

Chris Hemsley
Deputy Director, Railway Markets & Economics

12 January 2018



Dear stakeholders

Consultation on improvements to the drafting of Schedules 4, 7 and 8 of the passenger and freight model track access contracts

The purpose of this letter is to invite suggestions for improvements to the drafting of Schedules 4, 7 and 8 of the model freight and passenger track access contracts ('model contracts'). We would welcome comments from current or prospective franchised passenger operators, freight operators, open access operators and others.

Train operators wanting to access Network Rail's network need a track access contract with Network Rail, and such a contract must have ORR's approval. We have published model contracts that set out standard terms for such access, including each party's rights and obligations relating to charging and the rights to run services. We expect Network Rail and train operators to use these model contracts.

The existing charging and incentives regime is set out in Schedules 4, 7 and 8 of the model contracts. As part of our 2018 Periodic Review of Network Rail (PR18), we are reviewing the charging and incentives framework in place between Network Rail and train operators, and this provides an opportunity to improve the clarity, consistency and simplicity of the contractual drafting in these model contracts.

We have confirmed a number of policy changes we intend to make to charges and incentives as part of PR18, and we will conclude on the remaining policy areas in due course. **Changes to our policy on charges and incentives and how this is implemented in the model contracts are outside the scope of this consultation.**

What we are seeking views on

We are seeking specific proposals for how the existing drafting of Schedules 4, 7 and 8 of the model contracts could be improved to address:

1. Any uncertainty and ambiguity in the drafting;
2. Any aspect of the contractual drafting which stakeholders consider does not reflect the established policy intent;
3. Inconsistent wording within the contracts;
4. Any aspect of the contractual drafting which does not reflect or allow for current or desired commercial practices; and

5. Any opportunities for simplification of the drafting, while retaining the established policy intent.

We also welcome suggestions from stakeholders for new wording to reflect other relevant developments, such as technological improvements in billing processes, or any possible improvements to processes associated with these Schedules.

In providing your response to this consultation, **please complete the table in Annex 1 with your suggestions**, ideally supported with marked-up contractual drafting for any significant proposed changes. However, if you would find it easier to respond in a different format then please feel free to do so. The model contracts are available on the ORR website here (<http://orr.gov.uk/rail/access-to-the-network/track-access/forms-model-contracts-and-general-approvals>).

We are **not** seeking feedback on:

- The substance of our policies relating to charges and incentives, and any changes required to implement them; and
- Drafting of elements of the contract that will not apply (and will need to be removed in the model contracts) for control period 6, reflecting those policy decisions made in PR18. These relate to the capacity charge and the coal spillage charge.

We are aware that Network Rail is consulting on five possible changes to the model contracts¹. We intend to take responses to this Network Rail consultation into consideration (subject to any requests for confidentiality by the respondents to it) when we decide what changes to make to the model contracts.

Responding to this consultation

We invite responses to this letter by **Friday 23 February 2018**. Please send responses to mark.tettenborn@orr.gsi.gov.uk.

Where written responses are made to us (particularly more formal responses), we may publish these on our website. If you wish any information that you provide, including personal data, to be treated as confidential, please say so in your response (an automatically generated confidentiality disclaimer by IT systems will not necessarily be sufficient in this respect). However, please be aware that regardless of any such request, we may be obliged to disclose or release any submissions made to us under the access to information regimes, such as the Freedom of Information Act 2000 or Data Protection Act

¹ Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6 (CP6), available at <https://cdn.networkrail.co.uk/wp-content/uploads/2017/11/Consultation-on-proposed-changes-to-the-wording-of-track-access-contracts-CP6.pdf>.

1998. Further information about how we may treat your response is available in paragraphs 6.40-6.43 of our initial consultation on PR18².

Next steps, and how we will use your input

Using responses to this consultation (and to Network Rail's, where appropriate), we will identify how we can improve the drafting of Schedules 4, 7 and 8 of the model contracts and look to implement these improvements.

We intend to consult on our proposed updated model contracts in mid-2018, following our draft determination. The updated contracts will reflect both the drafting improvements identified through this consultation and our policy decisions on charges and incentives.

Yours sincerely

Chris Hemsley

² <http://orr.gov.uk/rail/consultations/pr18-consultations/periodic-review-2018-initial-consultation>.

Annex 1: What improvements would you like made to the drafting of Schedules 4, 7 and 8 of the model track access contracts?

This pro-forma is available to those who wish to use it to respond to our consultation. However, as noted above, you may respond in any format you find convenient. In either case, please be sure to include the below details.

Please send your response to mark.tettenborn@orr.gsi.gov.uk by **Friday 23 February 2018**.

Full name	
Job title	
Organisation	
Email*	
Telephone number*	

*This information will not be published on our website.

Specific paragraph reference (including which of the model TACs you are referring to)	Description of issue	Further comments
[for reference purposes]	[please include a specific reference to the drafting]	[if you have a specific solution/change in drafting in mind please include it here]

Specific paragraph reference (including which of the model TACs you are referring to)	Description of issue	Further comments

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