

David Reed
Senior Executive, Access & Licensing
Email [REDACTED]

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

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

Dear Suzanne and John

51st Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and ScotRail Trains Limited (ScotRail) dated 3 March 2016

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and ScotRail (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision. ORR's approval of this application will provide additional services to passengers between Edinburgh Waverley, Dunblane and Dunbar from December 2025.

Background

2. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as "unsupported" applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.

Application

3. The purpose of this supplemental agreement is to grant ScotRail the rights necessary to operate an additional weekday service between North Berwick and Edinburgh Waverley.

4. The rights are to commence on a firm basis upon the Principal Change Date (PCD) in December 2025 and will expire on the termination of ScotRail's track access contract.

5. The application also included the request for an additional weekday right between Edinburgh Waverley and North Berwick, which we have not approved.



Industry consultation

6. The initial industry consultation took place from 21 May to 25 June 2024, noting that the application at that time also included additional rights between Edinburgh Waverley and Tweedbank which ScotRail was not pursued through this application.
7. Industry was then invited to comment on Network Rail's final representations from 29 April to 14 May 2025.
8. In the initial consultation, comments in support or raising no objections or concerns were received from DB Cargo and Transport Focus.
9. Also in the initial consultation, CrossCountry, GBRf and Freightliner all stated that they did not yet have enough information about other potential applications in the area and Network Rail's plans to accommodate them to be able to offer their support, nor about the final details of the East Coast Main Line Event Steering Group (ECML ESG) timetable.
10. First Trenitalia West Coast Rail Limited (Avanti West Coast, 'AWC') had no specific objections to this proposal, but noted that ScotRail intends to use more capacity at Edinburgh and asked for any information that could be shared about performance impacts. Network Rail provided a performance assessment in its final published representations, as set out below.

Statutory Consultation

11. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application, and it replied on 28 June 2024. We forwarded these representations to ScotRail on 3 July 2024 and asked for its comments. As with the industry consultation, these representations and comments reflected the fact that the application at that time included a wider range of rights across ScotRail's operated network. Therefore, some of Network Rail's response related to elements that have since been removed from the application.
12. Following the completion of Network Rail's capacity analysis on the East Coast Mainline (ECML) and the other interacting locations associated with this application, it sent its final representations on 25 April 2025. Again, we forwarded these to ScotRail and asked for its comments. ScotRail confirmed to us on 14 May 2025 that it had no further comments to add.

Network Rail's representations

13. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application because it requested firm rights on the ECML which was one of the 10 interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators.
14. In its final representations dated 25 April 2025, Network Rail stated that it was now in a position to support some (not all) of the quantum of rights requested.

15. Network Rail's position is:

- a) The one additional firm right Edinburgh Waverley to North Berwick requested by ScotRail is not supported by Network Rail. The Edinburgh Waverley to North Berwick additional right is not as expected in the proposed December 2025 ECML timetable and the access right has not been submitted by ScotRail as a passenger service in the access proposal for December 2025 timetable at D-40. Network Rail does not support access rights for which there is no confirmed use of capacity as a general point of principle, and therefore does not support this access right.
- b) The one additional firm right North Berwick to Edinburgh Waverley is supported by Network Rail subject to an existing access right between Prestonpans and Edinburgh Waverley being surrendered. This right is as expected in the December 2025 ECML timetable. However, Network Rail note that its support is dependent on the surrender of an existing ScotRail Prestonpans to Edinburgh Waverley right. This right is not included in the proposed December 2025 ECML Timetable and has not been bid for the December 2025 Timetable. Network Rail noted that ScotRail's intention is for this access right to be surrendered in favour of the North Berwick to Edinburgh Waverley access right. This was not referred to in the application.

16. ScotRail confirmed that it had no comments to make in response to Network Rail's position on this application.

ORR review

17. We carried out a full review of the application, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.

18. Access rights are approved or directed on a quantum basis. It is for Network Rail to produce a robust timetable to accommodate them. This application includes some services which Network Rail has included in the East Coast Mainline Event Steering Group (ECML ESG) timetable for December 2025, and some services which have not been included in that timetable.

19. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.

20. For these reasons, in reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.

21. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider

directing the rights in this application that are included in the ECML ESG timetable supports our duty to have regard to guidance from the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

22. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.

23. The services that Network Rail support were included in the proposed December 2025 ECML timetable but outside of the performance modelled time scope; because of this Network Rail commissioned further performance analysis of these services. This analysis showed that the addition of the limited number of rights sought in this application are not perceived to be a risk to achieving the Scottish Train Performance Measure (STPM) target. As a result of this work, the Network Rail (Scotland) performance team supported the rights sought by ScotRail in this application as the sale of these rights should not adversely impact STPM any more than is expected by the implementation of the ECML ESG timetable.

24. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative. Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.

25. Overall, we concurred with Network Rail's assessment. We agree with Network Rail's position on the rights in this application, and its position to not support access rights where the operator has not committed to operate the service. We also note that ScotRail did not object to Network Rail's assessment. We concluded that we would direct the application in line with the services which Network Rail has been able to support. We will approve the one additional North Berwick to Edinburgh Waverley weekday right, with the stipulation to remove the associated Prestonpans to Edinburgh right. We will not approve the additional Edinburgh Waverley to North Berwick right.

Our duties under section 4 of the Act and our decision

26. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 duties of the Act: in particular, those relating to:

- enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
- promoting improvements in railway service performance (section 4(1)(zb))
- protecting the interests of users of railway services (section 4(1)(a))



- promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))
- having regard to the funds available to the Secretary of State (section 4(5)(c)).

27. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.

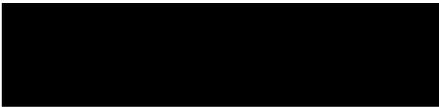
Conformed copy of the track access contract

28. 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 ScotRail. ORR's copy should be sent for my attention.

Public register and administration

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

Yours sincerely



David Reed