

Directions issued on 05 December 2025

1. I am grateful to GB Railfreight ('GBRf') for service of its Sole Reference Document ('SRD'). Unusually, questions have arisen about the SRD for which clarification has been sought before any Directions have been issued. I am grateful to GBRf for the clarification provided at my request at very short notice.
2. The principal issue between the Parties is whether NR should, or indeed must, take account of the restrictions on the arrival and departure times of trains set out in the *London Gateway Port Harbour Empowerment Order 2008* ('the HEO') when reaching a Decision on Train Operator Variation Requests ('TOVR') or an Access Proposal. At risk of over-simplification, GBRf's case is that a provision such as the HEO is not referred to in Part D of the Network Code, so therefore NR should not consider the HEO in an access Decision.
3. A further issue is whether the TOVR was deemed to have been accepted under D3.3.8.
4. Noting that GBRf relies in part on its interpretation of TTP2591, which I chaired, it might assist both Parties if I point out that the interpretation which GBRf seeks to place on this TTP does not reflect my understanding. As GBRf will recollect, TTP2591 first decided whether or not the path in dispute was compliant with the TPRs in force at the time. The decision was that the path was compliant.
5. The hearing then turned to the objections that NR had raised on safety grounds. The Determination made it clear that NR was entitled – and indeed required – to consider safety issues, but did not uphold the conclusion that NR had reached relating to safety. But safety issues clearly fall within Part D, because the Objective (D4.6.1) specifically includes a reference to safety.
6. Nothing within TTP2591 examined the question at issue here, whether NR should take into account a legal provision which is not specifically mentioned in Part D. I await any further submissions from GBRf, but my initial view is that nothing within TTP2591 will assist in resolving this TTP.
7. At my request, the Secretary has strongly encouraged London Gateway to be represented at the hearing.
8. Paragraphs 4.3 and 4.4 of GBRf's SRD initially gave the impression (possibly inadvertently) that 4L19 was running under STP arrangements and was being accepted into London Gateway at 1702. As the Secretary and I could only trace through Real Time Trains recorded scheduled arrival times at London Gateway at 1600, so only 1 minute into the restricted period, clarification was sought from GBRf on this point. GBRf's response sent to the Secretary and NR at 1540 today clarifies a distinction between the desired arrival time (at 1702) included in the TOVR and the STP arrangements. **GBRf is to confirm as soon as possible, and in any event by 1200 on Tuesday, 09 December whether any operation of 4L19 under STP arrangements has been given a scheduled arrival time within the restricted hours.**
9. **GBRf is to provide, as soon as possible and no later than 1200 on Tuesday, 09 December** any correspondence between it and London Gateway relating to the provisions of Clause 6.4.1 of its Track Access Contract.
10. **At the hearing** it will be helpful if GBRf will explain why the TOVR did not adopt the timings being used for the STP services, with an arrival time of 1600 at London Gateway.
11. Noting GBRf's quotation at paragraph 5.4, that NR was not there to police the HEO, it might be helpful if I comment that the Panel will read that quotation in the context of the opening paragraph of the e-mail from NR being quoted (which appears at Appendix 5 to GBRf's SRD).

12. GBRf has provided me with a copy of the e-mail from London Gateway to NR dated 23 May 25 quoted in the rejection of the TOVR. It will be helpful if NR serves any other relevant correspondence with either GBRf or London Gateway.
13. No doubt NR will explain in its SRD the basis on which it regards the provisions of the HEO as relevant and applicable in its Decision relating to the TOVR, and by extension to any similar Access Proposal.

[Signed on the original]

Clive Fletcher-Wood
Hearing Chair TTP2736