## Annex to access guidance update in preparation for revocation of retained EU law

The following tables set out a summary of the proposed changes to the guidance documents. They include the current text; a tracked changes version showing proposed changes; and a ‘clean’ copy of the proposed new text. In some cases we have additionally provide an explanation or comment on a proposed change, that it show in the third column and in square brackets.

NOTE: where text quoted from the guidance includes footnotes, those footnotes have not been included here.

Table 1: The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended Access to the rail network and service facilities, infrastructure management and appeals

[Current Guidance](https://www.orr.gov.uk/sites/default/files/2021-07/guidance-on-the-access-2016-regulations.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24697/download)

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| Paragraph  | Original text | Tracked changes | Revised text |
| 1 | **Introduction**1. This guidance sets out the Office of Rail and Road’s (ORR’s) interpretation of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended (the 2016 Regulations). The focus is on these key areas:● Access to infrastructure and service facilities.● Infrastructure managers’ responsibilities.● Appeals to ORR.**Legislative framework**2. Since 2016, the legislative framework has evolved, both at EU and domestic level1. This guidance also reflects the new rules which came into force from 1 January 2021 at the end of the transition period following the exit of the UK from the EU. The 2016 Regulations were amended several times to account for this new situation2. 3. This guidance also reflects the provisions of the Commission Implementing Regulation 2017/2177 of 22 November 2017 on access to service facilities and rail related services (the Implementing Regulation)3, which supplements a number of obligations set out in the 2016 Regulations (relating to service facilities). 4. This guidance covers significant elements of the legislation that infrastructure managers, railway undertakings and service providers should be aware of and explains ORR’s policy and processes. However, we do not seek to cover every aspect of the legislation. It is the responsibility of individual businesses to ensure that they are compliant with the law.5. While this guidance covers changes to some provisions of the 2016 Regulations, it does not cover all the new provisions introduced by subsequent regulations. You should read the 2016 Regulations in full and as amended. | **Introduction**1. This guidance sets out the Office of Rail and Road’s (ORR’s) interpretation of *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended* (the 2016 Regulations). It has been updated in [December 2023] following the revocation of four Commission Implementing Regulations The focus is on these key areas:Access to infrastructure and service facilities.Infrastructure managers’ responsibilities.Appeals to ORR.~~Legislative framework~~~~Since 2016, the legislative framework has evolved, both at EU and domestic level. This guidance also reflects the new rules which came into force from 1 January 2021 at the end of the transition period following the exit of the UK from the EU. The 2016 Regulations were amended several times to account for this new situation.~~ ~~This guidance also reflects the provisions of the Commission Implementing Regulation 2017/2177 of 22 November 2017 on access to service facilities and rail-related services (the~~ **~~Implementing Regulation~~**~~), which supplements a number of obligations set out in the 2016 Regulations (relating to service facilities).~~ This guidance covers significant elements of the ~~legislation~~ 2016 Regulations that infrastructure managers, railway undertakings and service providers should be aware of and explains ORR’s policy and processes. However, we do not seek to cover every aspect of the legislation. It is the responsibility of individual businesses to ensure that they are compliant with the law.Please note that the 2016 Regulations and the Railways Act use different terms covering the operators, managers and owners of service facilities and sites. For convenience, we generally refer simply to service providers and service facilitiesin this guidance. Some key definitions are set out in the annex to this module. If you are in any doubt as to whether a provision applies to you, please refer directly to the legislation. ~~While this guidance covers changes to some provisions of the 2016 Regulations, it does not cover all the new provisions introduced by subsequent regulations. You should read the 2016 Regulations in full and as amended.~~  | IntroductionThis guidance sets out the Office of Rail and Road’s (ORR’s) interpretation of *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended* (the 2016 Regulations). It has been updated in [December 2023] following the revocation of four Commission Implementing Regulations. The focus is on these key areas:Access to infrastructure and service facilities.Infrastructure managers’ responsibilities.Appeals to ORR.This guidance covers significant elements of the 2016 Regulations that infrastructure managers, railway undertakings and service providers should be aware of and explains ORR’s policy and processes. However, we do not seek to cover every aspect of the legislation. It is the responsibility of individual businesses to ensure that they are compliant with the law.Please note that the 2016 Regulations and the Railways Act use different terms covering the operators, managers and owners of service facilities and sites. For convenience, we generally refer simply to **service providers** and **service facilities** in this guidance. Some key definitions are set out in the annex to this module. If you are in any doubt as to whether a provision applies to you, please refer directly to the legislation. [A footnote will specify the revoked CIRs] |
| 7 | The 2016 Regulations and the Implementing Regulation apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. | The 2016 Regulations ~~and the Implementing Regulation~~ apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. | The 2016 Regulations apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. |
| 11 | The Department for Transport has produced separate guidance on the scope of the 2016 Regulations. | [Paragraph deleted in its entirety] | [Paragraph deleted in its entirety] |
| 12-16 | The Implementing Regulation 12 The Implementing Regulation10 setting out new rules relating to service facilities was adopted in November 2017 and most provisions entered into force from 1 June 2019. Since the exit of the UK from the EU, the Implementing Regulation has been amended to correct inoperabilities. 13 The Implementing Regulation applies to all service providers covered by the Regulations 2016. Certain railway undertakings and networks are exempted from certain provisions relating to the access regime and these exemptions are reflected in the 2016 Regulations. Where a service facility is not subject to the requirements in the 2016 Regulations then the Implementing Regulation will not apply to it. 14 Even where the 2016 Regulations do apply to the service facility, it is possible for certain service facilities to apply to ORR for exemptions from certain provisions. The procedures for doing this are explained below. 15 Article 2(2) of the Implementing Regulation allows ORR to exempt service providers13 from all or some of its provisions, with some exceptions14. Article 2(1) states that operators of service facilities that exist solely for use by heritage railway operators for their own purposes may request exemption from the whole of the Implementing Regulation. ORR will consider any applications received on a case by case basis. We will have regard to the criteria set out in the Implementing Regulation and the Independent Regulators’ Group (Rail)’s (IRG-Rail) paper on exemptions15. 16 Exemption from the Implementing Regulation does not provide exemption from any of the obligations under the 2016 Regulations or the Act. | ~~The Implementing Regulation~~ ~~The Implementing Regulation setting out new rules relating to service facilities was adopted in November 2017 and most provisions entered into force from 1 June 2019. Since the exit of the UK from the EU, the Implementing Regulation has been amended to correct inoperabilities.~~~~The Implementing Regulation applies to all service providers covered by the Regulations 2016. Certain railway undertakings and networks are exempted from certain provisions relating to the access regime and these exemptions are reflected in the 2016 Regulations. Where a service facility is not subject to the requirements in the 2016 Regulations then the Implementing Regulation will not apply to it.~~~~Even where the 2016 Regulations do apply to the service facility, it is possible for certain service facilities to apply to ORR for exemptions from certain provisions. The procedures for doing this are explained below.~~~~Article 2(2) of the Implementing Regulation allows ORR to exempt service providers from all or some of its provisions, with some exceptions. Article 2(1) states that operators of service facilities that exist solely for use by heritage railway operators for their own purposes may request exemption from the whole of the Implementing Regulation. ORR will consider any applications received on a case by case basis. We will have regard to the criteria set out in the Implementing Regulation and the Independent Regulators’ Group (Rail)’s (IRG-Rail) paper on exemptions.~~ ~~Exemption from the Implementing Regulation~~ **~~does not~~** ~~provide exemption from any of the obligations under the 2016 Regulations or the Act.~~  | [Section deleted in its entirety] |
| 19-20 | Interpretation 19 In this guidance, except where specifically indicated otherwise, a reference to a regulation is to the 2016 Regulations and a reference to an article is to the Implementing Regulation. Some key definitions are set out in the annex to this module for ease of reference. 20 Please note that through the different legislation there are now a variety of different terms covering the operators, managers and owners of service facilities and sites. For convenience, we generally refer simply to service providers and service facilities in this guidance. If you are in any doubt as to whether a provision applies to you, please refer directly to the legislation. | [Section deleted. Paragraph 19 has been deleted in its entirety. Paragraph 20 has been moved to the introduction section] | [Section deleted. Paragraph 19 has been deleted in its entirety. Paragraph 20 has been moved to the introduction section] |
| 21-22 | Key changes 21 Some key changes made by the Implementing Regulation, as reflected in this guidance, include: (this list is not exhaustive). ● Service providers must provide Service Facility Descriptions containing specific information about their service facilities. ● Infrastructure managers, like Network Rail, must provide a template, facilitate collection of Service Facility Descriptions and publish them through their network statements. ● Certain exemptions are possible.● Details are added for the process for considering access requests. ● Clarification is added for unused service facilities. 22 Whilst we have endeavoured to flag relevant changes in this guidance, we recommend that you also refer in detail to the legislation. | [Section deleted in its entirety] | [Section deleted in its entirety][This section described changes introduced by CIR 2017/2177, which will no longer be relevant in the event that CIR is revoked.] |
| 23-26 | ORR guidanceORR has also published other guidance that may be relevant and of interest. This section sets out some of them.The 2016 Regulations require us to monitor the competitive situation in the rail services market. This duty sits alongside our monitoring responsibilities under the Act and competition law. Guidance, ‘*ORR’s approach to monitoring and reviewing markets*’, is available on our website.ORR has the power to fine a ‘relevant operator’ who has contravened or is contravening a decision, direction or notice issued by us under the 2016 Regulations. ORR’s policy regarding the imposition of penalties, ‘*ORR’s economic enforcement policy and penalties statement - Great Britain*’, is available on our website.We have published a suite of separate guidance modules on access contracts and our approach to regulating track access on our website.  | [Section deleted in its entirety] | [Section deleted in its entirety][This section is not replicated in other ORR Guidance.] |
| Chapter 3, 6 | They may use the template developed for service providers to do this. It is also a requirement for the infrastructure manager to specify in the network statement or on its web portal the deadline for receipt of the relevant information on service facilities or the relevant link to be published in the network statement. | They may use the template developed for service providers to do this. ~~It is also a requirement for the infrastructure manager to specify in the network statement or on its web portal the deadline for receipt of the relevant information on service facilities or the relevant link to be published in the network statement.~~  | They may use the template developed for service providers to do this.[The deleted text refers to an obligation created by Article 5(2) of CIR 2017/2177. This will no longer be relevant in the event that CIR is revoked.] |
| Chapter 3, 8 | Network statements, in their provisional and final versions and the information which must be included, can be the subject of an appeal to ORR under regulation 32. An appeal brought in relation to a network statement will be dealt with in accordance with the process set out in Appeals chapter of this guidance | Network statements, in their provisional and final versions and the information which must be included, can be the subject of an appeal to ORR under regulation 32. An appeal brought in relation to a network statement will be dealt with in accordance with the process set out in the Appeals chapter of this guidance | Network statements, in their provisional and final versions and the information which must be included, can be the subject of an appeal to ORR under regulation 32. An appeal brought in relation to a network statement will be dealt with in accordance with the process set out in the Appeals chapter of this guidance.[An additional work has been inserted to correct its previous omission.] |
| Chapter3, 25 | Part 5 and Schedule 4 (as amended)58 set out the framework and timetable for the allocation of infrastructure capacity59.[…]Fn 58. The Schedule substantially reproduces the provisions of Annex VII to the Recast Directive (the text of which was replaced by Commission Delegated Decision (EU) 2017/2075) | Part 5 and Schedule 4 of the 2016 Regulations~~(as amended)~~ set out the framework and timetable for the allocation of infrastructure capacity59. | Part 5 and Schedule 4 of the 2016 Regulations set out the framework and timetable for the allocation of infrastructure capacity.[FN 58 has been deleted] |
| Chapter 3, 27 | New rules regarding the procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity were adopted in April 2016. These applied from December 2016 and are relevant to holders of framework agreements (track access contracts in Great Britain). Infrastructure managers should ensure they are familiar with, and understand, the requirements. | [Paragraph deleted in its entirety] | [Paragraph deleted in its entirety][This paragraph referred to CIR 2016/545. In the event that it is revoked the rules referred to will no longer apply.]  |
| Chapter 4, 1-2 | This chapter focuses on access to service facilities. Legislation permits railway undertakings to obtain access to other operators’ service facilities in Great Britain. This chapter sets out how that access regime works and in particular certain key changes introduced by the Implementing Regulation, which include:● The introduction of further details regarding the information to be published on the service facility and/or rail related services and the obligation to produce a Service Facility Description.● The establishment of timescales for responding to requests.● Rules applying when a service provider receives a request that is in conflict with another request and in particular additional provisions relating to the process for considering viable alternatives.Please note that, ‘privately owned’ facilities do fall within the scope of the UK’s legislative requirements. | This chapter focuses on access to service facilities. ~~Legislation~~ The 2016 Regulations permit~~s~~ railway undertakings to obtain access to other operators’ service facilities in Great Britain. This chapter sets out how that access regime works ~~and in particular certain key changes introduced by the Implementing Regulation, which include:~~* 1. ~~The introduction of further details regarding the information to be published on the service facility and/or rail related services and the obligation to produce a Service Facility Description.~~
	2. ~~The establishment of timescales for responding to requests.~~

~~Rules applying when a service provider receives a request that is in conflict with another request and in particular additional provisions relating to the process for considering viable alternatives~~Please note that, ‘*privately owned*’ facilities do fall within the scope of the UK’s legislative requirements. | This chapter focuses on access to service facilities. The 2016 Regulations permit railway undertakings to obtain access to other operators’ service facilities in Great Britain. This chapter sets out how that access regime works.Please note that, ‘*privately owned*’ facilities do fall within the scope of the UK’s legislative requirements. |
| Chapter 4,3-6 | **Provision of information****Summary**3. Transparency of access arrangements and procedures is key to ensuring the basis for non-discriminatory access to service facilities for all railway undertakings, as required by the 2016 Regulations. The Implementing Regulation sets out further detail on information that must be made available, in the form of a Service Facility Description, and on requirements to make this information publicly available. **Service Facility Description**4 Article 4 of the Implementing Regulation provides that service providers must make available a ‘Service Facility Description’ for the service facilities and services for which they are responsible. The Service Facility Description must include at least the following information:● List of all the relevant installations including their locations and opening hours.● Key contact details of the service provider.● A description of the technical characteristics.● A description of all rail-related services supplied in the facility and of their type (basic, additional or ancillary).● The possibility of self-supply and the conditions to be met for self-supply. ● Information on the procedures for requesting access, with any deadlines for submitting the requests and time limits for handling them.● Information on whether separate requests are needed where there is more than one provider of services.● Information on the minimum content and format of an access request or a template.● Model access contracts and general terms and conditions, in particular where service facilities are operated by operators under the direct or indirect control of a controlling entity. ● Information on the terms of use of IT systems, where access to these systems is required, and the rules concerning the protection of sensitive and commercial data.● A description of the coordination procedure and measures which may be adopted to maximise capacity and any priority criteria.● Information on changes in technical characteristics and temporary capacity restrictions which could have a major impact on operation.● Information on charges.● Information on principles of discount schemes offered, respecting commercial confidentiality requirements.**Publication** 5. Article 5 of the Implementing Regulation provides that service providers must make the Service Facility Descriptions available free of charge through the infrastructure manager’s network statement. The service provider can supply the Service Facility Description to the infrastructure manager or provide the infrastructure manager with a link to the service provider’s Service Facility Description. This must be done in accordance with the deadline set by the infrastructure manager for receipt of information to be published in the infrastructure manager’s network statement or web portal. Service facility operators may as an alternative publish the service facility description on their own website and share the link with the infrastructure manager for publication in the network statement. The information contained in the service facility description must be kept up to date by the service facility operator as necessary.6. Although not compulsory, we encourage service providers to use the common template that has been developed by RailNetEurope and that service providers may use. | Provision of information~~Summary~~3. Transparency of access arrangements and procedures is key to ensuring the basis for non-discriminatory access to service facilities for all railway undertakings, as required by the 2016 Regulations. ~~The Implementing Regulation sets out further detail on information that must be made available~~~~, in the form of a Service Facility Description, and on requirements to make this information publicly available.~~ ~~Service Facility Description~~Service providers must provide the infrastructure manager with information to be included in the infrastructure manager’s Network Statement. This information must include: information on access to and charges for the supply of service facilities listed in Schedule 2 of the 2016 Regulations, including those services which are provided by only one supplier, and including information on technical access conditions, or details of a website where such information is available free of charge in electronic format. We would expect this information to be sufficiently detailed to allow an applicant to understand whether a service (or facility or any rail related services within that facility) is suitable to meet its needs. Facility owners may find it helpful to use the template provided by infrastructure managers when compiling this information. ~~Article 4 of the Implementing Regulation provides that service providers must make available a ‘Service Facility Description’ for the service facilities and services for which they are responsible. The Service Facility Description must include at least the following information:~~* 1. ~~List of all the relevant installations including their locations and opening hours.~~
	2. ~~Key contact details of the service provider.~~
	3. ~~A description of the technical characteristics.~~
	4. ~~A description of all rail-related services supplied in the facility and of their type (basic, additional or ancillary).~~
	5. ~~The possibility of self-supply and the conditions to be met for self-supply.~~
	6. ~~Information on the procedures for requesting access, with any deadlines for submitting the requests and time limits for handling them.~~
	7. ~~Information on whether separate requests are needed where there is more than one provider of services.~~
	8. ~~Information on the minimum content and format of an access request or a template.~~
	9. ~~Model access contracts and general terms and conditions, in particular where service facilities are operated by operators under the direct or indirect control of a controlling entity.~~
	10. ~~Information on the terms of use of IT systems, where access to these systems is required, and the rules concerning the protection of sensitive and commercial data.~~
	11. ~~A description of the coordination procedure and measures which may be adopted to maximise capacity and any priority criteria.~~
	12. ~~Information on changes in technical characteristics and temporary capacity restrictions which could have a major impact on operation.~~
	13. ~~Information on charges.~~
	14. ~~Information on principles of discount schemes offered, respecting commercial confidentiality requirements.~~

~~Publication~~ * 1. ~~Article 5 of the Implementing Regulation provides that service providers must make the Service Facility Descriptions available free of charge through the infrastructure manager’s network statement. The service provider can supply the Service Facility Description to the infrastructure manager or provide the infrastructure manager with a link to the service provider’s Service Facility Description. This must be done in accordance with the deadline set by the infrastructure manager for receipt of information to be published in the infrastructure manager’s network statement or web portal. Service facility operators may as an alternative publish the service facility description on their own website and share the link with the infrastructure manager for publication in the network statement. The information contained in the service facility description must be kept up to date by the service facility operator as necessary.~~

~~Although not compulsory, we encourage service providers to use the common template that has been developed by RailNetEurope and that service providers may use.~~  | Provision of informationTransparency of access arrangements and procedures is key to ensuring the basis for non-discriminatory access to service facilities for all railway undertakings, as required by the 2016 Regulations. Service providers must provide the infrastructure manager with information to be included in the infrastructure manager’s Network Statement. This information must include: information on access to and charges for the supply of service facilities listed in Schedule 2 of the 2016 Regulations, including those services which are provided by only one supplier, and including information on technical access conditions, or details of a website where such information is available free of charge in electronic format. We would expect this information to be sufficiently detailed to allow an applicant to understand whether a service (or facility or any rail related services within that facility) is suitable to meet its needs. Facility owners may find it helpful to use the template provided by infrastructure managers when compiling this information.[In the event that CIR 2017/2177 is revoked the obligations referred to in this section will no longer apply] |
| Chapter 4,7-11 | 7. Regulations 6(2) to 6(12) of the 2016 Regulations deal with access to, and the supply of, services for railway undertakings. Service providers are required to supply access to all railway undertakings. This includes track access, and access to service facilities and the supply of services described in paragraph 2 of Schedule 2. This includesrefuelling, stations, marshalling yards, storage sidings and freight terminals. 8. Service providers must supply access to services to all railway undertakings who are seeking access to service facilities and the supply of services (including the supply of services at ports and terminals).9. Requests for access to, and the supply of, services must be answered within a reasonable time limit as set by ORR. In our view a reasonable time limit is, as a general rule, ten working days, commencing on the first working day after the requesthas been made. However, where there is a short-notice request (such as ad hoc requests for unplanned access), we would expect service providers to deal with such requests within a shorter timescale where it is reasonable to do so. We do not intend to set a separate time limit for short-notice requests as matters stand. 10 Under regulation 6, only railway undertakings (and not applicants more widely) are entitled to be supplied the minimum access package and to request access to, and supply of, services described in paragraph 2 of Schedule 2. 11. The 2016 Regulations and Article 13(3) of the Implementing Regulation require a service provider to justify, in writing, a decision to refuse a request for access to, and the supply of, services in specified situations. As well as this, Article 13(4) of the Implementing Regulation requires a service provider to demonstrate reasons at the request of an applicant. However, we expect all service providers to ensure refusals for any of the services referred to in paragraph 2 of Schedule 2 are in writing and fully reasoned and objectively justified. Therefore, whenever a service provider is refusing access, we expect the service provider to explain why it is refusing access and, where applicable, why it considers the alternative facility it has identified is a viable alternative for the railway undertaking. This is because all such decisions are appealable and may be subject to ORR scrutiny in due course. | 5. Regulations 6(2) to 6(12) of the 2016 Regulations deal with access to, and the supply of, services for railway undertakings. Service providers are required to supply access to all railway undertakings. This includes track access, and access to service facilities and the supply of services described in paragraph 2 of Schedule 2. This includes refuelling, stations, marshalling yards, storage sidings and freight terminals. 6. Service providers must supply access to services to all railway undertakings who are seeking access to service facilities and the supply of services (including the supply of services at ports and terminals).7. Requests for access to, and the supply of, services must be answered within a reasonable time limit as set by ORR67. In our view a reasonable time limit is, as a general rule, ten working days, commencing on the first working day after the requesthas been made. However, where there is a short-notice request (such as ad hoc requests for unplanned access), we would expect service providers to deal with such requests within a shorter timescale where it is reasonable to do so. We do not intend to set a separate time limit for short-notice requests as matters stand. 8. Under regulation, only railway undertakings (and not applicants more widely) are entitled to be supplied the minimum access package and to request access to, and supply of, services described in paragraph 2 of Schedule 2. 9. For the reasons set out below, in most cases we would expect that service providers provide access where they are able to accommodate requests for their services. This reflects the underlying market opening principles and purpose of the 2016 Regulations. Specifically, in the case of conflicting requests, service facility owners must attempt to meet all requests as far as possible. This means that, for example, we would expect that service providers consider whether retiming services would enable both requests to be met. 10.Service providers are not obligated to invest in their facilities in order to meet all requests. Accordingly, where there is a non-conflicting request which would require such investment, we consider that a service provider may refuse a request without having to consider if a viable alternative exists.11. The 2016 Regulations also provide that service facility owners may only refuse access to a service facility where a viable alternative exists. The definition of a viable alternative is “access to another service facility which is economically acceptable to the railway undertaking, and allows it operate the freight or passenger services concerned”. Viable alternatives are discussed further, below. We consider that there are likely to be limited circumstances in which this arises, and that in most cases our expectation would be that service facility operators provide access to their facilities if they are able to accommodate the request. 12. Where capacity at a service facility is constrained, we do not consider that the 2016 Regulations create an obligation on the service provider to substitute the railway undertaking’s services for its own or for those of an existing or planned future user.13. The 2016 Regulations ~~and Article 13(3) of the Implementing Regulation~~ require a service provider (which is under the direct or indirect control of a dominant body or firm) to justify, in writing, a decision to refuse a request for access to, and the supply of, services in specified situations. ~~As well as this, Article 13(4) of the Implementing Regulation requires a service provider to demonstrate reasons at the request of an applicant. However, w~~We expect all service providers to ensure refusals for any of the services referred to in paragraph 2 of Schedule 2 are in writing and fully reasoned and objectively justified. Therefore, whenever a service provider is refusing access, we expect the service provider to explain why it is refusing access and, where applicable, why it considers the alternative facility it has identified is a viable alternative for the railway undertaking. This is because all such decisions are appealable and may be subject to ORR scrutiny in due course. | 5. Regulations 6(2) to 6(12) of the 2016 Regulations deal with access to, and the supply of, services for railway undertakings. Service providers are required to supply access to all railway undertakings. This includes track access, and access to service facilities and the supply of services described in paragraph 2 of Schedule 2. This includes refuelling, stations, marshalling yards, storage sidings and freight terminals.6. Service providers must supply access to services to all railway undertakings who are seeking access to service facilities and the supply of services (including the supply of services at ports and terminals).7. Requests for access to, and the supply of, services must be answered within a reasonable time limit as set by ORR. In our view a reasonable time limit is, as a general rule, ten working days, commencing on the first working day after the request has been made. However, where there is a short-notice request (such as ad hoc requests for unplanned access), we would expect service providers to deal with such requests within a shorter timescale where it is reasonable to do so. We do not intend to set a separate time limit for short-notice requests as matters stand.8. Under regulation 6, only railway undertakings (and not applicants more widely) are entitled to be supplied the minimum access package and to request access to, and supply of, services described in paragraph 2 of Schedule 2.9. For the reasons set out below, in most cases we would expect that service providers provide access where they are able to accommodate requests for their services. This reflects the underlying market opening principles and purpose of the 2016 Regulations. Specifically, in the case of conflicting requests, service facility owners must attempt to meet all requests as far as possible. This means that, for example, we would expect that service providers consider whether retiming services would enable both requests to be met. 10. Service providers are not obligated to invest in their facilities in order to meet all requests. Accordingly, where there is a non-conflicting request which would require such investment, we consider that a service provider may refuse a request without having to consider if a viable alternative exists.11. The 2016 Regulations also provide that service facility owners may only refuse access to a service facility where a viable alternative exists. The definition of a viable alternative is “access to another service facility which is economically acceptable to the railway undertaking, and allows it operate the freight or passenger services concerned”. Viable alternatives are discussed further, below. We consider that there are likely to be limited circumstances in which this arises, and that in most cases our expectation would be that service facility operators provide access to their facilities if they are able to accommodate the request. 12. Where capacity at a service facility is constrained, we do not consider that the 2016 Regulations create an obligation on the service provider to substitute the railway undertaking’s services for its own or for those of an existing or planned future user.The 2016 Regulations require a service provider to justify, in writing, a decision to refuse a request for access to, and the supply of, services in specified situations. We expect all service providers to ensure refusals for any of the services referred to in paragraph 2 of Schedule 2 are in writing and fully reasoned and objectively justified. Therefore, whenever a service provider is refusing access, we expect the service provider to explain why it is refusing access and, where applicable, why it considers the alternative facility it has identified is a viable alternative for the railway undertaking. This is because all such decisions are appealable and may be subject to ORR scrutiny in due course.[This section has been expanded to provide a more accessible version of the guidance previously contained in the following paragraphs, which we propose to remove.] |
| Chapter 4,12-32 | **Non-conflicting requests for access to services**[…]**Conflicting requests for access to services (including conflict with allocated capacity)**[…]**Stage 1 - The Coordination Procedure**[…]**Stage 2 – Deciding upon the request(s):**[…]**Constrained capacity**[…] | [Section deleted in its entirety] | [Section deleted in its entirety and replaced with a simplified approach, which is provided in the preceding paragraph.] |
| Chapter 4,33 | Viable alternative 33. The requirement to consider whether there is a ‘viable alternative’ when refusing a request for access only applies to requests for access to, and the supply of, services described in paragraph 2 of Schedule 2. | Viable alternativeThe requirement to consider whether there is a ‘viable alternative’ when refusing a request for access only applies to requests for access to, and the supply of, services described in paragraph 2 of Schedule 2.The regulations make provision for a service provider to refuse a non-conflicting application on the basis of a viable alternative. We consider that there are likely to be limited circumstances in which this arises due to the definition of the viable alternative (see below). It is therefore our expectation that in most cases service providers should provide the requested services where they are able to do so. In cases where there are conflicting requests for services, the service provider must attempt to meet all requests prior to providing information about a viable alternative. | Viable alternativeThe requirement to consider whether there is a ‘viable alternative’ when refusing a request for access only applies to requests for access to, and the supply of, services described in paragraph 2 of Schedule 2.The regulations make provision for a service provider to refuse a non-conflicting application on the basis of a viable alternative. We consider that there are likely to be limited circumstances in which this arises due to the definition of the viable alternative (see below). It is therefore our expectation that in most cases service providers should provide the requested services where they are able to do so. In cases where there are conflicting requests for services, the service provider must attempt to meet all requests prior to providing information about a viable alternative. |
| Chapter 4,36 | Service providers would require a robust rationale for stating that another facility is a viable alternative, having considered the above issues in detail. Meanwhile, the Implementing Regulation also recognises that many service facilities cannot be easily duplicated, given the significant investment involved and the limitations on where such facilities can be constructed. | Service providers would require a robust rationale for stating that another facility is a viable alternative, having considered the above issues in detail. ~~Meanwhile, the Implementing Regulation also recognises that many service facilities cannot be easily duplicated, given the significant investment involved and the limitations on where such facilities can be constructed.~~ | Service providers would require a robust rationale for stating that another facility is a viable alternative, having considered the above issues in detail. |
| Chapter 4,New Section | [Insertion of new section] | **Right to appeal**Railway undertakings and service providers comply with the 2016 Regulations and make reasonable attempts to find mutually agreeable solutions. This is likely to be preferable and faster than regulatory intervention.Railway undertakings (applicants) have a broad right of appeal to ORR under the 2016 Regulations. The regulations on access to service facilities additionally make specific reference to an appeal in the event that there is no viable alternative and that a request for access cannot be accommodated, and more generally in the event that “a railway undertaking is denied the entitlements conferred on it by this regulation”. | Right to appealRailway undertakings and service providers comply with the 2016 Regulations and make reasonable attempts to find mutually agreeable solutions. This is likely to be preferable and faster than regulatory intervention.Railway undertakings (applicants) have a broad right of appeal to ORR under the 2016 Regulations. The regulations on access to service facilities additionally make specific reference to an appeal in the event that there is no viable alternative and that a request for access cannot be accommodated, and more generally in the event that “a railway undertaking is denied the entitlements conferred on it by this regulation”. |
| Chapter 4,38-47 | The process for considering viable alternatives[…] | [Section deleted in its entirety] | [Section deleted in its entirety][This section provided guidance on a process contained in CIR 2017/2177 which is not replicated in the 2016 Regulations. ORR considers that railway undertakings and service providers will observe normal professional and commercial practices in the event they need to undertake such an exercise in the future. We do not intend to provide specific guidance in this area.] |
| Page 30 | Diagram A: Non-conflicting requests for access to, and the supply of, services [Diagram] | [Diagram A deleted in its entirety] | [Diagram A deleted in its entirety][This diagram relates to the current drafting of guidance on “Regulation 6: Access to services” and paragraphs 7-47 of Chapter 4. It is proposed (see above) for that section of the guidance to be simplified. We have also added further information on an applicant’s right of appeal. With that simplified approach, this diagram is no longer considered to be required.] |
| Page 31 | Diagram B: Conflicting requests for access to, and the supply of, services [Diagram] | [Diagram B deleted in its entirety] | [Diagram B deleted in its entirety][This diagram relates to the current drafting of guidance on “Regulation 6: Access to services” and paragraphs 7-47 of Chapter 4. It also includes the “co-ordination procedure” step which was an obligation under CIR 2017/2177. It is proposed (see above) for that section of the guidance to be simplified. With the simplified approach, this diagram is no longer considered to be required.] |
| Page 32 | Diagram C: Viable alternatives [Diagram] | [Diagram C deleted in its entirety] | [Diagram C deleted in its entirety][This diagram relates to the current drafting of guidance on “Regulation 6: Access to services” and paragraphs 7-47 of Chapter 4. It also includes the joint assessment element of consideration of viable alternatives, which was an obligation under CIR 2017/2177. It is proposed (see above) for that section of the guidance to be simplified. With the simplified approach, this diagram is no longer considered to be required.] |
| Chapter 4,56-64 | Unused service facilities 56. Regulation 6 of the 2016 Regulations sets requirements for unused facilities to be made available for lease or rent. Article 15 of the Implementing Regulation adds detail. 57. Under regulation 6(9) of the 2016 Regulations, where a service facility: ● has not been in use for at least two consecutive years, and ● interest by a railway undertaking for access to this facility has been expressed to the service provider on the basis of demonstrated need, the service provider must offer the operation of the service facility, or part of it, for lease as a rail service facility, and publicise this offer. 58. The obligation does not, however, arise if the service provider can demonstrate that on-going redevelopment work (‘a reconversion process’) reasonably prevents the use of the service facility by any railway undertaking. Under article 15(6) the owner must inform ORR of the reconversion process. ORR may request substantiation and if that is unsatisfactory, ORR may require that the facility, either in whole or in part, is available for lease or rent. 59. Under article 15(7) the owner of the service facility must publicise on its website a notice on the availability of that facility for lease or rent. The notice must contain all the necessary information to enable interested undertakings to submit an offer to take over operation of the facility in whole, or in part. It must include certain information as specified in article 15(7). It must also inform ORR and the relevant infrastructure manager. 60. Where a railway undertaking expresses an interest in such a service facility, we recommend that it makes an application for track access in parallel. This is to ensure that where access has been granted to the service facility, railway vehicles can be accepted on and off the network promptly. 61. In particular, any railway undertaking interested in using a service facility which has not been in use for at least two consecutive years must express its interest in writing, and inform ORR, demonstrating the needs of the railway undertaking concerned. 62. Article 15 states that the service provider may then decide to resume operations in the facility, in a way that satisfies the railway undertaking’s demonstrated needs. 63. Where the service provider is required to offer the operation of the facility for lease, a notice of the offer (including all necessary information) must be published on the website and sent to the relevant infrastructure manager and ORR. The notice must in particular include details of the selection procedure89, selection criteria, the main characteristics of the technical equipment of the service facility and the address and time limit for the submission of tenders90. 88 Track.access@orr.gov.uk 89 The selection procedure must be transparent, non-discriminatory and take into account the objective of ensuring an optimum effective use of the capacity at the facility. 90 The time limit must be at least 30 days after publication of the notice. 64. The Implementing Regulation also sets out some specific requirements which will apply where an expression of interest is received where the owner of the facility is not also the service provider91. | Unused service facilitiesRegulation 6 (9) of the 2016 Regulations sets requirements for unused facilities to be made available for lease or rent. ~~Article 15 of the Implementing Regulation adds detail.~~Under regulation 6(9) of the 2016 Regulations, where a service facility:has not been in use for at least two consecutive years, andinterest by a railway undertaking for access to this facility has been expressed to the service provider on the basis of demonstrated need,the service provider must offer the operation of the service facility, or part of it, for lease as a rail service facility, and publicise this offer. The obligation does not, however, arise if the service provider can demonstrate that on-going redevelopment work ~~(‘a reconversion process’)~~reasonably prevents the use of the service facility by any railway undertaking. ~~Under article 15(6) the owner must inform ORR of the reconversion process. ORR may request substantiation and if that is unsatisfactory, ORR may require that the facility, either in whole or in part, is available for lease or rent.~~~~Under article 15(7) the owner of the service facility must publicise on its website a notice on the availability of that facility for lease or rent. The notice must contain all the necessary information to enable interested undertakings to submit an offer to take over operation of the facility in whole, or in part. It must include certain information as specified in article 15(7). It must also inform ORR and the relevant infrastructure manager.~~ Where a railway undertaking expresses an interest in such a service facility, we recommend that it makes an application for track access in parallel. This is to ensure that where access has been granted to the service facility, railway vehicles can be accepted on and off the network promptly.~~In particular, any railway undertaking interested in using a service facility which has not been in use for at least two consecutive years must express its interest in writing, and inform ORR, demonstrating the needs of the railway undertaking concerned.~~ ~~Article 15 states that the service provider may then decide to resume operations in the facility, in a way that satisfies the railway undertaking’s demonstrated needs.~~~~Where the service provider is required to offer the operation of the facility for lease, a notice of the offer (including all necessary information) must be published on the website and sent to the relevant infrastructure manager and ORR. The notice must in particular include details of the selection procedure, selection criteria, the main characteristics of the technical equipment of the service facility and the address and time limit for the submission of tenders.~~~~The Implementing Regulation also sets out some specific requirements which will apply where an expression of interest is received where the owner of the facility is not also the service provider.~~ | Unused service facilitiesRegulation 6 (9) of the 2016 Regulations sets requirements for unused facilities to be made available for lease or rent. Under regulation 6(9) of the 2016 Regulations, where a service facility:has not been in use for at least two consecutive years, andinterest by a railway undertaking for access to this facility has been expressed to the service provider on the basis of demonstrated need,the service provider must offer the operation of the service facility, or part of it, for lease as a rail service facility, and publicise this offer. The obligation does not, however, arise if the service provider can demonstrate that on-going redevelopment work reasonably prevents the use of the service facility by any railway undertaking. Where a railway undertaking expresses an interest in such a service facility, we recommend that it makes an application for track access in parallel. This is to ensure that where access has been granted to the service facility, railway vehicles can be accepted on and off the network promptly.[The current guidance explains the requirements of CIR 2017/2177 in this area, which are an additional layer of requirements built on Regulations 6(9) and 6(10) of the 2016 Regulations. The proposed new drafting explains the requirements of the 2016 Regulations] |
| Annex: Key defintions | The terms used throughout the guidance have the same meanings as in the 2016 Regulations, the Implementing Regulation and the Act unless the context requires otherwise. Some key definitions used in this guidance are set out below: | The terms used throughout the guidance have the same meanings as in the 2016 Regulations~~, the Implementing Regulation~~ and the Act unless the context requires otherwise. Some key definitions used in this guidance are set out below: […] | The terms used throughout the guidance have the same meanings as in the 2016 Regulations and the Act unless the context requires otherwise. Some key definitions used in this guidance are set out below: |
| “Definitions in the Implementing Regulation” | ‘ad hoc requests’ […]‘basic service’ […]‘controlling entity’ […]‘coordination procedure’ […]‘late request’ […]‘linked service facility’ […]‘rail related service’ […]‘reconversion’ […]‘service facility description’ […]‘service facility capacity’ […]‘self dupply of services’ […]  | [Section deleted in its entirety] | [Section deleted in its entirety] |

Table 2: Duration of track access agreements (framework agreements)

[Current guidance](https://www.orr.gov.uk/sites/default/files/2023-05/guidance-on-the-duration-of-track-access-agreements-2023.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24700/download)

|  |  |  |  |
| --- | --- | --- | --- |
| Paragraph  | Original text | Tracked changes | Revised text |
| 3 | The regulation of access contracts is governed by domestic and former European legislation which has been incorporated into domestic legislation, in particular *The Railways Act 1993* (the Act) and *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations). | The regulation of access contracts is governed by ~~domestic and former European legislation which has been incorporated into domestic legislation, in particular~~ *The Railways Act 1993* (the Act) and *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations). | The regulation of access contracts is governed by *The Railways Act 1993* (the Act) and *The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016* (the 2016 Regulations). |

Table 3: ORR Guidance on the assessment of new international passenger services

[Current guidance](https://www.orr.gov.uk/sites/default/files/2022-05/guidance-on-the-assessment-of-new-international-passenger-services_0.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24703/download)

|  |  |  |  |
| --- | --- | --- | --- |
| Paragraph  | Original text | Tracked changes | Revised text |
| 2 | The applicable legislation as amended and retained in domestic legislation is set outin The Railways (Access, Management and Licensing of Railway Undertakings)Regulations 2016, as amended (the Regulations) and in the ImplementingRegulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteriafor the application of the Economic Equilibrium Test (the Implementing Regulation4).The Implementing Regulation (EU) 869/2014 of 11 August 20145 on new railpassenger services was repealed with effect from 12 December 2020. | The applicable legislation as amended and retained in domestic legislation is set out in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended (the Regulations) ~~and in the Implementing Regulation (EU) 2018/1795 of 20 November 2018 laying down procedure and criteria for the application of the Economic Equilibrium Test (the Implementing Regulation). The Implementing Regulation (EU) 869/2014 of 11 August 2014 on new rail passenger services was repealed with effect from 12 December 2020.~~ | The applicable legislation as amended and retained in domestic legislation is set out in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, as amended (the Regulations). |
| 4 | The focus of the guidance is on these key areas: ● Principal purpose test for international passenger services; and ● Economic Equilibrium Test for international passenger services. | The focus of the guidance is on these key areas: Principal purpose test for international passenger services; andEconomic Equilibrium Test for international passenger services with cabotage. | The focus of the guidance is on these key areas: Principal purpose test for international passenger services; andEconomic Equilibrium Test for international passenger services with cabotage. |
| 6 | We intend to carry out a test which is based on the criteria set out in the applicable legislation that we believe will give us the information we require to carry out our assessment. | We intend to carry out a test ~~which is based on the criteria set out in the applicable legislation~~ that we believe will give us the information we require to carry out our assessment. | We intend to carry out a test that we believe will give us the information we require to carry out our assessment. |
| 13,14,15 | ORR is also responsible for carrying out the Economic Equilibrium Test. The assessment process in order to determine whether the economic equilibrium of a PSC would be compromised by the proposed new international rail passenger service, including domestic portion(s) of that service, is further defined and set out in the Implementing Regulation8. The test is carried out by the ORR at the request of a ‘relevant’ party (competent authority, infrastructure manager or affected PSC operator). ORR must make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria published by it10. The Implementing Regulation explicitly sets out a requirement to consider whether the new passenger service would have a substantial negative impact on the profitability of services operated under the PSC and on the net cost for the competent authority awarding the PSC. This is described further in chapter 4. Regulatory bodies are progressively developing guidelines on this issue, based on their experience. | ORR is also responsible for carrying out the Economic Equilibrium Test (the assessment process in order to determine whether the economic equilibrium of a PSC would be compromised by the proposed new international rail passenger service, including domestic portion(s) of that service~~, is further defined and set out in the Implementing Regulation. The test is carried out by the ORR~~ at the request of a ‘relevant’ party (competent authority, infrastructure manager or affected PSC operator). ORR must make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria. ~~The Implementing Regulation explicitly sets out a requirement to consider whether the new passenger service would have a substantial negative impact on the profitability of services operated under the PSC and on the net cost for the competent authority awarding the PSC.~~ This is described further in chapter 4.~~Regulatory bodies are progressively developing guidelines on this issue, based on their experience.~~ | ORR is also responsible for carrying out the Economic Equilibrium Test (the assessment process in order to determine whether the economic equilibrium of a PSC would be compromised by the proposed new international rail passenger service, including domestic portion(s) of that service) at the request of a ‘relevant’ party (competent authority, infrastructure manager or affected PSC operator). ORR must make the determination on the basis of an objective economic analysis and in accordance with pre-determined criteria. This is described further in chapter 4. |
| 17 | The term ‘new rail passenger service’ is set out in the Implementing Regulation as ‘a rail passenger service designed to be operated as a regular time-tabled service, that is either entirely new, or that implies a substantial modification of an existing rail passenger service, in particular in terms of increased frequencies of services or increased number of stops, and which is not provided under a public service contract’. | The term ‘*new rail passenger service’* is ~~set~~ ~~out in the Implementing~~ not defined in the Regulations~~Regulation~~. We consider it to mean ~~as~~ ~~‘~~a rail passenger service designed to be operated as a regular time-tabled service, that is either entirely new, or that implies a substantial modification of an existing rail passenger service, in particular in terms of increased frequencies of services or increased number of stops, and which is not provided under a public service contract~~’~~. | The term ‘*new rail passenger service’* is set not defined in the regulations. We consider it to mean a rail passenger service designed to be operated as a regular time-tabled service, that is either entirely new, or that implies a substantial modification of an existing rail passenger service, in particular in terms of increased frequencies of services or increased number of stops, and which is not provided under a public service contract. |
| 29 | ORR has a number of economic regulatory functions relating to rail in Northern Ireland. The Implementing Regulation also applies in Northern Ireland. If ORR were to receive such an application, we would follow this guidance but would make relevant adjustments to our process on a case by case basis, and would act in line with our published guidance on Northern Ireland Regulations. | ORR has a number of economic regulatory functions relating to rail in Northern Ireland and has produced a separate version of this guidance document that is applicable to it. This is due to Commission Implementing Regulation (EU) 2018/1795 being retain in Northern Ireland. ~~The Implementing Regulation also applies in Northern Ireland.~~ If ORR were to receive such an application, we would follow ~~that~~ this guidance ~~but~~ and would make relevant adjustments to our process on a case by case basis, and would act in line with our other published guidance on Northern Ireland Regulations. | ORR has a number of economic regulatory functions relating to rail in Northern Ireland and has produced a separate version of this guidance document that is applicable to it. This is due to Commission Implementing Regulation (EU) 2018/1795 being retain in Northern Ireland. If ORR were to receive such an application, we would follow that guidance and would make relevant adjustments to our process on a case by case basis, and would act in line with our other published guidance on Northern Ireland Regulations.[To note: We will also publish a Northern Ireland specific guidance document (“ORR Guidance on the assessment of new international passenger services – Northern Ireland”). We do not intend to consult on that document as it will be generally the same as the original guidance, but applicable only in relation to applications made in Northern Ireland.]  |
| 32 | While the ORR must still consider the principal purpose of a passenger service, the legislation setting out pre-determined criteria to carry out the test has been repealed. To assist in reaching its decision, the ORR intends however to refer to the principles previously set out in its guidance published in June 2009 and subsequently in the Implementing Regulation 869/2014. | [Text removed in its entirety] | [The criteria for that ORR will use for considering the principal purpose of a new international service remain unchanged and specified in the following paragraph of the proposed guidance. This paragraph is being removed as it is no longer relevant to those criteria.] |
| 39 | The Regulations require the regulatory body to carry out the economic equilibrium test upon request of relevant parties. Article 10 of the Implementing Regulation describes the content of the Economic Equilibrium Test and the assessment criteria. It states that the economic equilibrium shall be considered as compromised where the new service would have a substantial negative impact on: ● the profitability of services operated under the PSC; and/or ● the net cost for the competent authority awarding the PSC. | Where an applicant applies for infrastructure capacity with a view to operating an international passenger, ~~eT~~ the Regulations require the regulatory body to determine whether the exercise of such a right ~~by an applicant~~ would compromise the economic equilibrium of a relevant public service contract ~~carry out the~~ (the economic equilibrium test). ~~Article 10 of the Implementing Regulation describes the content of the Economic Equilibrium Test and the assessment criteria. It states that the economic equilibrium shall be considered as compromised where the new service would have a substantial negative impact on:~~~~the profitability of services operated under the PSC; and/or~~~~the net cost for the competent authority awarding the PSC.~~ | Where an applicant applies for infrastructure capacity with a view to operating an international passenger, the Regulations require the regulatory body to determine whether the exercise of such a right would compromise the economic equilibrium of a relevant public service contract (the economic equilibrium test).  |
| 44 | The following flowchart shows how we intend to apply the tests: [Flowchart] | [Text and flowchart removed in their entirety] | [Text and flowchart removed in their entirety][We no longer consider that the chart provide additional clarity to the guidance] |
| 53 | The Implementing Regulation states that “predetermined thresholds or specific criteria may be applied but not strictly or in isolation from other criteria” and Article 10(5) states that ORR shall also assess other factors including “the net benefits to customers arising from the new rail passenger service in the short and medium term”. Our policy is therefore that we will weigh up a number of factors in reaching a decision on whether the economic equilibrium is compromised. These are described below. As we do currently with all access applications, we will consider each application on a case by case basis. | ~~The Implementing Regulation states that “predetermined thresholds or specific criteria may be applied but not strictly or in isolation from other criteria” and Article 10(5) states that ORR shall also assess other factors including “the net benefits to customers arising from the new rail passenger service in the short and medium term”.~~ Our policy is ~~therefore~~ that we will weigh up a number of factors in reaching a decision on whether the economic equilibrium is compromised. These are described below. As we do currently with all access applications, we will consider each application on a case by case basis. | Our policy is that we will weigh up a number of factors in reaching a decision on whether the economic equilibrium is compromised. These are described below. As we do currently with all access applications, we will consider each application on a case by case basis.[Our policy here remains unchanged. It is however no longer based on a requirement of the CIR] |
| 54 | We will consider four key elements when we carry out the Economic Equilibrium Test, consistent with Article 10 of the Implementing Regulation; ● Impact on profitability of services operated under the PSC; ● Impact on the net cost for the competent authority awarding the PSC; ● NPA test – which we consider represents a measure of the wider benefits to consumers; and ● Other factors set out in Article 10 including the impact on performance and quality of rail services | We will consider four key elements when we carry out the Economic Equilibrium Test, ~~consistent with Article 10 of the Implementing Regulation~~; Impact on profitability of services operated under the PSC; Impact on the net cost for the competent authority awarding the PSC; NPA test – which we consider represents a measure of the wider benefits to consumers; and Other factors ~~set out in Article 10~~ including the impact on performance and quality of rail services | We will consider four key elements when we carry out the Economic Equilibrium Test; Impact on profitability of services operated under the PSC; Impact on the net cost for the competent authority awarding the PSC; NPA test – which we consider represents a measure of the wider benefits to consumers; and Other factors including the impact on performance and quality of rail services.[Our policy here remains unchanged. It is however no longer based on a requirement of the CIR] |
| 61 | The Implementing Regulation refers to the concept of a ‘substantial negative impact’ on the profitability of services operated under the PSC. Consistent with the text of the Regulation, we do not intend to apply strictly or in isolation set pre-determined decrements to profitability that would constitute a ‘substantial impact’. We will, rather, consider each case on its merits. We will benchmark our results with reference to the rates of return earned by the PSC operator. We will also consider the returns earned by other PSC operators. | ~~The Implementing Regulation refers to the concept of a ‘substantial negative impact’ on the profitability of services operated under the PSC. Consistent with the text of the Regulation, w~~ We do not intend to apply strictly or in isolation set pre-determined decrements to profitability ~~that would constitute a ‘substantial impact’~~. We will, rather, consider each case on its merits. We will benchmark our results with reference to the rates of return earned by the PSC operator. We will also consider the returns earned by other PSC operators. | We do not intend to apply strictly or in isolation set pre-determined decrements to profitability . We will, rather, consider each case on its merits. We will benchmark our results with reference to the rates of return earned by the PSC operator. We will also consider the returns earned by other PSC operators.[Our policy here remains unchanged. It is however no longer based on a requirement of the CIR] |
| 69 – 73 | 69. During the assessment process, we will consider the principal purpose of a proposed new service and, where appropriate, consider whether the economic equilibrium of a public service contract would be compromised. We will carry out both a qualitative and quantitative analysis that takes into account the foreseeable evolution of the service as well as foreseeable changes in market conditions during the period covered in the applicant's notification. Notification form70. When intending to apply for a new international passenger service, the applicant must submit a completed notification form to ORR and the infrastructure manager. The notification form is available on our website and is also attached as an Annex to this guidance. 71. Information to be submitted in the notification form includes: ● The applicant’s name, address and contact information; ● The planned start date of the services; ● Details of the applicant’s licence and safety certificate or indication of the point reached in obtaining them; ● Details of the route including departure and destination stations and all intermediate stops; ● Indicative timings and frequency including proposed departure and arrival times; and ● Indicative information about the intended rolling stock. 72. If the form is incomplete, we will notify the applicant that incomplete requests will not be considered and will give the applicant the possibility to complete the form within 10 working days. 73. On receiving a complete form we will publish it on the current applications page of our website. We will do this as quickly as possible and within 10 days at the latest. We will also notify the relevant parties, listed in paragraph 40. | 69. Track access applications for new international services should follow the same application process as those for domestic services. During the assessment process, we will consider the principal purpose of a proposed new service and, where appropriate, consider whether the economic equilibrium of a public service contract would be compromised. We will carry out both a qualitative and quantitative analysis that takes into account the foreseeable evolution of the service as well as foreseeable changes in market conditions during the period covered in the applicant's notification.[All other text removed in its entirety] | Track access applications for new international services should follow the same application process as those for domestic services. During the assessment process, we will consider the principal purpose of a proposed new service and, where appropriate, consider whether the economic equilibrium of a public service contract would be compromised. We will carry out both a qualitative and quantitative analysis that takes into account the foreseeable evolution of the service as well as foreseeable changes in market conditions during the period covered in the applicant's notification.[The requirement to notify ORR and the infrastructure manager in these circumstances resulted solely from Article 4 of the CIR, which is to be revoked. This section will be amended (as above) to clarify that post revocation all track access applicants should follow the same process, which will itself notify ORR and the Infrastructure Manager. Such access applications will be subject to industry consultation, providing relevant parties an opportunity to comment on the detailed proposal. We will continue to invite potential new operators to discuss their proposals with ORR on an informal basis.]  |
| 74 | The relevant parties listed in paragraph 40 may request ORR to carry out the Economic Equilibrium Test. Any request must be received within one month of ORR’s publication of the notification form and should be sent to track.access@orr.gov.uk. | The relevant parties listed in paragraph 40 may request ORR to carry out the Economic Equilibrium Test. Any request must be received within ~~one month of ORR’s publication of the notification form and~~ the timeframe of the industry consultation on a TAC application, which is 28 days. **~~should be sent to~~** **~~track.access@orr.gov.uk~~****~~.~~** ORR will inform the applicant if it receives such a request. | The relevant parties listed in paragraph 40 may request ORR to carry out the Economic Equilibrium Test. Any request must be received within the timeframe of the industry consultation on a TAC application, which is 28 days. ORR will inform the applicant if it receives such a request.[This change reflects that all applicants will follow the same process] |
| 75 | If no request for an Economic Equilibrium Test is received within one month, the applicant should proceed to submit its access application to ORR in accordance with published guidance, and ORR will assess the application in the usual manner without and Economic Equilibrium Test. The ORR shall inform the applicant and the infrastructure manager without delay. | [Text removed in its entirety] | [Text removed in its entirety] |
| 78 | The Implementing Regulation requires ORR to reach a decision within 6 weeks of the receipt of all relevant information, and in any event before the relevant Priority Date (‘D-40’) for the timetable during which services will start. Six weeks before ORR’s deadline for reaching a decision, if: […] | The ~~Implementing~~ Regulations require~~s~~ ORR to reach a decision within 6 weeks of the receipt of all relevant information ~~, and in any event before the relevant Priority Date (‘D-40’) for the timetable during which services will start~~. Six weeks before ORR’s deadline for reaching a decision, if: […] | The Regulations require ORR to reach a decision within 6 weeks of the receipt of all relevant information. Six weeks before ORR’s deadline for reaching a decision, if:[The requirement to reach a decision within 6 weeks is also set out in Regulation 33(6) of the AMRs. As such this requirement is unchanged.] |
| 83 | The entity requesting the Economic Equilibrium Test must provide the following information25: […] | The entity requesting the Economic Equilibrium Test ~~must~~ should provide the following information: [The proceeding list remains unchanged] | The entity requesting the Economic Equilibrium Test should provide the following information: [The proceeding list remains unchanged][The list of required information is currently a requirement of Article 7.1 of the CIR. ORR will still require this information post revocation.] |
| 89 | ORR will not disclose commercially sensitive information received from the parties in connection with the principal purpose and the Economic Equilibrium Test. ORR will redact any commercially sensitive information from its decision letter. However, the Implementing Regulation explicitly states that information included in the Form IA shall not be considered commercially sensitive. | ORR will not disclose commercially sensitive information received from the parties in connection with the principal purpose and the Economic Equilibrium Test. ORR will redact any commercially sensitive information from its decision letter. ~~However, the Implementing Regulation explicitly states that information included in the Form IA shall not be considered commercially sensitive.~~ | ORR will not disclose commercially sensitive information received from the parties in connection with the principal purpose and the Economic Equilibrium Test. ORR will redact any commercially sensitive information from its decision letter. |
| 93-95 | Process during competitive tender of a public service contract 93 If at the time an Economic Equilibrium Test has been requested, a PSC covering the same route or an alternative route is being competitively tendered, ORR may decide to suspend consideration of the proposed application for a limited period of time pending the award of the new PSC. This suspension will last no longer than 12 months from the receipt of the application or until the tender process has concluded, whichever is sooner; or 94 ORR may decide to undertake the Economic Equilibrium Test against the existing PSC, and if it demonstrates that access can be granted, the access will be time limited until the expiry of the existing PSC. Any decision on time-limited access would be within our existing track access application regime. 95 ORR will decide whether to suspend consideration or consider temporary access following discussions with the applicant and relevant parties. | [Section deleted in its entirety] | [Section deleted in its entirety][CIR 2018/1795 contains a specific provision allowing the regulatory body to decide upon such a delay. This provision is not replicated in the AMRs. It is not clear that ORR would have the ability to do this without such a provision. Irrespective of the above, ORR does not consider that, in a GB context, it would be necessary or appropriate to suspend our consideration in this way. We therefore propose to remove this possibility from our processes. We do not consider this likely to have any material impact on the outcome of any potential ORR decisions.]  |
| 99 | The applicable legislation also provides that the following parties can request the regulatory body’s decision or direction to be reconsidered: […] | ~~The applicable legislation also~~ Regulation 33 provides that the following parties can request the regulatory body’s decision or direction to be reconsidered: […] | Regulation 33 provides that the following parties can request the regulatory body’s decision or direction to be reconsidered: […][This change is not related to the revocation of the CIR and is intended to provide additional clarity.] |
| 102 | Cooperation with other regulatory bodiesThe applicable legislation allows us to cooperate with regulatory bodies competent for the route of the proposed new service in exchanging relevant information subject to receiving appropriate undertakings as regards confidentiality. [paras 103 -106 remain unchanged] | Cooperation with other regulatory bodies~~The applicable legislation allows us to cooperate with regulatory bodies competent for the route of the proposed new service in exchanging relevant information subject to receiving appropriate undertakings as regards confidentiality.~~  | Cooperation with other regulatory bodies[paras 103 -106 remain unchanged][This section sets out how ORR may choose to engage with regulatory bodies in other relevant countries and in relation to a specific application. This is currently specifically permitted by the CIR. In the event the CIR is revoked, ORR considers that we will retain the ability to co-operate in the same way, without a specific legal provision to do so. During any exchange of information regarding the tests, we intend to respect the confidentiality of commercially sensitive information received from the parties involved in the tests.]  |
| 103 | Upon receipt of the applicant’s notification to start a new international passenger service or a request for either a principal purpose test or an economic equilibrium test, we may inform other regulatory bodies having competence for the route of the proposed service. We intend to inform relevant parties of our plan to engage with other regulatory bodies. | Upon receipt of the ~~applicant’s notification~~track access application to start a new international passenger service or a request for either a principal purpose test or an economic equilibrium test, we may inform other regulatory bodies having competence for the route of the proposed service. We intend to inform relevant parties of our plan to engage with other regulatory bodies. | Upon receipt of the track access application to start a new international passenger service or a request for either a principal purpose test or an economic equilibrium test, we may inform other regulatory bodies having competence for the route of the proposed service. We intend to inform relevant parties of our plan to engage with other regulatory bodies. |
| Annex | Form: INTERNATIONAL APPLICATION NOTIFICATION TO THE OFFICE OF RAIL AND ROAD OF A PROPOSED SERVICE THAT MAY BE SUBJECT TO THE PRINCIPAL PURPOSE AND ECONOMIC EQUILIBRIUM TESTS | [Form IA deleted in its entirety] | [In the event that the CIR is revoked, its notification requirement will be removed and this form will no longer be relevant to any party. See proposed changed to 69-73 (above) for further explanation] |

Table 4: Industry code of practice for track access application consultations

[Current guidance](https://www.orr.gov.uk/sites/default/files/om/code-of-practice-for-track-access-application-consultations.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24700/download)

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| Paragraph  | Original text | Tracked changes | Revised text |
| 17 | Where the infrastructure manager does not impose an annual or multi-annual deadline (as in the case of Network Rail) and receives a request to conclude or modify a framework agreement, it should take reasonable steps to inform other potential applicants about its intention to conclude a framework agreement6 . The consultation period for such framework agreements will be a minimum of one to four months to reply in order to have adequate time in which to consider and make representations7 . | Where the infrastructure manager ~~does not impose an annual or multi-annual deadline (as in the case of Network Rail) and~~ receives a request to enter into~~conclude~~ or modify a framework agreement, it should take reasonable steps to inform other potentially affected parties~~applicants about its intention to conclude a framework agreement.~~ Framework agreements are complex and can have impacts on multiple parties. As such, t~~T~~he consultation period for ~~such~~ new framework agreements or modifications to framework agreements is~~will be~~ a minimum of 28 calendar days~~oneto fours to reply~~ in order that all potentially affected parties ~~to~~have adequate time in which to consider and make representations. | Where the infrastructure manager receives a request to enter into or modify a framework agreement, it should take reasonable steps to inform other potentially affected parties. Framework agreements are complex and can have impacts on multiple parties. As such, the consultation period for new framework agreements or modifications to framework agreements is a minimum of 28 calendar days in order that all potentially affected parties have adequate time in which to consider and make representations.[The amended parts of this paragraph refer to CIR 2016/545 of 7 April 2016 on procedures and criteria concerning framework agreements for the allocation of rail infrastructure capacity. In the event that this CIR is revoked, the need for consultation on framework agreements will remain. ORR considers that the appropriate minimum length for such a consultation should revert to the period of 28 calendar days which was used prior to 2016. This provides uniformity to the period of consultation.] |
| 18 | Where an infrastructure manager receives a request to make minor modifications to an existing framework agreement and the proposed modification does not impact other framework agreements, it is initially for the infrastructure manager to decide whether to inform and consult the other potential applicants of such a request. | Where an infrastructure manager receives a request to make minor modifications to an existing framework agreement and the proposed modification does not impact other framework agreements, it is initially for the infrastructure manager to decide whether to inform and consult the other potential applicants of such a request. If a consultation is not carried out and issues that may impact other parties are identified by ORR during its review of the application, ORR may request a consultation is carried out or seek specific comments from industry parties. | Where an infrastructure manager receives a request to make minor modifications to an existing framework agreement and the proposed modification does not impact other framework agreements, it is initially for the infrastructure manager to decide whether to inform and consult the other potential applicants of such a request. If a consultation is not carried out and issues that may impact other parties are identified by ORR during its review of the application, ORR may request a consultation is carried out or seek specific comments from industry parties.[This additional text is not related to the REUL Act. The policy specified is current ORR policy and is included for additional clarity.] |

Table 5: Criteria and Procedures for the approval of framework agreements on the HS1 network

[Current guidance](https://www.orr.gov.uk/sites/default/files/2021-11/hs1-framework-agreements-criteria-and-procedures.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24702/download)

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| Paragraph  | Original text | Tracked changes | Revised text |
| 1.9 | Our statutory duties under section 4 of the Act are engaged by Regulation 31(1) of the Regulations to the extent that they are relevant and consistent with EuropeanUnion Directives. […] | Our statutory duties under [section 4](https://www.orr.gov.uk/sites/default/files/om/our-rail-and-road-duties.pdf) of the Act are engaged by Regulation 31(1) of the Regulations to the extent that they are relevant ~~and consistent with European Union Directives.~~and consistent with the Regulations. | Our statutory duties under [section 4](https://www.orr.gov.uk/sites/default/files/om/our-rail-and-road-duties.pdf) of the Act are engaged by Regulation 31(1) of the Regulations to the extent that they are relevant and consistent with the Regulations. |
| 1.17-1.21  | Commitments to the European Commission [Full section] | [Section deleted in its entirety] | [The commitments referred to expired in 2022.] |
| 2.42 | In all cases, it is important that consultees have adequate time in which to consider and make representations. The consultation period for all new framework agreements shall be one to four months to reply in order to have adequate time in which to consider and make representations.3 The consultation period for proposed changes to existing framework agreements shall also be one to four months, unless the proposed modifications are minor and do not impact other framework agreements. | [Paragraph replaced with the following text]Where the infrastructure manager receives a request to enter into or modify a framework agreement, it should take reasonable steps to inform other potentially affected parties. Framework agreements are complex and can have impacts on multiple parties. As such, the consultation period for new framework agreements or modifications to framework agreements is a minimum of 28 calendar days in order that all potentially affected parties have adequate time in which to consider and make representations. | Where the infrastructure manager receives a request to enter into or modify a framework agreement, it should take reasonable steps to inform other potentially affected parties. Framework agreements are complex and can have impacts on multiple parties. As such, the consultation period for new framework agreements or modifications to framework agreements is a minimum of 28 calendar days in order that all potentially affected parties have adequate time in which to consider and make representations.[CIR 2016/545 contains an obligation on HS1 to perform such consultations according to the current drafting of this section. In the event that CIR 2016/545 is revoked ORR considers that HS1 should be regulated as far as possible in line with other infrastructure managers. For that reason, it is proposed that this section is aligned with the industry Code of Practice on conducting consultations.] |
| 2.81 | Except in special circumstances (that have been agreed with us) a pre-application consultation led by HS1 Limited should be undertaken for all applications. This is to be conducted in accordance with the arrangements set out in the section on consultation above. | ~~Except in special circumstances (that have been agreed with us) a~~ A pre-application consultation led by HS1 Limited should be undertaken for all applications other than those described at paragraph 2.43. This is to be conducted in accordance with the arrangements set out in the section on consultation above.  | A pre-application consultation led by HS1 Limited should be undertaken for all applications other than those described at paragraph 2.43. This is to be conducted in accordance with the arrangements set out in the section on consultation above. [This proposed change is not related to the REUL Act. ORR considers that other than applications relating to minor modifications, all consultations should be for a minimum of 28 calendar days. This brings our policy for HS1 in line with that for other infrastructure managers.] |
| 2.93 | Within 14 days of the parties signing the contract, HS1 Limited must send a copy to ORR at Track.Access@orr.gov.uk for the public register. | Within 14 days of the parties signing the contract, HS1 Limited ~~must~~ should send a copy to ORR at Track.Access@orr.gov.uk for the public register. | Within 14 days of the parties signing the contract, HS1 Limited should send a copy to ORR at Track.Access@orr.gov.uk for the public register.[This proposed change clarifies the basis on which HS1 will engage with ORR. It is not related to the REUL Act.]  |

Table 6: Criteria and procedures for the approval of station access agreements

[Current guidance](https://www.orr.gov.uk/sites/default/files/2023-01/criteria-and-procedures-for-the-approval-of-station-access-agreements.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24698/download)

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| Paragraph  | Original text | Tracked changes | Revised text |
| 2.2 | The regulatory framework applying to station access was established by the Act. It is complemented by domestic regulations, which implement EU legislation, including the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document, Starting Mainline Rail Operations. | The regulatory framework applying to station access was established by the Act. It is complemented by ~~domestic regulations, which implement EU legislation, including~~ the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document[, *Starting Mainline Rail Operations.*](https://www.orr.gov.uk/media/10790/download)  | The regulatory framework applying to station access was established by the Act. It is complemented by, the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document[, *Starting Mainline Rail Operations.*](https://www.orr.gov.uk/media/10790/download)  |
| 2.8 | The 2016 Regulations transposed certain EU rail directives into domestic law. They apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. | The [2016 Regulations](https://www.legislation.gov.uk/uksi/2016/645/made) ~~transposed certain EU rail directives into domestic law. They~~ apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. | The [2016 Regulations](https://www.legislation.gov.uk/uksi/2016/645/made)  apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. |
| 2.41 | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98) (and, in so far as they may affect trade between EU Member States, Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU). | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98) ~~(and, in so far as they may affect trade between EU Member States, Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU)~~.  | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98). |
| 2.43 | The EC Modernisation Regulation, which came into force on 1 May 2004, abolished the system of notifying agreements for exemption. Consistent with this, in domestic law the Competition and Markets Authority (CMA) and ORR are no longer able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our guidance. | ~~The EC Modernisation Regulation, which came into force on 1 May 2004, abolished the system of notifying agreements for exemption. Consistent with this, in domestic law t~~ The Competition and Markets Authority (CMA) and ORR are not ~~longer~~ able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our [guidance.](http://www.orr.gov.uk/__data/assets/pdf_file/0019/21367/competition-act-guidance.pdf) | The Competition and Markets Authority (CMA) and ORR are not able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our [guidance.](http://www.orr.gov.uk/__data/assets/pdf_file/0019/21367/competition-act-guidance.pdf) |
| 2.44 | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98 and Articles 101 and 102 of the TFEU regarding the supply of services relating to railways). | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98). ~~and Articles 101 and 102 of the TFEU regarding the supply of services relating to railways).~~ | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98).  |
| 2.45 | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. Parties should be aware that the rulings of the European Court indicate that such a defence will only be available in very limited circumstances. If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. ~~Parties should be aware that the rulings of the European Court indicate that such a defence will only be available in very limited circumstances.~~ When implementing competition law, ORR must act with a view to securing that there is no inconsistency between the principles it applies, and the principles laid down in rulings of the European Court before 31 December 2020 but may depart from such rulings made before that date where it is considered appropriate in light of specified circumstances.If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. When implementing competition law, ORR must act with a view to securing that there is no inconsistency between the principles it applies, and the principles laid down in rulings of the European Court before 31 December 2020 but may depart from such rulings made before that date where it is considered appropriate in light of specified circumstances.If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. |
| 3.1 | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, the Act and with domestic regulations that implement EU legislation, including such procedural obligations as they impose. This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, under the Act and the 2016 Regulations ~~and with domestic regulations that implement EU legislation, including such procedural obligations as they impose.~~ This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, under the Act and the 2016 Regulations. This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. |

Table 7: Criteria and procedures for the approval of depot access agreements

[Current guidance](https://www.orr.gov.uk/sites/default/files/2023-01/criteria-and-procedures-for-the-approval-of-depot-access-agreements.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/media/24699/download)

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| Paragraph  | Original text | Tracked changes | Revised text |
| 2.2 | The regulatory framework applying to station access was established by the Act. It is complemented by domestic regulations, which implement EU legislation, including the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document, Starting Mainline Rail Operations. | The regulatory framework applying to station access was established by the Act. It is complemented by ~~domestic regulations,~~ ~~which implement EU legislation, including~~ the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document[, *Starting Mainline Rail Operations.*](https://www.orr.gov.uk/media/10790/download)  | The regulatory framework applying to station access was established by the Act. It is complemented by the 2016 Regulations. Further information on this, and on ORR, is available in Annex C of the document[, *Starting Mainline Rail Operations.*](https://www.orr.gov.uk/media/10790/download)  |
| 2.8 | The 2016 Regulations transposed certain EU rail directives into domestic law. They apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. | The [2016 Regulations](https://www.legislation.gov.uk/uksi/2016/645/made) ~~transposed certain EU rail directives into domestic law. They~~ apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. | The [2016 Regulations](https://www.legislation.gov.uk/uksi/2016/645/made)  apply to the allocation of capacity and entitlements to access, the levying of charges, and provide for open access for all types of rail freight services. |
| 2.36 | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98) (and, in so far as they may affect trade between EU Member States, Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU). | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98). ~~(and, in so far as they may affect trade between EU Member States, Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU).~~  | Agreements which are restrictive of, or which distort, competition or which could amount to an abuse of a dominant position, may fall for consideration under the Chapter I or Chapter II prohibitions, respectively, of the Competition Act 1998 (CA98). |
| 2.38 | The EC Modernisation Regulation, which came into force on 1 May 2004, abolished the system of notifying agreements for exemption. Consistent with this, in domestic law the Competition and Markets Authority (CMA) and ORR are no longer able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our guidance. | ~~The EC Modernisation Regulation, which came into force on 1 May 2004, abolished the system of notifying agreements for exemption. Consistent with this, in domestic law t~~ The Competition and Markets Authority (CMA) and ORR are not ~~longer~~ able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our [guidance.](http://www.orr.gov.uk/__data/assets/pdf_file/0019/21367/competition-act-guidance.pdf) | The Competition and Markets Authority (CMA) and ORR are not able to grant an individual exemption from the Chapter I prohibition. It is, therefore, the responsibility of the parties to ensure that any agreement that they enter into is compliant with competition law. For further information on the application of competition law in the railway sector please refer to our [guidance.](http://www.orr.gov.uk/__data/assets/pdf_file/0019/21367/competition-act-guidance.pdf) |
| 2.39 | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98 and Articles 101 and 102 of the TFEU regarding the supply of services relating to railways). | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98). ~~and Articles 101 and 102 of the TFEU regarding the supply of services relating to railways).~~ | Agreements may be challenged under competition law by third parties: either by private litigation through the courts or by a complaint to the competition authorities (the CMA and ORR have concurrent jurisdiction as competition authorities to examine claims under CA98).  |
| 2.4 | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. Parties should be aware that the rulings of the European Court indicate that such a defence will only be available in very limited circumstances. If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. ~~Parties should be aware that the rulings of the European Court indicate that such a defence will only be available in very limited circumstances.~~ When implementing competition law, ORR must act with a view to securing that there is no inconsistency between the principles it applies, and the principles laid down in rulings of the European Court before 31 December 2020 but may depart from such rulings made before that date where it is considered appropriate in light of specified circumstances.  If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. | To the extent that access agreements are entered into in compliance with ORR’s directions made under section 17-22A of the Act, the parties may seek to argue that they are excluded from the scope of the prohibitions. When implementing competition law, ORR must act with a view to securing that there is no inconsistency between the principles it applies, and the principles laid down in rulings of the European Court before 31 December 2020 but may depart from such rulings made before that date where it is considered appropriate in light of specified circumstances.If a challenge were to be investigated, parties would have to take advice on the individual circumstances of their case. In general terms, it would be necessary to demonstrate that the legislative regime of the Act absolutely required them to act in the way complained of and would have prevented the parties from having any scope to make an agreement that would not have contravened competition rules. |
| 3.1 | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, the Act and with domestic regulations that implement EU legislation, including such procedural obligations as they impose. This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, under the Act and the 2016 Regulations ~~and with domestic regulations that implement EU legislation, including such procedural obligations as they impose~~. This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. | This chapter explains the procedures we expect to follow when considering applications for agreements granting access to station facilities for freight and passenger train services. Through these procedures, our aim is to ensure that our consideration of applications is undertaken in a timely manner and is wholly consistent with our statutory duties, under the Act and the 2016 Regulations . This chapter also sets out the process for submitting access agreements and amendments under the wide-ranging General Approval, submitting access agreements and amendments for specific approval, the procedure whereby ORR deals with appeals and disputes, and our process for applications involving the exemption of facilities from the provisions of the Act. |

Table 8: Starting Mainline Operations

[Current guidance](https://www.orr.gov.uk/sites/default/files/2023-02/starting-mainline-rail-operations.pdf)

[Proposed amended guidance](https://www.orr.gov.uk/sites/default/files/2023-08/draft-guidance-starting-mainline-operations.pdf)

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| Paragraph  | Original text | Tracked changes | Revised text |
| A.5-A.6 | A.5 5. The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended) and Commission Implementing Regulation 2017/2177 of 22 November 2017 on access to service facilities and rail related services. A.6 The 2016 Regulations and the Implementing Regulation apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. The 2016 Regulations describe entitlements Office of Rail and Road | Starting Mainline Rail Operations 36 and obligations in respect of access and governance for railway undertakings (as well as service providers and infrastructure managers). | A.5 5. ~~The Railways (Access, Management and Licensing of Railway Undertakings)~~ ~~Regulations 2016 (as amended) and Commission Implementing Regulation 2017/2177 of 22 November 2017 on access to service facilities and rail related services.~~ A.6 The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended)~~The 2016 Regulations and the Implementing Regulation~~ apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. The 2016 Regulations describe entitlements and obligations in respect of access and governance for railway undertakings (as well as service providers and infrastructure managers). | A.5 [Deleted]A.6 The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (as amended) apply alongside the Railways Act 1993 (the Act). Where the Act applies, service providers should follow the established ORR procedures, such as for contesting access to a rail facility under section 17 of the Act. The 2016 Regulations describe entitlements and obligations in respect of access and governance for railway undertakings (as well as service providers and infrastructure managers). |