



OFFICE OF RAIL REGULATION

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To addressees – see list below

Dear colleague

Periodic review 2008 – implementation

I am writing to inform you that we have published a number of documents relating to the 2008 periodic review (PR08). These documents all concern the implementation of our determination of Network Rail's outputs and funding for 2009-14 which we published on 30 October 2008.¹ The documents are:

- review notices for track access charges payable by franchised train operators, open access passenger train operators and freight train operators; and the review notice for station long term charges;
- price lists/schedules of charges;
- network licence;
- interim review procedural document; and
- a letter clarifying our position on a range of issues raised by Network Rail relating to our determination.

Review notices

PR08 is an access charges review under Schedule 4A to the Railways Act 1993 (the Act). The review notices are given under paragraph 4 of Schedule 4A of the Act and start the legal process to implement our determination. By publishing the review notices and

¹ *Periodic review 2008: Determination of Network Rail's outputs and funding 2009-14*, Office of Rail Regulation, October 2008. This may be accessed at <http://www.rail-reg.gov.uk/upload/pdf/383.pdf>. All our documentation relating to PR08 is available on our PR08 webpage, which may be accessed at www.rail-reg.gov.uk/server/show/category.180.

serving them on Network Rail, train operators and users of stations we are initiating the implementation of our determination.

The changes given effect by the review notices relate to the track access and station long term charges payable by passenger and freight train operators and users of stations and the arrangements for the performance and possessions regimes.² The review notices make the necessary changes to the access agreements for all the passenger and freight train operators, and users of stations. These changes will take effect from 1 April 2009. The Secretary of State for Transport and Scottish Ministers and Network Rail have also executed the deed of grant (England & Wales) and grant agreement (Scotland) which make provision for payments from the two government to Network Rail of network grant, which is paid in lieu of fixed track access charges (as approved by us).

Network Rail recovers its revenue requirement principally through the track access charges, station long term charges and network grant. Our determination set out that Network Rail will need income of £26.7bn to operate, maintain, renew and enhance the railway network in CP4. Of this, £25bn is expected to be recovered through track and station long term charges and grants with the remaining £1.7bn from other sources, principally property rental and sales.

Amendments to an access agreement

The review notices include a provision providing that if we approve amendments to an access agreement after we have served the review notice then those later amendments will have priority if there is a conflict with the changes specified in our review notice.

Station long term charges

Annex 2 of the review notice relating to the station long term charge, provides a list of stations, ordered by station facility owner, and shows the long term charge for each station that will apply at the start of the next control period on 1 April 2009.

However, we are aware that in the period between us issuing the review notice on 18 December 2008 and 31 March 2009, enhancements at stations may be completed which could result in an increase (or decrease) to the station long term charge.

² Railways Act 1993, Access Charges Review 2008, Review Notice: Franchised Passenger Track Access Charges. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/tar-pass_not.pdf.

Railways Act 1993, Access Charges Review 2008, Review Notice: Open Access Passenger Track Access Charges. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/tar-oa_not.pdf.

Railways Act 1993, Access Charges Review 2008, Review Notice: Freight Track Access Charges. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/tar-frgt_not.pdf.

Railways Act 1993, Access Charges Review 2008, Review Notice: Station Long Term Charges. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/tar-stns_not.pdf.

The review notice contains provision to protect any increment (or decrement) that is approved by us in the period between 18 December 2008 and 31 March 2009. It is important to note that this provision is designed to protect the amount by which the long term charge is increased (or decreased) rather than the long term charge figure itself.

In submitting to us for specific or general approval any proposed increase or decrease to a station long term charge up to 31 March, it is important that you specify clearly the following:

- the current total long term charge for the station;
- the amount of the increment or decrement to be approved;
- the total long term charge that will apply up to 31 March 2009; and
- the total long term charge that will apply from 1 April 2009.

If you have any questions about how to submit the application to us or the information that you should include, please contact our stations and depots team at stations.depots@orr.gsi.gov.uk.

Next steps following the review notices

The Act requires us to specify a period of not less than six weeks from the date of publication of a review notice in which Network Rail has an opportunity to object to any of the proposed changes. If we receive such an objection, we may issue a new review notice or make a reference to the Competition Commission. Should we issue a new review notice, this stage of the process begins again, with Network Rail having a further period of not less than six weeks to make any objections to the new notice.

Network Rail has until 5 February 2009 to decide whether it accepts or rejects the conclusions of the periodic review. If it rejects the review notices then we expect to refer our determination to the Competition Commission. It would review all the evidence available and reach its own view on Network Rail's outputs, regulatory framework and access charges. Whilst any reference to the Competition Commission is in progress our determination will apply.

More specific detail on the implementation process is provided in chapter 29 of our determination.

Price lists/schedules of charges

Following publication of our determination, Network Rail has calculated the price lists/schedules of charges associated with the track and station access agreements and review notices. These price lists/schedules have been be audited by Halcrow, the

independent reporter, to ensure their accuracy and consistency with our determination.³ The price lists/schedules are formally published on Network Rail's website⁴ but we are also placing copies on our website. The price lists/schedules of charges are:

- track usage price list, which includes:
 - variable track usage charge for passenger operators;
 - variable rate for freight operators;
 - electrification asset usage charge for passenger and freight operators;
 - coal spillage charge rate and coal spillage reduction investment charge rate;
 - freight only line charge rate (electricity supply industry (ESI) coal);
 - freight only line charge rate (spent nuclear fuel);
- traction electricity consumption rates list (all relevant passenger and freight operators);
- list of capacity charge rates (franchised passenger and freight operators);
- fixed track charges schedule; and
- long term charge for stations.

Network licence

In June 2008 (July in respect of the financial conditions) we published, for consultation, our proposals to modify and improve Network Rail's network licence.

Following extensive discussions with the industry and consideration of all the responses received to our consultations, we have now published the formal statutory consultation proposing the licence changes.⁵ Subject to responses to the consultation and Network Rail's consent, we plan to make these changes in time for the start of CP4 on 1 April 2009.

³ *Audit of CP4 Access Charges: Final Report*, Halcrow Group Limited, December 2008. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/rep-cp4_halcrow.pdf.

⁴ The price lists on Network Rail's website may be accessed at <http://www.networkrail.co.uk/browseDirectory.aspx?dir=\Regulatory%20Documents\Access%20Charges%20Reviews\CP4%20Charges&pageid=2893&root>.

⁵ *Review of the Network Rail licence: statutory notice of proposed modifications*, Office of Rail Regulation, December 2008. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/cons-NR_netwrk_lic.pdf.

The changes we propose to make to Network Rail's licence strengthen the obligations and make it more purpose driven. This will give Network Rail an appropriate level of flexibility about how to deliver its high-level obligations, while providing us with greater scope to intervene where it can have the most benefit to Network Rail's customers, funders and other stakeholders. As part of the licence proposals we are including the criteria by which we will consider the case to restrict the use of the financial indemnity mechanism (provided by government to guarantee Network Rail's debt) and introduce unsupported debt during CP4. This restriction would be through a licence modification which we will consult on.

The statutory consultation on the proposed licence changes runs to 5 February 2009.

Procedural approach to conducting an interim review

We have also published our final version of the procedural document that sets out the process by which we would expect to carry out an interim review during CP4 and the target timescales for carrying this out.⁶ The document takes into account comments made by stakeholders on an earlier draft issued for consultation in July 2008. We have made a number of refinements to the process as a result of those responses, consistent with the re-opener provisions set out in our determination. The procedural document provides more detail to, and should be read in conjunction with, our determination.

Clarification of issues raised by Network Rail relating to our determination

We have also published a letter that we have sent to Network Rail which provides it with clarification on a number of issues which it has sought clarification on from us relating to our determination.⁷

Yours sincerely



Paul McMahon

⁶ *Procedural approach to conducting an interim review in CP4*, Office of Rail Regulation, December 2008. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/pr08-ir_proc.pdf.

⁷ PR08 determination – clarification issues, letter to Network Rail, 18 December 2008. This may be accessed at http://www.rail-reg.gov.uk/upload/pdf/pr08_ORRlet2NR_clarific_iss.pdf.

List of addressees

Association of Train Operating Companies
Department for Transport
Freight operating companies
HM Treasury
National Assembly of Wales
Network Rail
Passenger Focus
Passenger Transport Executives
Rail Freight Group members
Rail Industry Association
ROSCOs
Train operating companies
Transport for London
Transport Scotland