



## **Approach to the Sale of Access Rights until ORR Directs Decisions on the 20<sup>th</sup> May Interacting Section 17 and 22a Applications**

### ***Background***

On 24 April ORR wrote to current and prospective train operators requesting submission by 20 May of any aspirations for rights for December 2024, May 2025 and December 2025 at nine locations highlighted in the letter. A total of 82 unsupported applications were submitted to ORR.

Network Rail is undertaking the necessary assessments to come to a position on each application and provide ORR evidence to inform their decisions and directions, but in most cases this can be expected to take some time and it is necessary to maintain normal business as far as possible during this interim period.

Our approach permits business as usual to continue as far as possible, without prejudicing decisions for later timetable periods.

### ***Communicating our approach***

This guidance note on our approach addresses a requirement from the ORR in its July 22 response to our High-Level Plan that “Where access rights are required to support continuity of service pending Network Rail’s final decisions, ORR expects Network Rail to set out how it will expedite the parts of the 20 May applications it supports for ORR to consider.”

Our approach as set out here is consistent with that expectation and is in line with our individual Representations of June 28 to the ORR’s Statutory Consultations.

In its response, ORR has also noted that, among the categories in which access applications can be considered to expedite decisions, it expects Network Rail to consider “a. Full or partial rights within applications which Network Rail considers can be accommodated on the network without conflicting with existing rights or alternative applications submitted by 20 May. Network Rail should aim to agree these applications and expedite them for decision by ORR (notwithstanding any additional considerations on an individual basis, such as economic analysis for open access applications)”.

Our Interim approach is intended to work alongside the ongoing work to fully or partially agree applications when we are in a position to do so as set out below.

### ***Continuity of operations***

As set out in Representations made on June 28 on all applications, in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes (in line with our obligations in Regulation 19 of the Access and Management Regulations and Part D of the Network Code) can be made when there is low risk of negative outcomes for passengers and freight users and avoiding prejudicial decisions that could unduly favour one party where aspirations interact.

Decisions arising in the preparation of a new working timetable will be taken according to the Network Code - including the priority order in Part D4.2 and the Decision Criteria in Part D4.6.



This encompasses any expectation of rights of any Timetable Participant which have been Exercised, provided Network Rail considers (acting reasonably) they will be Firm or Contingent Rights in force during the Timetable Period.

This will place timetable applications bid in expectation of rights on the same (third) priority level as Contingent Rights supporting the requirement to not unduly prioritize applications at different stages of assessment during the process.

### ***Extension of existing rights***

Access rights aspirations which are not at interacting locations will continue to be processed as normal. Extension of existing rights (where there is no increase in, or amendment to, existing rights) will continue to proceed as normal at any location (including application of East Coast Mainline Policy), in line with ORR's policy to presume continuity of rights as referenced in its 24 April letter.

### ***New / amended rights applications***

For the nine interaction locations listed in ORR's letter, and any other locations identified by ORR subsequently as a result of the applications made, until ORR reaches its final decision on the application, Network Rail will review allocation decisions made through the Network Code Part D timetable production process for each timetable period.

Where paths associated with some of the quantum rights in one of the unsupported applications are included in a New Working Timetable issued under the Part D process, then Network Rail will seek to work with the applicant on these elements of the application for the timetable period.

This would therefore apply from the D-26 timetable production dates (already applicable for the December 2024 timetable) where relevant applications are still to be decided upon by ORR and rights are required for that particular timetable period.

While dealing with each application on a case-by-case basis, our aim, subject to normal governance processes including regional assessments of any relevant considerations, will be to potentially agree a new supported application for contingent, time-limited rights for that timetable period with no presumption of continuity.

Supported applications will then be progressed in the normal way, noting that for freight applications contingent rights may be progressed under the ORR's General Approval for Freight Track Access Contracts 2024 without the need for industry consultation.

### ***East Coast Mainline***

On the East Coast Main Line (ECML), a similar approach has been in place for several years so that services introduced after ORR's rights decision in 2016 cannot preclude the delivery of the rights directed in that decision. A decision was taken on 22 July 2024 that a future ECML Event Steering Group timetable (as referenced in paragraph 6 of ORR's 24 April letter) would not be introduced before December 2025. The ECML local access policy, which currently expires at the December 2024 Timetable Change Date, is therefore extended to the December 2025 Timetable Change Date.



The need to preserve the protection provided by the ECML policy until the 2016 directed rights are delivered or surrendered gives rise to a multi-tier approach:

- (i) operators with firm rights on the ECML (whether pre-dating 2016 or directed in 2016) have a presumption of continuity and those rights may be extended in the normal way;
- (ii) operators with contingent rights under the ECML policy may also extend those rights in line with the policy until the Timetable Change Date in December 2025; and
- (iii) operators whose applications were noted in ORR's 24 April letter or submitted in response to it will be considered for contingent rights for each timetable period in line with the standard interim approach to interacting applications outlined above.

### ***Final positions***

We will continue to look for opportunities to expedite our assessment of the unsupported applications, and wherever we are able to reach a conclusive position we will provide those final representations to ORR at once so that it may reach a decision consistent with its statutory duties.

This might relate to a single application or a number that interact in a relatively contained way; but we will only be able to do this before the end of the assessment programme if we are able to reach a position of confidence about the way these applications interact with others, especially those relating to later time periods including applications for after December 2025 received on 20 May.

Similarly, we also note that ORR has stated in its response that "Where ORR has the necessary information to expedite decisions for each timetable it will do so. This includes undertaking any required economic analysis in a timely manner so that decisions can be incorporated into Network Rail's timetable production." Where such decisions remove interactions and enable us to move forward with other remaining applications we will seek to do so.

### ***Bidding in expectation***

We recognise that Part D of the Network Code allows operators to bid in expectation of rights.

We will therefore apply this policy where paths bid in expectation are subsequently included in the New Working Timetable and / or Working Timetable and therefore require rights for one of the timetables identified in the ORR letter.

This will allow ORR to take decisions in due course, noting that the ORR's Letter of April 24 stated that "ORR plans to approve or direct access applications received after 20 May in the identified locations for December 2024, May and December 2025 only where there is clear evidence they do not interact/conflict with the applications which have already been received. It is therefore less likely that we will be able to assess and determine applications for additional capacity in the identified locations received after 20 May, for inclusion in timetables before the end of 2025."

### ***Keeping our approach under review***

This approach will be continuously reviewed, with particular attention to the milestone dates for each timetable production cycle, and may be amended if it would be beneficial, but the guiding principle will remain that we should apply the standard industry processes in order to achieve the balance of needs set out above.