

## **Impact Assessment of ORR's industry reform project, workstream 6 – reform of access contractual and consultation arrangements**

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**Stage:**

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### **Section 1: The issue**

#### **What is the issue?**

1.1. This project arises from Chapter 6.3.6 (page 86) of the Rail Value for Money Study ("VFM Study") which says that ORR should identify and develop options for streamlining industry contractual change and consultation processes. Part of ORR's Industry Reform Programme.

1.2. We believe that there are steps which could be taken to reduce timescales, make the current access regime less cumbersome and opaque and more generally review and refresh processes and procedures which are not fit for purpose. There is a wide range of areas which we intend to focus on. These areas, and the reasons for choosing them, are highlighted in the main body of the consultation document. Therefore, they will not be repeated here.

1.3. The VFM Study recommendation encompassed six main areas of activity. By addressing these, we will removed the problems with the current access contractual regime:

- publishing a clear forward plan and outputs for policy consultations, packaging consultations where possible, and using industry groups to provide transparency and feedback on the forward plan;
- publishing defined timescales for reaching decisions following consultations and appeals, which cover the entire time period, including the time taken to obtain information;
- reviewing industry change processes to examine whether informal early consultation can be required so that industry parties have early sight of potential changes when they might be better able to influence outcomes;
- where feasible, simplifying change processes so that they use common terminology and are more readily understood by industry parties;
- reviewing whether some simple changes could go through a less complex process, and, where more complex, changes should proceed to a published timescale; and
- building on the proposed changes to station changes by considering whether to apply the same principles to other areas such as network and vehicle change. This could encompass separating the change and

compensation processes so that negotiations over compensation do not hold back changes that are agreed to be necessary.

### **Why are we intervening?**

1.4. We are responding to the VFM recommendations and are undertaking a significant programme of industry reform (of which, this is only one workstream) to address the recommendations the report has made.

1.5. ORR is involved to differing levels in the various aspects of the industry reform programme, but is predominantly leading on workstream 6. A significant amount of changes will be made to our own processes and procedures, and it is important that we lead effectively on these.

### **What is the desired outcome?**

1.6. The desired output is a comprehensive action plan and programme of work, which has been agreed by industry stakeholders to address effectively the issues identified in the VFM Study, setting out clearly the measures to be implemented with appropriate milestones and ownership.

1.7. This is to ensure a legal and contractual framework that:

- is comprehensive, but fair and transparent;
- provides for a consultation process that is targeted, transparent, co-ordinated and accessible;
- provides for decisions to be made more quickly thereby making change easier; and
- engenders a more partnership and collaborative based approach to working relationships.

1.8. The aim of the overall package of reforms we have proposed will lead to a better performing, sleeker access regime, where the industry takes on more responsibility for its contractual arrangements and, in turn, ORR is able to focus its efforts where it can add more value.

### **When will we review the success of the intervention?**

1.9. Review of success will be ongoing and will consist of feedback from stakeholders before, during and after our consultation and subsequent implementation process. ORR experiences of using new or changed processes and their impact on the overall access regime will also be kept under ongoing review.

1.10. We will also gather feedback from stakeholders on how changes to the regime have affected them, and whether these effects have been positive and constructive. A full review is planned for 12-18 months after implementation is complete.

## **Section 2: The options**

### **Option 1: ‘Do nothing’**

2.1. We could choose not to act on the recommendations of the VFM report, and continue as we are. This is not really a viable option, as it would mean us ignoring obvious and significant inefficiencies with current processes and policies, as outlined in the main body of the consultation document, as well as ignoring the recommendations of the VFM report itself.

2.2. It would also mean ignoring industry concerns over these policies and processes (some of which ORR is the owner) which would deny the opportunity to make significant cost and resource savings. This would also likely affect ORR’s credibility as a regulator if it is seen not to respond (especially given that we have already undertaken a significant programme of informal consultation).

### **Option 2: Streamline access contractual and consultation arrangements**

2.3. It is our intention to consider further ‘do something’ options based on the consultation responses we receive. At this point, our drafting reflects the proposals we have made in the main document; although there is no assumption that these proposals are exhaustive

2.4. At this stage, a full list of actions and outputs has not been agreed. Some proposals have already been implemented, some are in progress and some proposals are yet to be started, or their owners agreed. Our consultation, to which this impact assessment is appended, may yet highlight further areas which the industry believes require addressing which we had not previously considered. Further proposals are outlined in the main document, and may be adopted, removed or altered depending on the responses we receive.

2.5. We expect that all new or existing proposals which are adopted are consistent with the aims and outcomes identified in the body of the consultation document, and in section 1 of this impact assessment.

2.6. Work we have already undertaken includes:

- a revised edition of the C&Ps (published December 2011)
- two revised application forms for passenger and freight access
- revisions to ORR’s website for clarity and accessibility purposes

2.7. These steps have been taken to take account of industry views, to improve clarity and accessibility, and to cut down on the time taken to complete forms, find information and confirming that our own policies and procedures are up to date (in the case of the C&Ps).

### Section 3: 'Streamline access contractual and consultation arrangements' option

#### Impact on stakeholders/duty holder

3.1. **Network Rail:** Depending on the responses received to our consultation, there is likely to be a significant impact on Network Rail. Network Rail will be involved with reviews of any Part of the Network Code (including the ongoing Part G review) and will need to provide the appropriate time and personnel resource required to make effective input.

3.2. Network Rail will also face initial staff and resource costs in reviewing this document, our final conclusions (likely to take the form of an action plan) and any other documents associated with this workstream. Network Rail has also already undertaken a significant time commitment in attending regular liaison meetings. However, we believe these costs are likely to be insignificant when compared against the overall savings in time and resource which will be gained by Network Rail.

3.3. Network Rail may also incur further costs in reviewing and implementing changes to the access contractual regime.

3.4. However, we consider that our proposals are likely to save Network Rail (amongst others, see below) a significant amount of time, and therefore cost, in the long term.

3.5. Precise costings will become clearer once proposals and the way forward have been agreed, but we would welcome an early indication of potential costs from Network Rail, if it is in a position to provide them.

3.6. **Passenger and freight operators:** Operating companies may incur some initial additional costs through their consideration of the consultation document and drafting of any response they choose to make, in addition to their consideration of any further publications related to this workstream.

3.7. Train operators may also incur further costs in reviewing and implementing changes to the access contractual regime, including their own contracts as necessary. Again, we believe these costs are likely to be insignificant when compared against the overall savings in time and resource which will be gained by operators.

3.8. Train operators may also incur costs depending on their involvement in working groups and other workstreams arising from the agreed actions. It is not possible to cost these at this stage but we would welcome an

early indication of potential costs from operators, if they are in a position to provide them.

3.9. However, we consider that our proposals are likely to save train operators a significant amount of time, and therefore cost, in the long term, through the shortening of timescales, ongoing reform of Parts of the network code, increased use of general approvals and early engagement with ORR and other industry parties, amongst other steps.

3.10. Precise costings will become clearer once proposals and the way forward have been agreed.

3.11. **Funders (DfT/Transport Scotland):** Funders may incur some initial additional costs through their consideration of the consultation document and drafting of any response they choose to make, in addition to their consideration of any further publications related to this workstream.

3.12. **ORR/Government:** ORR has developed the work done to date, including this document, with the associated costs. There will be ongoing costs through reviewing and revising our policies and procedures, and their implementation.

3.13. ORR will also be involved with reviews of any Part of the Network Code (including the ongoing Part G review) and will need to provide the appropriate time and personnel resource required to make effective input. There will also be a significant resource requirement involved with the production of any new general approvals, and with any amendments to our model clauses, amongst other proposals.

3.14. However, we consider that our proposals are likely to save a significant amount of time, and therefore cost, in the long term, through the shortening of timescales, ongoing reform of Parts of the network code, increased use of general approvals and early engagement with industry parties, amongst other steps.

3.15. Precise costings will become clearer once proposals and the way forward have been agreed.

3.16. **Representative bodies (ATOC, Passenger Focus, LTW):** Representative bodies may incur some initial additional costs through their consideration of the consultation document and drafting of any response they choose to make, in addition to their consideration of any further publications related to this workstream.

### **Impact on specific consumer groups**

3.17. **Disability** – This policy involves allocation and utilisation of track access capacity only and is disability neutral.

3.18. **Gender** – This policy involves allocation and utilisation of track access capacity only and is gender neutral.

3.19. **Race** – This policy involves allocation and utilisation of track access capacity only and is race neutral.

3.20. **Other** - We do not consider that the impact of this policy would vary across consumer groups or any other protected characteristic as defined by the Equality Act 2010.

3.21. More generally, we expect that whilst passengers may not experience the direct impact of any proposals (as efficiencies will be made predominantly through time, cost and other resource savings at operating companies and Network Rail) they may still benefit in the long run.

3.22. For example, administrative costs associated with operating franchises will be reflected in tenders submitted to franchising authorities. If these costs fall based on the outcomes of these proposals, there may eventually be an impact, however minor, on fares. Additionally, if the proposal on 'SPOTS' is adopted, subject to industry support and the working up of the proposal, this may provide more certainty for passengers with regard to the timetabling of services.

### **Impact on health and safety**

3.23. No impact on health and safety is anticipated. Proposals that impact on licensed operators will have no effect on their safety certifications and other health and safety obligations.

### **Impact on sustainable development**

3.24. No impact on sustainable development is anticipated.

### **Impact on competition**

3.25. No impact on competition is anticipated. However, the intention is that these proposals will reduce costs for operators which, at the margin, should reduce barriers to entry to the market (although the effect is likely to be very minor).

### **Geographic impacts**

3.26. No geographic impacts are anticipated.

### **Statutory duties**

3.27. We are taking ongoing internal legal advice on our proposals to ensure that our statutory duties are not compromised by any 'stepping back' from our current level of involvement.

3.28. We think the following statutory duties under section 4 of the Railways Act 1993 are relevant to the current proposals:

- to promote improvements in railway service performance;
- to protect the interest of users of railway services;
- to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway facility, to the greatest extent that ORR considers economically practicable;
- to promote efficiency and economy on the part of persons providing railway services;
- to promote competition in the provision of railway service for the benefit of users of railway services; and
- to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

### **Overall impact**

3.29. It is currently difficult to estimate the total cost of this workstream's outputs, given that our consultation may generate further ideas from the industry which are not discussed in the consultation document.

3.30. Additionally, owners for some of the areas of review outlined in the consultation document have not yet been agreed (assuming the proposals are even adopted), and some parties may incur extra resource expense depending on the extent of their contribution.

3.31. This impact assessment is a living document, and will be updated following responses received from the industry and upon the publication of an agreed action plan (please see the main document for more details).

### **Conclusion**

3.32. From the impacts described above, we believe that the implementation of the proposals outlined in our document are likely to have a net benefit for the rail industry and is therefore currently a viable option to proceed with. In conclusion, we will consider all the potential impacts listed above throughout this process, making a final decision once the proposals are finalised. Our decision will, of course, be based on our statutory duties under section 4 of the Railways Act 1993.

3.33. **Consultees are invited to comment on the impact assessment, particularly on the likely impact of our proposals (and any further proposals they suggest) on their business and the potential initial costs versus longer-term benefits.**