



Connection contracts

October 2016

Introduction

1. This module contains information and guidance relating to connection contracts, including how to make an application for approval to the Office of Rail and Road (ORR)¹. It is aimed at private network operators seeking to connect to other networks, particularly Network Rail Infrastructure Limited's (Network Rail's). We explain our model contract, our General Approval, individual applications and novations.
2. We encourage early discussions with us, especially if a contract is not straightforward or departs from the terms of our model contract. Contact us at any time if you want to discuss any aspect of your case².

Background

Connection contracts

3. Connection contracts are formal agreements between two parties setting out the arrangements for connecting their networks. Connection contracts set out the rights and obligations of connected parties in respect of the on-going maintenance, repair and renewal of connections between two networks. In terms used in *The Railways Act 1993* (the Act), the parties are simultaneously facility owners of their own network and beneficiaries of the facility owner of the adjacent network³. Connection contracts are predominantly between Network Rail and owners of connected freight facilities (such as terminals and sidings) but they can also be between Network Rail and owners of passenger service facilities (such as light maintenance depots) or between Network Rail and another facility owner. The party connected to Network Rail's network is identified as the Adjacent Facility Owner (AFO) in ORR's model connection contract.
4. Connection contracts set out the terms of the agreement in relation to payments, termination, liabilities and the obligations of each party. Although it is clearly intended that trains will pass over the connection

¹ <http://orr.gov.uk/>

² Email us at: track.access@orr.gsi.gov.uk

³ As set out in section 17(6) of *The Railways Act 1993*.

point (the point where the networks join), a connection contract is concerned with the joining together of two networks and does not normally confer any further rights.

Network Rail

5. Network Rail⁴ runs, maintains and develops Britain's national rail infrastructure. Most train operators will need to use the national rail infrastructure. Therefore many private facility owners adjacent to Network Rail's network will want a physical connection in place. A connection contract provides reassurance and certainty that the connection is in place according to the terms of that contract. Condition 8 of Network Rail's network licence⁵ (Stakeholder Relations) requires it to treat its stakeholders in an appropriate manner, dealing with them efficiently and effectively. If you want to connect to its network, Network Rail will provide a contact and appropriate liaison. See Network Rail's website and stakeholder relations code of practice⁶.

The adjacent facility owner

6. Although connection contracts are usually between a private AFO and Network Rail, there will be occasions where a facility owner wants to connect to a third party's network. They will also need a connection contract, although in that case they cannot rely on ORR's General Approval.

7. The facility owner does not have to be the operator of its network. These functions can be contracted out to third parties but it is the facility owner who enters into the connection contract. This is because it is the party responsible for granting access rights to its network.

8. Please be aware that the connection contract is only one of several ORR-regulated matters you might have to consider. For example, you might need a licence/or licence exemption for the site and a facility or depot access agreement if other beneficiaries are to have access. See our website for more details⁷.

The Office of Rail and Road

9. ORR protects the interests of rail and road users. ORR is the independent safety and economic regulator for Britain's railways. We regulate access to the national rail network, license the operators of railway assets, and regulate Network Rail's activities and funding requirements. We are also the competition authority for the railways and enforce consumer protection legislation in the sector. We must balance a number of statutory duties when exercising our regulatory functions⁸.

⁴ Network Rail Infrastructure Limited

⁵ <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/network-licence>

⁶ <http://www.networkrail.co.uk/asp/10513.aspx> and <http://www.networkrail.co.uk/WorkArea/DownloadAsset.aspx?id=30064775688>

⁷ <http://orr.gov.uk/what-and-how-we-regulate/permissions-and-approvals>

⁸ <http://orr.gov.uk/>

The legislation

10. ORR's powers relating to the approval of access contracts are established in sections 17 to 22A of the Act. For connection contracts our jurisdiction applies to certain existing connections and new connections. There are also other important protections in the Act for parties wishing to connect to the national network, as explained in this guidance.

11. Section 18 of the Act enables us to direct on new connection contracts submitted to us that have been agreed by the parties. These applications are the most common type. In making our decision, we may direct the parties to enter into the contract as submitted to us or approve it with modifications under section 18(7) of the Act.

12. Section 17 of the Act enables an AFO (as a beneficiary) to make its own application to us for a new connection contract when it has been unable, for whatever reason, to agree the terms of that contract with a facility owner. In making our decision in respect of such applications, we have the power to direct both parties to enter into a contract on the terms we specify. There appears to be nothing in the Act that limits Network Rail's ability to apply to ORR for directions under section 17.

13. Sections 22 and 22A also provide for amendments to existing contracts ([see below](#)).

The Railways (Class and Miscellaneous Exemptions) Order 1994

14. In 1994, the then Secretary of State made an Order called *The Railways (Class and Miscellaneous Exemptions) Order 1994* (the CMEO)⁹. This exempts various classes of, and individually specified, railway assets from certain aspects of the Act. If the CMEO applies to both the adjoining networks that you wish to connect, and they are exempted from the track access regime, then you do not need ORR approval for your connection contract. Although if there is a dispute there may be scope for resolution under *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016*. Please note however that in our experience it is rare for two adjoining networks to be covered by the CMEO. It will not apply where Network Rail is the facility owner for one of the networks.

General approval

15. New connection contracts do not need to be submitted to ORR for individual specific approval if they fall under the terms described in our General Approval¹⁰. Contracts which fall under these terms are automatically approved without you needing to apply directly to ORR. But you must still send us a copy of the signed contract so that we can place it on our public register.

⁹ <http://www.legislation.gov.uk/uksi/1994/606/contents/made>

¹⁰ <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/forms-model-contracts-and-general-approvals>

16. If you want to connect to Network Rail's network, your starting point should be our model connection contract. This is available on our website¹¹. You will notice that there is a separate model connection contract for networks in Scotland, if you and Network Rail consider it appropriate to use that version.

17. Any elements of the connection contract in square brackets, that is [], can be added to by you as long as you remain within the confines of the General Approval. For the General Approval to apply both parties must agree on all the terms then sign and date the contract.

18. The General Approval has certain financial limits and these must be adhered to for it to apply.

Audit

19. We reserve the right to audit contracts said to be covered by the General Approval, in order to check that they do indeed fall under the General Approval. If there is any doubt about compliance, we will discuss that with the parties.

Consultation

20. Network Rail will need to conduct an industry consultation. This should include any potentially affected parties, including train operating companies that might pass over the connection point or use the networks being connected. The general principles for industry consultations are set out in the module '*Industry Code of Practice for Consultations*'¹².

Specific approval

21. The use of our model connection contract and General Approval is not mandatory. If your contract is one which needs ORR regulatory approval and it is not covered by the General Approval, or it is but the parties cannot agree all the terms, you will need to apply to ORR for our specific approval. You should download Form C from our website¹³. Please make it clear why the General Approval does not apply. You should also explain how and why any terms deviate from ORR's model contract and/or what the disputed terms are (if any).

Consultation

22. One party will need to conduct an industry consultation. Usually this will be Network Rail if it is involved. The consultation should include any potentially affected parties, including train operating companies that will pass over the connection point or use the networks being connected. The general principles for industry consultations are set out in our module '*Industry Code of Practice for Consultations*', available on our

¹¹ <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/forms-model-contracts-and-general-approvals>

¹² <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

¹³ <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/forms-model-contracts-and-general-approvals>

website¹⁴. You should seek to resolve any issues raised. The results of the consultation should be recorded in your application form.

23. If the parties cannot agree terms then you do not have to conduct an industry consultation at that stage but you should make it clear in your application form that a consultation has not taken place. In that instance it may be appropriate to undertake a consultation later, after the terms have been settled, or ORR may conduct one as necessary before issuing our directions to both parties.

Making an application

24. For applications under section 18 of the Act for ORR specific approval, where both parties agree on the terms, one facility owner may take the lead in completing the application form. However we ask that the other party endorses the application by writing a letter of endorsement. Your application should therefore include:

- (a) A completed Form C.
- (b) A letter of endorsement from the other facility owner if not a co-signatory to the Form C.
- (c) Your proposed connection contract with any plans, photographs, and supporting documentation.

25. For disputed applications made under section 17 of the Act you do not need to include a letter of endorsement. But please be aware that your application may be disclosed in full to the other facility owner so that it may make representations.

26. The more complete and comprehensive an application, the more promptly we will be able to process it.

Assets and Plans

27. You must detail the assets covered by your connection contract in Schedule 1 and include a plan whether using the General Approval or applying for specific approval.

Plans

28. Your plan should be clear, of a reasonable size, and reflect the contract. The bigger and more complex the site, the more detailed your plans should be. If possible, please consider zoom-in snapshots for key areas so that insulated block joints (IBJs) and other listed assets can be identified.

¹⁴ <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

Some other pointers for your plan:

- *Connection points and associated items must be clearly identified and fit for purpose.*
- *Do use photographs if you wish.*
- *The connecting network (as defined in the contract) should be coloured orange. The network on the AFO's premises should be coloured purple or yellow. The Connection Point is normally where the orange and purple/yellow tracks meet, and is indicated by "C.P."*
- *Include a key to explain the symbols and any colour coding used.*
- *The mainline should be indicated and named.*
- *Use Ordnance Survey coordinates and signal numbers, or similar references, if you can.*
- *The boundary line between the networks should be marked, for reference.*

Renewals

29. The model contract is drafted so that maintenance, repairs and renewals are covered in the annual charge. In that case, the optional clause 15.4 is not used. The parties will use an annual charge that will cover renewal costs, incorporating a calculation based on the average lifespans for each type of asset and the relevant future renewal costs. However, the model contract also allows the parties to separate out renewal costs. The charges are calculated and paid for only when renewal works are made. In that case, clause 15.4 is included.

30. So that the adjacent facility owner can make an informed choice about which option to use, Network Rail should provide an indication of when each type of asset is likely to need renewing and the cost of such work (in today's prices). We recommend that Schedule 1 includes a statement about the initial condition of each asset.

Amendments

31. We recommend that parties regularly review their connection contracts (including the schedules and plans) and keep them up to date and fit for purpose. Existing connection contracts can be amended by agreement between the parties. ORR only has an approval role in relation to such amendments where we have approved the original connection contracts¹⁵. The proposed amendment would need to be submitted to us to informally first. Once we have reviewed it, the parties can then make amendment and should then submit it to us for formal approval under section 22 of the Act.

32. One party should conduct an industry consultation for any amendment that needs ORR approval before it is submitted to us. Usually this will be Network Rail if it is involved. The consultation should include any potentially affected parties, including train operating companies that pass over the connection point. You

¹⁵ For example, some contracts pre-date rail privatisation or both networks are covered by the CME0, and so did not need ORR approval.

should seek to resolve any issues raised and notify them to ORR when you seek approval for your variation.

33. Changes to contracts based on our model that comply with ORR's General Approval, and have no unresolved issues from any consultation, do not need our specific approval. This includes changes to bring old text into line with the current model connection contract. You should however send us a copy of the amending agreement and a revised consolidated version, for our records and Public Register ([see below](#)).

34. Section 22A provides for ORR to grant, upon request, amendments to an access contract permitting "more extensive use of the railway facility or network installation" where the parties cannot agree between them. To date, no such application has been made in respect of a connection contract. In practice, this provision more readily lends itself to the circumstances where an operator is seeking to increase the number of trains it runs, such as a train operator on Network Rail's network.

Variations to the Payments

35. The model contract provides at clause 15.1 for the sum payable to be adjusted annually by a formula set out in Schedule 3 of the model contract. The formula is designed to calculate the increase in payments due to inflation but also includes an efficiency factor set by ORR at each control period¹⁶. ORR posts the expected efficiency rates in the form of a letter posted on our website¹⁷. Network Rail is expected to calculate this variation every year for each contract.

36. If the financial limits are covered by the General Approval initially, but then exceed it solely because of later adjustments consequent to clause 15.1 then the General Approval will continue to apply.

Example: An Adjacent Facility Owner enters into a connection contract with Network Rail costing £49k per year. This is under the General Approval threshold for annual charges of £50k. One year later, after an adjustment under clause 15 for inflation, less relevant efficiencies (1+RPI-x), the new annual cost happens to be £51k. This would still be covered by the General Approval. But a new contract with that level of charges (£51k) would not be covered by the General Approval; it would need specific ORR approval.

37. The model contract, at clause 16, also provides for more thorough reviews of the amount payable at five yearly intervals. Notice must be given to ORR of any adjustments made as a consequence of such a review, or if no adjustments are made. Please explain the reasons for any adjustments you want to make. ORR will then consider and consent to or refuse the adjustment, as appropriate.

¹⁶ <http://orr.gov.uk/what-and-how-we-regulate/regulation-of-network-rail/how-we-regulate-network-rail>

¹⁷ <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/how-to-apply-for-track-access/connection-contracts>

ORR's consent to an adjusted amount can be considered automatic under the General Approval if:

- *the contract was made under the General Approval,*
- *it is stated in the adjustment notice that the General Approval is being relied on,*
- *the annual amount, after adjustment, is under £50k per year, and*
- *both parties agree to the proposed adjustments.*

You should however still send a copy of your notice to ORR so that we can place it on our public register.

Novation

38. Upon application ORR can approve the novation of a connection contract. Novation is the transfer of a connection contract from one facility owner to another. There is a standard novation agreement template on our website that you can use¹⁸. The novation is in essence both an approved amendment of an existing contract and a direction to enter into a new contract with the new party involved. There is no set application form but you should set out the circumstances in full, in writing. You should explain if and why there are any differences between the contract being novated and the current version of our model contract. You should also explain what steps you have taken to review the applicable charges. You should apply to ORR before the novation is signed.

39. ORR recommends, on balance, that you enter into a new agreement, preferably under the General Approval, rather than novate someone else's contract, especially if it is not based on our model contract. There may however be cases where novation is appropriate.

ORR can be asked from time to time to novate connection contracts which date back to the 1990s or early 2000s. Such contracts have not always been kept fully up-to-date. Some terms will be redundant. Some terms that feature in our model will be missing from older contracts. For these reasons ORR is reluctant to approve such novations without a comprehensive set of modifications. You should be aware that these may take time to work out between ORR and the parties involved. It is for this reason we would recommend that a new contract is negotiated in preference to novation in these circumstances. Given our statutory approval role, we are unlikely to be convinced by the contention "this contract has worked until now, so it should work in future".

Consultation

40. There is no formal requirement for you to consult other parties on a novation. We recommend however that you do liaise with any other potentially interested persons who might be affected by a change of ownership. If there is a change of facility owner, there may be facility access contracts to be changed, for

¹⁸ <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/forms-model-contracts-and-general-approvals>

example. Any responses should be recorded in your application. Further, ORR may consult third parties if we consider it appropriate before deciding whether to approve a novation submitted to us.

Publication

41. Section 72 of the Act requires us to maintain a public register and sets out what we must enter in it - including every direction to enter into an access contract, every access contract, and every amendment of an access contract. This includes notices in respect of new connection contracts, amendments, novations and adjusted amounts of payment. We will also put on our decisions webpage any connection contracts entered into under ORR specific approval¹⁹.

42. You must send us copies of any connection contracts entered into under an ORR specific or General Approval within 14 days of signature. You should state if either party wants any information redacted on the grounds of commercial sensitivity. We will consider any requests for redaction on the same lines as we do for other track access decisions – see the '*Confidentiality, consultation and ORR's public register*' section in our module '*Making an application*'²⁰.

¹⁹ <http://orr.gov.uk/consultations/access-consultations/track-access-decisions>

²⁰ <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>