

E-mail: licensing.enquiries@orr.gov.uk

7 June 2019

To consultees:

Amey Keolis Infrastructure / Seilwaith	National Assembly for Wales
Amey Keolis Limited	Network Rail Infrastructure Limited
Keolis Amey Operations / Gweithrediadau	Rail Delivery Group
Keolis Amey Limited	Rail Freight Group
British Transport Police Authority	Rail Safety and Standards Board
Colas Rail Limited	Transport Focus
DB Cargo (UK) Limited	Transport for London
Department for Transport	Transport for Wales
Direct Rail Services Limited	Transport Scotland
First Greater Western Limited	XC Trains Limited
Freightliner Group	
London TravelWatch	Also published on the ORR website

Initial consultation on a network licence for the operator of the Core Valley Lines

Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited (“AKIL”) has applied for a network licence. AKIL will become the infrastructure manager for the network running from Cardiff to Treherbert, Aberdare, Merthyr Tydfil, Coryton and Rhymney (known as the Core Valleys Lines (“CVL”)) once this asset transfers from Network Rail to Transport for Wales (“TfW”). TfW is a not for profit company wholly owned by the Welsh Government.

The purpose of a network licence is to help protect users of railway services from any abusive monopolistic or discriminatory behaviour by a monopoly operator. This letter sets out the background to the transfer and our views on the proposed form of the network licence to be granted to AKIL. We are seeking views on this proposal by 5 July, before we issue a formal statutory consultation on the proposed licence later that month.

Background

In June 2018, Welsh Ministers awarded the rail franchise for Wales & Borders to Keolis Amey Wales Cymru Limited (“KAWCL”). The rail services are operated by Keolis Amey Operations / Gweithrediadau Keolis Amey Limited (“KAOL”), operating as TfW Rail Services. As well as the rail services, the franchise award also covers the future operation, maintenance and assessment of renewals and upgrades of the CVL.

The CVL assets are currently owned by Network Rail and will be transferred from Network Rail to TfW who will lease them to AKIL. AKIL will carry out infrastructure services on behalf of KAWCL. As a result, AKIL will become the infrastructure manager for the CVL network. The transfer is conditional on the Welsh Ministers’ approval and certain conditions being met in the transfer arrangements between Network Rail and TfW. The transfer can take place as early as 20 September 2019.

The contractual terms of the award are set out in the Grant Agreement entered into between Welsh Ministers and KAWCL on 4 June 2018 (“the Grant Agreement”). This covers the obligations to operate the rail services as part of the Wales and Borders Franchise and to manage the CVL infrastructure. TfW acts on behalf of the



Welsh Ministers to manage the Grant Agreement and a copy of the Grant Agreement is available on the TfW website. The agreement runs until October 2033, with the option to extend for a further period, at the Welsh Ministers' discretion.

The CVL network covers rail routes from Cardiff Bay to Rhymney, Cwmbargoed and Coryton, and Cardiff Queen Street North Junction to Merthyr Tydfil and Treherbert. The transfer will also include the City Line from Radyr to Ninian Park. The CVL connects to Network Rail's network at two points: at the north of Cardiff Central Station and to the north of Ninian Park Station. It carries primarily passenger services operated under the franchise as well as some freight traffic. We understand this comprises fourteen moves per week by DB Cargo UK (seven return trips to Cwmbargoed). Freightliner also has rights that it is not using.

The CVL is around 137 route-kilometres having a mix of single and double track layout comprising 198km of mixed traffic track and a further 12km of freight-only track, making 210km of track in total.

Schematics of the CVL are at **Annex A**.

Licensing policy

In order for AKIL to operate the CVL, AKIL will need either a network licence granted in accordance with section 6 of the Railways Act 1993 ("the Railways Act") or an exemption from the requirement to hold a licence granted in accordance with section 7 of the Railways Act.

Following a period of engagement with both TfW and AKIL, AKIL applied for a network licence on 10 April 2019, and we have considered the most appropriate way to license AKIL.

In view of the unique contractual arrangements in place in relation to the CVL, it is our intention to license AKIL as a network operator in respect of the CVL network only. Should AKIL wish to extend the scope of its licence in the future, it would require a modification of the licence, in accordance with the provisions of the Railways Act.

Form of network licence

A network licence can help protect users of railway services from any abusive monopolistic or discriminatory behaviour by a monopoly operator. We consider each network licence application on a case by case basis. In considering the nature of the network licence to be granted to AKIL we have considered a range of factors, including what other protections users of the network will have, the size of the network and needs of current and future operators on that network, and network licences that have been granted in respect of other networks.

Our starting point is to refer to our model network licence. There are relatively few conditions in this type of licence and we would expect to add conditions to this as required to reflect the specific circumstances of the network in question. The model licence is available on our website¹ and contains clauses which would require AKIL to:

- act in non-discriminatory way
- hold appropriate insurance

¹ Available at https://orr.gov.uk/data/assets/pdf_file/0009/2232/lic-nwk_lic.pdf

- comply with arrangements relating to claims allocation and handling
- comply with Railway Group Standards
- inform ORR of change in control
- establish a policy to protect the environment
- pay fees to ORR
- ensure access can be granted in an emergency

There are a number of network licences in existence. The fullest network licence is held by Network Rail. It was revised from 1 April 2019 to reflect its devolved responsibilities to its individual routes and its system operator function, and to reflect its public ownership from September 2014. A key function of Network Rail's network licence is that it supports our setting of charges and enforces the delivery of outputs in a periodic review. Like other non-Network Rail infrastructure managers, AKIL is not subject to a periodic review under the Railways Act. This is discussed further below.

Other protection for users of the CVL network

When considering the network licence for CVL, we have considered the protection that users are granted through other means. In this case, this is primarily through the Grant Agreement between Welsh Ministers and KAWCL and the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the 2016 Regulations").

The Grant Agreement is a contractual document which specifies the obligations of KAWCL with respect to the CVL infrastructure. It includes obligations on KAWCL for the maintenance and renewal of the assets and their funding. AKIL will perform those obligations on behalf of KAWCL, overseen by TfW under the mechanisms set out in the Grant Agreement. TfW has powers to enforce these obligations. We note that TfW is a public body, accountable to Welsh Ministers for its actions and therefore we are satisfied that the Grant Agreement provides adequate protections in relation to network management, which do not need to be replicated in a network licence.

Although TfW has not asked ORR to carry out periodic reviews for the CVL, the 2016 Regulations provide protection for users with regard to the charges AKIL levies for use of the CVL. In particular, the 2016 Regulations require ORR to set the charging framework and specific charging rules for AKIL. In addition, we are the appeal body in the event of an appeal in relation to the level and structure of infrastructure charges as well as other matters. Further, in support of our role under the 2016 Regulations we have powers to collect, monitor and/or control, a wide range of information (e.g. in relation to business plans, network statements, charges and costs).

In addition, there are other protections set out in the 2016 Regulations which require AKIL to:

- grant access on equitable, non-discriminatory and transparent conditions;
- have a performance scheme(s) in place between it and operators, the purpose of which is to encourage train and network operators to minimise disruption and improve performance of the networks;
- take all such steps as are necessary to restore normal operation of the network and have in place a contingency plan listing various bodies who are required to be informed in event of a serious incident or serious disruption to train movements.

We also note that ORR must approve all access contracts entered into between AKIL and an operator under the Railways Act. AKIL is currently discussing the terms of the track access

contracts with operators, including details of charging and performance regimes that it proposes will apply.

Proposed network licence for AKIL

Having considered the issues and the protections for users outlined above, we propose that the network licence for AKIL will contain the conditions set out in Annex B. This includes all the conditions in the model licence and some conditions from the Network Rail licence.

At this point, we do not consider that replicating all of Network Rail's licence is necessary for AKIL's operation of the CVL. This is because CVL will be a largely self-contained network, expected to provide services for only one franchised passenger train operator, procured by Welsh Ministers, and relatively few freight trains. In particular, as noted above, we will not mirror Network Rail licence conditions that relate to our periodic review of Network Rail's charges as TfW will not require ORR to carry out periodic reviews of track access charges or enforcing the delivery of specified network outputs as those will be secured contractually through the Grant Agreement between Welsh Ministers and KAWCL.

In view of the interface between the CVL network and Network Rail's network, we do propose to include a licence condition regarding cooperation with other infrastructure managers, to ensure that there is no negative impact on operators who will run trains over both the CVL network and Network Rail's network.

In addition, the other key conditions in the Network Rail licence that are not in the model network licence and which we do not propose to include in the AKIL network licence for CVL are:

- general network management responsibilities – we are proposing to include a licence condition related to planning and capacity allocation. However, we do not propose to include a licence condition related to general asset management responsibilities as CVL asset management responsibilities have been set and are defined in the Grant Agreement; and
- financial ring fence and land disposal – these are not restrictions we place on other non-Network Rail operators, and our view is that policing these matters can be properly left to TfW.

Responding to this consultation

We would welcome your views on this initial consultation as a whole, especially on:

- the conditions we are considering to include in the licence, as shown in Annex B; and
- whether any other obligations should be included.

Please send your responses preferably by email to licensing.enquiries@orr.gov.uk. Alternatively you can send a hardcopy response to:

Licensing Team
Office of Rail and Road
One Kemble Street
London
WC2B 4AN



In either case, please mark your response "Consultation on CVL network licence". Please ensure your response reaches us by **no later than 5 July 2019**.

This consultation will be followed by a statutory consultation we are required to carry out on all proposals to grant licences. We expect the statutory consultation to run for 28 days.

This consultation is also being published on our website.

A handwritten signature in blue ink that reads "Les Waters".

Les Waters

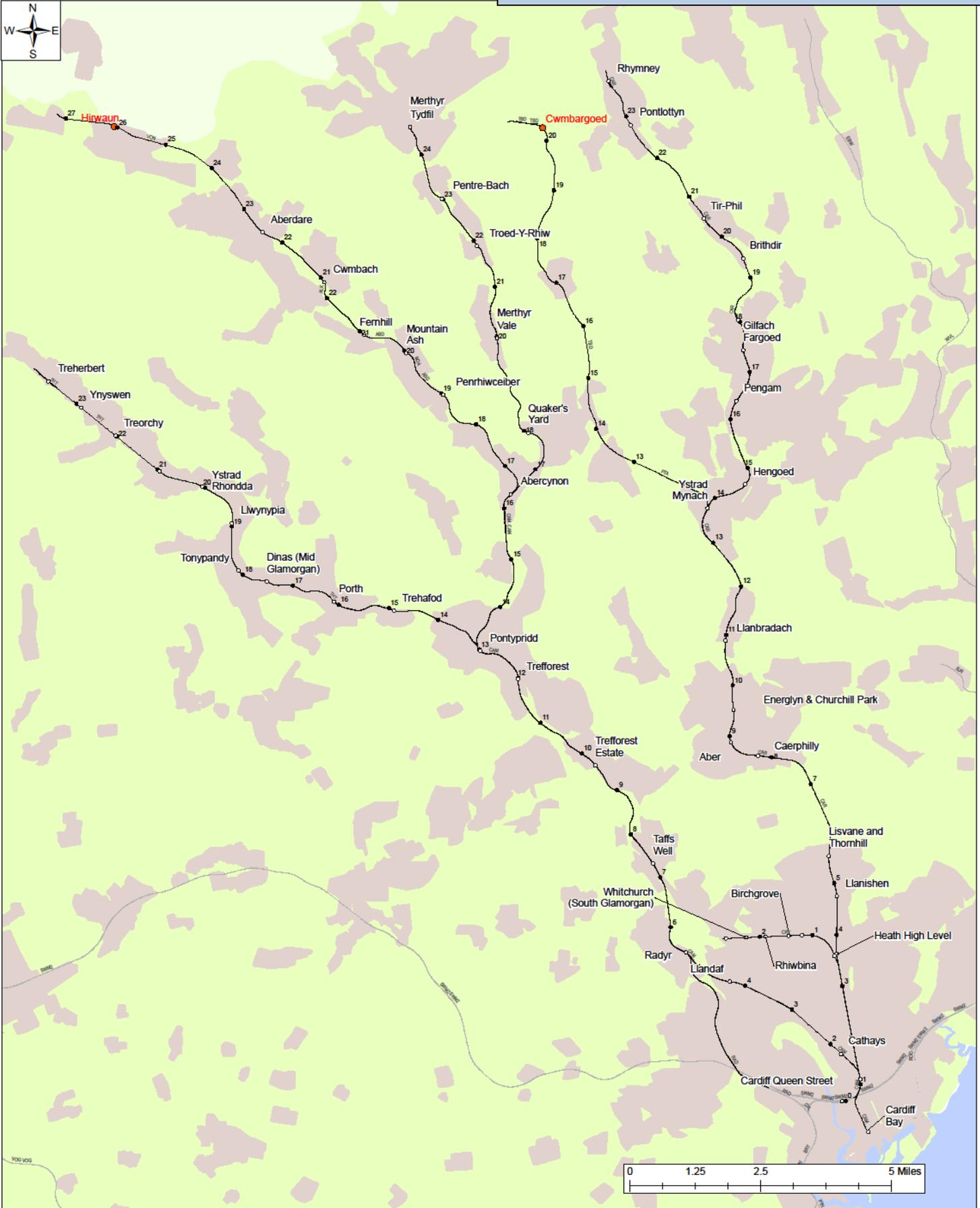
Information provided, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information to be treated as confidential, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation - but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

We will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. Files in the OpenDocument format are platform independent and do not rely on any specific piece of software.

Annex A – Schematics of the Core Valley Lines



LEGEND	
○ Stations	— Rail Network
● Mileage Waymark	— Rivers
● Freight Locations	■ Coastline
— Core Valley Lines	■ Urban Areas
	■ National Park

CORE VALLEY LINES			
CLIENT:	NETWORK OPERATIONS		
JOB NO.:	10388.102	USE TYPE:	[INTERNAL]
SCALE:	1:75,000 @ A2	DATE:	13/02/2019
VERSION:	01	PRODUCED BY:	AS
		QA BY:	SD



NetworkRail

Asset Information Services

Contains Ordnance Survey data © Crown copyright and database right 2019. Licence No: 0100040992

GeospatialReportingAnalysis@NetworkRail.co.uk

Corporate GIS data is subject to frequent updates therefore any data exported from the corporate GIS system is a static representation of the data at the time of export, and should be treated as such. No warranty or guarantee is given as to the absolute accuracy or completeness of this information. Network Rail disclaims any responsibility for any loss, damage or inconvenience however caused arising out of or as a consequence of reliance on this information in any context.



Potential network licence conditions for the Core Valley Lines network

The proposed outline clauses for the AKIL network licence are set out below. The network licence will be limited to apply to the operation of the CVL only. If AKIL wishes to extend its operation to other assets it will need either a new licence or a licence modification.

Type	Condition	Reason for inclusion in AKIL network licence
Model clause	Insurance against third party liability	We expect AKIL to have insurance that meets our requirements to protect third parties.
Model clause	Claims Allocation and Handling	We expect AKIL to be a party to arrangements relating to the handling of claims and the allocation of liabilities among operators of railways assets.
Model clause	Safety and Standards	AKIL would need to comply with Railway Group Standards.
Model clause	Environmental Matters	AKIL should have environmental policies which are given effect by operational and management arrangements.
Model clause	Payment of fees	Allows ORR to recover costs of regulation.
Model clause	Change of control	Requires the operator to inform us if a party acquires 30% or more of shares/capital in the operator.
Model clause	Non discrimination	AKIL must not unduly discriminate between users.
Model clause	Emergency access	AKIL must grant access as required in event of emergency.
NR condition 1	Core duties - part on passenger information	Passenger information obligations would promote consistent provision of information across networks and operators.
NR condition 1	Core duties - part on stakeholder engagement	To ensure that AKIL cooperates with Network Rail, including its System Operator, function, and other infrastructure managers, so that it acts efficiently, economically and in a timely manner.
NR Condition 5	General network management responsibilities – sections on planning and capacity allocation	Responsibility for network operator to plan to meet reasonably foreseeable demand for railway services.
NR Condition 8	Information for ORR	The condition allows ORR to access information (if/when needed) expeditiously, compared with the Railways Act.
NR Condition 12	Information on stakeholder dealings	To support wider stakeholder engagement generally.
NR Condition 13	Safety and standards	Railway Group Standards condition is included in basic model network licence. Network Rail licence also requires membership of the Rail Safety and Standards Board, which helps RSSB achieve its objective of improving health and safety performance of the railways in Britain. The CVL operator should contribute to this through membership.
NR Condition 19	Cross-subsidy	The prohibition of cross-subsidy is appropriate where an organisation is part of a larger group and cross-subsidy is a possibility. Inclusion would help provide clarity, noting that Regulation 9(2) of the <i>2016 Regulations</i> requires accounts for activities to be kept in such a way to reflect the prohibition on cross-subsidy.
NR Condition 21	Restricted use of protected information	Prohibits Network Rail from disclosing certain information gained from others. Relevant to CVL as freight operator(s) will use the network.