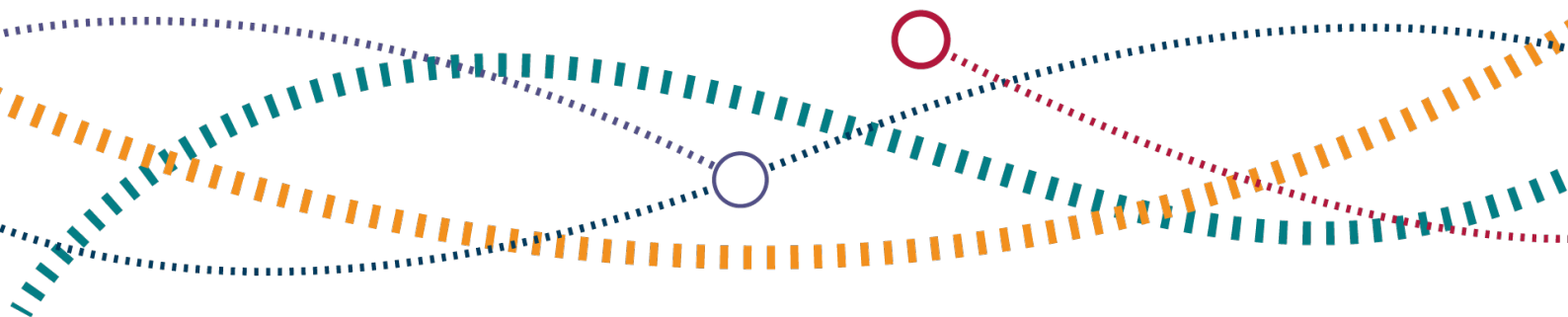# Open access guidance

Making a track access application and ORR decision making

31 January 2025

Contents

Document control

Document published: 13 January 2025

Document due for review: November 2026.

Document owner: Passenger Track Access Manager

Table 1.1   Document control history.

Date	Change
12 Sept 2024	This new guidance was drafted to update the NPA guidance. This update introduces a routine approach to assessing the costs and benefits associated with open access applications. The benchmarking stage of the NPA test has also been removed. This guidance also gives further information and clarification on ORR's policy and decision making, this is intended to support new operators.
27 Nov 2024	Amendments were made following the consultation to further improve explanations provided. These included some additional cross references to other guidance, fuller explanations and clearer definitions. The order of some text was changed to improve flow. We have improved the explanation of the NPA test and added explanatory headings. An additional chapter, Where can I find more information was added.
13 Jan 2025	The section on Secretary of State, Scottish Minister and the Welsh government in Chapter 3 was amended to include reference to a letter from the Secretary of State.

1. Introduction

1.2   This guidance explains the process of applying for track access for open access operators, and the basis on which we make our decisions. It explains how we conduct the Not Primarily Abstractive (NPA) test, what other factors we consider and our approach to making decisions.

1.3   This document summarises policies contained in our track access guidance that are of particular relevance to open access applications. Signposting is provided to other relevant guidance which applicants should consult when making applications.

Who is this guidance for?

1.4   The guidance is intended to support aspirant and existing open access operators in making their applications and understanding the basis on which ORR makes its decisions. It is also intended to support potential investors in open access operators who would like to understand more about ORR's approach to open access. Investors may also find our guidance *Investing in the railway: securing access* informative.

1.5   Other railway operators and railway funders who may be affected by open access applications may also find the guidance informative. Those already familiar with access decision making may find the technical description of how we conduct the NPA test provided in Chapter 4 most relevant.

1.6   Aspirant operators who are not already familiar with the legislative and contractual framework should consult ORR's track access guidance, including *Starting Mainline Operations*, *The statutory and contractual framework* and *Making an application*. To operate trains you will need to meet health & safety requirements and hold the relevant licences. Aspirant operators must also familiarise themselves with the relevant infrastructure manager's (IM's) processes and published information.

Summary

1.7   ORR weighs all our relevant duties under the Railways Act 1993 when determining track access applications. For open access applications in particular, this includes the need to consider the impact on existing operators and Secretary of State's funds along with potential benefits to passengers from competition. We developed

the Not Primarily Abstractive (NPA) Test to help us weigh these issues. The test considers the expected impact of a new open access service proposal. It creates a ratio between income expected to be generated by services attracting new passengers to rail (referred to as generation) and income which is expected to result from passengers switching from existing services (referred to as abstraction).

1.8   The NPA test is an important tool to support our decision making, but it is not determinative as we also consider other factors in accordance with our duties. As we explain in our *Guidance on the use of capacity*, in addition to conducting the NPA test, we also consider our statutory duties; but generally, we would not expect to approve applications which generate less than 30 pence for every pound abstracted.

Legislative context

1.9   ORR determines track access contracts for Network Rail, Core Valley Lines and the Crossrail Central Operating Section in accordance with the [Railways Act 1993](#). This requires ORR approval for all track access contacts and gives ORR the power to direct access where applicants and the infrastructure manager are unable to agree. The Railways Act sets out our statutory duties, and we weigh our relevant duties when making track access decisions.

1.10   We also consider the requirements of the [Railways (Access and Management and Licensing of Railway Undertakings) Regulations 2016 as amended](#) (the AMRs).

1.11   Only the AMRs (and not the Railways Act 1993) apply to the Heathrow Spur, High Speed 1 and Eurotunnel. We hear appeals under the AMRs for matters concerning Heathrow Spur and High Speed 1. We also approve framework agreements covering more than 12 months (one timetable period) for access to High Speed 1. We discharge relevant functions under the AMRs in accordance with our Railways Act 1993 statutory duties.

1.12   Further information on the legislative context is provided in our *Guidance on the statutory and contractual framework.*

2. Making a new open access application

2.1   Developing an open access application from initial proposition through decision making and operation on the network has taken operators several years. This reflects the need for operators to manage the complex interplay between operational preparations such finance, rolling stock, driver training and mobilisation; engaging with the IM on matters such as capacity, performance and timetabling; and regulatory approvals including access, licensing the safety. Further information is available in *Starting Mainline Operations.*

2.2   Our guidance on *Making an application for track access* explains the process for seeking ORR's approval of track access applications. This document does not duplicate that guidance, but for the benefit of new operators, particular attention is drawn to:

- Applications need to be sufficiently developed to enable both IM and ORR to consider the proposals. This will require applicants to have completed the application form and to have provided any supporting information. Applicants will need to have considered all relevant factors such as network capacity, performance implications, any competing services and rolling stock.

- Normally, ORR expects applicants to have engaged with the IM prior to making an access application. Network Rail (and other IMs) provide information for operators on their websites, including on the sale of access rights process, network statement, network code, station access, access charges and operational rules.

- Consultation with industry and other interested parties is an important part of the track application process and informs our decision making. The *Industry code of practice for track access application consultations* explains the requirements.

- Our guidance on *Making an application for track access* explains the processes to be followed for both agreed and non-agreed applications. Applicants who are not able to reach agreement with IM on their proposed service are able to apply to directly to ORR for access to the Network.

2.3   Starting to operate a train service on the mainline is a significant undertaking, likely to require a substantial investment in expertise and rolling stock. We explain

in our *Guidance on the use of capacity*, that we would not normally expect to approve access rights unless the applicant satisfies us as to its clear intention and ability to use the capacity. This is to ensure capacity is not reserved for services which have little prospect of being operated. We would therefore want to see evidence supporting an applicant's intention and ability to use that capacity.

Submission to ORR

2.4   Applications for access to Network Rail's infrastructure are submitted to ORR using the application form available on our [website](#). The application must include a draft track access contract. A model contract for open access operators is available on our [website](#).

2.5   The information required for an application to ORR is detailed and specific. The applicant needs to be decided on what route they intend to run, which stations and depots they intend to use, what type of rolling stock to use and at what times. Any issues raised in the consultation should also have been addressed.

2.6   Where the proposed service may compete with an existing service, the application form requires the submission of:

- Business plan, including details of:

    – Forecasts of passenger traffic and revenues, including forecast methodology

    – Estimated elasticities of the services (e.g. price elasticity, elasticity with respect of quality characteristics of the service)

    – Pricing strategies

    – Ticketing arrangements

    – Marketing strategy

    – Rolling stock specifications (e.g. load factor, number of seats, wagon configuration)

    – Track access charges and other infrastructure charges

- Demand forecasting (including associated spreadsheet models) demonstrating modelled generation : abstraction ratio; and

- Indicative timetables, including associated .spg files.

2.7 In cases where Network Rail agrees the application, the application form is usually completed by Network Rail. In cases where Network Rail does not support the application, it is completed by the applicant.

2.8 Applications for the other IMs are different but all publish information about their network and how to apply for capacity in their network statements. Further information is available on our website and from each IM:

(a) Core Valley Lines (CVL)

(b) Crossrail Central Operating Section (CCOS)

(c) Eurotunnel

(d) Heathrow Spur

(e) High Speed 1

2.9 ORR will conduct the Not Primarily Abstractive test on open access applications based on the information provided. We will seek additional information from the applicant if required to conduct the necessary analysis.

3. ORR decision making

3.1   This guidance summarises issues that are of particular relevance to open access applications. It is intended to provide an overview and is not a substitute for consulting our other published guidance.

ORR duties and what we consider

3.2   We determine all track access applications in the manner we consider best calculated to achieve our statutory duties, which are set out mainly in section 4 of the Railways Act 1993 and detailed in our guidance document "Our Rail and Road Duties". The weight we place on each duty depends on the circumstances of each case. Where the duties point in different directions, we weigh them against each other to help us reach a decision.

3.3   Although our duties are wide ranging, our experience generally is that a subset tends to be especially relevant to access decisions. In previous open access cases, we have placed the most weight on these duties:

- promote improvements in railway service performance (which is defined as including in particular, performance in securing (a) reliability (including punctuality), (b) avoidance or mitigation of passenger overcrowding, and (c) that journey times are as short as possible);

- otherwise protect the interests of users of railway services;

- promote the use and development of the network for passengers and goods to the greatest extent that we consider economically practicable;

- promote competition in the provision of railway services for the benefit of rail users;

- enable persons providing railway services to plan the future of their businesses with reasonable assurance;

- have regard to the funds available to the Secretary of State and their guidance; and,

- where applicable, have regard to guidance from Scottish Ministers and/or the Welsh Government.

3.4   A summary of the issues that ORR considers, and the associated statutory duties is provided at Annex 1.

Capacity and competing applications

3.5   We consider evidence and analysis from infrastructure managers and applicants when considering what capacity maybe available and the impact of allocating capacity. Our Guidance on the use of capacity explains that is sometimes necessary to make choices in the allocation of capacity, potentially between:

●   alternative uses of capacity (passenger or freight)

●   different operators or funders wishing to use the same scares capacity

●   more trains and the impact of network performance

●   the time required for safe, effective and adequate maintenance and renewal of the network.

3.6   Our *Guidance on the use of capacity* explains how these factors are considered, based on analysis and the quantification of physical and economic trade-offs. In cases of competing applications, the guidance says, "In cases where two or more applications apply for alternative uses of the same capacity, we will conduct both the NPA test and an economic cost-benefit analysis (CBA) to inform our decision. The results of the CBA will be included when weighing our public interest duties under section 4 of the Act."

3.7   Our 2016 East Coast Mainline decision letter provides an example of our use of cost benefit analysis, where the expected Net Present Value (NPV) was calculated for individual applications and used to compare competing applications.

3.8   The *Guidance on the Use of Capacity* also explains that in some cases we will require applicants to share further information such as business cases, internal approvals, indicative timetables and economic modelling to support our considerations.

3.9   The guidance also provides further information about how we consider other issues such as performance and competition for capacity between passenger and freight. An example of this type of consideration can be found in our determination of competing applications between Transport for Wales Rail and GB Railfreight.

Performance and operations

3.10 ORR must satisfy itself that any applicant will be operationally capable of using approved access rights and that, for the benefit of all users of the network, the new services are likely to be able to operate punctually and reliably. This can be discharged by the applicant's production of satisfactory documentation on how the new service(s) will operate. The level of detail required will vary depending on the scale and relative complexity in operating proposed new services on the network. For example, a larger application is likely to need more detail than a smaller application. In addition, we will generally ask for more detail in an application when the applicant has less of a track record in operating train services.

3.11 ORR expects the applicant's submitted documentation to describe plans for:

(a) Rolling stock, including type, procurement plans, stabling and maintenance;

(b) Train crew;

(c) Stations, including impact on passenger numbers and train operations;

(d) Train planning;

(e) Business continuity / managing disruption;

(f) Performance management; and

(g) Start-up operations.

3.12 ORR expects to consider the applicant's plans for rolling stock and the impact of the new services on train performance closely when determining access applications. ORR does not require operators to have signed a rolling stock contract before awarding rights, but we do expect to see advanced plans to secure and operate suitable rolling stock. ORR may incorporate requirements for the procurement of rolling stock in the track access contract and include a long stop date to terminate the contract if these requirements are not met.

3.13 ORR will also engage with the IM about the proposals. In particular we expect to consider the IM's submissions on:

(a) Performance modelling and capacity utilisation;

(b) Rolling stock;

(c)   Network enhancements and investments required;

(d)   Power supply; and

(e)   Effect on other IMs.

3.14   Descriptions of the types of evidence ORR is likely to require to assess operational viability and performance are in Annex 2. This is an indicative and non-exhaustive list, as ORR considers each case on its merits and there maybe additional issues which require scrutiny to support our decision making.

The NPA test

3.15   ORR weighs all our relevant duties when making access decisions. One of our duties is to "promote competition in the provision of railway services for the benefit of users of railway services". We recognise that competition can make a significant contribution to innovation in terms of the routes served, ticketing practices and service quality improvements, by both the new operator and through the competitive response of existing operators.

3.16   We must also consider our other duties when making access decisions. These include duties to have regard to the funds available to the Secretary of State in relation to railways and to protect the interests of users of railway services, both passengers and freight customers. These require us to consider the impact of new open access services not just on the passengers benefitting directly from those services but all users of railway services. We also have a duty to "enable persons providing railway services to plan the future of their business with a reasonable degree of assurance".

3.17   With those issues in mind, our approach is to use the NPA test to assist us in weighing these duties. The NPA test aims to help us weigh our duties to promote competition for the benefit of users (represented by generation) and to have regard to the funds available to the Secretary of State (represented by abstraction). The extent to which we value the potential benefits competition can bring is reflected in the threshold for the test that we expect new services to reach – we would not expect to approve applications that did not generate at least 30p of new revenue for every £1 abstracted from existing operators (i.e. achieve a ratio of 0.3:1).

3.18   We would expect to apply the 'not primarily abstractive' test to:

- a new open access service which would compete with franchised services (or other types of publicly funded services) and so impact on the public sector funder's budget;

- a new franchised service (or another type of publicly funded services) which would compete with an existing franchised service (or another type of publicly funded services), where we would expect to focus the test on areas where the competing franchised services are operated on behalf of different funders or where for some other reason there are particular concerns over the impact on a funder's budget; and

- a new service, which might be open access or franchised (or another type of publicly funded), which would compete with an existing open access service and which, if it caused the existing open access operator to withdraw from the market, could reduce overall competition on the network.

3.19   We also believe that there could be circumstances where we would apply the test when one franchisee (or other type of publicly funded operator) proposes to increase the level of competition against another franchisee (or other type of publicly funded operator). This might include, for example, an increase in the number of services or station calls, in order to help inform us whether it would be likely to be wasteful competition.

3.20   Once a service has been established, an application to approve an extension of the duration of access rights does not amount to a new competing service. We would not therefore expect to reassess such services against the 'not primarily abstractive' test. Changes to an existing services, for example adding additional stops, will require the NPA test.

3.21   In addition to the NPA test, we may also take account of the absolute level of abstraction, and we may decide to decline a track access application should we deem the absolute level of revenue abstraction to be too great. This gives us the ability to give greater weight to the impact on Secretary of State's funds than is implicit in the NPA test when balancing our Section 4 duties. ORR has no pre-set limit on an acceptable level of absolute abstraction. Past decisions have been made on a case-by-case basis, taking account of the circumstances surrounding each application.

Financial viability

3.22   Applicants will need to demonstrate the financial viability of their proposition so that ORR can be assured of the applicant's ability to use the capacity applied for. Operators will therefore need to demonstrate that they have an appropriate business plan, suitable expertise and a reasonable expectation of securing the required investment and rolling stock.

3.23   Applicants should be aware that ORR's subsequent processes include conditions and requirements to ensure access rights are used, and if they are not, those rights are removed. In particular, track access contracts:

- May incorporate requirements for the procurement of rolling stock,

- May incorporate requirements for other types of investment, including infrastructure investment;

- Require operators to hold the required safety permissions, certifications and authorisations,

- Require operators to hold relevant licences, and

- Will normally include a longstop date for the contact to be terminated if any of the conditions/requirements are not met.

3.24   Applicants should also be aware of the provisions in Part J of the Network Code which includes provisions on failure to use (J4), third party notices (J5), rights review meetings (J9) and better use (J10).

Secretary of State, Scottish Ministers and the Welsh Government

3.25   ORR has duties to have regard to statutory guidance issued by the Secretary of State and Scottish Ministers, and to have regard to any notified strategies and policies of the Welsh Government.

3.26   At the time this guidance was published, the most recent formal guidance issued by the Secretary of State was published in July 2017. Scottish Ministers issued updated guidance in May 2024 which ORR has regard to when considering relevant access applications. When this guidance was published, the Welsh Government had not notified ORR of any strategies and policies.

3.27   ORR will have regard to any subsequent updates to guidance issued by the Secretary of State or Scottish Ministers and to subsequently notified strategies and policies from the Welsh Government.

3.28   We also consult the Department for Transport, Transport Scotland and the Welsh Government on relevant access applications and have regard to their responses. Similarly, the Secretary of State wrote to ORR in January 2025 to provide the government's views and priorities for open access. This letter does not replace formal guidance, and we will have regard to it in our decision-making alongside our other duties.

Monetising costs and benefits

3.29   In addition to generation, abstraction, viability and performance, where relevant, we also assess the wider costs and benefits associated with the application to inform our consideration of our duties. We will base our assessment on DfT's transport analysis guidance (TAG). This will allow us to monetise factors including:

- Social;

- Economic;

- Environmental; and

- Indirect tax transfers.

3.30   We will provide this information to our Board to inform their decision making. ORR considers all relevant duties and determines what weight to give each factor when making decisions. In previous open access decision making, ORR has placed substantial weight on capacity, performance, the balance between the impact of the funds available to the Secretary of State and passenger benefits and total abstraction. We expect monetised costs and benefits to be most relevant when these other considerations are finely balanced.

Timescales

3.31   Access decisions and contracts should be finalised before the relevant timetable Priority Date (as defined in the Network Code), or in the case of freight, before a train operator variation request expires.

3.32   Our *Guidance on making an application for track access* indicates that for straight forward applications (ones that do not meet the criteria we have established for

focused regulatory scrutiny), applicants should allow six weeks from receipt of the complete application for our decision making.

3.33   For more contentious cases (those not agreed with IM or those which meet the criteria for focused regulatory scrutiny), applicants should allow 12 weeks from receipt of a complete application. We would consider competing applications and those which require the NPA test as contentious cases. In the past, some open access applications have been delayed by prolonged discussions on economic modelling or the availability of capacity. Applicants should bear in mind that ORR needs to have a complete application and all relevant information to be able to progress our decision making. This includes all the information required for the NPA test.

3.34   Network Rail has [published] an indication of the dates by when an agreement would need to be reached in order to submit an application to ORR for a decision before the Priority Date. Network Rail suggests the contentious applications or those requiring focused regulatory scrutiny would need to have been approved by the Sale of Access Rights Panel at least six months before the Priority Date (D40).

ORR's decision

3.35   We have set out our criteria for focused scrutiny of agreed applications in our *Guidance on making an application for track access.* We expect in principle to approve an application agreed with the IM where we are satisfied that it does not meet any of our criteria for focused scrutiny. Generally, open access applications will require more scrutiny due to the potential to abstract and the need for ORR to conduct the NPA test.

3.36   Applications which have not been agreed with the IM will naturally be contentious and will require more detailed scrutiny. We follow the process established by Schedule 4 of the Railways Act when dealing with non-agreed applications. This is described in our *Guidance on making an application for track access.* It includes seeking representations from the IM and other "interested persons" and then allowing the applicant to respond.

3.37   We will consider the representations we have received, the issues raised by the industry consultation and the results of other analysis such as the NPA test or NPV when weighing our statutory duties and deciding whether to direct access. We consider each application on its merits and determine how much weight to place on each of our duties. The result of the NPA test is significant but is not

determinative as we consider a range of factors. Generally, we would not expect to approve applications with ratios of generation to abstraction below 0.3 to 1.

3.38   ORR publishes our [decisions](#) and the reasons for our decision on our website.

What can I do if I am unhappy?

3.39   If applicants are unable to reach agreement with Network Rail, Core Valley Lines or the Crossrail Central Operating Section on their proposed access rights, they can apply directly to ORR. The process for non-agreed applications is explained in our *Guidance on Making an application for track access.*

3.40   Train operators who have a track access contract and who are unhappy with the behaviour or decision of an IM can consider using the Access Dispute Resolution Rules which are appended to the Network Code. These are available on the relevant IM's website. We have provided guidance on *Network Code Appeals.*

3.41   [Regulation 32](#) of the Regulations also include a broad right of appeal to ORR which applies in respect of all IMs. This regulation requires that we apply Section 17 of the Railways Act where relevant. In cases where the Railways Act does not apply (for example Heathrow Spur and High Speed 1), Regulation 32 allows applicants who have not been able to reach an agreement with an IM on their proposed access rights to appeal to ORR. Further information is available in our guidance on *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.*

3.42   ORR's determination of track access applications is final. Applicants can re-submit applications.

4. Process for conducting the NPA

4.1 This section explains how the NPA test is conducted. The order or extent that each stage is taken forward may differ on a case-by-case basis, depending on what is considered proportionate. Iterations of some stages may also be necessary before reaching the final outputs used in ORR decision making.

Stage 1: ORR initial forecast

4.2 Stage 1 will use standard industry models of growth and patterns of changes in demand, notably the passenger demand forecasting handbook (PDFH) and MOIRA software, to make an initial broad estimate of the likely level of revenue abstraction and generation created by the proposed service. This initial forecast represents the first year of operation, when the new services are considered to be fully commercially operational, following an expected demand 'ramp-up' period. MOIRA allocates demand based on timetable factors such as station to station journey times, service frequency and interchanges.

4.3 Where material and practical we would expect to take explicit account of the following factors:

- large time savings: where time savings are large and the existing rail service is poor (for example if the new service provides a direct service where none previously existed). In line with PDFH recommendations we define large journey time changes, known as generalised journey time (GJT), as a GJT change of 30%+. In these circumstances, and where data is available, we would also expect to take account of railheading. Railheading occurs when passengers choose to travel further than necessary to a station (by any mode), for example because the journey from an alternative station is faster or because tickets are cheaper.

- differential fares on new competing services.

- crowding: where new services would reduce existing crowding or the level of crowding on new services is likely to be different to that on existing ones.

- service quality and marketing, for example the use of different rolling stock on new competing services.

4.4   In our assessment of these impacts, where appropriate and practical, we would expect to build on the approaches that we have used in previous applications. For example, the use of a gravity model in our [ECML 2016 decision](#).

Stage 2: Revised forecast(s)

4.5   Stage 2 will review the initial forecasts produced in stage 1 in the light of information provided by:

- the applicant proposing the new competing services;

- incumbent operators potentially affected by the new competing services;

- the DfT, Transport Scotland and Welsh Assembly Government; and

- any other interested parties, such as Transport for London, PTEs, Transport Focus and London TravelWatch.

4.6   To inform this assessment, the applicant proposing the new services will be asked for its business plan, including:

- details of the forecast revenues and costs for the proposed services;

- details of the forecast benefits to passengers using its services;

- details of the proposed fare structure and pricing policies; and

- forecast demand growth on the route (i.e. the level of growth in overall rail passenger usage, as opposed to the impact on incumbent train operators).

4.7   The information provided by an incumbent operator is likely to comprise analysis illustrating the impact on its business, including the expected levels of abstraction. It may also provide demand forecasting analysis that is on a different basis or uses a different approach to that used by us in stage 1, if it considers this is likely to provide a more accurate estimate of likely impacts.

4.8   The realism of any forecasts will be assessed and we may request meetings with, in particular, the applicant and the relevant franchising authority (or other public funder of rail services) to inform this assessment.

Stage 3: Annual forecasts

4.9   Stage 3 will consider the likely impact that the proposed new services would have in the other years after their introduction, on the basis of available relevant information, including information from the applicant, the franchising authority or other of public funder of rail services and incumbent operators. For instance, this is to identify material impacts that would occur immediately on introduction of the new competing services and/or in future years beyond the full establishment of the service.

4.10   Where relevant we would expect to use ramp-up factors taken from the latest version of PDFH. We may also consider circumstances in which abstraction and/or generation may change, for example, if the operator of the new services were to change its pricing policy.

Stage 4: Other relevant factors

4.11   Stage 4 will consider other relevant factors. Stages 1 to 3 will provide a quantitative estimate – almost certainly in the form of a range - of the revenue from the proposed new services that might be expected to be new to rail (i.e. generated revenue rather than abstractive). However, this figure needs to be put in context and other relevant factors may need to be assessed, including:

- the degree of confidence that can be placed in the various estimates derived in stages 1 to 3 (for example, whether all or most of the evidence points towards a level of abstraction falling within a narrow range, or whether there is considerable uncertainty about the likely revenue effect);

- whether the levels of abstraction and generation are relatively evenly spread across the flows under consideration; and

- where a new service competes with an open access service - whether this would cause the open access operator to withdraw from the market, reducing competition on the network.

4.12   Our NPA test previously contained an additional benchmarking stage which has now been removed. This is because the Passenger Demand Forecasting Handbook 5.1 introduced higher fares and GJT elasticities and because we use more robust methodologies to account for large changes in journey times, such as a gravity model.

4.13   As discussed in Chapter 3, having completed this four stage process, we will then consider whether the proposed rights are primarily abstractive in nature. We will weigh this alongside our wider considerations of our statutory duties.

5. Where can I find more information?

Legislation

5.1 We have provided *Guidance on the Statutory and Contractual Framework.* Operators will find it useful to familiarise themselves with the relevant legislation:

- [Railways Act 1993](#)

- [The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016](#)

5.2 We provide information about the health and safety laws and requirements on our [website.](#) As well as being required to comply with all rail-specific legislation, rail industry must also comply with generational health and safety legislation. Guidance about these requirements can be found on the Health and Safety Executive's [website](#).

ORR industry guidance and decisions

5.3 We have produced guidance on all aspects of the access process. This is available on our [website](#). A helpful starting point is our *[Starting Mainline Operations](#)* guidance.

5.4 Details of our application form, model contracts and general approvals can be found on our [website](#). Information is also provided on [operator licences and exemptions](#).

5.5 We regulate health and safety for the entire mainline rail network in Britain, as well as London Underground, light rail, trams and the heritage sector. Operators will need to be familiar with our [health and safety](#) requirements and guidance.

5.6 We also publish [past decisions](#) and [consolidated track access agreements](#). New operators may find these examples informative.

Network Rail and other IMs

5.7 Network Rail publishes [information for operators](#), including:

- [Network Statement](#)

- [Network Code](#)

- [Access charges for CP7](#) (April 2024 to March 2029)

- [The sale of access rights process](#) – commonly shortened to "SoAR"

5.8   We expect that applicants will have familiarised themselves with this information, worked up their proposal in detail and discussed their application with Network Rail before applying to ORR.

5.9   We have provided information on access to other regulated networks on our [website](#)

Annex 1 – ORR considerations and duties

We determine all track access applications in the manner we consider best calculated to comply with our statutory duties, which are set out mainly in section 4 of the Railways Act 1993. The weight we place on each duty is a matter for us depending on the circumstances of each case. The below table summarises how we typically consider the statutory duties which experience tells us are especially relevant to open access decisions.

Consideration	Analysis	Which applications	Further guidance	Relevant duty
Availability of capacity	Capacity analysis provided by the IM and applicant, and if necessary, sourced by ORR.	We would usually expect to consider this in cases of disputed and/or competing applications.	Guidance on the use of capacity	Promote the use and development of the network for passengers and goods to the greatest extent that we consider economically practicable
Economic and efficient use of capacity	We may conduct cost benefit analysis in cases where we are considering applications which are competing for the same capacity.	We would usually expect to consider this in cases of disputed and/or competing applications. There may also be cases where we consider this for agreed applications if the application meets our criteria for focused regulatory scrutiny.	Guidance on the use of capacity	Promote the use and development of the network for passengers and goods to the greatest extent that we consider economically practicable
Abstraction	Not Primarily Abstractive test to consider the ratio of revenue generated and	Those with the potential to compete with another service (OA vs publicly funded service,	Chapter 4 Process for	Have regard to the funds available to the SofS and their guidance,

Consideration	Analysis	Which applications	Further guidance	Relevant duty
	revenue abstracted, and the absolute level of abstraction.	publicly funded services vs OA, publicly funded service vs publicly funded service, OA vs OA)	conducting the NPA test	Where applicable, have regard to guidance from Scottish Ministers and/or notified strategies of the Welsh Government Promote competition in the provision of rail services for the benefit of rail users Enable persons providing railway services to plan the future of their business with reasonable degree of assurance
Performance	Performance analysis provided by IM and applicant, and if necessary, sourced by ORR.	We would usually expect to consider this in cases where this is an issue in disputed applications. There may also be cases where we consider this for agreed applications if the application meets our criteria for focused regulatory scrutiny.	Annex 2 ORR's consideration of operational viability and performance Guidance on the use of capacity	Promote improvements in railway service performance
Operational readiness and viability	Qualitative review of operational plans. While we do not require applicants to have signed a rolling stock lease, we do expect to see	We would usually expect to consider this for new applicants in order to ensure applicants have a clear intention and ability to use capacity. There may be cases	Annex 2 ORR's consideration of operational viability and performance	Promote efficiency and economy on the part of persons providing railway services

Consideration	Analysis	Which applications	Further guidance	Relevant duty
	that concrete steps and planning has been done.	where ORR consider this for other applications.	Guidance on the use of capacity	
Financial viability	Qualitative review of business plans	We would usually expect to consider this for new applicants in order to ensure applicants have a clear intention and ability to use capacity. There may be cases where ORR consider this for other applications.	Guidance on the use of capacity	Promote efficiency and economy on the part of persons providing railway services Otherwise to protect the interests of users of railway services
Views of stakeholders, including results of industry consultation and the statutory consultation	Review of issues raised in the consultation(s) and how the applicant has sought to address them.	We will examine all applications to ensure that the issues raised in the industry consultation have been addressed.	Guidance of making an application for track access Industry code of practice for track access applications consultations	Enable persons providing railway services to plan the future of their business with reasonable degree of assurance
Guidance issued by the Secretary of State or Scottish Ministers, strategies or policies notified by the Welsh Government	Review of alignment with the guidance, policies or views of the Secretary of State, Scottish Ministers or Welsh Government.	ORR will also have regard to guidance issued by the Secretary of State and Scottish Ministers, and to strategies and policies notified by the Welsh Government. We expect this to be of particular relevance for open	Guidance on the use of capacity Chapter 3 ORR decision making	Have regard to the funds available to the SofS and their guidance, and Where applicable, have regard to guidance from Scottish Ministers and/or the or notified

Consideration	Analysis	Which applications	Further guidance	Relevant duty
		access applications or competing applications. We consult the Department for Transport, Transport Scotland and the Welsh Government on relevant access applications.		strategies of the Welsh Government
Economic and societal benefits associated with the application	Assessment and monetisation of wider costs and benefits associated with the application, based on DfT Transport Analysis Guidance	We would usually only expect to conduct this type of analysis to support our decision making for open access, and/or competing applications.	Guidance on the use of capacity Chapter 3 ORR decision making	Promote competition in the provision of rail services for the benefit of rail users Otherwise to protect the interests of users of railway services Have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public Have regard to the funds available to the SofS and their guidance, and Where applicable, have regard to guidance from Scottish

Consideration	Analysis	Which applications	Further guidance	Relevant duty
				Ministers and/or the Welsh Governance

Additionally, we have set criteria for focused regulatory scrutiny of agreed applications (Section 18 and 22) in our *Guidance of making an application for track access*. These are:

- Charging and commercial terms
- Model clauses (also see ORR *Guidance on the expression of access rights)*
- Disputes
- ORR policy issues
- Economic and efficient use of capacity
- Performance

Annex 2 – Operational viability and performance

These tables provide an indicative, non-exhaustive list of the factors that ORR considers when assessing operational viability and performance. ORR considers each case on its merits, and there may be additional issues which require scrutiny to support our decision making. We consider train operator's operations and performance plans but do not approve them as part of our decision making.

Table 5.1   Assessing train operator's operations and performance plans

Category	ORR considerations
Rolling stock	The applicant must set out the plan for rolling stock. **As this is a critical part of the applicant's operation, ORR would expect detail in the application to include:** • The type of rolling stock the applicant intends to use • Whether this rolling stock is route cleared (including gauge clearance, station lengths - i.e. compliance with platform docker/simplifiers - and compatibility) for the aspired service. If the rolling stock is not route cleared, a plan for its clearance. • The procurement plan for obtaining this rolling stock • How the rolling stock will be maintained, both light and heavy maintenance • The stabling arrangements for the rolling stock • How accessibility requirements will be met with this rolling stock
Traincrew – drivers, guards and conductors	The applicant must set out the overall approach to the management of traincrew. In the application, this can be at a high level but should include: • the numbers of traincrew required • the route knowledge requirements, both principal, ancillary, and diversionary • how these traincrew will have their competency achieved and then maintained • how the traincrew will be supervised when on duty • how traincrew will be informed of their rostered turns
Stations	The applicant must set out how station activities will be managed. This should include:

Category	ORR considerations
	• Safe dispatch of trains – including whether the trains will be DOO or DCO-operated • Any operational implications arising from multiple train operators • Provision of customer service • Customer information • How accessibility issues will be managed • Impact on number of passengers using the stations
Train planning	The applicant must set out how train planning activities will be undertaken. This will include all aspects of timetable planning, from timing of services, rostering traincrew, diagramming rolling stock. In this application, this can be at a high level.
Business continuity/ managing disruption	The applicant must set out the plan for managing the train service during disruption. In this application, this can be at a high level and should include: • On-call arrangements for senior staff • Control arrangements • Contact arrangements with traincrew • Resilience plans in case of disruption
Performance plans	The applicant should set out how it intends to work with the IM to deliver good train performance.
Start-up operations	The applicant should set out its plan for the first few days and weeks of operation – to ensure teething problems are quickly addressed and resolved
Safety	We generally expect to assess safety compliance through ROGS. We expect operators to be preparing to meet these requirements.

Table 5.2   Assessing IM contribution to operations and performance

Category	ORR considerations
Modelling/ capacity	The IM must show that there is sufficient capacity on the network for the applicant's services. It must explain the impact on performance. It must give its opinion on whether the proposed services can be accommodated. This will require the applicant to have shared information of sufficient quality to enable the IM to complete its analysis. **This is an essential element of the application and will be scrutinised closely by ORR.**

Category	ORR considerations
Rolling stock	The IM must set out the route clearance status of the applicant's proposed rolling stock. The IM must set out what work, if any, is required to achieve route clearance for that rolling stock.
Enhancements/ investments	The IM should show what investments and enhancements are needed to deliver the new train service. It should indicate what level of commitment there is toward these investments.
	Any other enhancements that may have affect future operation should be identified.
	The IM should indicate whether the application aligns with the future regional plan operation/ requirements (e.g. ETCS) – both active and passive provision.
Power supply	An outline statement on the power requirements required, if any.
Other IMs	If more than one IM is involved, the respective IMs should show how they will interface with each other.
Safety	The IM should show whether there are any safety risks associated with the submitted application.

Annex 3 - Glossary

Term	Explanation
Abstraction	Abstraction refers to the income for a new service which results from passengers switching from using an existing service.
Benefit Cost Ratio (BCR)	A BCR is the ratio of the value of benefits and the value of costs.
Cost Benefit Analysis (CBA)	Cost Benefit Analysis (CBA) is widely used across government as a means of appraising policies, programmes, and projects. CBA increasingly involves the presentation of as many impacts as possible in monetary terms
Department for Transport (DfT)	DfT is a ministerial government department. It leads the planning of transport infrastructure in the UK. In rail, DfT sets the strategic direction for the rail industry in England and Wales. It funds investment in infrastructure through Network Rail, funds and specifies some rail services and regulates rail fares.
Franchise	Franchising is the system of government contracting train operators to run passenger services in Great Britain. The system was developed as part of privatisation. The type of contracts was altered substantially during the COVID-19 pandemic, but the overarching system and legal framework remains. Further changes are anticipated as part of the government's rail reform program.
Generalised journey time (GJT)	Generalised journey time (GJT) is a measure of the overall timetable related service quality of a train service. GJT is made up of station-to-station journey time, service frequency and interchange time (where a change of train is required). We consider a large journey time change to be more of more than 30%.
MOIRA	MOIRA is a computer model which models the effect of changes in rail timetables on passenger demand and passenger train operator revenue. It is consistent with the PDFH and may be used in tandem with that document
Not Primarily Abstractive Test (NPA)	The NPA test was developed by ORR to support the weighing of our duties. The test considers the expected impact of a new open access service proposal. It creates a ratio between income generated by proposed services (referred to as generation) and income which results from passengers switching from existing services (referred to as abstraction). It is a simple representation of value for money.
Open access operator	Open access passenger train operators are those who operate services purely on a commercial basis, not funded or specified by government.

Term	Explanation
	These are companies who identify an opportunity to run a service which is not currently being provided, and they apply to ORR for the necessary track access rights and to the IM for train paths in the timetable.
Passenger Demand Forecasting Handbook (PDFH)	The PDFH summarises existing knowledge on rail passenger demand forecasting and is based on research studies. It gives clear recommendations that enable users to forecast changes in demand in light of anticipated changes in circumstances. It is collated by the Rail Delivery Group.
Rolling stock	Rolling stock refers to the locomotives, coaches and freight wagons used on the rail network. They are predominately owned by rolling stock leasing companies (ROSCOs) who hire them to train and freight operating companies.
Statutory duties	Statutory duties refer to things that public authorities or bodies must do in conducting their functions. ORR's statutory duties are mainly described in Section 4 of the Railways Act 1993. ORR considers its relevant duties when making decisions.
Track Access Contract	Track access contracts (TACs) refer to the contract between the IM, such as Network Rail, and train or freight operating companies. TACs define the access rights held, and the conditions and obligations attached to these rights. ORR must approve all TACs.
Transport Analysis Guidance (TAG)	DfT publishes guidance on the conduct of transport studies. This guidance serves as a best practice guide. Projects or studies which require government approval are expected to use the guidance.