

Michael Albon
Executive, Access & Licensing
Telephone: 0207 282 3660
E-mail: michael.albon@orr.gsi.gov.uk



21 February 2018

Sam Commons
Customer Manager
Network Rail Infrastructure Ltd
Stratford Place, 1 Stratford Place
Montfichet Road
London
E20 1EJ

David Rourke
Track & Engineering Access Manager
Arriva Rail London Limited
Overground House
125 Finchley Road
London
NW3 6HY

Dear Sam and David

Approval of the 59th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail London Limited (ARL) (jointly, “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 21 February 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.
2. This agreement amends the parties' Track Access Contract (Contract) to reflect the additional overnight weekend services that Arriva Rail London will operate from 24 February 2018. The night overground services will mainly operate on TFL-owned East London Line infrastructure, joining the Network for the short, segregated stretch of line from Dalton Junction to Highbury & Islington.
3. As a result of the additional overnight services granted under this Agreement, the following provisions in Schedule 4 are being dis-applied:
 - Restrictions of Use taken on Core ELL Infrastructure affect the Route between Highbury & Islington and Dalston Junction;
 - Restrictions of Use prevent the operation of 'Night Overground' Services; and
 - Restrictions of Use which prior to the introduction of 'Night Overground' Services, would have occurred either during the early hours of Saturday

morning or during the early hours of Sunday morning, occur instead on Sunday evenings.

4. Network Rail undertook the normal industry consultation ending on 12 January 2018 with two response from Transport Focus and First Greater Western both offering no objections.
5. We reviewed the bespoking of Schedule 4 and requested reassurance from the parties that the provisions would only be up-to the end of Control Period 5 (CP5). This is because the dis-applying of Schedule 4 is additional to what was anticipated by the Access Charge Supplement for CP5. ARL advised that whilst the changes to Schedule 4 are linked to the new overnight services (up to the Subsidiary Change Date 2019), it is likely to conclude a new supplemental agreement for the May 2019 Timetable (for additional quantum), so the Schedule 4 provisions within the Contract will be updated at that point. We are satisfied with this response.
6. We noted some drafting issues for the provisions in the Contract that would allow the new overnight services to be effective. We provided some suggestions and the parties have accepted our comments, amending the agreement accordingly for the formal submission.
7. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).
8. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.
9. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Michael Albon', written over a horizontal line.

Michael Albon