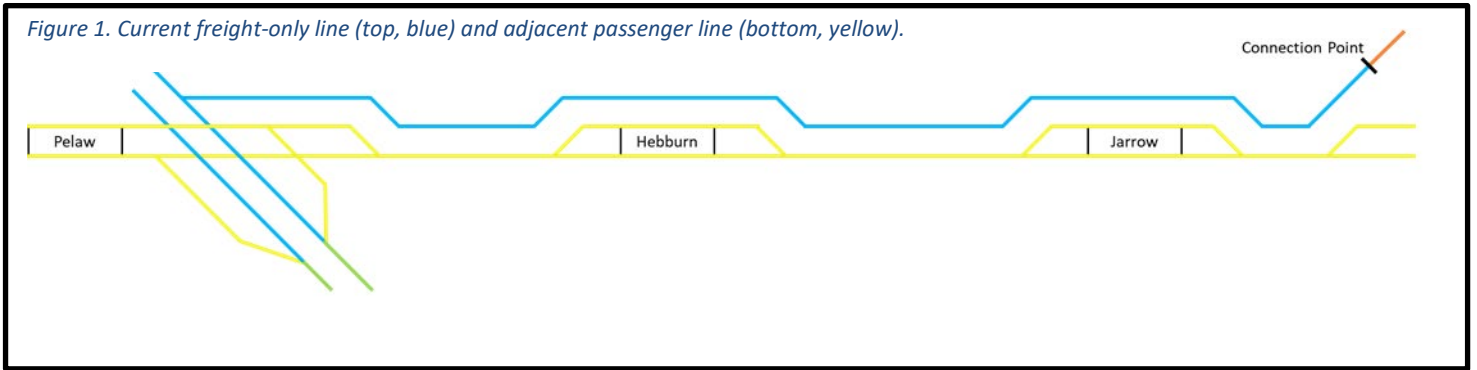
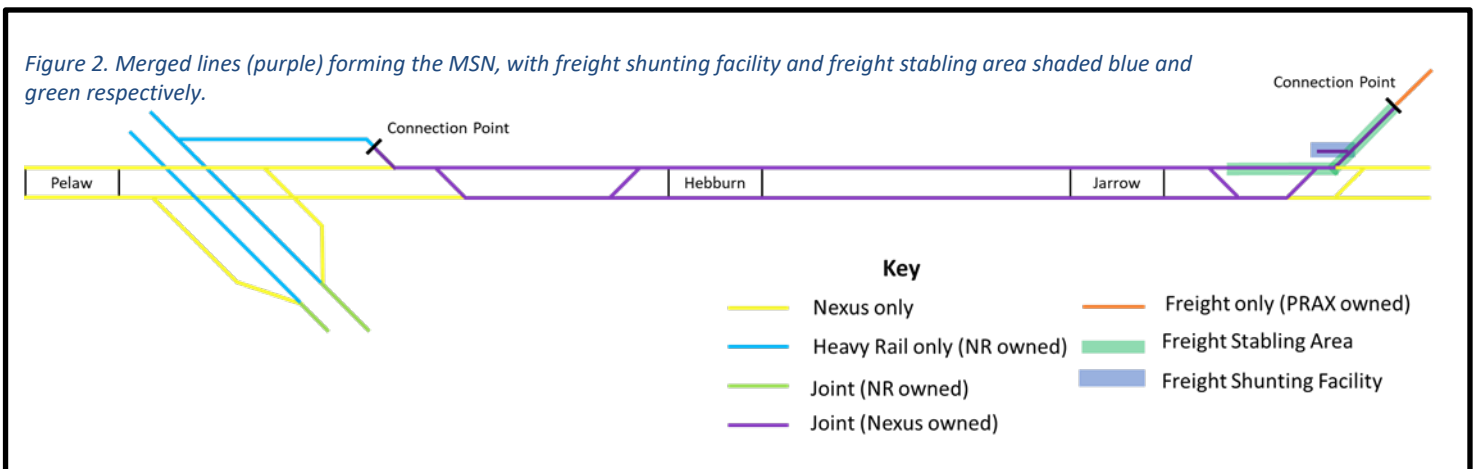


Figure 2. Merged lines (purple) forming the MSN, with freight shunting facility and freight stabling area shaded blue and green respectively.



Potential network licence conditions for the Nexus network

The proposed outline clauses for the Nexus network licence are set out below. The network licence will be limited to apply to the operation of the **Nexus MSN** only.

Where stipulated	Condition	Reason for inclusion or exclusion in Nexus network licence
Model clause	Insurance against third party liability	We expect Nexus to have insurance that meets our requirements to protect third parties.
Model clause	Claims Allocation and Handling	We expect Nexus to be a party to arrangements relating to the handling of claims and the allocation of liabilities among operators of railways assets.
Model clause	Safety and Standards	Nexus would need to comply with Standards.
Model clause	Environmental Matters	Nexus should have environmental policies which are given effect by operational and management arrangements.
Model clause	Payment of fees	Allows ORR to recover costs of regulation.
Model clause	Change of control	Requires the operator to inform us if a party acquires 30% or more of shares/capital in the operator.
Model clause	Non-discrimination	Nexus must not unduly discriminate between users.
Model clause	Emergency access	Nexus must grant access as required in event of emergency.
Network Rail; Core Valley Lines	Core duties – network management duty - passenger information - stakeholder engagement	Purpose of licence is to regulate network operations for the protection of the freight traffic. Not required, given the above purpose. To ensure that Nexus cooperates with FOCs and Network Rail, and infrastructure managers/service facility providers, so that it acts efficiently, economically and in a timely manner.
Network Rail; Core Valley Lines	General network management responsibilities, including planning and capacity allocation	Responsibility for network operator to plan to meet reasonably foreseeable demand for railway services.
Network Rail; Core Valley Lines	Information for ORR	The condition allows ORR to access information (if/when needed) expeditiously, compared with the Railways Act.
Network Rail; Core Valley Lines	Information on stakeholder dealings	To support wider stakeholder engagement generally.
Network Rail; Core Valley Lines	Cross-subsidy	Not required. The prohibition of cross-subsidy is appropriate where an organisation is part of a larger group and cross-subsidy is a possibility. We do not consider that there is a potential issue that we need to address in the network licence, given the scale of Nexus operations and the low volume of freight traffic on the MSN.
Network Rail; Core Valley Lines	Restricted use of protected information	Prohibits licence holder from disclosing certain information gained from others. Relevant to Nexus as freight operator(s) will use the network.