



See distribution

7 October 2005

REVIEW OF NETWORK CODE PART J (CHANGES TO ACCESS RIGHTS)

1. One of ORR's stated 2005-06 outputs¹ is to monitor and review the effectiveness and efficiency of the new mechanisms introduced under Part J of the Network Code. The attached papers will form the basis for a meeting that ORR intends to hold to consider how the Part J mechanisms have operated since their introduction in January 2005, and whether they need to be revised to ensure that the ORR's original intention is being met.

2. In order to gain some perspective on the overall operation of Part J, ORR has met with Network Rail, and a number of issues have been identified that we believe need to be considered further. We are also aware that concerns have been raised by a number of freight operators. In view of the number of issues identified, ORR agreed with Network Rail that this review process should start as soon as possible. ORR raised this matter at the meeting of the industry led Network Code Reform Steering Group (ISG) on 5 August 2005 where it was agreed that the ISG would take responsibility for this work. The group asked ORR to establish and chair a new sub-group to take this matter forward. The purpose of this letter is to:

- (a) set out those issues that might require further consideration;
- (b) propose possible solutions; and
- (c) invite nominations from addressees for participation on this new sub-group.

Please feel free also to provide any comments that you might have on the issues identified, along with details of any others that you feel need to be examined further.

Background

3. ORR's consultation document *Changes to access rights: final conclusions*² set out a number of mechanisms for making changes to the access rights of train operators under

¹ *ORR business plan 2005-08*, ORR, London, April 2005 (paragraph 4.6(h)).

² *Changes to access rights: final conclusions*, ORR, London, June 2004.

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track access contracts which ORR considered should be included in a new Part J of the Network Code. The main intention behind Part J is to enable access rights to be either transferred between, or surrendered by, train operators, to ensure that capacity that is not being used or is being significantly under-used can be released. The Network Code was considered the most appropriate platform for these mechanisms, rather than individual track access contracts, because;

- (a) all operators (or all freight operators, where a mechanism is freight-specific) are subject to the same provisions, thus ensuring consistency and fairness of treatment; and
- (b) improvements to processes can be made over time in the light of experience in a way that is both relatively simple and fair to all operators, compared with making changes to bilateral track access contracts.

On this basis, Part J of the Network Code came into effect on 10 January 2005.

The Part J mechanisms

4. There are seven mechanisms outlined in Part J under which the existing access rights of either passenger or freight operators might be adjusted. These are summarised at Annex A of this paper.

ORR's responsibilities

5. With the exception of Condition J7, which only requires ORR to be notified of any resultant modifications to existing track access contracts, ORR is required to give its consent to any modifications proposed by the parties. To date ORR has received three applications for consent (under Condition J4). In respect of the adjustment of cordon caps, ORR may, if it does not consider the proposed modifications to be appropriate, determine the new cordon caps after consultation with the parties. A table setting out ORR's functions and responsibilities under Part J is attached at Annex B.

Network Rail's responsibilities

6. Network Rail's responsibilities, and the processes that they follow, in respect of the Part J mechanisms are outlined in section 3.10 of its Commercial Manual. This is attached at Annex C. Network Rail would find it helpful if addressees could provide any comments on this document that they feel are appropriate.

Issues for consideration

7. To date, Conditions J2, J4, J5, J7 and J8 have all been triggered, and certain issues and problems have been identified which suggest that the provisions should be reviewed with a view to:

- (a) assessing the effectiveness and efficiency of the mechanisms;
- (b) identifying those areas of the processes that need to be clarified or improved; and

(c) determining what changes to Part J are required and how they should be effected.

A breakdown of these issues is at Annex D. At Annex E is a table outlining more detailed discrepancies with the drafting of Part J, some of which reflect issues raised in Annex D.

Timetable/Way forward

8. The purpose of this letter and attachments is to consult industry parties on the issues identified, and seek nominations for participation in the policy sub-group. It is ORR's intention, once the composition of the sub-group has been established, to arrange an initial meeting during November 2005. In the meantime, ORR intends to inform the ISG of progress on this issue at its next meeting on 13 October 2005.

9. Addressees are therefore requested to provide details of nominees to attend this policy sub-group by **20 October 2005**. It would be helpful if the nominees could also provide an indication of dates during November on which they might be available to attend the first meeting. A proforma is attached at Annex F for this purpose.

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Distribution list

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