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05 June 2024

Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes.

Thank you for your letter of 24 April 2024 setting out how ORR plan to make their decisions on access applications for December 2024, May 2025 and December 2025.

We recognise your description of the complexity of Network Rail and Operator's timetable planning for December 2024, and are acutely aware that the timetable will not include most of the East Coast Mainline (ECML) Event Steering Group (ESG) changes. It is correct that further work is ongoing to deconflict operators stated timetable aspirations before a decision is taken in 2024 on whether or not to implement a version of the ESG timetable in either May or December 2025.

On the basis of ORR's letter there are two separate sections to this response:

1. The first results from ORR's view that the definition of Congested Infrastructure appears to have been met for at least parts of the ECML. This requires Network Rail to comply with the requirements in the Regulations or explain why it considers the criteria are not met by 05 June 2024.
2. The second is associated with the implications for applications for December 2024, May 2025 and December 2025 and plan for timetable/performance assessments to inform on rights applications.

To provide clarity we have grouped our response under a Section One and associated Appendix One and a Section Two and associated Appendix Two below.

Section 1: Congested Infrastructure (CI) Declaration on the ECML

1.1 Our Approach to CI on the ECML

It was our intention to issue an Early Indicator of Likely Congestion notice on 5 June 2024 as defined in our Code of Practice. Owing to the Pre-Election Period we have delayed this until after the General Election on 4 July 2024 and we plan to publish the Early Warning notice on our website on 5 July 2024. This notice will be for the following sections of the ECML

- Between Huntingdon North Jn and New England North Jn (Peterborough)
- Between Doncaster Marshgate Jn and Leeds Copley Hill West Jn
- Between Northallerton Longlands Jn and Newcastle King Edward Bridge South Jn
- Between Newcastle East Jn and Monktonhall Jn (Edinburgh)

In August 2024 we will refine our definition of relevant route sections and publish Declaration of Congested Infrastructure notices for any sections where the analysis set out in 1.2 below shows a full notice is required.

1.2 Our Rationale

The System Operator Capacity Planning team are working with the Regions and Train Operators to assess what the opportunities are to meet the ECML ESG timetable ambitions in May 2025 or December 2025. As you know an East Coast Industry Task Force on which ORR, Operators and funders sit will be meeting between 11 June and the decision points set out below to make recommendations.

The timeline associated with this work is shown in Appendix One, and in summary immediately below:

1. **ECML ESG Timetable in May 2025** – Target Go/ No go decision point before end of July 2024
2. **ECML ESG Timetable in December 2025** – Target Go/ No go decision point by end September 2024 (with fallback to D55 November 2024)

The work we are completing to the end of July 2024 for the May 25 Go/ No Go decision point will allow us to complete the following in advance of a full CI declaration.

- Complete analysis on options to solve conflicts currently identified in the ESG plan – possibly reducing the number of sections that would be correctly designated congested.
- Allow the East Coast Industry Task Force to assess any trade-offs and if necessary, recommend alterations to the service specification that could remove conflicts on a given section or sections.

This process will allow us, if necessary, to produce sufficiently granular Declarations of Congested Infrastructure for relevant parts of the Route. It will avoid Network Rail issuing CI notices in June / July and potentially having to revoke some of these two months later once the work being undertaken for the East Coast Industry Task Force is complete.

By allowing the important work set out above to be completed we believe we have selected the most practical approach for a CI declaration, which should lead to a declaration most useful to operators, funders and ORR. We believe that this approach is procedurally compliant and the rationale with respect to the Code of Practice and the Regulations, is set out in Appendix One.

Section 2. Access applications for December 2024, May 2025, December 2025.

Due to the unprecedented scale of 83 new applications received at one point in time, Capacity Planning will phase the analysis, initially prioritising applications for December 2024, followed by May 2025 and then December 2025. Additionally, assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis. All ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable. This approach is explained in more detail in Appendix Two and a timeline showing the target decision points for the ECML ESG timetable is included in Appendix One.

The timelines in the high level plan described in Appendix Two are not set out as deadlines for completion of the analysis and assessment of access applications, rather these are the key

milestone dates for the production of the timetable as outlined in the Network Code. This is no different to how the access rights assessment and timetable development processes typically interact today. These dates are identified to show what analysis could pass between the Advanced Timetable Team and the Production team in Capacity Planning. As we know the Network Code (Part D) does not currently require completion of all analysis supporting applications by D40.

We recognise the reality of the constrained timescales that we are having to work to, and we are not able to commit to concluding all necessary access application phases of work before the timetables enter the D40 development periods. We are committed to establishing a joint team to continue the analysis and assessment work into the development window in order to maximise the level of work completed. Where necessary we will escalate issues and progress reports to the East Coast Industry Task Force.

Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail. Where applications have been submitted outside of the timetables under review we will discuss how these should be treated on a case by case basis with ORR. Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately. This may require existing applications to be split out. Our assessments may include a small number of existing (pre-May 20th) applications already being considered by ORR and to which we may have already submitted representations – we will confirm such cases with you.

Network Rail asks that while it carries out all its assessments, ORR progresses with its own assessments to assist in making early decisions/de-scoping the scale of applications requiring assessment from Network Rail. Additionally, any applications which are deemed operationally un-ready by Network Rail or otherwise deemed un-ready by their lead regional or national customer function for May 2025 and/or December 2025 should be descope as early as possible.

Throughout the rights assessment work phases Network Rail intends to communicate with ORR on progress and provide collated information against individual applications as they are assessed through the plan. The intention is to enable decisions during the process, where possible, rather than await a fully completed package of work considering all in-scope applications.

The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other changing industry priorities and requirements. For example recommendations from the East Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the remaining stages of the plan, including impacting when analysis can be completed.

We propose establishing a change control mechanism to track changes in the plan, when and where required, to retain transparency and clarity. This may also lead to consequential changes to anticipated dates of any resulting representations planned by our customer teams.

Network Rail is developing its approach to the access rights it will support in the interim while this work is undertaken and before ORR is able to make a decision. This approach will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact. Applications outside the scope (locations and timescales) of the analysis will be processed as normal.



Statutory and industry consultations

The vast majority of the 83 new access applications received by ORR by its 20 May deadline were unsupported by Network Rail. This was to be expected given the time between the ORR's letter of 24th April and the deadline of May 20th did not, in most cases, allow time for the requisite industry consultations ahead of the submission of any supported applications. Where discussions had been underway we were already dealing with the complexity of assessing interactions between the many aspirations over such a wide geography and many of these discussions, while they may have been positive in nature have equally been required to go down the unsupported applications route.

ORR is obliged by the 1993 Railways Act to consult Network Rail about each unsupported application, and Network Rail must make representations on each in a timeframe set by ORR, which for these applications is 28 June 2024.

Network Rail customer teams in each Region and the System Operator will coordinate these representations letters, which as usual may raise specific local issues or concerns with each application. In the context of the large number of interacting applications and the analysis plan set out in Appendix 2 of this letter, the representations letters are mostly expected to reserve Network Rail's position pending the outcome of the analysis.

As per ORR's advice to customer teams, these responses will also be expected to reference any plans for other information or provide it, e.g. from an operations perspective – which we will seek to do by indicating as far as reasonably practical the timing of the availability of evidence and information identified. We are also mindful that the wider plan and its analysis may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses.

Separately from this statutory consultation, it is normal for applicants to ask Network Rail to consult other train operators about their application. Where this is not precluded by confidentiality concerns, Network Rail customer teams have already started this process. We will report on this in the statutory consultation representations, and in due course the results will of course be shared with ORR.

Yours sincerely

Chris Rowley
Capacity Planning Director

Appendix One – Congested Infrastructure

App 1.1 Congested Infrastructure Approach

Background

The circumstances in which a Declaration of Congested Infrastructure (hereafter referred to as a 'Declaration') is to be made are detailed under The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (A&M Regs).

Regulations 26(1) and 26(2) deal with these specific circumstances, respectively applying after and during the coordination of requests and production of the timetable. These can be summarised as follows:

- 26(1) – after coordination of requests for capacity and consultation a Declaration must be made if Infrastructure Manager is unable to satisfy request for infrastructure capacity adequately.
- 26(2) – a Declaration must be made if during the preparation of the next timetable period¹ the infrastructure manager considers that elements of the railway are likely to become congested.

Regarding the ECML, the Event Steering Group developed a timetable to deliver the principal outputs from ORR's 2016 directions. This was intended for introduction in December 2024 and was included as part of the Prior Working Timetable (PWT) but conflicts with Priority Date Notification Statement (PDNS) and rolled-forward access proposals have resulted, as part of ongoing coordination and consultation, in the industry revising their requests for access for the December 2024 timetable. Further work is ongoing to deconflict operator's stated timetable aspirations before a decision is taken in 2024 on implementing a version of the ESG timetable during 2025.

Consideration of Regulation 26(1)

The conditions for a declaration of congested infrastructure in Regulation 26(1) have currently not been satisfied because, at the date of this letter, the access proposals made in accordance with Condition D2 of the Network Code have been revised by train operators so that they are expected to be satisfied adequately and coordination of requests and consultation with applicants is ongoing in line with Regulation 23(4). The proposals were revised after industry consideration of timetable risks in accordance with Condition D7.3 of the Network Code.

At this point in time Network Rail has not issued a notice of rejection of any specific bids submitted by any operators bidding for paths in the December 2024 timetable.

In the event that we are unable to satisfy the current requests adequately in the new working timetable issued on 14 June (after "coordination", in the terminology of Regulation 26), we will make a declaration under Regulation 26(1).

¹ In the AMR a timetable period is a year from December, so this applies to the December TCD after next.

Consideration of Regulation 26(2)

Unlike Regulation 26(1), 26(2) requires the infrastructure manager to form an opinion on the likelihood of the 26(1) conditions arising in a limited future timeframe. While the ongoing analysis work on deliverability of the ESG timetable is underway, we are unable to form a clear view of the applicability of Regulation 26(2). At present we expect that, when the current phase of analysis is completed in July, a small number of congested infrastructure declarations will be required for sections of the ECML. Assuming that is the case we will look to make Declarations in August 2024.

We have considered the merits of making one or more declarations now under Regulation 26(2), and changing their geographic scope later as conclusions are drawn from the current analysis.

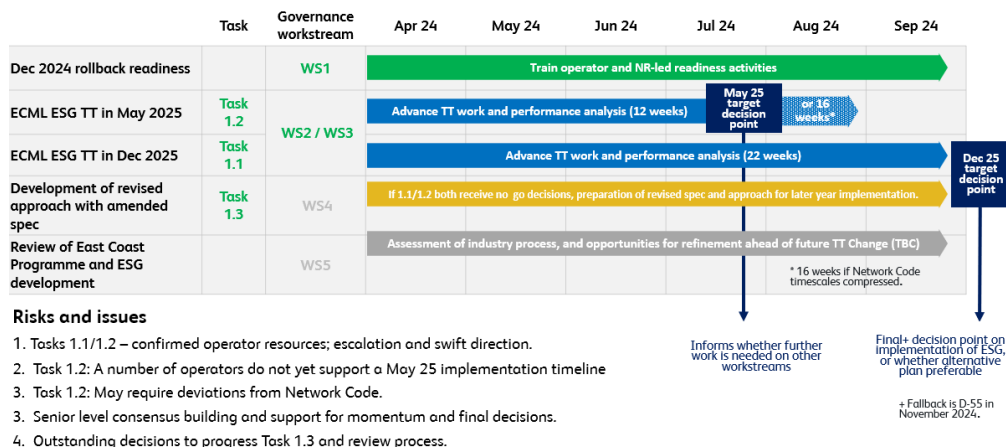
We consider that the more valuable approach for current and potential future customers – is to use a less formal indicator now, so that the anticipated formal declaration(s) can be more accurate. This would facilitate meaningful analysis so that the options developed, and the subsequent enhancement plans published, are practical, informative and can identify more achievable solutions to alleviate the identified issues.

Application of the Code of Practice

Consequently, we have confirmed that we will publish an Early Indicator of Likely Congestion as an advisory notice to Stakeholders in relation to parts of the ECML. This notice will be formally published after the Pre-Election Period. Although this notice lacks statutory or contractual authority, it adheres to the Network Rail Management of Congested Infrastructure Code of Practice we have previously consulted with industry.

The Early Indicator that will be published (Appendix One) is for the areas that are the focus of most work in the current assessments of the deliverability of the ESG timetable. These areas might therefore require a declaration of congested infrastructure under Regulation 26(2), although at this stage the list can only be advisory and may change as the analysis progresses to a level where meaningful conclusions can be drawn. We have been clear above regarding the timescales for this decision.

App 1.2 ECML Timeline for Decision on May or December 2025 implementation



App 1.3 Draft Early Indicator of Likely Congested infrastructure East Coast Main Line

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05 July 2024

Early Indicator of Likely Congested Infrastructure: East Coast Main Line

In accordance with the Network Rail Management of Congested Infrastructure Code of Practice (March 2024) (hereafter referred to as the “[Code of Practice](#)”), Network Rail is issuing this Early Indicator of Likely Congestion in relation to the East Coast Main Line.

The East Coast Main Line operates between London King’s Cross and Edinburgh Waverley plus Doncaster to Leeds via Wakefield Westgate and has been subject to a local Sale of Rights [Access Policy](#) for several years.

Under this policy, Network Rail has generally declined to support applications for Firm Rights on the East Coast Main Line in recent years. Consequently, this early indicator notice is issued in accordance with the Code of Practice Section 3.2.1(a).

Work undertaken by Network Rail to date indicates that there may be specific geographic locations on the ECML that, whilst not formally congested, are likely to require additional work and consideration for future timetables. These sections currently include:

- Between Huntingdon North Jn and New England North Jn (Peterborough)
- Between Doncaster Marshgate Jn and Leeds Copley Hill West Jn
- Between Northallerton Longlands Jn and Newcastle King Edward Bridge South Jn
- Between Newcastle East Jn and Monktonhall Jn (Edinburgh)

This notice is non-binding and advisory only, with no legal or contractual status as detailed within the Code of Practice. As this notice is non-binding, it does not trigger the requirement for Network Rail to undertake either a Capacity Analysis, or a Capacity Enhancement Plan. Should the circumstances on this route require a formal declaration of congested infrastructure then the processes outlined within the Code of Practice will be followed in order to comply with the Railways (Access Management and Licensing of Railway Undertakings) Regulations 2016.

A copy of this notice will be published on the Network Rail website.

Chris Rowley
Capacity Planning Director

Appendix Two - Applications for access rights: High Level Plan

This plan has been developed with absolute clarity that the timelines in the high level plan described are not set out as deadlines for completion of the analysis and assessment of access applications, rather these are either:

- i. The key milestone dates for the production of the timetable as outlined in the Network Code. This is no different to how the access rights assessment and timetable development processes typically interact today. These dates are identified to show what analysis could pass between the Advanced Timetable Team and the Production team in Capacity Planning, not when analysis is completed.
- ii. Or where not specifically relevant to the Network Code, indicative date ranges based on our current sift of the list of applications.

We recognise the reality of the constrained timescales that we are having to work to, and we are not able to commit to concluding all necessary access application phases of work before the timetables enter the D40 development periods.

Phase 1 Collation & Scoping – 21 May - 28 June (6 weeks);

- Overlay December 2024 and May 2025 applications across each other and identify key locations of interaction/timings of interactions where known.
- For the purposes of this assessment, interacting will be defined as Timetable Planning Rule (TPR) conflicts.
- If applications do not contain all the required information, or were not submitted by 20 May 2024, Network Rail will work with Operators to identify the impact and agree if and when the required information can be provided. If by the end of this Phase we do not have or have not agreed a plan to get that information, we will advise where we do not believe it will be possible to take forward the relevant application into Phase 2 of this work.
- Explain the options and make clear recommendations to reduce the scope and the scale of applications, or components of applications, which do not meet the required quality/level of completeness, or which have no interaction. In particular, prioritising applications that are not dependent on ECML ESG implementation first, to inform a view for rights applications in December 2024 and May 2025 initially.

Timetable Production outputs for December 2024 can be used to inform December 2024 rights but if interacting will need to be dated.

- **Phase 2 Risk Identification May 2025 – 17 June – 9 August (8 weeks);**
- Phase 2a – 17 June – 26 July (6 weeks)
 - Overlay in-scope May 2025 applications on December 2024 D-26 Timetable offer and identify key areas of constraint and risk; focussing on geography off the East Coast Main Line Event Steering Group geography. This enables an initial look at areas not impacted by the ECML ESG decision for May2025.
- Phase 2b – 26 July (first ECML decision point) – 9 August (2 weeks)
 - Start to assess May 2025 constraints and risk against either a December 2024 base for entire geography or against ECML ESG sprints, dependent on ECML ESG decision.
- There will be no opportunity to inform decisions on access rights applications concerning May 2025 ahead of D40
- Explain the options and make clear recommendations to reduce the scope and the scale of applications, or parts of applications, which do not meet the required quality/level of completeness, or which have no interaction. In particular prioritising applications that are



not dependent on ECML ESG implementation decision first, to inform a view for rights applications in December 2024 and May 2025 initially.

- Provide Performance Intelligence at identified key locations to provide performance context to aspirant applications. This Performance Intelligence will be constrained by the time available.
- High level capacity assessments at identified key locations may be undertaken if suitable but only in exceptional situations as these assessments will not provide a robust output which also considers the feasibility of the entire origin to destination of services included in an application.
- If we are able to bring any December 2025 applications into scope at this Phase we will, but must recognise that they will be the lowest priority.

Phase 3 May 2025 Production Development Period – 12 August - 15 November (14 weeks);

- Assess May 2025 applications through May 2025 Timetable Production Development Period with a view to alignment with ANTCs. Network Rail would prioritise applications which align with ANTCs submitted for May 2025.
- East Coast Industry Task Force recommendations may need to be taken into account at this stage which could significantly impact the plan.
- Identify which of the December 2025 applications may conflict with May 2025 applications and/or other December 2025 applications.
- Support, where applicable, the development period by providing performance insights and intelligence of valid applications to Production.
- Due to limited opportunity to assess applications and for decisions to be made in advance of D40, there is potential for rejections through the Development period and possible consequential Congested Infrastructure declarations if capacity is the primary reason for rejection.
- Wider Network Rail Region Timetable Change Risk assessments (TCRAGS) will take place as per standard processes in preparation for the May 2025 timetable change.
- If services are not impacted by aspirations for December 2025, then firm rights decisions can be made.
- If May 2025 aspirations are known to interact and/or compete with December 2025 aspirations, rights may have to be dated to December 2025.
- D55 for December 2025 will be mid/late-November 2024, operators ANTC submissions should align with rights applications already submitted for that timetable change and/or detail further aspired changes that would require additional rights to those already applied for.
- 30 September ECML ESG go/no go decision – if decision is made to not implement ECML ESG in December 2025, ECML aspirations should be absorbed into future ECML service specification discussions and applications rejected. Paths would likely need further development to meet existing structure and any amended new applications assessed outside of this workstream.

Phase 4a - (ECML confirmed for December 2025) – focussing on December 2025 – 15 November – December 2025 D40 (early/mid-March 2025)

- Assess December 2025 applications against May 2025 D26 Working Timetable plus outputs of ECML ESG sprint work.
- Provide Performance Intelligence at identified key locations to provide performance context to aspirant applications. This Performance Intelligence will be constrained by the time available.
- TPHAZID Route risk assessments for December 2025 Timetable change commence in or around September 2024.
- Subject to change if ECML decision made in January 2025.

Phase 4b - (ECML confirmed for May 2025) – focussing on December 2025 –15th November – December 2025 D-40 (early/mid-March 2025)

- Assess December 2025 applications against May 2025 D-26 Working Timetable.
- Provide Performance Intelligence at identified key locations to provide performance context to aspirant applications. This Performance Intelligence will be constrained by the time available.
- TPHAZID Route risk assessments for December 2025 Timetable change commence in or around September 2024.

Phase 5 – December 2025 Production Period

- Continue to assess December 2025 applications through December 2025 Timetable Production Development Period with a view to alignment with ANTCs. Network Rail would prioritise applications which align with ANTCs submitted for December 2025. Support, where applicable, the development period by providing performance insights and intelligence of valid applications to Production.
- Wider Network Rail Region Timetable Change Risk assessments (TCRAGS) will take place as per standard processes in preparation for the December 2025 timetable change.