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By email

24 April 2024

Dear colleague,

Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes

1. ORR and Network Rail expect, and have received, a higher-than-usual number of access applications from freight and passenger operators for additional or amended services for the **December 2024, May 2025 and December 2025** timetable changes. Some services in the applications interact with each other, or have the potential to, at different points across the GB railway network. This letter sets out how we plan to make our decisions on these applications. It follows our existing published guidance, which ensures capacity applications are sufficiently in advance of timetable implementation.
2. Previously, we have issued similar statements requiring careful management (notably on the East Coast Main Line and West Coast Main Line) to support our statutory duties in determining applications with competing aspirations or significant complexity. Equally, this statement clarifies expectations for Network Rail in its duty as the infrastructure manager to coordinate the allocation of capacity. We consider the following approach supports ORR in ensuring capacity allocation decisions are fair, transparent and timely, while providing structure to industry for planning. This should provide the best possible chance of success in implementing proposed improvements to services for the benefit of customers over this period. We welcome conversations with industry to explain this, where desired.

December 2024 Timetable Production status

3. Industry has worked intensively over the last few years to plan the introduction of major timetable changes in December 2024. These changes are some of the most complex in terms of Network Rail and operator planning since May 2018. Network Rail is still working to produce the December 2024 timetable. We understand the timetable will not include most of the East Coast Mainline (ECML) Event Steering Group (ESG) changes. Further work is ongoing to deconflict existing access rights and timetable bids before a decision is taken in 2024 on implementing a version of the ESG timetable during 2025.
4. Given it has not been possible to accommodate existing access rights and satisfy the timetable bids made for December 2024, we consider that the definition of **Congested Infrastructure** in the Access and Management Regulations (2016) appears to have been met for at least parts of the ECML. Network Rail must now



comply with the requirements in the Regulations or explain why it considers the criteria are not met by **05 June 2024**.

5. Network Rail has said that it will follow future Part D milestones for delivery of the December 2024 timetable, but we recognise decisions in the timetable production process could materially influence operator and funder plans for December 2024 and beyond. We are monitoring industry and Network Rail compliance with the Code.

Implication for applications December 2024 to December 2025

6. A material factor in determining the approval or direction of applications received is the basis on which ORR understands the December 2024 working timetable will be implemented, and the decision on implementing a future ECML ESG timetable. This is because,
 - (a) Existing ECML applications will have used the ECML ESG solution as the base timetable;
 - (b) Even where applications are not on the ECML, decisions on the ECML could interact with them; and
 - (c) Capacity and performance analysis using ECML ESG assumptions need to be reworked (along with timings) for the actual December 2024 timetable and for future timetables (including when the ESG timetable outcome is known).

Process for access rights for December 2024, May and December 2025

Establishing demand for capacity

7. It is currently unclear to what extent there will be capacity to accommodate all the current applications and any further applications received for **specific locations** in upcoming timetables. Similarly, it is not clear what the performance implications might be; and, where there are trade-offs, what those choices would entail.
8. To facilitate a timely and fair assessment, ORR has agreed with Network Rail to request industry complies with a **deadline of 20 May 2024** for applications for additional rights (or amended rights which change capacity parameters) for **December 2024, May and December 2025** according to the following criteria.
9. Does an application require capacity in any of the following locations?
 - (a) West Coast Main Line Euston-Nuneaton;
 - (b) Birmingham area including Water Orton;
 - (c) Birmingham-Derby;
 - (d) Derby-Sheffield;
 - (e) Sheffield area;
 - (f) ECML Kings Cross-Edinburgh and Leeds;
 - (g) Oxford;
 - (h) Gloucester; or
 - (i) Cardiff.



10. This list is based on Network Rail's assessment of where existing applications or aspirations interact. As capacity analysis work progresses, it is possible further locations could be identified.
11. Has an application already been submitted to ORR (see **annex A**), before the date of this letter, which does not require updates? If so, it will be considered alongside applications received between now and 20 May 2024, i.e. there is no need to resubmit it.
12. **All further applications in the identified locations should be submitted to ORR as soon as possible or by 20 May.** This includes proposed applications where an industry consultation is underway, as the outputs from the consultation can follow the application deadline. Where operators are discussing further aspirations or plans with Network Rail in the locations for the timetable periods specified, but an application has not been submitted to ORR it is important that a submission is made to ORR.
13. We recognise it may not be possible for Network Rail to support an application by this date. However, we expect operators to have discussed the application with Network Rail before submission. Submission by 20 May will ensure transparency and could initiate a statutory process and timeframe which ORR and Network Rail must follow.
14. Passenger and freight operators may want to extend the duration of their existing rights in the geographical locations identified. Our guidance sets out a strong presumption in favour of the extension of current access rights, except where we have stated otherwise. Reflecting this, the 20 May deadline in this letter will not apply to the extension of existing rights in line with our guidance (except where ORR has advised that the presumption of existing rights does not apply).
15. For the avoidance of doubt, we are not requesting submission by 20 May of applications unrelated to the specified locations or to the identified timetable changes set out in this letter.

Reaching timely decisions

16. It is vital that Network Rail provides a prompt and robust assessment of the applications and the available options for accommodating them. Network Rail will need to provide an appraisal of capacity and the potential impact on performance that would result from the proposed additional services contained in the applications received. The deadline for applications should support Network Rail in producing a plan, as well as its response to ORR on Congested Infrastructure, promptly.
17. ORR will prioritise assessment of applications received by 20 May. The applications received by this date provide a **quantum baseline** of demand for capacity use, which Network Rail must assess and assure itself and industry can be accommodated.



18. ORR plans to approve or direct access applications received after 20 May in the identified locations for December 2024, May and December 2025 only where there is clear evidence they do not interact/conflict with the applications which have already been received. It is therefore less likely that we will be able to assess and determine applications for additional capacity in the identified locations received after 20 May, for inclusion in timetables before the end of 2025.
19. In making decisions on the use of capacity, we must consider all our statutory duties and weigh them where they do not all point in the same direction. Our duties are varied and include protecting the interests of users of railway services, promoting use of the network, competition, improvements in rail service performance and efficiency and having regard to the funds available to the Secretary of State and his, and the Scottish Minister's, guidance to us.
20. Where proposed services may compete with existing services, we may undertake our 'Not Primarily Abstractive' test, in line with our guidance. If it appears that not all proposals can be accommodated, we will also assess the wider costs and benefits of the possible capacity uses to inform our decisions.

Application requirements

21. We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance). This will ensure the application is ready for consultation where it has not taken place already, and the evidence requirements are met as set out in the Form P or Form F, including, where relevant, submission to ORR of business cases and demand forecasting.
22. It is useful for funders and industry to understand that ORR assesses whether train operators have sufficient commitment and capability to operate services. We consider each application on a case-by-case basis against this requirement; having a firm budget commitment from a funder is a good indication of commitment but may not be necessarily sufficient.

T-12 compliance

23. Finally, in the CP7 Final Determination, ORR set Network Rail a requirement to return the timetable process to Network Code compliance by December 2024. Given the challenges facing the industry in December 2024, we consider the steer provided on timetabling and access in this letter is supportive of Network Rail's commitment to produce a robust new working timetable at D-26 so that operators can meet their T-12 commitment.



Next steps and review

24. Applicants should discuss with Network Rail and submit applications by 20 May 2024 once they have reviewed their existing and future applications against the criteria in this letter.
25. ORR has requested that Network Rail produces a high-level plan by **05 June 2024** for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024. At the same time, we expect Network Rail to provide its view on declaring the ECML as Congested Infrastructure.
26. We have asked Network Rail to arrange an industry wide meeting by 07 June. Network Rail will communicate its plan at the meeting. Following that meeting it will publish the plan. We expect Network Rail to communicate its approach to industry on how it will consider these applications and assess the available capacity. We will attend this meeting to ensure our position is clear to stakeholders.
27. We will review this process throughout 2024, as issues and applications become clearer. In particular, we will consider the appropriateness of the timescales for Network Rail's capacity study.
28. I trust this letter provides clarity on the management of current and potential upcoming applications in specific areas and that this will avoid Network Rail repeating complex analysis to reach an allocation decision. However, please contact me if you would like to discuss the approach further. We will publish this letter on our website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G Clancy', written over a faint, light-colored circular stamp.

Gareth Clancy



Copied to:

ECML and WCML Passenger and Freight Operators	Declared aspirant operators
Chris Rowley, Capacity Planning Director, Network Rail System Operator	Transport Focus
Rupert Walker, Acting Group Director, Network Rail System Operator	Chris Curtis, Industry PMO, Network Rail
Jake Kelly, Managing Director, Eastern Region, Network Rail	Sam Caughey, Markets Strategy and Planning, Department for Transport
Rob McIntosh, Managing Director, North West and Central, Network Rail	Fiona White, Markets North, Department for Transport
Liam Sumpter, Managing Director, Scotland, Network Rail	Elisabeth Cuthbertson and Lucy Ryan, Public Transport and Local Group
Rob Cairns, Managing Director, Wales and Western, Network Rail	Jim Richards, Markets South, Department for Transport
Ellie Burrows, Managing Director, Southern, Network Rail	Access Disputes Committee



Annex A – Access Applications submitted to ORR or gone to Industry Consultation

Operator	Application summary	Timetable start date Aspiration	Type	Application Status
Alliance Rail	Cardiff <> Edinburgh	Dec 25 TT	S.17	Not submitted to the ORR. Industry Consultation closed 13 November 2023.
CrossCountry	Cardiff <> Edinburgh (Dec 24 TT) and Full Hydra TT (May 25 TT)	Dec 24 TT / May 25 TT	S.17	Submitted to ORR 25 January 2024
Hull Trains	London Kings Cross <> Sheffield	May-25	S.22A	Submitted to ORR 5 January 2024
WSMR	Wrexham <> Euston	May-25	S.22A	Submitted to ORR 14 March 2024
GB Railfreight 28 th SA	Converting 33 contingent rights to firm rights (interacting with Eastern and NWC)	ASAP	S.22	Submitted to ORR 7 February 2024. Network Rail reconsidering position.
DB Cargo 70 th SA	4 additional 1-hour firm rights, 12 amended 1-hour firm rights, 2 amended 3-hour firm rights, 15 relinquished 1-hour firm rights	ASAP	S.22	Submitted to ORR 30 January 2024. Network Rail reconsidering position.
GB Railfreight 25 th SA	Converting 96 contingent rights to firm rights, amending 44 firm rights and deleting 116 firm rights (interacting with all regions)	ASAP	S.22A	Not submitted to ORR. Industry consultation ends 30 April 2024.