

Third Prospective Consultation on the Operational Arrangements and the Principles for the Allocation of Capacity



Appendix A - PROPOSED OPERATIONAL ARRANGEMENTS

And

Appendix B - PRINCIPLES FOR ALLOCATION OF CAPACITY

Table of Contents

Appendix A

| | |
|--|---|
| PROPOSED OPERATIONAL ARRANGEMENTS | 1 |
| HS1 NETWORK CODE AND OPERATIONAL CODES..... | 1 |
| GENERAL CHANGES TO THE CODES..... | 1 |
| HS1 NETWORK CODE | 1 |
| HS1 OPERATIONAL CODES | 4 |

Appendix B

| | |
|--|----|
| CAPACITY ALLOCATION PRINCIPLES | 5 |
| CAPACITY ALLOCATION FRAMEWORK..... | 5 |
| DECLARATION OF SPECIALISED INFRASTRUCTURE | 5 |
| REQUESTS FOR RESERVATION OF CAPACITY | 6 |
| FRAMEWORK TRACK ACCESS CONTRACTS | 6 |
| FRAMEWORK TRACK ACCESS OPTIONS..... | 7 |
| SHORT TERM TRACK ACCESS CONTRACTS..... | 7 |
| APPEALS..... | 8 |
| SCHEDULE FOR PATH REQUESTS AND ALLOCATION PROCESS | 8 |
| ALLOCATION OF CAPACITY FOR MAINTENANCE, RENEWAL AND ENHANCEMENT | 8 |
| DISPUTE RESOLUTION..... | 9 |
| CONGESTED INFRASTRUCTURE | 9 |
| NON-USAGE OF ALLOCATED CAPACITY AND TRAIN PATHS..... | 10 |
| CANCELLATION OF ALLOCATED CAPACITY | 12 |

PROPOSED OPERATIONAL ARRANGEMENTS

HS1 Network Code and Operational Codes

1. The HS1 Network Code (previously known as the CTRL Track Access Conditions), the Emergency Access Code, Performance Data Accuracy Code and the Railways Systems Code (together the "**Codes**") describe the set of operating rules and procedures which will apply to each party that has entered into a track access contract with HS1 Ltd.
2. A description of the types of track access contracts is set out in paragraph 11 in Appendix B to this letter. It is proposed that each of the Codes will be incorporated by reference into all track access contracts entered into by HS1 Ltd and that each party to a track access contract will be required to comply with its obligations imposed by each of the Codes.

General Changes to the Codes

3. The existing versions of each of the Codes have been reviewed to ensure that they reflect current industry practice and continue to be appropriate following the consolidation of the HS1 railway and restructuring of LCR's business. In this regard, the following general changes have been made to each of the Codes:
 - (a) each of the Codes have been amended as though the consolidation of Sections 1 and Sections 2 and CTRL (UK) Limited and HS1 Limited has taken place;
 - (b) where a specific Code allow for a cost recovery mechanism, HS1 Ltd will seek to recover 100% of the associated costs involved for managing changes being requested by any party; and
 - (c) each of the Codes have been amended so that any disputes will be determined in accordance with the dispute resolution procedure contained within the existing Dispute Resolution Agreement.
4. It should be noted that HS1 Ltd is currently working with the Department for Transport to review the current dispute resolution framework and to consider whether this needs to be modified. In particular, as mentioned in the Second Prospective Consultation, the Department for Transport has signalled its intention that elements of the Secretary of State's regulatory role in relation to the HS1 railway may be transferred to the ORR. To the extent that such transfer relates to involvement in the determination of disputes, it is contemplated that a review of the dispute resolution procedure will be undertaken.

HS1 Network Code

5. This section describes in high level terms the changes which have been made to the CTRL Track Access Conditions dated 1998, now called the HS1 Network Code.
6. As part of its review of the various parts of the HS1 Network Code, HS1 Ltd has consulted a number of HS1 operational experts so as to ensure that the operational arrangements are brought up to date and to better align the arrangements with working practices and industry improvements over time, whilst continuing to reflect the commercial environment in which the HS1 railway operates. On this basis significant changes have been made to:

- (a) Part D – the timetabling process which describes the translation of access applications into a working timetable so as to align the process with current industry practice;
 - (b) Part F – the Vehicle Change process which describes the contractual arrangements governing changes to trains permitted to be used on the HS1 Network. The provisions have been amended to be consistent with the applicable HS1 Standards and the Railway and Other Guided Transport Systems (Safety) Regulations 2006;
 - (c) Part H – the management of Operational Disruption which describes the measures the parties will take to mitigate disruption on the network following the occurrence of a disruption. Amendments have been made to this Part of the HS1 Network Code mainly to bring it in line with current working practices; and
 - (d) Part I – the dispute resolution process has been simplified.
7. The new HS1 Network Code also sees the introduction of:
- (a) Part J – Changes to Access Rights – describing how the access rights may be adjusted in certain circumstances; and
 - (b) Part L – Performance Management Process.
8. Set out below is a short description of the changes that have made to each part of the HS1 Network Code. Included within each section is a more detailed description of what that particular Code aims to achieve and the processes to be followed by the access parties.

| Section of HS1 Network Code | Changes |
|------------------------------------|---|
| Part A. General Provisions | Part A has been based on Part A of the CTRL Track Access Conditions and has been updated to reflect, amongst other things, the consolidation of Sections 1 and 2. The changes are not considered to be material. |
| Part B. Performance Monitoring | Part B is substantially similar to Part B of the CTRL Track Access Conditions. No significant changes have been made. The regime is also similar to the equivalent regime in the Network Code which applies to the domestic rail network (" NRIL Network Code "), although there are some key differences. For example, the NRIL Network Code incorporates the Delay Attribution Guide and provides for the creation of the Delay Attribution Board to govern changes to the Delay Attribution Guide. Part B of the HS1 Network Code does not follow this approach although it should be noted that HS1 Ltd will apply the rules within the Delay Attribution Guide in the first instance. |

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| Part C. Modifications | <p>Part C is based on Part C of the CTRL Track Access Conditions. The amendments are considered to be minor in nature.</p> <p>The equivalent provisions in the NRIL Network Code create four "classes" (i.e. Network Rail, franchised passenger operators, non-franchised passenger operators and non-passenger operators) and provide class protection in respect of these classes. These provisions have not been included within the HS1 Network Code as they add an unnecessary level of complexity given the nature of the HS1 railway.</p> |
| Part D. Timetable Change | <p>Part D is based on the equivalent provisions in the NRIL Network Code, although the provisions relating to the Possessions Strategy Notice have been removed. In practice the HS1 Network Code follows the NRIL process for timetabling.</p> |
| Part E. Environmental Protection | <p>Part E is substantially similar to the equivalent Part E in the CTRL Track Access Conditions. No significant changes have been made. It is also substantially similar to the NRIL Network Code.</p> |
| Part F. Vehicle Change | <p>Part F is based on Part F of the NRIL Network Code. The main difference with the existing CTRL Track Access Conditions is that the HS1 Network Code only allows Vehicle Changes to be proposed by the Train Operator. Amendments have also been made to the existing arrangements in order that the Vehicle Change process is consistent with the applicable HS1 Standards and the Railway and Other Guided Transport Systems (Safety) Regulations 2006.</p> |
| Part G. Network Change | <p>Part G is based on Part G of the CTRL Track Access Conditions. The principal change to the CTRL Track Access Conditions is the inclusion of a short term Network Change procedure similar to that which exists in the NRIL Network Code.</p> |
| Part H. Operational Disruption | <p>Part H is based on Part H of the CTRL Track Access Conditions. The changes are primarily operational in nature and not considered to be significant.</p> |
| Part I. Disputes Resolution Procedure | <p>Part I has been based on Part I of the CTRL Track Access Conditions. The principal change has been to remove the requirement for an access party to notify the Secretary of State of a dispute.</p> |

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| Part J. Changes to Access Rights | Part J is a new section and has been introduced in order to comply with the Railways Regulations. |
| Part L. Performance | Part L is a new section and has been based on the relevant provisions in the NRIL Network Code. |

9. In comparison to the NRIL Network Code the HS1 Network Code does not contain a Part K relating to the exchange of information between the parties. HS1 Ltd considers that such section is not appropriate in the context of the HS1 railway. As an alternative, HS1 Ltd is considering the inclusion of a provision regarding the sharing of information in each framework track access contract, framework track access option and short term track access contract (see Appendix B further information regarding these types of agreement).
10. The HS1 Network Code also does not contain an equivalent to Part M of the NRIL Network Code. HS1 Ltd considers that such a section is not necessary as the scope of an access party's rights of appeal is set out in the Railway Regulations.

HS1 Operational Codes

11. This section describes in high level terms the changes which have been made to the existing versions of the Railway Systems Code, Performance Data Accuracy Code and the Emergency Access Code

| HS1 Operational Code | Changes |
|------------------------------------|---|
| HS1 Railway Systems Code | The HS1 Railway Systems Code describes the systems utilised on the HS1 railway and the process required to be undertaken for changes proposed to those systems. The changes made are not considered to be significant. |
| HS1 Performance Data Accuracy Code | The HS1 Performance Data Accuracy Code is based on the CTRL equivalent. The changes are primarily consequential and reflect certain changes in technology. |
| HS1 Emergency Access Code | The HS1 Emergency Access Code is based on the CTRL equivalent. The existing CTRL Emergency Access Code was drafted as an agreement to be entered into by various parties whereas the new HS1 Emergency Access Code is drafted as a code which is intended to be incorporated into each framework track access contract and each short term track access contract (see Appendix B further information regarding these types of agreement). This has given rise to a number of changes. In other respects, the changes are primarily consequential. |

CAPACITY ALLOCATION PRINCIPLES

Capacity Allocation Framework

1. Under the Railway Regulations the Secretary of State may establish a framework for the allocation of capacity on the HS1 railway. The specific capacity allocation rules established by HS1 Ltd and the process for allocating capacity must be consistent with such framework.
2. As at the date of this consultation the Secretary of State has not exercised his right to establish a capacity allocation framework and has not indicated that he is currently minded to do so.

Declaration of Specialised Infrastructure

3. Following consultation with industry parties in September 2006 the HS1 railway was declared to be specialised infrastructure in accordance with regulation 22 of the Railway Regulations. The effect of the declaration is that the HS1 railway has been designated for use by specified types of rail service and that priority may be given to the specified type of rail service in the allocation of infrastructure capacity.
4. The designated type of rail services and the corresponding order of precedence comprising the declaration of specialised infrastructure is as set out below:
 - High speed international passenger trains
 - High speed domestic passenger trains
 - High speed freight trains
 - Other trains
5. The prioritisation described above will apply except for the duration of the special timetable to be introduced for the Olympic Games in 2012, when the order of priority will be:
 - High speed domestic passenger trains
 - High speed international passenger trains
 - High speed freight trains
 - Other trains
6. In this context, a high speed train is one which is capable of travelling at more than 95% of the maximum speed permissible for its class specified in the Infrastructure Register. For ease of reference, the specified speeds are as follows:

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| • International passenger trains which are not locomotive-hauled | 300 km/h |
| • Domestic passenger trains which are not locomotive-hauled | 230 km/h |
| • Locomotive-hauled passenger trains | 200 km/h |
| • Freight trains | 140 km/h |
7. It is not currently the intention of HS1 Ltd to revoke or modify the declaration of the specialised infrastructure set out above.

Requests for Reservation of Capacity

General

8. In accordance with the Railway Regulations, HS1 Ltd will ensure that capacity on the HS1 railway is allocated in a fair and non-discriminatory manner.
9. Detailed capacity allocation in terms of the allocation of train paths takes place through the timetabling process set out in Part D of the HS1 Network Code (see paragraphs 24 to 27 below). In addition capacity may be reserved by means of longer term framework track access contracts which, subject to the detailed timetabling of train paths through the timetabling process, describe the capacity which has been reserved over a specified period of time.
10. Most customers of HS1 Ltd are expected to be planning their business on a long term basis for which framework track access contracts are appropriate.
11. If an applicant is seeking train paths on the HS1 railway as part of an international service (whether freight or passenger) it may contact a One Stop Shop which will assist with the international allocation process on its behalf. Network Rail Infrastructure Limited currently represents HS1 Ltd's interest in this regard. Further information about One Stop Shops may be found at www.railneturope.com.
12. In accordance with the Railway Regulations a framework track access contract or other form of track access contract must be entered into by the applicant and HS1 Ltd prior to the utilisation of the allocated capacity by the applicant. It is intended that parties to framework track access contracts and short term track access contracts will be required to comply with the operational arrangements described in Appendix A to this letter.

Framework Track Access Contracts

13. As contemplated by regulation 18 of the Railway Regulations, the reservation of capacity on the HS1 railway whether for domestic or international services will be undertaken by HS1 Ltd through entering into framework track access contracts with the relevant applicant.
14. While the precise form of the framework track access contract will depend on the nature of the capacity requested by the applicant, it is envisaged that framework track access contracts will specify certain characteristics of the capacity allocated to the applicant over a period of time exceeding a single timetable period. The framework track access contract will not specify any train paths in detail but, subject to the provisions of the Railway Regulations will provide the applicant with assurance that suitable train slots will be available during the timetabling process.
15. Where an applicant wishes to enter into a framework track access contract with HS1 Ltd it should contact NR CTRL at the earliest opportunity to discuss its requirements. There are no application forms which need to be submitted prior to contacting NR CTRL with a request for a framework track access contract.

16. In deciding whether to enter into framework track access contracts HS1 Ltd proposes to take into account whether the request made by the applicant complies with the Railways Regulations including:
- (a) the extent to which the proposed arrangement will preclude the use of HS1 railway by other applicants; and
 - (b) whether the proposed duration of the arrangement satisfies the requirements specified in regulation 18(7) to (9) of the Railway Regulations.
17. It is HS1 Ltd's current intention not to enter into framework track access contracts unless it considers that there is sufficient capacity on the HS1 railway to satisfy the request for capacity made by the applicant. In circumstances where HS1 Ltd does not consider that there is sufficient capacity on the HS1 railway it will discuss the request with the applicant and seek to agree alternative arrangements.
18. While applications for framework track access contracts will be considered by HS1 Ltd in the order that they are received by it, if HS1 Ltd is considering more than one application at the same time and is unable to accommodate all of the requests for capacity, it is proposed that HS1 Ltd will apply the priority criteria specified in the Declaration of Specialised Infrastructure described in paragraphs 3 to 6 above.

Framework Track Access Options

19. In some circumstances it might be appropriate for an applicant and HS1 Ltd to enter into a framework track access option which entitles the applicant to require HS1 Ltd to enter into a framework track access contract at a future date. It is envisaged that framework track access options might be appropriate in circumstances where the identity of the future operator of the passenger or freight services is not known or where the reservation of capacity in the future is required to support a specific railway related investment.
20. It is anticipated that, in considering whether to enter into a framework track access option, HS1 Ltd will follow a similar approach to that described in described in paragraphs 13 to 18 above.

Short Term Track Access Contracts

21. Where an applicant has requested and has been allocated capacity on the HS1 railway in accordance with regulation 19(1) or 21(1) of the Railway Regulations, it will be required to enter into a track access contract with HS1 Ltd. The track access contract will expire after the end of the relevant timetable period and will only reflect the capacity which has been allocated to that person through the timetabling process (ie the train paths allocated to that person for the relevant timetable period).

Appeals

22. The Railway Regulations provide applicants with a right of appeal to the ORR if they believe that they have been unfairly treated, discriminated against or is any other way aggrieved, including in relation to decisions taken by HS1 Ltd concerning:
- (a) the Network Statement and the information contained therein;
 - (b) the allocation process and its results; and
 - (c) the charging scheme and charging system.
23. The ORR has published guidance on the approach it will take in considering appeals made by applicants. A copy of the guidance is available from the ORR's website.

Schedule for Path Requests and Allocation Process

24. An annual process will be undertaken to establish a working timetable for the HS1 railway. The establishment of the working timetable will enable:
- (a) those parties who have a framework track access contract to translate the access rights described in that contract into train paths; and
 - (b) other applicants who wish to be allocated capacity on the HS1 railway to obtain actual train paths.
25. Part D of the HS1 Network Code sets out the process by which HS1 Ltd will allocate capacity on the HS1 railway through the preparation of the working timetable. A description of the proposed timetabling process is set out in the Explanatory Notes to Part D of the HS1 Network Code
26. The timetabling process has been structured so that is consistent with the requirements of the Railway Regulations and the process for the scheduling on international train paths through RailNetEurope, the organisation of European railway infrastructure managers. Further information on RailNetEurope may be found at www.railneteurope.com.
27. It is proposed that the schedule of dates applicable to the main stages of the preparation of the working timetable will be notified by HS1 Ltd to each access party and other persons who need to participate in the capacity allocation process.

Allocation of Capacity for Maintenance, Renewal and Enhancement

28. It is intended that the requirements of HS1 Ltd and its contractors to carry out maintenance, renewal and enhancement works on the HS1 railway will be set out in the HS1 Rules of the Route.

29. It is envisaged that the HS1 Rules of the Route will specify:
- (a) the location, number, timing and duration of any possessions of any track or section of track, which enable inspection, maintenance, renewal and repair thereof or of any other railway asset or any other works in relation thereto, and any restrictions regarding those possessions;
 - (b) any temporary speed and other restrictions on the operation of trains on any section of track, which may be necessary to carry out any inspection, maintenance, renewal or repair referred to in paragraph (a) above; and
 - (c) any alternative train routes or stopping patterns which may apply during any possessions referred to in paragraph (a) above.
30. The HS1 Rules of the Route are agreed between HS1 Ltd and each access party each year through a consultation process set out in Condition D2 of Part D of the HS1 Network Code.
31. The HS1 Rules of the Plan will also contain a procedure to enable amendments to be made to the HS1 Rules of the Route other than through the annual consultation process set out in Condition D2 of Part D of the HS1 Network Code. It is proposed that no changes may be made to the HS1 Rules of the Route unless HS1 Ltd has consulted, to the extent reasonably practicable, with each access party affected by the proposed change and due regard has been had to the Decision Criteria (specified in Condition D8 of Part D of the HS1 Network Code).

Dispute Resolution

32. It is proposed that access parties will have certain rights of appeal against decisions made by HS1 Ltd during the timetabling process. The proposed grounds on which an access party make appeal a decision made by HS1 Ltd and the proposed timeframes in which an access party is obliged to lodge any appeal are set out in Condition D7 of Part D of the HS1 Network Code.
33. It is intended that any appeal by an access party will be determined in accordance with Dispute Resolution Procedure set out in Part I of the HS1 Network Code.

Congested Infrastructure

34. The HS1 railway is not presently "congested infrastructure" as described in regulation 23 Railways Regulations. The arrangements which are proposed to apply if the HS1 railway were to become congested infrastructure are described in paragraphs 136 to 145 of the Second Prospective Consultation.

Non-Usage of Allocated Capacity and Train Paths

35. It is intended that Part J of the HS1 Network Code will provide a means by which reserved and allocated capacity on the HS1 railway may be cancelled in the event of an access party's failure to use such capacity unless such failure is due to non-economic reasons beyond that access party's control.
36. It is proposed that Part J will contain three mechanisms for the adjustment of reserved or allocated capacity.

Mechanism 1 - Failure to Bid for Train Path

37. The first mechanism applies where a train operator with a framework track access contract fails to bid for the full quantum of services which it has reserved under its framework track access contract in accordance with the timetabling process set out in Part D of the HS1 Network Code. In these circumstances it is proposed that:
- (a) the quantum of train slots which have been reserved but not bid for by the train operator would be available for other train operators to use for the period of the working timetable;
 - (b) where the train operator who has failed to bid for the full quantum of train slots is:
 - (i) a domestic or international passenger operator, that operator will pay a reservation charge for each train slot for which it does not bid equal to the investment recovery charge ("**IRC**") plus 7.5% of the operating, maintenance and renewal charge ("**OMRC**"). If the train slot is used by another operator ("**second operator**"), the passenger operator will be entitled to a rebate on its reservation charge for the non-bid path equal to 75% of the lower of (a) the reservation charge paid by the passenger operator and (b) where the second operator is a domestic or international passenger operator, the amount of IRC paid by the second operator together with 7.5% of the OMRC paid by the second operator or, where the second operator is a domestic or international freight operator, 82.5% of the OMRC paid by the second operator; or
 - (ii) a domestic or international freight operator, that operator will pay a reservation charge for each train slot for which it does not bid equal to 82.5% of the OMRC. Where the train slot is used by another operator, the freight operator will be entitled to a rebate on its reservation charge equal to 75% of the lower of (a) the reservation charge paid by the freight operator and (b) where the second operator is a passenger operator, the amount of IRC paid by the second operator together with 7.5% of the OMRC paid by the second operator or, where the second operator is a freight operator, 82.5% of the OMRC paid by the second operator;

- (c) with effect from the Passenger Change Date in December 2014, where the train operator (whether a passenger operator or a freight operator) has failed to bid for the full quantum of train paths for two consecutive timetable periods, HS1 Ltd may require the train operator to surrender the quantum of train paths which were not bid in each of the two consecutive timetable periods for the remainder of its Framework Agreement. In such circumstances the train operator would cease to be liable for the reservation charge for the surrendered train slots; and
 - (d) notwithstanding paragraph (c) above, the train operator could nevertheless submit a spot bid for a train path provided that it has not been reserved by or allocated to another operator.
38. For further information regarding the proposed levels of the IRC and OMRC may be found in the Second Prospective Consultation issued in September 2007.

Mechanism 2 - Failure to exercise Framework Track Access Option

39. Where an access party, through a framework track access option with HS1 Ltd, has reserved capacity on the HS1 railway in the future, it is proposed that:
- (a) if the access party fails to exercise the option by the date specified in the framework track access option for such exercise, then the reserved capacity will cease to be reserved and will be available to other applicants;
 - (b) if the access party only exercises in part the option by the date specified in the framework track access option for such exercise, then the reserved capacity which is not subject to the exercise of the option will cease to be reserved and will be available to other applicants; and
 - (c) if the access party has an existing framework track access contract with HS1 Ltd and unless otherwise agreed with HS1 Ltd, the access party will only be entitled to exercise the option up to a level which reflects the level of capacity utilised by that access party as at the date the option is exercised. Any reserved capacity which is not subject to the exercise of the option will cease to be reserved and will be available to other applicants.

Mechanism 3 - Failure to use timetabled train path

40. The third mechanism in Part J of the HS1 Network Code is intended to be consistent with regulation 26 of the Railway Regulations. The mechanism applies where a train operator has been allocated capacity in the working timetable but fails to use a particular train path. In such circumstances it is proposed that a train operator (whether a domestic or international passenger or freight operator) will be required to surrender the unused train path:

- (a) where the train operator utilises the train path on less than 50% of the occasions when it is available in a month and HS1 Ltd considers that another train operator would utilise the train path on 50% or more of the occasions when it is available in a month; and
 - (b) where the train operator utilises that train path on less than 10% of the occasions when it is available in a month.
41. With effect from such surrender that train operator would cease to be entitled to such train path for the remainder of the timetable period. Where the surrender of the train path related to a train operator who had a framework agreement, there would not be any modification to the reserved capacity by virtue of the surrender of the train path although the provisions of paragraph 37 above would apply to such reserved capacity.

Non-Economic Reasons for Non-use

42. It is proposed that a train operator would be entitled to object to the proposed surrender of a train path as described in paragraphs 37 and 40 above on the grounds that its non-use was for non-economic reasons beyond the control of the train operator. HS1 Ltd considers that non-economic reasons include
- (a) the non-availability of the Channel Tunnel system; and
 - (b) the occurrence of a force majeure type event.
43. It is proposed that the non-use of a train path by a train operator due to seasonal factors will not constitute a failure to use that train path for the purposes of Part J of the HS1 Network Code.

Cancellation of Allocated Capacity

44. Train operators are encouraged to notify HS1 Ltd at the earliest opportunity if it becomes aware that it will not operate a planned service. Where such a decision is taken it is proposed that the train operator will not be entitled to a rebate of any track access charges unless such capacity is used by another train operator.

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