

22 February 2022

Timetabling and Network Code change requirements

Introduction

1. Since March 2020, in response to public health measures and changes to passenger demand, operators have had to make numerous changes, sometimes at short notice, to planned services. Infrastructure managers have had to plan timetable changes in the context of this uncertain environment.
2. As the country continues in its recovery from the pandemic, the industry must continue to work together in planning services, to ensure the best network use for passengers and freight. This is especially important because a continued separation of planning services for timetables from the contractual rights of parties, and therefore, non-compliance with the Network Code (the Code), is neither desirable for railway users or sustainable because of the pressure placed on resources for infrastructure managers and operators.
3. Network Rail is responsible for publishing the timetable on its network and is subcontracted by other infrastructure managers to provide timetable services. Commendably, during the last two years, industry has minimised legal disputes, even as changing circumstances have increased resource and commercial pressures. However, while the continued goodwill of industry participants remains important, the Code(s) must be amended to ensure future planning certainty and transparency for users.
4. Our duties and functions under legislation¹ enable ORR to hold industry to account in relation to applications for access and determinations of appeals on timetabling. To support reaching a more stable and robust planning platform this statement sets out how we plan to hold industry to account on the delivery of the timetable and compliance with the Code. This includes the Better Timetabling for

¹ [The Railways Act 1993](#) and [The Railways \(Access, Management and Licensing of Railways Undertakings\) Regulations 2016](#)

Passengers and Freight (BTPF) programme led by Network Rail (previously Industry Timetable Process Reform) and industry compliance with the Code.

5. This regulatory statement explains how we will apply the legislative and contractual framework in line with our published guidance and policies. In summary, this statement explains:

- a. Current timetabling process: We expect industry to engage constructively with timetable planning and we will engage in that vein;
- b. ORR holding to account:
 - i. our approach to timetabling during the pandemic
 - ii. our expectations for industry led proposals for change to the Code and ORR intervention;
- c. Timetable reform and TTP003:
 - i. we expect industry to work constructively to reform timetabling and follow the formal change process set out in Network Code(s) to avoid ambiguity and mitigate the risk of disputes;
 - ii. infrastructure managers need to obtain sufficient evidence to support the consideration and application of the Decision Criteria under Part D of the Network Code.

Current Timetabling process

6. For the timetable process to reach a degree of stability it requires industry to act in a constructive manner in its access right applications and timetable bids. Operators should note the many Code requirements and criteria infrastructure managers must consider, as well as our previous statement on [Future Service Levels and Unused Access Rights](#). Of particular relevance is the section on new applications, where we stated we may require further information and “*we may need to examine the impacts of the proposed services on the timetable that is likely to operate, as well the impacts in the scenario where all services with rights are timetabled*”.

ORR holding to account

7. Over the past two years our regulatory approach to timetabling Code compliance and requirement to produce a timetable by T-12 weeks (Network Licence and Informed Traveller timetable) has acknowledged the challenging circumstances faced by industry. We have focussed on whether Network Rail has done everything “reasonably practicable” to deliver timetabling effectively. At the start, this meant managing timetable risk, and support of passenger and freight operations. Latterly, we have also welcomed its engagement on timetable reform (BTPF) which aims to achieve Code compliance as well as improving the process. We have communicated

this in our [Annual Assessment of Network Rail](#) (July 2021) and continued to closely monitor the work by the System Operator in Network Rail.

8. As proposals for change to the Code and timetabling processes grow in significance, it is necessary for industry to demonstrate it has clearly analysed the proposals. Given the operational nature of many processes, industry will often understand best the possible solutions and the consequences and these need to be articulated in the relevant proposal for change. For any proposals for change (whether industry led or initiated by ORR) we expect industry will provide, as a minimum:

- a. a clear articulation of all of the issues (procedural and legal) and the extent of industry agreement on the need for change;
- b. a clear explanation of the identified issues, and why the proposal is the most appropriate one in respect of the issues cited;
- c. a clear understanding of the operational implications (processes and systems);
- d. a clear assessment of the implications of a particular Code change, for example, on other parts of the Code, TACs, dispute processes or legislation²;
- e. a clear draft proposal which demonstrably addresses identified issues and industry participants' views; and
- f. plans for implementation and management of risks with identified owners.

9. We will continue to carefully monitor BTPF and Code changes in line with our statutory duties and role set out in the Code. Alongside this, we will continue to respond to industry proposal for change consultations, using the criteria set out above as a guide. We will also participate in Task & Finish groups where a regulatory view could be constructive. This will ensure we are able to assess how Network Rail has engaged with industry to develop workable proposals and support our functions as approver of Code changes.

Timetable reform and TTP003

10. Network Rail's BTPF engagement for phase 1 produced the high-level process objectives for timetable reform in December 2021. Our understanding is that these objectives attracted sufficient support for Network Rail to enter Phase 2, where

² For example, Part D is linked to The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016

it will define and deliver the detail required to meet those objectives. This includes the necessary Code changes.

11. In January 2022, Network Rail began an industry consultation on its first Proposals for Change to the Code under BTPF. Network Rail has since organised a Task and Finish Group to develop them further. We will participate in this group as a regulatory view could be constructive, while ensuring we do not fetter our discretion in our approval role.

12. Timetable reform has the potential to improve outcomes for all operators, infrastructure managers, funders, freight customers and passengers. Industry does need to continue to engage constructively with efforts to improve the timescales and processes to deliver the most efficient timetable planning process. This relies on industry having a common understanding of the end state and direction of travel. It also relies on industry having sufficient capacity to use its expertise to make changes to its processes with that end goal in mind.

13. In January 2022, we published a [Timetable Panel Dispute Determination \(TTP003\)](#) on the Heathrow Airport Ltd (HAL) network. The timetable process and its timescales under the Code was central to this case. To ensure clarity of approach for industry, it is important that we set out where this determination has a relevance to the wider network.

14. Our Determination emphasised the importance of the formal modification process in providing legal certainty for all industry timetable participants. The timescales and processes set out in Network Code(s) were put in place to ensure transparency and sufficient time for all parties to carry out their responsibilities effectively. Departing from contractually agreed terms inevitably puts all parties at risk of confusion and dispute. It must be remembered that our role is to apply the law as set out in legislation and under the contracts parties hold.

15. Another conclusion in our Determination of wider industry significance is the importance of following the processes and procedures for application of the Decision Criteria contained in Part D of the Network Code. In particular, an infrastructure manager needs to demonstrate with evidence that it has endeavoured to comply with access proposals submitted in accordance with the Network Code through consideration of relevant option(s). It must also have sufficient evidence to support its consideration and application of each of the Decision Criteria.

Industry and funder considerations

16. Industry is planning its recovery from major changes in services levels over the last two years, and there are significant upcoming timetable projects on the mainline network. Improving the governance and contractual structure set by the Code, while ensuring sufficient clarity and stability is in place to provide industry and funder certainty, is vital. To achieve these apparently conflicting objectives, funders

and infrastructure managers need to work together to coordinate their respective plans to mitigate the pressures placed on the industry planning community.

17. Industry and funders must engage closely in the consideration of the BTPF (or any) changes. If appropriate changes to the Code cannot be agreed, then it follows that a return to contractual timescales in the Code will need to be pursued. We would not expect industry to operate in the longer term in continued non-compliance with the Code.

Application of this statement

18. The scale of industry change has increased the uncertainty for timetable planning. This statement sets out our position regarding timetable reform and use of the existing processes within Network Code(s) to ensure transparency and regulatory certainty. This statement is available on our website and should be considered alongside our [track access guidance](#), which sets out our regulatory approach across the track access regime. This statement will remain relevant while the process of industry timetable reform is ongoing. However, we will review this guidance in April 2023.

Daniel Brown

A handwritten signature in black ink, appearing to read 'Daniel Brown', with a horizontal line underneath the name.