



# Duration of framework agreements

October 2019

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## Purpose

1. This module sets out the Office of Rail and Road's (ORR's) policy for the duration of [framework agreements](#). Please read this guidance alongside the other track access guidance modules on our website<sup>1</sup>.

## Introduction

2. The law is that framework agreements can only be longer than five years if there is justification. This document sets out our policy on what constitutes sufficient justification.
3. Our policy was originally developed in 2005<sup>2</sup>. We have updated it to reflect experience and changes in the law since then. On 29 July 2016 *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations) replaced *The Railways Infrastructure (Access and Management) Regulations 2005* (the 2005 Regulations). We have taken the opportunity to shorten and simplify our guidance.
4. Where approval is sought for framework agreements that are longer than five years, it is for the applicant to justify its case. Each case is assessed on its own individual merits as each case is different. This guidance therefore is in general terms. You are welcome to contact ORR<sup>3</sup> at any time for an informal discussion before making your application.

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<sup>1</sup> <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

<sup>2</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0004/1678/240.pdf](http://orr.gov.uk/_data/assets/pdf_file/0004/1678/240.pdf)

<sup>3</sup> [track.access@orr.gsi.gov.uk](mailto:track.access@orr.gsi.gov.uk)

## The legislation

5. The regulation of access contracts is governed by domestic and European legislation, in particular *The Railways Act 1993* (the Act) and the 2016 Regulations.

### The Act

6. We formulate our policy in the context of our duties under section 4 of the Act. These duties include exercising our functions in order to:
  - promote improvements in railway service performance;
  - protect the interests of users of railway services;
  - promote the use of railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent it considers economically practicable;
  - promote efficiency and economy on the part of persons providing railway services; and
  - enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

### The 2016 Regulations

7. Regulation 21(7) of the 2016 Regulations states that in principle framework agreements will be for a period of five years, renewable for periods equal to the original duration, provided that the infrastructure manager may agree to shorter or longer cases in specific cases. The circumstances where a longer duration may be agreed are discussed below.
8. Regulation 21(7) only concerns framework agreements. It is clear under the legislation that framework agreements are track access contracts between an infrastructure manager and an applicant. Regulation 21(7) is not relevant to contracts that are not framework agreements<sup>4</sup>.

## Commercial contracts, specialised investment or risks

9. Regulation 21(8) says that framework agreements for longer than five years must be justified by the existence of commercial contracts, specialised investments or risks.
10. Commercial contracts, in our view, include:
  - Franchise or concession arrangements.
  - Contracts with suppliers.
  - Contracts with customers.

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<sup>4</sup> See our guidance on the 2016 Regulations for more information on infrastructure managers at: <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>.

11. We are open to representations concerning specialised investments or risks. For example, an investment programme to purchase dedicated rolling stock for a particular open access route might be justification for a framework agreement of over five years duration. However, the general purchase of locomotives and rolling stock necessary for day-to-day operations is less likely to be sufficient justification, without other supporting reasons.
12. As a general principle we expect that where investment is cited as a reason, the payback period should be no less than the duration of the framework agreement applied for. We would also want to be convinced that the investment was conditional on the duration of the contract. Also, the longer the duration requested, the more justification that will generally be required. We may also consider the scope for including review provisions to ensure that the investment cited in the original business case was being made.
13. We discuss below potential scenarios faced by different train operator types.

### **Franchised operators**

14. ORR's position is that it is consistent with the 2016 Regulations and our section 4 duties to approve framework agreements with a term over five years if the purpose is to operate passenger services under a franchise agreement or concession. The total duration can include a period of up to two years after the end of the relevant franchise or concession to:
  - support the orderly transfer of the franchise;
  - ensure the continuation of priority bidding rights.
15. We will consider applications for extensions to a franchised operator's existing agreement, including where a franchise term is extended during the period of the contract. In such circumstances we would expect the franchisee to apply for an extension in the normal manner.

### **Open access operators**

16. Open access passenger operators do not have franchise agreements. We recognise, however, that, depending on the nature of their services, they might have other contracts with suppliers or investment commitments.

### **Freight operators**

17. Freight operators requesting framework agreements of more than five years duration need to justify them through the existence of commercial contracts, specialised investments or risks. Although ORR will consider each case on its merits, consistency between operators facing similar market conditions is an important

consideration. ORR has approved freight track access contracts of ten years duration<sup>5</sup>.

18. We expect long-term framework agreements to have enough flexibility to provide for the review of access rights and transfer/loss of access rights where they are no longer justified. ORR takes the view that for agreements with Network Rail, this function is served through the operation of Part J of the Network Code, subject to arrangements being kept under review and improved as appropriate.
19. We expect all operators who want to enter into long-term framework agreements with other infrastructure managers to conform to provisions similar to ORR's model contract. In particular we would expect parties to sign up to an arrangement similar to Part J of the Network Code allowing for the transfer/loss of access rights.

## Designated infrastructure

20. Regulations 21(9) to 21(12) concern framework agreements for railway infrastructure which has been designated in accordance with regulation 25(2) (designated railway infrastructure). Regulation 21(9) allows for such agreements to be for a period of up to 15 years where there is substantial and long-term investment justified by the applicant. Where such an application is made, we will apply the principles discussed above.
21. Regulation 21(10) says that designated infrastructure framework agreements may be for a period in excess of 15 years in "exceptional circumstances". The regulation refers to large-scale and long-term investment, particularly where such investment is covered by contractual commitments including a multi-annual amortisation plan. ORR's view is that these exceptional circumstances would have to be for major investment schemes with considerable amounts of capital involved.

## Renewals and extensions

22. While framework agreements are time limited, with specified expiry dates, it is most likely that the train operator or funder will intend the services (or similar services) to continue running after the expiry date of the framework agreement. When planning new services, existing or prospective train operators should therefore anticipate applications will be forthcoming for the continuation of existing services and that the capacity they are using will not be freely available beyond the expiry date of any current framework agreements.
23. Reflecting this, there is a strong presumption in our approach in favour of the extension of current access rights except where we have said otherwise (for example, where there was uncertainty about capacity or performance impacts, or if

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<sup>5</sup> See our track access decisions page at: <http://orr.gov.uk/consultations/access-consultations/track-access-decisions>.

we anticipate a significant change in infrastructure configuration/capacity). Any applications for new services that could preclude the extension of existing services, or adversely impact them, would need to demonstrate that their benefits clearly outweighed the disbenefits to passengers or freight users from the loss of, or impact on, the existing services. We will reach any decision in accordance with our section 4 duties.

24. Although the 2016 Regulations say that framework agreements can be renewable for periods equal to their original duration (or shorter or longer in specific cases) we will also consider applications to extend the duration of a framework agreement, subject to the total remaining duration being justified and consistent with the rest of our policy.

## Track access options

25. Track access options are one way of securing capacity on a future rail facility for when it has been built. Access options can provide reassurance that enhanced or new capacity made available by proposed investments can be used for the intended services. More information is available in our guidance “Investing in the railway: securing access, January 2018”<sup>6</sup>. Our experience is that track access options require greater customisation than is the generally the case with other agreements. We will therefore provide advice on the development of individual track access options and their duration clauses, as appropriate and in the context of each case.



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<sup>6</sup> <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>