

RAILWAYS ACT 1993

2013 PERIODIC REVIEW

REVIEW NOTICE: LINKED LICENCE CONDITIONS

TO:

- (1) Network Rail Infrastructure Limited (“**Network Rail**”);
- (2) the persons whose names are set out in Part 1 of Annex 1 to this Review Notice;
- (3) the persons whose names are set out in Part 2 of Annex 1 to this Review Notice; and
- (4) the Secretary of State for Transport, the Scottish Ministers and the Treasury, together the “**Addressees**”.

1 General

- 1.1 This review notice (the “**Review Notice**”) is given in accordance with paragraph 4 of Schedule 4A to the Railways Act 1993 (the “**Act**”).
- 1.2 As part of its 2013 Periodic Review, the Office of Rail Regulation (“**ORR**”) has undertaken, in accordance with paragraph 1A of Schedule 4 to the Act, a review (the “**Linked Licence Review**”) of the licence conditions of the network licence granted to Network Rail (previously Railtrack PLC) on 31 March 1994 (the “**Linked Licence**”).
- 1.3 ORR’s conclusions on the Linked Licence Review, and its reasons for those conclusions, are:
 - (a) set out in a document entitled “Periodic Review 2013: Final determination of Network Rail’s outputs and funding for 2014-19” published by ORR on 31 October 2013 (the “**Review Document**”); and

(b) hereby incorporated into this Review Notice.

- 1.4 In order to give effect to ORR's conclusions on the Linked Licence Review, a number of changes are required to be made to Licence Condition 3 and certain parts of Licence Condition 4 of the Linked Licence ("**the Conditions**"). These changes will be implemented through this notice.
- 1.5 By publishing this Review Notice and serving it on each of the Addressees, ORR is initiating the implementation of the Linked Licence Review.

2 Proposed Relevant Changes

- 2.1 For or in connection with giving effect to ORR's conclusions on the Linked Licence Review, ORR proposes to amend the Conditions on the terms set out in Annex 2 to this Review Notice (the "**proposed relevant changes**").
- 2.2 ORR proposes that, subject to paragraph 3, the proposed relevant changes will come into operation on and from 1 April 2014.

3 Regulated Modifications

- 3.1 If, before the proposed relevant changes come into operation, the Linked Licence is modified by agreement under section 12 of the Act or through a modification reference under section 13 of the Act ("**regulated modification**"), then:
- (i) the proposed relevant changes shall come into operation subject to any regulated modification; and
 - (ii) if there is any conflict between the proposed relevant changes and any regulated modification, the regulated modification shall take precedence.

4 Consultation

- 4.1 In accordance with paragraph 4(2A) of Schedule 4A to the Act, ORR has consulted with the Secretary of State and the Scottish Ministers on 12 July 2013, 21 November 2013 and 18 December 2013.

5 Objections

5.1 Subject to paragraph 5.2, any person specified in paragraph 4(4)(a) or (b) of Schedule 4A to the Act may make objections with respect to:

- (a) any of the proposed relevant changes; or
- (b) the date on which it is proposed that any such proposed relevant changes shall come into operation.

5.2 Any objection made under paragraph 5.1 must be:

- (a) made in writing;
- (b) received by ORR on or before 7 February 2014; and
- (c) addressed to ORR as follows:

John Larkinson
Office of Rail Regulation
One Kemble Street
London WC2B 4AN

6 Definitions and Interpretation

6.1 In this Review Notice, unless the context otherwise requires:

- (a) references to “this Review Notice” include the Annexes to this Review Notice;
- (b) references to the singular include the plural and *vice versa*;
- (c) words and phrases defined in:
 - (i) the Act; or
 - (ii) the Linked Licence

shall have the same meanings in this Review Notice;

(d) any general rules of interpretation contained in the Linked Licence shall also apply to this Review Notice.



Richard Price

Chief Executive

**FOR AND ON BEHALF OF
THE OFFICE OF RAIL REGULATION**

Dated 20 December 2013



ANNEX 1

Part 1 – Train Operators

Train Operator Name	Train Operator Company Number
Abellio Greater Anglia Ltd	06428369
Arriva Trains Wales/Trenau Arriva Cymru Limited	04337645
c2c Rail Limited	02938993
The Chiltern Railway Company Limited	03007939
Colas Rail Limited	02995525
Crossrail Limited	04212657
DB Regio Tyne and Wear Limited	06733214
DB Schenker Rail (UK) Limited	02938988
Devon and Cornwall Railways Limited	04973992
Direct Rail Services Limited	03020822
East Coast Main Line Company Limited	04659708
East Midlands Trains Limited	05340682
Europorte Channel SAS	518454-301
Eurostar International Limited	02462001
First Capital Connect Limited	05281077
First Greater Western Limited	05113733
First/Keolis Transpennine Limited	04113923
First ScotRail Limited	SC185018
Freightliner Limited	03118392
Freightliner Heavy Haul Limited	03831229
GB Railfreight Limited	03707899
Grand Central Railway Company Limited	03979826
Heathrow Express Operating Company Limited	03145133

Hull Trains Company Limited	03715410
London & Birmingham Railway Limited	05814584
London & South Eastern Railway Limited	04860660
London Overground Rail Operations Ltd	05668786
London Underground Limited	01900907
Merseyrail Electrics 2002 Limited	04356933
North Yorkshire Moors Railway Enterprises PLC	02490244
Northern Rail Limited	04619954
Rail Express Systems Limited	02938991
Southern Railway Limited	06574965
Stagecoach South Western Trains Limited	05599788
Venice Simplon-Orient-Express Limited	01551659
West Coast Railway Company Ltd	03066109
West Coast Trains Limited	03007940
XC Trains Limited	04402048

Part 2 – Other Addressees

Rail for London Limited

Merseyside Passenger Transport Executive

Welsh Government

Tyne and Wear Passenger Transport Executive

ANNEX 2
STANDARD AMENDMENTS

ORR hereby gives notice to Network Rail that ORR proposes to make the following amendments to the Linked Licence:

1. Licence Condition 3

- 1.1 Delete Licence Condition 3, “Financial indebtedness” in its entirety and replace it with the words in inverted commas in Appendix A to this Annex.

2. Licence Condition 4

- 2.1 Re-number Licence Condition 4.31 as 4.32; and
2.2 Insert the following new Licence Condition 4.31:

“Relevant payments to funders

- 4.31 The licence holder shall not make a payment to a funder other than in the ordinary course of business or to comply with a legal obligation, unless ORR has consented in writing to the payment no more than 6 months prior to it being made.”

Appendix A to Annex 2: New Licence Condition 3

“3 Financial indebtedness

3.1 Except with the written consent of ORR, the licence holder shall use reasonable endeavours to ensure that at any time the amount of financial indebtedness of:

- (a) the licence holder;
- (b) Network Rail Infrastructure Finance; and
- (c) any subsidiaries of the licence holder or Network Rail Infrastructure Finance

does not exceed the limits set out in table 3.1. The limits on financial indebtedness are expressed in table 3.1 as a percentage of the Value of the RAB.

Table 3.1: Restrictions on the ratio of financial indebtedness to the Value of the RAB

Financial year	Limit
2014-15	75%
2015-16	75%
2016-17	75%
2017-18	75%
2018-19	75%

3.2 The limit in table 3.1 which applies in 2018-19 shall also apply to each subsequent financial year unless ORR determines different limits following consultation with the licence holder.

3.3 If at any time the total amount of financial indebtedness of the licence holder, any subsidiaries of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance exceeds the limit set out in table 3.1 applicable to that financial year the

licence holder shall, within such time period as ORR may notify as being appropriate in the circumstances:

- (a) provide to ORR details of the steps it intends to take to reduce the amount to that limit or below;
- (b) take those steps; and
- (c) provide to ORR evidence that it has taken those steps.

3.4 The licence holder shall:

- (a) provide, from time to time as requested by ORR and in any event every year in the regulatory financial statements the licence holder prepares pursuant to condition 11, confirmation that, in respect of the financial year to which the statements relate, it has complied, and, in respect of the following financial year, it is not aware of any circumstances which will prevent it complying and it is likely to comply, with condition 3.1 and (where applicable) condition 3.3 and, if so requested by ORR, evidence in support of that confirmation; and
- (b) notify ORR immediately in writing if at any time the licence holder becomes aware of any circumstance that means it is no longer complying, or that causes it no longer to have the reasonable expectation that it is likely to comply, with condition 3.1 and (where applicable) condition 3.3.

3.5 Except with the written consent of ORR, the licence holder shall pay the Secretary of State, at least annually, a fee in respect of the state financial indemnity.

3.6 In this condition:

“fee” means the amount equal to 1.10 per cent (on an annual basis) of the daily outstanding amount of financial indebtedness incurred by Network Rail Infrastructure Finance and which is supported by the state financial

indemnity;

“financial
indebtedness”

means the sum of:

- (a) all financial liabilities arising from all transactions (including any forward sale or purchase agreement) which have the commercial effect of a borrowing;
- (b) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; and
- (c) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraph (a);

less

- (d) cash and cash equivalents which are assets or investments that are held for the purpose of meeting short-term cash commitments or other investments with a maturity of twelve months or less for the purpose of pre-funding the repayment of financial indebtedness.

For the purposes of this condition:

(a) financial indebtedness excludes:

- (i) any financial indebtedness between the licence holder or any of the licence holder’s subsidiaries and Network Rail Infrastructure Finance or any of Network Rail Infrastructure Finance’s subsidiaries;
- (ii) any financial indebtedness between the licence holder and any of its subsidiaries;
- (iii) any financial indebtedness between any of the licence holder’s subsidiaries;
- (iv) any financial indebtedness between Network Rail Infrastructure Finance and any of its subsidiaries; and
- (v) any financial indebtedness between any of Network Rail Infrastructure Finance’s subsidiaries;

(b) financial indebtedness is:

- (i) calculated by reference to the principal amount outstanding of any such financial indebtedness (and no mark to market value will be used to

calculate its amount); and

(ii) measured as specified in the regulatory accounting guidelines, issued in accordance with condition 11, in force at the applicable time;

(c) where financial indebtedness denominated in a foreign currency is hedged by a foreign currency derivative transaction protecting against or benefiting from fluctuations in foreign exchange rates, the principal amount outstanding shall be calculated by reference to the sterling amount payable under the relevant derivative;

“Network Rail Infrastructure Finance” has the meaning given to it by condition 4.32;

“state financial indemnity” means the financial indemnity provided by the Strategic Rail Authority on 29 October 2004 (and transferred to the Secretary of State on 26 June 2005), which is available until 2052; and

“Value of the RAB” means the value of the licence holder’s assets calculated in accordance with the regulatory accounting guidelines, issued in accordance with condition 11, in force at the applicable time.”