

30 September 2014

All access agreement stakeholders

Dear stakeholder

Connection contracts: amending our general approval to include novations

1. On 17 April 2014 we issued a new general approval for connection contracts¹ between Network Rail and a third party. The purpose of this letter is to consult you on our proposal to extend that general approval to include the novation of connection contracts. We would like your views on this proposal.

Background

2. Connection contracts are formal agreements between parties who wish to connect their networks together. New connection contracts between Network Rail and other parties (and amendments to existing contracts) do not need specific approval by the Office of Rail Regulation (ORR) under sections 18 and 22 of the Railways Act 1993, if they are covered by our general approval. Other connection contracts, and any amendments to those contracts, require specific approval from us.

Novation

3. Novation of a connection contract is a means of transferring a party's rights and obligations under that contract to a third party. This can occur for a number of reasons, including at franchise change. To be covered by our general approval, connection contracts must follow the terms of ORR's model connection contract². The model contract requires that novation of the contract is subject to ORR direction (clause 14). Therefore when a party novates its connection contract to another party it must seek specific approval from ORR. However, we see no reason why we should need to individually direct a novation for a connection contract that meets the conditions in the general approval.

Consultation

4. We propose inserting into the general approval the following clause:

¹ http://orr.gov.uk/_data/assets/pdf_file/0007/11599/connection-contract-general-approval.pdf

² http://orr.gov.uk/_data/assets/word_doc/0005/11597/model-connection-contract.doc and http://orr.gov.uk/_data/assets/word_doc/0004/11596/model-connection-contract-scotland.doc

ORR approves the novation of a connection contract between Network Rail and an adjacent facility owner, which is covered by this general approval, to a different adjacent facility owner, under section 18(1)(c) of the Railways Act 1993, where:

- (a) the terms and conditions of that novation conform with ORR's model novation template (N2); and
- (b) the requirements in paragraphs 6 [previous paragraph 5] and 8 [previous paragraph 7] of this general approval are met.

5. This clause would be inserted as a new clause 5 and there would be some minor consequential changes and renumbering of subsequent paragraphs. The current paragraph 7 would be renumbered as paragraph 8 and amended to read:

*Network Rail and an adjacent facility owner may only enter into a connection contract or amend, **or novate**, an existing connection contract, if a consultation in respect of that contract, **novation**, or amendment has been carried out, in accordance with subparagraphs (a) and (b) below.....relevant third party. [New text in bold.]*

6. ORR will also publish an additional model novation template "N2"³. This is based on the existing novation template but states that ORR's approval is given under a general approval. We do not believe that the current model connection contract needs amendment as it does not distinguish between specific and general approvals.
7. Please note that the proposed new clause will apply only to the novation of the contract itself (i.e. the transfer from one party to another). It would not cover any other amendments to the contract. Where further amendments to a connection contract are necessary as a result of the novation, the process for obtaining approval from ORR for such amendments will have to be concluded separately, whether also covered by the general approval or requiring ORR specific approval.

Impact assessment

8. Our provisional assessment is that this measure is essentially deregulatory and should ease regulatory burdens on rail businesses without unduly compromising the integrity of the access regime established under the Railways Act 1993, in line with ORR's duties under section 4 of that Act.

³ http://www.orr.gov.uk/_data/assets/word_doc/0004/14827/novation-draft-template.doc

Proposed process under the revised General Approval

9. In summary:

- a. The novation of the contract would be subject to an industry consultation in accordance with clause 7 of the [current] General Approval;
- b. The novated connection contract must meet the requirements in clause 5 of the [current] General Approval;
- c. Network Rail must remain one of the parties to the contract;
- d. The completed novation contract should be submitted to us for inclusion on our public register;
- e. It will apply to all connection contracts whose terms conform with ORR's general approval, even if the contract predates the date of the general approval relied on.

Your views

10. Do you agree with this proposal? If not, what are the reasons for your view? Please send your comments by 28 November 2014 to me at:

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11. Please be aware that we may publish responses on our website and may quote from them. Where all or part of your response is confidential please indicate it as such. Also, please provide a non-confidential statement of your main points that can be published. If you send us a PDF document, please:

- create it from the original file, as opposed to an image scan, where possible; and
- ensure that the PDF's security method is set to 'no security' in the document properties.

12. I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Gordon Herbert', is written over the typed name.

Gordon Herbert