

Richard Gusanie  
**PR18 programme manager**

26 March 2018

To all Network Rail customer teams and train operators<sup>1</sup>

Dear sir / madam

## **PR18 implementation and your track access contract**

This letter sets out what you will need to do over the spring to ensure that your track access contract contains the right provisions from the start of the control period 6 (CP6), which will begin on 1 April 2019. It is particularly important for those whose contracts contain bespoke provisions and are not entirely on the 'standard' model contracts.

### **Background**

In October 2018, we will publish our final determination on the 2018 periodic review. This will set out the amount of funding that Network Rail can recover from its customers during CP6, as well as the charging and incentive framework that will apply. We will then need to implement our decisions. In particular, this will involve us issuing legal notices which begin the process of amending track access contracts to reflect the final determination.

This amendment work will mainly involve replacing existing Schedules 4, 7 and 8 (where these exist) with new standard CP6 versions of these schedules. However, a number of train operators have bespoke provisions in their contracts. For example, some contracts contain additional charges in Schedule 7 and some have bespoke Schedule 8 provisions (such as particular peak/off-peak definitions). Some of these will need to be carried over into CP6, while others will not. Our legal notices will need to reflect this.

As such, there needs to be a process to:

- identify what bespoke provisions exist in Schedules 4, 7 and 8 in your track access contract(s) (and in the front end of the contract where these interact with Schedules 4, 7 and 8); and
- decide whether these provisions should continue to apply in CP6.

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<sup>1</sup> In this letter, "train operator" includes any beneficiary of a track access contract with Network Rail (unless that contract is not within the scope of the 2018 periodic review).

## How this process will work

We have discussed with Network Rail how this process should work. We have agreed that Network Rail should work with each of its customers to identify any bespoke provisions and then make a joint submission to us on whether the provisions should be retained or removed for CP6 (setting out the reasons for this). There will be a template for this, which Network Rail's regulatory reform team will circulate to Network Rail's customer teams.

We will then consider each submission and make a decision on whether to adopt the proposal. If we disagree with the proposal we will give the parties the opportunity to make further representations before we make a final decision. Similarly, if Network Rail and its customer were unable to agree among themselves, we would consider their respective arguments and then determine whether the provisions in question should be rolled-forward. This may involve us asking for further information from either party.

Network Rail customer teams have already carried out some preparatory work to identify bespoke provisions (coordinated by Kush Desai and Peter Craig in Network Rail's regulatory reform team). However, it is important that each train operator considers from its perspective whether any bespoke aspects of its contract(s) need to be rolled forward into CP6. As such, it is important that each train operator engages with its Network Rail customer team on this over the spring; if we do not receive requests and reasons for bespoke terms to be carried forward into CP6, our assumption will be that we can direct changes to the contracts using standard CP6 model terms.

For those **charter passenger operators** that run on the network using the **model charter track access contract**, we will work on the assumption that these do not have any bespoke provisions in them, unless we are notified otherwise. As such, we will not expect a submission in respect of these contracts.

## Related work

We will be consulting on our draft determination in June 2018. Shortly after this, in July 2018, we will consult on the proposed new Schedules 4, 7 and 8 for each type of track access contract. Following our final determination in October 2018, and having considered consultation responses on the draft new schedules, we will finalise the new CP6 provisions and include them in our review notices in December 2018. At this point, we will also reflect the outcome of the process to identify the bespoke provisions.

## Timetable and next steps

The high-level timeline for this activity is set out in the appendix to this letter. We would be grateful if you would provide your joint submission to us by **close on Friday 1 June 2018**. Please send this to: [track.access@orr.gov.uk](mailto:track.access@orr.gov.uk), and copy it to [RegulatoryReform@networkrail.co.uk](mailto:RegulatoryReform@networkrail.co.uk) at Network Rail.

In terms of coordination within Network Rail, Kush Desai and Peter Craig will be working with Network Rail's customer teams and have a more detailed plan for this period.



This letter has been copied to Peter Craig and Kush Desai at Network Rail, and colleagues at the Department for Transport, Transport Scotland, Welsh Government, Merseytravel and Transport for London for information.

Thank you for your time in considering this matter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Richard Gusanie'. The signature is stylized with overlapping loops and a long horizontal stroke at the bottom.

Richard Gusanie

## Appendix: Timetable for identifying bespoke provisions

Date	Activity
From now until May 2018	Network Rail and train operators meet and seek to agree what bespoke provisions should and should not roll-forward.
By Friday, 1 June 2018	<p>Network Rail and each train operator submit a jointly signed letter to us setting out their view to us on what provisions should be rolled forward into CP6 and what provisions can be dropped (along with their reasoning for this).</p> <p>Where the parties cannot reach agreement, the joint submission could set out the points of disagreement or the parties could provide separate submissions to ORR (which they should copy to each other).</p>
12 June 2018	ORR consults on its draft determination, on what Network Rail should deliver in CP6 and the funding it should have for this, as well as the overall incentive framework.
July 2018	<p>Following its review of submissions, ORR will respond to Network Rail and each train operator, giving its proposed decision for each contract.</p> <p>Where the parties cannot agree, ORR may either set out its 'minded to' view or seek further information.</p>
July 2018	ORR consults on the drafting to implement its proposed determination (i.e. the new track access contract schedules for CP6)
September 2018	<p>Deadline for any further representations by Network Rail and beneficiaries on ORR's proposed decision.</p> <p>Alternatively, where there remains an outstanding disagreement between Network Rail and a train operator, ORR will set out the process for resolving this.</p>
31 October 2018	ORR publishes its final determination on PR18
20 December 2018	ORR issues review notices, setting out the changes that would be made to individual track access contracts to implement PR18 from 1 April 2019