



Response to ORR's technical consultation on the PR23 review of Network Rail's access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **24 September 2021**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

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Response from the Rail Wagon Association

1. The Rail Wagon Association (RWA) represents the interests of owners, keepers, users, designers, manufacturers, hirers, ECMs, consultants, maintainers and operators involved in rail freight wagons based in the UK. With 27 members, we cover over 95% of the wagons operating in the UK, including the infrastructure fleet.
2. We welcome the opportunity to comment on the PR 23 – Review of Network Rails access charges and do not wish to keep our response confidential.

Chapter 2: ORR's proposed approach and priorities

Question 1: Do you have any views on our overall approach to the PR23 charges review, in light of the prevailing industry context?

The prevailing industry context is one of change and uncertainty but also opportunity. The Williams Shapps Plan for Rail provides a high level direction of travel for freight with promises of protection of access and targets for volume growth. The PR23 charges review must be undertaken in that context and not result in a charging structure which undermines the freight growth aspiration stated in the Plan.

It is also important to understand the changes in costs incurred by many RWA members since the last charging review. These include increased costs due to the administrative burden of customs controls for the movement of spares and materials to/from the EU, growing labour and skills shortages and the impact of changes to red diesel taxation. All have impacted financially on rail industry companies.

Similarly, the review of charges must consider market changes such as the reduced volume of bulk commodities such as coal available to rail, and the emergence of freight movements on passenger type vehicles.

The future volume of freight moved will depend on the level of track access charges and the degree of certainty provided by the charging regime. Delivering the Williams Shapps vision of a growing freight business, underpinned by growth targets, will require a track access framework and charge level which is supportive of investment in the new wagons and infrastructure required to accommodate that growth.

Against this background, RWA agrees with the overall approach to PR23 set out in the ORR consultation document.

Question 2: Do you agree with the initial proposals and areas for further work that we have identified? Are there other priority areas that we should seek to address?

We welcome the acknowledgement of the need to engage with industry to set out more detailed positions and undertake further work on some areas. We believe that the latter should include a review of the existing phasing in of VUC increases for freight.

Chapter 3: Infrastructure cost charges

Question 3: Do you have any views on our proposal to use Network Rail's cost allocation methodology as the basis for allocating fixed costs to operators in CP7? Are there any elements of the methodology that you consider should be improved as part of this review?

We note that the allocation methodology is well established and allocates costs in line with recognised economic principles.

We also note the intention of Network Rail to review the traffic characteristics that are currently used to allocate traffic-avoidable costs. This review must be transparent and subject to scrutiny if it is to avoid undermining the general acceptance of the methodology.

Question 4: Do you have any views on our initial proposal to retain the FTAC for operators on concession-style agreements, on a fixed lump-sum basis (i.e. not to reintroduce the FTAC wash-up)?

No comment on concession-style agreements but please note the following on Infrastructure Cost Charges (ICCs) for Freight.

We believe that the use of ICCs for freight in the Freight Specific Charge (FSC) is becoming less relevant and should be reviewed within the legislative framework for the following reasons:

- At present, the FSC is applied to ESI coal, ESI biomass, Iron Ore and Nuclear traffic raising £500k, just 0.02% of total track access income.
- The volume of ESI coal will be virtually nil by the advent of CP7 and the ROC subsidy for biomass generation will have ceased in early 2027, making it less able to baseload and less able to bear the FSC.
- The threat of ORR reviewing which commodity can be captured by the ‘what the market can bear’ test every 5 years, is a source of uncertainty for any party considering investing in new freight wagons and/or infrastructure.
- If the FSC is retained, the market test must take into consideration the cost changes which have occurred over the last few years including those mentioned in our answer to Q1, namely Brexit, labour shortages and red diesel. Changes such as these do not conveniently fall every 5 years. What the market can bear during the PR process, is not what it can bear for the five years of the Control Period.

We note that in PR18, it was stated by one of ORR’s consultants that Drax had invested heavily in wagons and the associated port infrastructure and was therefore captive to rail and the FSC. Such sentiments, which come specifically from the application of the FSC mechanism, are not conducive to companies investing in rail.

Chapter 4: Variable charges

Question 5: Do you support our proposal to retain the PR18 phasing-in policy for freight and charter operators, subject to further review later in the periodic review process?

We note that the legal framework led to a policy of reducing the caps on VUCs over CP7 and that such a move will increase the cost of track access significantly for some freight flows.

Most of the freight traffic which is not on rail is very price sensitive and higher track access charges are unlikely to encourage modal shift. Moreover, to burden existing railfreight with additional cost at a time when the industry is facing increased pressures (as we set out elsewhere in this response) could well prejudice existing flows.

Given the stated intention of the Williams Shapps Plan to grow the volume of rail freight, we advocate that the current VUCs be maintained at least until the implementation of the Plan is better understood.

Question 6: What, if any, additional evidence should we consider in our review of Network Rail’s assessment of eligible costs to be recovered through the VUC?

A significant issue with the current track access regime is the extent to which charges provide an incentive for those investing in rail wagons to do the right thing. The current and well known example is track friendly bogies. The access charging regime does not reward the use of track friendly equipment sufficiently enough to cover the higher cost incurred, thereby disincentivising their use.

This issue will become more widespread as the freight industry looks at the adoption or otherwise of Digital Automatic Couplings. The use of technology to improve monitoring of freight wagon equipment has the potential to bring benefits to the rail infrastructure but requires the right incentives for wagon keepers and users to invest.

Consequently, we believe that the review of Network Rail's findings in PR18 should go wider than which are the eligible costs to be included. The VUC regime needs to be flexible enough to recognise where the provision of enhanced equipment on a freight wagon provides system benefits.

Question 7: Do you have any views on the relative merits of applying VUC to Network Rail's engineering trains?

ORR states in its consultation document that charges provide incentives to reduce network costs and encourage efficient use of the network. We note that Network Rail has chosen non-track friendly bogies for its new engineering wagon fleet.

Question 8: Do you have any suggestions on how the VUC calculator could be improved, or other ways in which we could improve industry's understanding of the principles and evidence underpinning the calculation of the VUC?

Understanding the principles and evidence underpinning the calculation of the VUC would be useful for wagon owners and users in evaluating the important cost elements when considering an investment. However, as new build projects can be quite long (18 months plus) certainty about future charging regimes and the overall level of charge are more important factors.

Uncertainty and insufficient reward for choosing infrastructure friendly equipment are issues which must be addressed.

Question 9: Do you have any views on the relative merits of a ring-fenced fund to incentivise on-train metering? How else could greater take-up of metering be incentivised?

No comment

Question 10: Do you have any views on our proposal to remove the PFM charging approach for EC4T?

No comment

Question 11: Do you have any views on our proposal to remove the loss incentive mechanism?

No comment

Question 12: Do you have any views on our proposal to make no changes to the EAUC in PR23, beyond recalibration?

No comment

Chapter 5: Station charges

Question 13: Do you have any views on our proposal to calculate the LTC for large/complex franchised stations based on station-specific expenditure forecasts?

Question 14: Do you have any views on better metrics that could be used to allocate LTC-related expenditure between operators? What would the potential benefits and

costs of these alternative metrics be, relative to the current approach?

Question 15: Do you have any views on our proposal to class stations that open within a control period as 'new' for a fixed five-year period from the date of opening?

Question 16: Do you have any views on the relative merits of making the QX fixed element a regulated charge for managed stations?

No comments

Chapter 6: Inflation Indexation

Question 17: Do you have any views on our proposal to maintain CPI as the general inflation index for Network Rail's access charges (and payment rates in other mechanisms where we set the method of indexation)?

No comment

Are there any other comments you would like to make?

We note ORR's comments in paragraphs 2.19 – 2.22 regarding Environmental Outcomes. However, a track access charging regime that runs contrary to the prevailing policy objectives of tackling Climate Change, Getting to Net Zero and De-carbonisation through modal shift, would be difficult to justify to the British public.

Thank you for taking the time to respond.

Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our [privacy notice](#), which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

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- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

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Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

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