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Dear Richard,

Covid-19: Compliance with regulatory obligations

The country has been significantly impacted by Covid-19. Lockdown restrictions which were introduced on 23 March continue to have a significant impact on society and businesses. Notwithstanding the unprecedented conditions in which we are currently operating, Network Rail remains absolutely committed to providing a service to key workers and freight users at this critical time.

In response to current challenges, we have reviewed and adjusted many of the ways in which we work to continue to safely operate the network whilst adhering to social distancing requirements. Many of our office-based colleagues can work productively and safely from home. However, this is not possible for frontline workers. Our colleagues who require access to specific business tools (such as train planning systems) face different challenges to keep the railway running. Despite this, it is pleasing that approximately 88 per cent of the planned Easter workbank was successfully delivered (albeit with an engineering overrun at Dunblane) and that we can continue to provide a vital service to those that depend on us. Planned work for the forthcoming bank holiday weekend is in a good position with six schemes going ahead and only one cancelled because of Covid-19.

In conjunction with our Chief Medical Officer and Trade Unions we have examined how we can safely get employees back into offices and workplaces whilst adhering to Government guidelines around social distancing. We have made good progress in terms of getting Capacity Planning colleagues back to their workstations as described later in this letter. However, and notwithstanding the steps that we are taking, ongoing restrictions mean a return to “business as usual” remains very challenging. Any increase or strengthening of our outputs will require a withdrawal of the restrictions that have been placed on our office-based teams. This step will be taken in full alignment with Government, industry and corporate policies.

As discussed previously, we have been assessing whether we expect to be able to comply fully with our regulatory obligations in the context of Covid-19 and we welcome the pragmatic approach ORR has taken to date. We have identified below where there are issues.

Continuity of timetable planning outputs (e.g. T-12 compliance and production of the December 2020 timetable)

On 24 March Capacity Planning colleagues within our System Operator (SO) function invoked a pre-existing business continuity plan. Planning teams were vacated from The Quadrant:MK to best protect the

workforce in line with Government guidelines. At this stage Informed Traveller work was suspended to focus on the receipt, processing and publication of contingency timetables.

Through continued engagement with TOCs, FOCs and regional teams we have considered further plans for reductions to emergency timetables based on key route strategies and other inputs. Suspension of Informed Traveller work has allowed us to review the emerging picture around change to the access workbank that impacts T-12 publication. The pre-developed business continuity plan is part of SO's steady state risk mitigation approach but was only ever intended to provide continuity of service for up to two weeks. Given that social distancing requirements are likely to last for several months immediate action was taken to equip a more substantial number of planners with better facilities to work as effectively as possible from home. All additional equipment was deployed to colleagues by 3 April 2020.

Having secured a stable planning environment in terms of resource and available technology, SO engaged with the industry regarding the best approach to timetable planning considering emerging conditions and Government requirements. In the first instance the agreed approach was to co-ordinate the development, bid, import, processing and publication of contingency timetables based on Day A for B planning (i.e. submit an amended timetable today and it is processed and published tonight ready for tomorrow). This led quickly to the largest ever use of Day A for B plans ready for the weekend of 28/29 March.

We have also continued to work with the industry on the introduction of the May 2020 timetable. The retention of the May 2020 timetable change date (17 May 2020) is currently supported by the industry owing to several factors including the significant quantum of work that has been undertaken to develop this timetable. The May 2020 timetable will therefore form the baseline for train operations as and when train services return to normal operation. Passengers will therefore benefit from the new timetable once normal services resume (albeit the emergency timetable will continue operate until such a time as restrictions on movement are lifted).

Work on the December 2020 timetable was also paused at the same time as SO invoked its business continuity plan. The team is currently scoping the size and content of December 2020 timetable changes in light of operator responses and readiness following the Covid-19 pandemic.

The Informed Traveller recovery options have been the subject of considerable debate with the Operational Planning Practitioners Group (OPPG) and the Strategy Group (OPSG). Three options have been identified and discussed in connection with the recovery to the T-12 timescales. OPSG and OPPG endorsed the option of restarting work on weeks 12 to 17 and completing the IT plans which are already with Capacity Planning using minimum safety only validation. In simple terms the SO's outputs have been impacted as follows:

Measure	Impact	Action being taken
Working Timetable (WTT) Milestones	Dec 20 - D26 Offer will not be delivered on 12 June 2020 May 21 - D55 Notice of Significant Change moved from D55 (24 April 2020) to D50 (29 May 2020)	The confirmed process for re-starting work on Dec 20 is that Network Rail publishes the timetable at D24 and provide a refresh of data at D21 rather than D22 (which is also D43 for May 21). This proposal is subject to agreement through Industry Timetable Change Steering Group and PMO.
502A Attributed delay	Levels of attributed delay are significantly higher owing to limited timetable validation under contingency planning timescales. Mechanisms to suspend or adjust targets are under consideration.	Delay attribution and investigation will be resumed on return to normal working.

Informed Traveller	T-12 publication is not possible at this stage. SO has led the industry debate and agreed a way forward – proposal to either suspend T-12 reporting until compliance is achieved, or adjust targets to reflect zero compliance level until the plan end date.	Recovery plan details have been finalised with industry through OPPG and work restarted on Informed Traveller 21 April. Review of the impact of Covid-19 on the Access workbank is a critical part of this process and stability of the base timetable plan. The recovery plan requires double week Offers and Publication from 22 May, with limited safety validation checks only in most cases.
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In order to safeguard development and delivery of the December 2020 WTT and our Short-Term Planning workload overall, we have now implemented plans to create a safe working environment (including a trial of thermal imaging technology – used to detect fevers and high temperatures) so that employees within our train planning community can return to The Quadrant:MK. Earlier this week, we were able to welcome a cohort of colleagues (c.150 members) from the Capacity Planning team back into the office. Social distancing guidelines are being fully respected, with absolute secure arrangements in place to ensure that there is no cross-over of the cohorts, and no risk of visitors or ad-hoc employee visits coming into the same office space as our core team.

For the reasons outlined above, whilst we are not currently publishing the timetable at T-12, we believe that we are providing information “as soon as is reasonably practicable having regard to all relevant circumstances” as required by condition 7.18(b)(ii) of our licence. SO colleagues (in consultation with the industry) are working in very challenging circumstances to provide information on Relevant Timetable Changes as soon as reasonably practicable, having regard to all relevant circumstances. Therefore, we believe we are acting consistently with overarching Network Management Duty as set out in condition 1.3 of our licence.

We now have draft plans in place to recover T-12 by 12 June 2020. The recovery timetable (that will be considered by our Executive Leadership Team next week) is attached at Appendix A, with explanation provided through the footnotes. It should be noted that, if any of the assumptions made in the development of this draft plan prove to be wrong (such as compliant receipt of operator bids or a worsening of the current Covid-19 situation) this may result in slippage to the plan.

We will continue to liaise with ORR around our recovery plans, particularly in relation to T-12. We have attached (Appendix B) a copy of the latest T-12 report. If ORR feels that this is useful, we can provide a weekly update along these lines. If this is something that ORR would like to receive, please provide the details of who this should go to and we can make the necessary arrangements.

Periodic and annual reporting to ORR (including Annual Return & Regulatory Accounts)

As described above, in line with Government guidelines, the overwhelming majority of office-based colleagues are working from home. Until w/c 20 April access to some of our core IT systems, including the Virtual Private (‘Remote Connect’) Network, was limited to business-critical user between 08.00 and 16.00 Monday to Friday. This is because our business continuity plans had previously made provision to allow approximately 7,000 employees to remotely access the Network Rail IT network at any one time. Currently, we have more than 20,000 employees seeking to access our corporate network remotely daily.

Plans have now been deployed which give all employees access to ‘Zscalar’. This provides employees across the organisation with much better access to our corporate IT systems. However, our reporting community rely heavily on system processing power, so home working brings obvious challenges as laptop computers lack the power to process data mining requests at the speed that is normally achievable. It is therefore possible that some regular reports, in addition to occupational health information that we have already discussed with you, may be delayed. Reports which could be delayed include those relating to maintenance volumes and information that is normally disaggregated to a route level. Wherever possible,

we will endeavor to let you know ahead of time of any delays and we are absolutely committed to addressing any information gaps as soon as we can. We are, of course, very content to discuss appropriate 'work-arounds' with you so that you continue to have access to the information that you need to fulfil your statutory duties. We have already begun discussions with your colleagues (Folusho Amusan and Peter Moran) about report prioritisation.

Given the circumstances as described above, we believe it is prudent to seek a derogation from compliance with licence condition 10.3 which requires provision of Periodic Returns no later than 21 days following the end of the Relevant Period to which it relates. To be clear, we expect to be able to provide the majority of required information to ORR within the 21-day time period as afforded by the licence, but we expect to experience some circumstances where a longer time period is necessary to supply information. We are, of course, happy to discuss the terms of any derogation with ORR and, for the avoidance of doubt, are not proposing a blanket exemption. We therefore suggest that any derogation is initially for a period of three months from the date of this letter but is sufficiently flexible to accommodate changing circumstances (e.g. the inability to provide a newly identified data set). This will allow a sufficient period either for circumstances to regularise themselves, or for further review in light of any updated Government guidelines.

In the interests of transparency, we believe that there is a potential risk of delay (and please note that this is risk of delay as opposed to delivery) of the provision of other information to ORR and therefore risk to complying with the following conditions (for which further derogations might be required):

- Condition 10.5 which requires provision of the Annual Return by a date which is not less than three months after the last date to which the Annual Return relates
- Condition 9.13 which requires provision of financial information no later than 1 July following the end of the Financial Year.

In relation to the Annual Return, we expect to publish a commentary document in accordance with our licence obligations, but it is possible that there could be some gaps in the Annual Return data tables. We will address these gaps as soon as we can but may need to publish updated data tables after initial publication of the Annual Return to address any reporting gaps.

In relation to the regulatory financial statements, ORR is already aware (we have discussed with Gordon Cole and Carl Hetherington) that we are unable to comply with the 1 July deadline (largely due to NAO review timescales) and obtaining consent to publish at a later date has already been discussed. We are yet to submit a formal consent application but if current circumstances remain stable then we would expect to provide our regulatory financial statements to ORR on 31 July. We will liaise with Gordon and Carl directly about this issue.

Considering our experience to date, we do not currently anticipate any delays in the provision of periodic financial information to stakeholders (including ORR, DfT or TS). However, if this situation changes we will, of course, discuss this with you.

Maintenance of appropriate asset information

Colleagues in our Safety Technical and Engineering function and in our regions who are working from home are faced with the same challenges as described above. Colleagues who are critical to the operation of the network are typically having to prioritise their workload so that the network remains open to key workers and freight.

Colleagues are working as diligently as possible to remain compliant with obligations under conditions 5.7 and 6.7 of the network licence which require us to maintain appropriate information about Relevant Assets (including condition, capability and capacity). There is a likely risk of non-compliance regarding the frequency of refreshed information on asset condition but this has been identified and colleagues are mitigating against this risk by pursuing, within each asset class, any risk of non-compliance with asset

specific standards. This will allow us to record and monitor any non-compliance and to redress this once we can safely return to “business as usual” and return employees to the workplace.

To provide ORR with assurance that we are doing everything reasonably practicable to comply with our regulatory obligations we can provide a regular high-level central overview covering regional assurance as well as additional information on how we are maintaining internal levels of assurance including decision making across the organisation. We suggest that this information is provided to ORR on a fortnightly basis. Much of this material is available to hand, however, some regional information will require consolidation. We are, of course, also happy to meet with your asset management colleagues as necessary to discuss this issue in more detail.

Longer-term business planning

We have seen a significant downturn in traffic on the network and there continues to be uncertainty regarding how long it will last. As a consequence, we are currently following our business as usual process to forecast the expected traffic on the network. We are working with regions to understand what assumptions we can, and should, make and will be updating the process in the following weeks. However, we are currently unable to make informed judgements about likely future traffic volumes with any degree of certainty and this will have an impact on business planning (for example determining what level of maintenance and renewal activity is required to sustain the condition of the network). We are not currently seeking any licence derogations from ORR in relation to this matter – but it is appropriate to flag the obvious risk that this creates in the preparation of the 2021/22 Delivery Plan Update and our longer-term plans. In addition, many of the forecasts as set out in our 2020 Delivery Plan Update are now highly unlikely to be achievable (for example in relation to delivery of planned renewals volumes).

Provision of information to passengers during disruption

We have scaled back real-time reporting on the network owing to priorities in reporting in the context of Covid-19. Therefore, we are no longer having two hourly reporting and as such, passenger information is no longer being reported on to external stakeholders in a consistent manner. We are instead refocusing our outputs to report by exception and are reporting on critical freight flows, all fatalities, all ORR/DfT reportable safety incidents and provision of a daily Covid-19 situational overview. In ordinary circumstances, we would suggest that this could present a real risk to delivery of our Passenger Information Duty under condition 1 of the Network Licence. However, due to the significant downturn in traffic (as referenced above) and current levels of good performance, at this stage, we do not consider this to be a material risk. The position is of course under a constant state of review.

We are happy to liaise with ORR to provide updates on Passenger Information and T-12 compliance, but as mentioned previously we currently envisage that we will have recovered T-12 by 12 June. We are, and will continue, liaising with Transport Focus regarding the steps we are taking towards full recovery.

Commitment to transparent engagement with ORR

In these unprecedented circumstances, we are continually assessing likelihood of compliance with regulatory obligations. As time passes, it may be the case that further issues present themselves which are currently unforeseen. We will continue to engage with you and keep you informed should we become aware of further issues.

We are also continuing to evaluate and respond to the changes across the business because of Covid-19. We understand that changes to our plans may be required that could be classified as relevant changes under the Managing Change Policy. We will continue to engage with ORR as further information becomes available.

Where we have requested a derogation from compliance we would be grateful to discuss the terms further with ORR so that we have a position that is mutually acceptable.

Finally, I would like to take this opportunity to thank you and your team for the constructive and pragmatic way in which you have engaged with us during this crisis. It is appreciated. Should it be helpful to discuss the content of this letter in more detail, please do let me know.

Your sincerely,

Jon Haskins
Head of Regulatory Compliance & Reform