

David Reed
Senior Executive, Access & Licensing



04 November 2024

Suzanne Murray
Customer Manager
Network Rail Infrastructure Ltd
151 St Vincent Street
Glasgow, G2 5NW

John Kerr
Regulated Contracts Manager
ScotRail Trains Ltd
Atrium Court, 50 Waterloo St
Glasgow, G2 6HQ

Dear Suzanne and John,

Approval of the 53rd supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and ScotRail Trains Limited (ScotRail) dated 3 March 2016

We have today approved the above supplemental agreement submitted to us formally on 1 November 2024 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. ORR's approval of this application ensures that ScotRail can provide continuity of services between Edinburgh Waverley and Dunbar to its passengers from the Principal Change Date (PCD) in December 2024. This letter explains the reasons for our decision. It also explains ORR's position on the concurrent application that ScotRail has submitted in accordance with section 22A of the Act.

Concurrent section 22A application

On 24 April 2024 ORR [wrote to industry](#) to set out a process for access applications for the December 2024, May 2025 and December 2025 timetable changes. In that letter we asked industry to comply with a deadline of 20 May 2024 for applications for additional rights (or amended rights that change capacity parameters) for these timetable changes that met specific criteria. ScotRail Limited submitted three such applications on 20 May 2024.

In reaching a decision on this supported 53rd supplemental agreement, it is important to clarify that:

- ORR has reached its decision in the full knowledge of ScotRail's concurrent section 22A applications;

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- ScotRail’s section 22A applications remain “live” and we continue to try to progress them. However, ORR cannot reach a decision on those applications as Network Rail has not yet completed its analysis. We continue to press Network Rail to complete its analysis as quickly as possible; and
- Most importantly, the approval of the 53rd supplemental agreement ensures that ScotRail has approved access rights in the December 2024 timetable.

Purpose of 53rd supplemental agreement

The purpose of the 53rd supplemental agreement is to grant ScotRail rights necessary to operate its proposed December 2024 timetable. This supplemental extends the existing contingent time-limited rights for a weekday service between Edinburgh Waverley and Dunbar until PCD 2025, in line with Network Rail’s East Coast Main Line access policy.

Network Rail noted that it could only agree to the requested additional access right until PCD 2025 due to potentially competing applications from other train operators, and that there could be no presumption of the continuation of these additional rights beyond PCD 2025.

Industry consultation

Network Rail undertook the usual industry consultation. Transport Focus and CrossCountry responded noting that they had no objections to the proposals.

ORR review

Our review of the application raised no operational, performance or economic concerns. We identified some minor drafting issues and these were resolved when the agreement was formally submitted.

We noted Network Rail’s position on the continuation of the contingent right on the service between Edinburgh Waverley and Dunbar until the PCD 2025 due to potentially competing applications from other train operators. In light of this, our usual policy of a strong presumption of the continuation of existing rights will not apply for these rights beyond PCD 2025.



Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access agreement

Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

David Reed