



OFFICE of the  
RAIL REGULATOR

29 October 1999

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FAO: John Smith  
Head of Regulation

Dear Sirs,

**NOTICE UNDER SECTION 55(6) OF THE RAILWAYS ACT 1993 IN  
RESPECT OF CONDITION 8 OF RAILTRACK'S NETWORK LICENCE  
- DARTFORD AREA RESIGNALLING PROJECT**

1. Further to the letter from Railtrack (Southern) of 13 August 1999, setting out the reasons for the rescheduling of possessions in respect of the Dartford area resignalling project. I understand that you have rescheduled certain possessions under this project to timetable weeks 30, 31 and 32 (ie. 23/24 and 30/31 October 1999 and 6/7 November 1999), which you consider will cause you to breach Condition 8 of Railtrack's network licence. You considered rescheduling this work to the only alternative later dates (timetable weeks 37 and 38, ie. 11/12 and 18/19 December 1999), which you would have been able to plan to a timescale consistent with your licence obligations. However, you noted that utilising the later timetable weeks would cause significantly greater disruption to passengers than the earlier timetable weeks because they are immediately before Christmas and would affect passengers travelling to key shopping centres.

2. The Regulator agrees with Railtrack that scheduling the work during weeks 30, 31 and 32, with the result that train times for those weekends were not available twelve weeks in advance, is a breach of paragraph 3 of Condition 8 of Railtrack's network licence. The Regulator has noted that the changes did not occur as a result of an emergency or severe weather conditions, and therefore the circumstances in

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paragraph 5 of Condition 8 do not apply. The Regulator is therefore satisfied that Railtrack is contravening that licence obligation.

3. Under section 55 of the Railways Act 1993, the Regulator is required to make an enforcement order if he believes a licence holder is contravening, or is likely to contravene, a licence condition or requirement. However, under section 55(6) he must serve a notice of his intention not to issue an order if he is satisfied (under section 55(5)):

- (a) that his section 4 duties preclude him from doing so;
- (b) that the company in breach is taking all appropriate steps to secure compliance; or
- (c) that the contraventions were of a trivial nature.

4. You have submitted representations as to the reasons why it was necessary for Railtrack to reschedule the relevant works in timetable weeks 30, 31 and 32, or weeks 37 and 38. You have also submitted in confidence a memorandum explaining other aspects of the works.

5. Taking account of these representations, the Regulator is satisfied with your argument that the works in question need to be undertaken during the timetable weeks proposed by Railtrack in the attachment to its letter of 13 August 1999. He is also satisfied that undertaking the work during the earlier timetable weeks mentioned (30, 31 and 32) will cause significantly less disruption to passengers than undertaking them during the later weeks (37 and 38). He also notes that Connex, the train operator affected, supports bringing the possessions forward to weeks 30, 31 and 32.

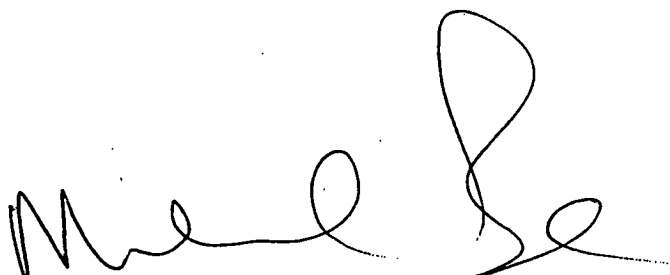
6. However, the Regulator considers that taking enforcement action against Railtrack for this breach is likely to result in the works being undertaken at a different time, either during the later timetable weeks mentioned above, causing significantly greater disruption to passengers, or later with consequential delays to the resignalling programme. The Regulator therefore considers that the duties set out in section 4 of the Railways Act 1993, given due weight, lead him to conclude that it is not appropriate for him to take enforcement action in this case. In particular, he considers that the duties in sections 4(1)(a) and 4(1)(b) of the Act, to protect the interests of rail users and to promote the use of the railway, are relevant in respect of the avoidance of severe disruption to rail services during the peak Christmas shopping period. He therefore gives notice to you that he is satisfied under section 55(5)(a) that no provisional or final order should be made in relation

to the contravention set out in your letter of 13 August 1999. This letter constitutes the necessary notice under section 55(6) of the Act.

7. However, the Regulator wishes to make it clear that the making of a section 55(6) notice in this instance does not set any precedent for future cases where work has to be rescheduled as a result of a review of an infrastructure project. The Regulator requires Railtrack to manage its relationship with its contractors in an efficient and professional manner to ensure that infrastructure work is planned in way which meets all Railtrack's obligations. If this is not done, the Regulator is prepared to use his enforcement powers to require Railtrack to take appropriate action.

8. I am copying this letter to Vince Lucas (Account Executive, Railtrack Southern), Head of Regulatory Relations at Railtrack; Michael Holden, Director, Railtrack Southern; and Philip O'Donnell at the SSRA. I am also placing a copy on the register maintained under section 72 of the Act.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Michael Beswick', written in a cursive style.

**MICHAEL BESWICK**  
**DIRECTOR, NETWORK REGULATION**

**Authorised by the Rail Regulator**