

ScotRail Franchise Agreement (“the Franchise Agreement”), Schedule 7.1 Public Performance Measure Benchmark Levels (“PPM Benchmark Levels”)			
Date of change	Subject	Clauses Impacted	End Date of Change
19 August 2018	Temporary waive to the PPM Benchmarks	Schedule 7.1	23 June 2019

Thank you for your letter of 8 August 2018 regarding the contractual PPM benchmarks. Transport Scotland and ScotRail have discussed the request in detail and note ScotRail’s performance has primarily been impacted due to the increase in Network Rail’s infrastructure issues and the timetable issues being experienced by cross border operators which has resulted in imported delays into Scotland.

In terms of Schedule 7.1 of the Franchise Agreement (“the Schedule”), ScotRail is required to ensure that it maintains certain levels in relation to train operating performance. One of these requirements concerns the PPM Benchmark Levels referred in to Appendix 3 of that Schedule.

By paragraph 2.6 of the Schedule, ScotRail is required to report the value of the PPM for each reporting period.

Where ScotRail is in breach of the Improvement Plan Performance Level for PPM (set out in Appendix 3 to Schedule 7.1) then by virtue of paragraph 3.2 of the Schedule it is required to give notice to Scottish Ministers of the fact that it has failed to reach the required level. It is also required by sub-paragraph (b) to provide an Improvement Plan and by sub-paragraphs (c) and (d) to implement that plan and from time to time notify Scottish Ministers of the results of implementation.

In terms of paragraph 3.3 of the Schedule, the consequences for failure to reach the Breach Performance Level (also set out in the Appendix 3 to Schedule 7.1) are set out in Schedule 10 of the Franchise Agreement.

For period 6 (18/19) to the start of period 5 (19/20) of the franchise Scottish Ministers:

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1. waive the right to require provision of an Improvement Plan under paragraph 3.2(b) (and the consequent obligations under sub-paragraphs (c) and (d)), provided that performance does not fall more than 1% below the specified Improvement Plan Performance Level; and
2. waive the right to apply the consequences set out in Schedule 10 of the Franchise Agreement in relation to the Breach Performance Level, provided that performance does not fall more than 1% below the specified Breach Performance Level.

This waiver of 1. and 2. above is subject to the following additional conditions:-

- i. Going forward the formal four weekly reporting shall be held at executive level through the Performance Monitoring Group (PMG). The focus will be:
 - period performance against the contractual benchmarks/ targets.
 - progress with delivery and timescales for the infrastructure and fleet interventions planned which will support performance improvement.
 - update on each of the actions identified through the Donovan Independent Review, along with timescales for delivery.

- ii. A closer working relationship shall be improved between ScotRail and Network Rail Scotland to identify and resolve asset failures, particularly rogue assets which fail regularly. A single point of contact (name of individual shall be confirmed) that Transport Scotland can liaise with to understand infrastructure related issues. Evidence of this closer working relationship is to be provided to Transport Scotland on a by-period basis.
- iii. A Protocol for the Incident Learning Reviews (ILR)s to be shared with Transport Scotland, along with advanced notification of forthcoming reviews that Transport Scotland should be invited to attend as an observer.

If these conditions are not met or maintained to the reasonable satisfaction of Transport Scotland throughout the period of waiver then the waiver shall immediately cease upon written notice to that effect being given to ScotRail and the Scottish Ministers reserve all rights and remedies available to them in connection with these Performance Levels. Similarly this waiver may be revoked by notice in writing to ScotRail in the event of any other breach of its obligations under the franchise agreement.

This waiver is also without prejudice to the Scottish Ministers' rights to enforce compliance with the obligations of the Franchisee in relation to the Default Performance Level during the waiver period and to their rights to enforce compliance with all of the PPM Benchmark Levels at the end of the waiver period.

Transport Scotland would be happy to meet ScotRail to discuss the content of this letter and I look forward to receiving your written acceptance of its terms.