

Approach to regulation of the Tyne and Wear Metro Shared Network

Introduction

1. We are publishing this regulatory statement to explain how we will apply the established legal and contractual framework to regulating the specific circumstances of the Tyne and Wear Metro Shared Network (“MSN”), once constructed. The MSN will be unusual in that there will be a shared use of a metro system where part of that network is covered by the access provisions of the Railways Act 1993 (“the Act”) and part is exempted by virtue of The Railways (Class and Miscellaneous Exemptions) Order 1994 (“the CMEO”).
2. This statement follows our engagement with the Tyne and Wear Passenger Transport Executive and DB Cargo (UK) Limited and from our discussions with them. It is based on our current understanding of the arrangements, and if this changes as a result of further information coming to light, we will update this statement accordingly.
3. Our regulation of the remainder of the Tyne and Wear Passenger Transport Executive Metro passenger network remains unchanged. The approach set out in this statement applies only to the MSN.

Background

4. The Tyne and Wear Metro is a light rail rapid transit system for Tyne and Wear, owned and operated by the Tyne and Wear Passenger Transport Executive (trading as Nexus). Nexus currently provides passenger services serving 60 stations.
5. There are three short single-track sections on the Nexus network where trains must use the same line in both directions: between Pelaw and Hebburn (800m), Hebburn and Jarrow (1.4km) and Jarrow and Bede (600m). Some 200 trains need to pass through these bottlenecks every day, reducing traffic flow and hence capacity on the network.
6. Nexus proposes to address this constriction through the Metro Flow expansion project. The project is to remove the bottlenecks by double-tracking the three single-track sections, using part of the adjacent freight line. Nexus expects this should increase the capacity of its network while increasing resilience to performance perturbations and delivering some 20% increase in train frequency across the Nexus network as a whole.

Nexus planned acquisition and use of the Jarrow Branch Line

7. The Jarrow Branch Line (“JBL”) is a freight-only line, some 5.95km in length, owned by Network Rail and forming part of its network. Currently, DB Cargo (UK) Limited (“DBC”) runs 1-2 trains a week on the branch line to the Prax Petroleum oil terminal at Jarrow.
8. Nexus is proposing to purchase the JBL from Network Rail to use part of it and re-align it, to bring double-tracking to the current single-track parts of Nexus’ network. Once the infrastructure works required to create the twin-track alignment are completed, freight train operators would share the merged infrastructure with the Nexus passenger trains.
9. The expanded Nexus Metro network will consist of two parts for the purposes of applying the regulatory framework: the existing Metro network and the MSN. A schematic of the current lines and how they are to be merged is shown at Annex A. The existing Metro network will remain exempt under the CMEO from the access and licensing provisions in the Railways Act 1993. Nexus has confirmed that it considers the exemption from scope set out in Regulation 4(7)¹ of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (“the 2016 Regulations”) will continue to apply to the existing Metro network.
10. The regulatory framework set out in this regulatory statement will apply to the MSN.

Effect on freight train operators

11. Currently, DBC is the only freight operator using the JBL. However, all freight train operators have the right to operate anywhere on Network Rail’s network, including this branch line. Therefore, it is important that the merged network will include freight operator access rights, and for the access contracts that are agreed upon for the shared network to include this provision.

Licensing

12. As set out above, under the CMEO, most of the existing Nexus network is exempt from the licensing provisions of the Act.² However, where Nexus shares a Network Rail line, running from Pelaw to Sunderland, we have issued Nexus with a passenger train licence and a station licence for these operations. Nexus currently does not hold or need a network licence, as Network Rail’s network licence covers this part of the track.

¹ DfT guidance regarding the existing scope of the Nexus network is at: [DfT guidance-on-the-scope-of-the-recast-first-rail-package-transposition-regulations \(002\).pdf](#)

² Articles 3 and 4 of the CMEO exempt railway networks from the licensing regime if they were in operation on 1 April 1994 and were not operated by British Rail or London Regional Transport.

MSN network licence

13. The extra track that Nexus plans to add to its network following transfer of this from Network Rail to Nexus will not be covered by the exemption in the CMEO. For Nexus to operate the track, it will need either a network licence or a licence exemption to be granted by the Office of Rail and Road (“ORR”). Once formed, the MSN will serve a mixture of Metro passenger services and freight operations. It will comprise both exempt and non-exempt track. Under these unique circumstances it appears appropriate for us to license the MSN’s merged track to bring uniformity to the otherwise mixed licensing arrangements.
14. Section 10 of the Act gives scope for conditions to cover all the shared network that the MSN will consist of. It is proposed that section 10 will apply to the conditions set out in the MSN network licence so that the licence will apply to both the CMEO-exempt sections of the MSN as well as the newly-created non-exempt sections. This will secure the benefits of a single, homogenous licensing regime for the MSN. For the avoidance of doubt, section 10 of the Act will only apply to the MSN; it will not apply to the rest of the Nexus passenger network.
15. In addition to our standard template network licence conditions, we consider that extra conditions relating to network management; timetable planning and capacity allocation; restricted use of protected information; and information for ORR, should also be included. We will consult on this in our proposal for a Nexus network licence for the MSN.

Network Rail network licence

16. Under Condition 17 of its network licence, Network Rail is required to obtain ORR consent prior to any disposal of land. On 10 March 2022, ORR gave consent to Network Rail’s disposal of the JBL and associated land to Nexus.³ However, our consent is subject to the Network Change procedure being agreed and completed before the disposal transaction can be finalised (the procedure is required under Part G of the Network Code, which is incorporated into track access agreements).

Access regime

17. Sections 17, 18, 22 and 22A of the Act set out an approval role for ORR in relation to access to railway facilities. If access agreements covered by the Act are not approved by ORR, they will be void, meaning that they are not enforceable by the parties. For access appeals that are not covered under sections 17 or 22A, the appeal process in the 2016 Regulations may be used.

³ Our decision is at <https://www.orr.gov.uk/sites/default/files/2022-03/c17-decision-doc-land-disposal-jarrow-branch-line.pdf>

18. Under Article 5 of the CMEQ, some types of facilities and certain specified facilities are exempted from the Act's access provisions. ORR approval is not needed for access agreements at exempted facilities.

19. Where the access provisions of the Act do not apply, the 2016 Regulations provide an appeal process where access has been denied or the applicant seeking access considers that it has been unfairly treated, discriminated against or is in any other way aggrieved.

Access contracts

20. The new access contracts between any freight operating company and Nexus will need ORR approval and direction. Our approach to regulating that contract is set out here. Our general approach to facility access contracts is set out in guidance modules on our website.⁴

Form of the contract

21. Access agreements are generally between the facility owner and an access beneficiary. An access agreement will cover the essential elements of the agreement including:

- duration of the agreement, the start and end date;
- type of access provided and timings;
- services provided (such as loading and unloading);
- charges;
- performance regime;
- termination provisions;
- dispute mechanisms; and
- provisions for amendments.

22. The facilities that Nexus would provide to freight operators are summarised as:

- a train formation/shunting facility, needed for access to the Jarrow oil terminal;
- the capability for freight trains to be stabled temporarily across part of the MSN; and
- an ancillary service of access to the telecommunications network on the MSN.

23. We do not have a formal model agreement for access agreements between a facility owner and an applicant. Parties have discretion to draft agreements that match their needs, subject to the terms required by law, whether or not they need ORR approval.

24. We expect facility owners to offer similar terms to all applicants or to have objective and justifiable reasons for offering different access terms. The terms of

⁴ [Track access guidance | Office of Rail and Road \(orr.gov.uk\)](#) and [Station and depot access | Office of Rail and Road \(orr.gov.uk\)](#)

the Nexus network licence, as drafted, will also prohibit discrimination, including between the network licence holder's trains and other operators (see above).

25. We note that the proposed train paths, depending on whether the train service is entering or egressing the facility, may require use of some sections not covered by the access provisions of the Act. **For the avoidance of doubt, when approving a contract, ORR will take it as given that permission to access a facility would imply permission to use the shared network to exit it as well (unless otherwise explicitly stated), or the purpose of the contract would be frustrated.**
26. The parties consider that parts of the MSN will be subject to the access provisions in the Act whilst other parts will be exempt by virtue of the CMEO. It would be impractical to have separate contracts for each section. Rather, the parties' preferred approach is to have a single contract governing DBC's access. ORR agrees. However, ORR directions under section 18 of the Act would only be relevant to the non-CMEO sections. This should be made clear in the agreement. Nevertheless, ORR would expect consistent and equivalent treatment between the regulated and non-regulated sections of the MSN.
27. We have issued a general approval for freight facility access.⁵ Where its terms are met, the general approval can be used instead of seeking specific approval from ORR. This is relevant to most new facility access agreements and is used regularly. Normally, if we were presented with a request for specific directions, where the parties are in agreement, we would query whether the general approval should be used instead. However, we recognise the particular circumstances of the MSN. We will therefore consider a request for specific approval in this instance, subject to a full industry consultation having been conducted and ORR being given sufficient time to consider the proposed terms. If we need more information, we will ask for it.

Appeals

28. ORR can be asked to determine the outcome for disputed access applications under the Act. We have published guidance about appeals in our track access guidance modules.⁶
29. Potential access beneficiaries may also make an application under section 17 to request formal ORR directions to the facility owner to grant access. This process is explained in our guidance and has been used by freight train operators in disputes. There is also a mechanism under section 22A to request 'more extensive use' of a facility.

⁵ [General Approval for freight facility access agreements 2018 \(orr.gov.uk\)](https://www.orr.gov.uk/sites/default/files/2021-07/general-approval-for-freight-facility-access-agreements-2018.pdf)

⁶ <https://www.orr.gov.uk/sites/default/files/2021-07/guidance-on-making-an-application-for-track-access.pdf> and <https://www.orr.gov.uk/sites/default/files/2021-07/guidance-on-the-access-2016-regulations.pdf>

30. Regulation 32(1) of the 2016 Regulations provides applicants with a right of appeal to ORR. An applicant can appeal to us if it believes it has been unfairly treated, discriminated against, or is in any other way aggrieved. This includes in relation to arrangements for access and charging.
31. Where the matter of an appeal under Regulation 32(1) is one in relation to which directions may be sought from ORR under section 17 or 22A of the Act, the applicant must lodge the appeal by way of an application under the relevant section.
32. We consider that the right of appeal under Regulation 32(1) means that the whole of the MSN is subject to ORR review and direction. As noted above, the MSN is part covered by the access provisions in the Act and part exempted. As such, where the appeal relates to a part of the MSN which is exempt under the Act, there will be a right to appeal under Regulation 32. If an appeal is made concerning access to the MSN, ORR would expect an application to be made both under Regulation 32 of the 2016 Regulations, and section 17 or 22A of the Act.
33. We would apply the legislation in a consistent manner in order to discharge our requirements under both regimes. We therefore consider that a freight train operating company seeking access to the MSN will have consistent treatment and rights of appeal on both the non-exempt and exempt sections of the MSN.

Safety regulation

34. ORR regulates safety through *The Railways and Other Guided Transport Systems (Safety) Regulations 2006* (“ROGS”). The proposal to merge the JBL with existing Nexus track does not bring any new regulatory issues, as Nexus already has a ROGS authorisation that would cover the MSN.

Conclusion

35. This regulatory statement explains how ORR would look to apply the established regulatory framework in terms of licensing and access to the MSN. We publish it in the interests of transparency and to provide certainty to the parties. We regard the circumstances of the MSN as being exceptional and novel, given it will be part exempted from the Act’s access provisions, and part not. We are grateful to the input from Nexus and DBC in helping our consideration and production of this statement

A handwritten signature in blue ink that reads 'Martin Jones'.

Martin Jones

Deputy Director, Access, Licensing and International

12 May 2022

Figure 1. Current freight-only line (top, blue) and adjacent passenger line (bottom, yellow).

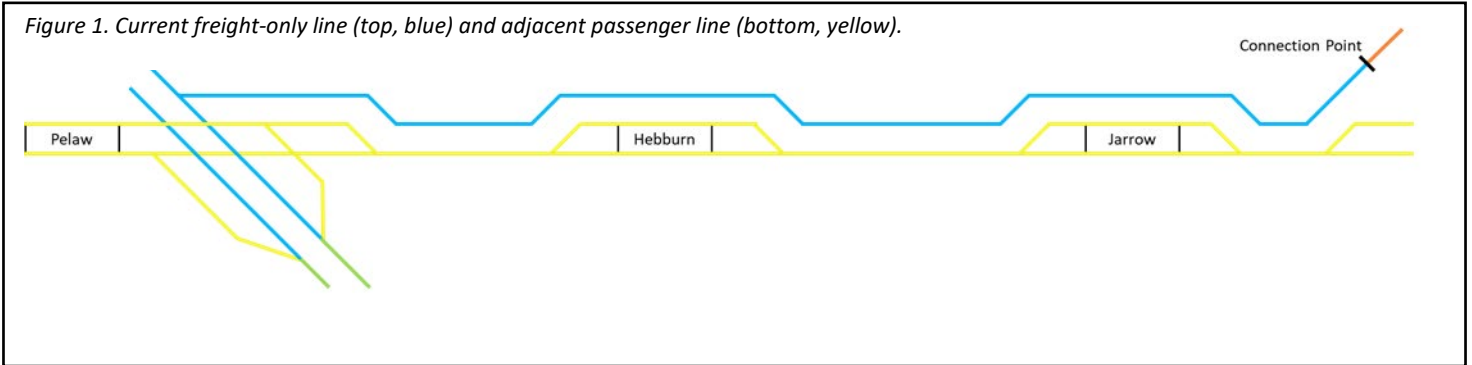


Figure 2. Merged lines (purple) forming the MSN, with freight shunting facility and freight stabling area shaded blue and green respectively.

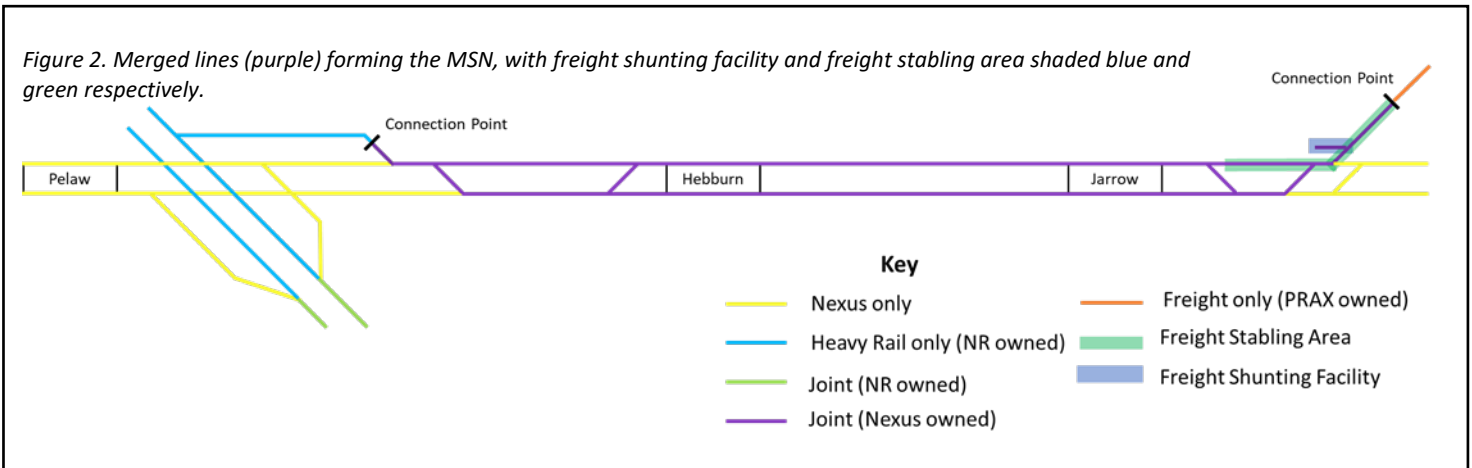


Figure 3. Areas of the MSN that are subject to the Act access regime shaded pink.

