Reform of access contractual arrangements

Seeking your views

January 2012

OFFICE OF RAIL REGULATION

Contents

1. Executive summary

Executive Summary

1.1 In this document, we are consulting you on how the existing access contractual regime can be changed to provide a more robust, less complex framework. This would improve working relationships across the industry and generally reduce the burden and cost of the processes.

1.2 The access contractual regime provides for the fair and efficient allocation of capacity for freight customers, freight train operators and passenger train operators so that they can use Network Rail's network to run rail services.

Context

1.3 The final report of the Rail Value for Money Study 'Realising the Potential of GB Rail' ("the RVfM Study"), set a series of important challenges for the industry. It outlined the opportunities for, and barriers to, improving the value for money of the railways in Great Britain for taxpayers, passengers and freight customers and emphasised the importance of alignment. A significant portion of the report's findings was based on the contributions of key industry stakeholders and it is clear that one area of industry concern lies with the legal and contractual framework arrangements that govern the railways. As a result, we have focussed on the recommendation in chapter 6.3.6 (page 86) of the RVfM Study, which states that: "*ORR should identify and develop options for streamlining industry contractual change and consultation processes*".

1.4 We accept the recommendations and recognise the need to take a whole industry view, including the need for alignment (particularly of structures and interfaces). We have already started to look at this strategically, to consider how we can ensure that the interfaces between different parts of the industry, particularly between Network Rail and operating companies can be improved. Access contracts, which govern the relationship between Network Rail and those who want to use its network, are a critical part of this interface. Therefore, this document needs to be seen alongside of other current activities, for example aligning incentives and the role of regulation.

1.5 In in this document we consider how we can ensure that the interfaces between different parts of the industry, particularly between Network Rail and train operators, work in the most efficient way. Access contracts, which govern the relationship between Network Rail and those who want to use its network, are a critical part of this interface. They have been developed since rail privatisation to support and facilitate more effective working arrangements. They should ensure the appropriate allocation of risk, as well as including incentives for efficiency and, overall, encouraging a culture of compliance and improved delivery. However, the changing shape and nature of the railway industry more recently means that the current arrangements, particularly in relation to **access**, need reviewing and updating.

1.6 The Rail Delivery Group ("RDG"), the industry body established to take forward the recommendations in the RVfM Study aimed at reducing costs and improving efficiency, has made it clear that one of its priorities is to look at contractual arrangements. However, its focus is at a more strategic level in the wider

context of industry reform and against the background of other work, for example, reviewing the structure of franchises, Network Rail devolution and alliancing. Moreover, all of this will take some time. We believe that there are changes that can be made to the existing contractual arrangements ('quick wins'), that will complement the work of RDG, but which can be implemented sooner.

Process

1.7 To inform our work, we have held a series of informal meetings with the industry over the last few months to understand its ideas for improving the current access processes, particularly in terms of removing anything considered unnecessary. These meetings have proved to be very positive and have produced a number of helpful and constructive ideas for which we are grateful.

Our findings

1.8 A number of common themes have emerged. These are set out below, but briefly include:

(a) the need for a better alignment of incentives across the industry;

(b) reviewing the structure and specification of access contracts, to see they are fair and proportionate and remain fit for purpose and relevant;

(c) examining the interaction between various industry (access-related) processes to see what obstacles operators have to contend with to achieve their objective and whether they can be made more aligned and more efficient;

(d) considering whether we can improve the network code, particularly those parts containg change processes; and

(e) reviewing our own internal administrative arrangements and published policies and guidance to see what scope there is for making them simpler, more efficient and as transparent as possible.

Recommendations

1.9 Having listened to what the industry has told us, we have set out in this document:

(a) the measures we have already taken, mainly related to improvements to our own processes and documentation, including improved documentation and accessibility to our website;

(b) the further steps we propose taking, including further changes to our application (for new or amended TACs) processes and how we consider applications; and

(c) a number of proposals relating to:

(i) the structure and specification of access rights;

(ii) the alignment of the track access and timetabling processes;

(iii) amendments to various parts of the network code, in particular Part G (network change).

We conclude that, when viewed together as a single package of reforms, the ideas and proposals outlined in this document will bring about real change for the industry through simplified processes and procedures, making our policies easier to understand and leading to efficiencies in terms of time, resource and cost.

1.10 However, this list should neither be seen as exhaustive nor the end of the story. The ideas and proposals contained in this document are just that – you should not consider the contents of this document to be formal draft policies, except where we indicate that we have already taken steps to commence work. Nor do all of the options and proposals in this document necessarily represent the firm views of ORR (with the exception of those proposals where our views are specifically stated). We want to ensure that the

industry has the opportunity to consider and debate fully all the issues and that we have all the facts before we reach our final conclusions.

Conclusion

1.11 Overall, it is our view that the areas of activity and proposals set out in this document will help to achieve a better public interest outcome and generally improve the efficiency and effectiveness of the processes, ensuring that:

(a) we build on and improve the way in which *network capacity* is allocated to ensure that it is in the public interest to the benefit of all users, providers and funders of railway services;

(b) the terms of the relationship and the associated processes *incentivise* and facilitate both a public interest outcome and an *appropriate commercial balance* between the parties (particularly the smaller ones);

(c) the industry is encouraged to take a *greater responsibility* for the terms of its contracts, and of the associated industry contractual codes (rather than continuing to rely so heavily on us);

(d) *timescales* are reduced; and

(e) *unnecessary burdens* and *procedural requirements* are removed, *costs* are reduced and effort is focused where it generates most value.

1.12 We know from our discussions and feedback the importance the industry places upon the access arrangements and ORR's role in administering them. For our part we recognise the importance of listening to what the industry is telling us and acting on it. Whilst there are significant changes taking place across the industry at the moment, we believe that through this work we can make a significant difference and hope that you will give the proposals an appropriate level of commitment and consideration.

1.13 At this stage, we are keen to implement 'quick wins'. We recognise that more radical and far-reaching options, for example as set out by the RVfM Study and RDG, may also be available and we welcome comments on any aspects of the regime which are not specifically covered in this document. We look forward to receiving your views and suggestions.

Office of Rail Regulation

25 January 2012

2. Introduction

Purpose of this document

2.1 This document seeks your views on our current thinking on the ways in which the existing access contractual regime can be changed. Our aim is to provide a more robust, less complex legal and contractual framework, resulting in improved and closer working relationships and generally providing a reduced burden and cost to the industry as a whole.

2.2 By streamlining the contractual framework we hope to achieve:

(a) a *better public interest outcome* and *general improvement in the efficiency and effectiveness of access processes*;

(b) an improvement in the way that *network capacity* is allocated to ensure that it is in the public interest to the benefit of all users, providers and funders of railway services;

(c) a situation where the terms of the relationship and the associated processes *incentivise* and facilitate both a public interest outcome and a *sound commercial balance* between the parties (particularly the smaller players);

(d) a situation where the industry is encouraged to take a *greater responsibility* for the terms of its contracts, and of the associated industry contractual codes (rather than continuing to rely so heavily on us);

(e) reduced *timescales*;

(f) the removal of *unnecessary regulatory and procedural requirements*, and a reduction in *unnecessary costs*; and

(g) the *focusing of effort where it generates most value*.

2.3 This document also provides some background on ongoing reviews of various parts of the network code and our wider review of the documentation which forms part of the contractual framework which we regulate, including updates to our criteria and procedures document ("C&Ps") and our application forms (passenger/freight).

2.4 This document represents the next stage in a programme of work to realise the aims mentioned above, which we envisage running over the next few months. The responsibility for some of this work will fall to the industry. The nature of this work will be based on the responses we receive to the proposals contained in this document. We have already spoken with some stakeholders on an informal basis, and those views have contributed to the proposals raised here. We will also hold an industry seminar on 15 February 2012 to flesh out the details of our proposals and to hear consultees' views and ideas.

2.5 This chapter explains the background to and rationale behind the work, our regulatory approach, the structure of this document and the consultation arrangements.

Background

2.6 ORR has detailed the process of making access applications, whereby a train operating company[1] applies to Network Rail for the right to access the railway network, bringing about contractual change and monitoring consultation processes through our C&Ps document, the latest edition of which was published in December 2011. We have also published a document providing advice to new entrants to the rail market. These documents, together with associated documentation such as model contracts, standard application forms, our track access option and long term track access policies have all been produced with the aim of maintaining a 'focused and effective' regulatory agenda. However, we recognise that there is scope for further improving our contractual change and consultation processes.

2.7 We welcome the findings of the RVfM Study and are keen to work in partnership with the industry to implement its recommendations and this document is published in that spirit. In particular, the proposals in this document seek to address the RVfM Study recommendation that *"ORR should identify and develop options for streamlining industry contractual change and consultation processes"* (Chapter 6.3.6 of the RVfM Study).

ORR process

2.8 We wrote to Network Rail, train operating and funders on 23 September 2011 saying that against the background of the industry led review of access planning in 2010[2] and industry change following the recent RVfM Study, it would be premature to grant extensions to the rights that TOCs currently enjoy in their track access contracts ("TACs") beyond December 2013 *in their current highly prescriptive form* until we had an opportunity to consider the options and had consulted you. We explained that this was an interim measure that applied equally to all TOCs and we have been careful to make sure that no one is disadvantaged.

2.9 We recognise and understand the commercial needs of TOCs and, although the issue of access rights specification forms a part of the wider programme of work set out in the document, we would ideally like to reach conclusions on this by April 2012. Consequently, this element of our consultation will be subject to a shorter consultation period (see Box 1 below for details) to ensure that we arrive at a decision as quickly as possible, so that TOCs, those involved in franchising, both funders and bidders, and those with other commercial contracts are provided with the necessary certainty and know what to expect.

2.10 We wrote again on 29 September 2011, outlining the key areas highlighted by the RVfM Study and seeking informal views on the specific changes the industry would like to see to improve and speed up industry contractual processes. The letter went on to outline:

(a) the aims of this reform work, which we believe are consistent with both our statutory duties and the wider regulatory agenda;

(b) the proposed areas of activity and issues - further information on which can be found in chapters 3-5;

(c) what we wanted from stakeholders; and

(d) the next steps.

[1] ("TOCs" - unless otherwise stated this term refers to both passenger and freight operators)

[2] The industry led Review of Access Planning in 2010 looked at the way in which access rights are described in TACs to see if they could be made less prescriptive. Unfortunately, there was no industry consensus on how this could be achieved and although the industry decided that there was no scope for making improvements at that time, it also concluded that we would continue to consider the level of detail required in Schedule 5 of TACs on a case by case basis.

In our letter, we also confirmed that we were liaising with RDG to ensure that we are not cutting across any of its, or the wider industry's, work. We will continue this liaison for the duration of this work and beyond.

2.11 We received some initial responses to this letter and arranged a series of meetings throughout October, November and December 2011. Comments were taken anonymously from participants, and have been used, in part, to formulate the content of this document. We wish to point out that those meetings were held in confidence. Although the subject matter discussed in those meetings has formed the basis of some of the issues discussed below, contributors have not been identified, nor their comments attributed, in any way. To give stakeholders a further opportunity to clarify their views and to help inform their response to this document we will host an industry seminar at our London office on 15 February 2012.

Our proposals

2.12 Overall, we believe that the proposals set out in this document will help to facilitate the aims enivsaged in the RVfM Study. Our broad proposals are as follows:

(a) the structure and specification of access rights, to see they are fair and proportionate, stop the use of 'blocking rights' and allow greater flexibility for Network Rail to develop timetables and TOCs to make changes to their services (see paragraphs 4.2-4.20);

(b) the interaction between various industry (access-related) processes to see what obstacles TOCs have to contend with to achieve their objective and whether they can be made more aligned and more efficient. This will include looking at the contractual arrangements and the alignment of the track access and timetabling processes (see paragraphs 4.25-4.35);

(c) our existing proportionate approach with a view to making significant reductions to the areas we look at in considering access applications (see paragraphs 4.45-4.47);

(d) extending the scope of existing General Approvals, for example to cover all agreed applications, so we are only involved in disputed cases, or where representations cannot be resolved - and only then when industry processes have been exhausted (see paragraphs 4.48-4.58);

(e) Our own internal administrative arrangements, including introduction of clearer and firmer timescales and deadlines allied to sound project management, revised guidance on our policy on publication of information, more co-ordinated access consultations and a review and update of our C&Ps and other published policies and guidance (see paragraphs 4.36-4.44); and

(f) whether any further improvements and simplification can be made to the network code, including:

(i) Part C (Modifications to the network code) – (see paragraphs 5.3-5.5);

(ii) Part F (Vehicle Change) (see paragraphs 5.6-5.11);

(iii) Part G (Network Change) (see paragraphs 5.12-5.14); and

(iv) any other parts of the code (see paragraphs 5.15-5.21).

Question 1
Q1. Do consultees agree that the key themes/areas set out above are the right ones to focus on given the aims and objectives of this work? If so, do you consider that these are the areas which should be the industry's highest priorities?

Regulatory approach

2.13 The focus of our regulatory involvement is to oversee the fair and efficient allocation of capacity on the railway network through our approval of TACs and amendments to those contracts, with the aim of ensuring a public interest outcome. A less than efficient use of capacity, particularly if this was brought about by our drawing back, could lead to users being disadvantaged and could leave ORR open to legal challenge. It is also important that we do not upset the current commercial balance.

2.14 Therefore, in carrying out this review of contractual arrangements, as in all our work, we will ensure that we are acting in line with our legal duties, derived from both domestic and European[3] law.

Structure of this document

2.15 The rest of this document is structured as follows:

- *chapter 3* sets out the scope of the project and progress to date;
- *chapter 4* sets out our main proposals;
- *chapter 5* sets out our proposals for reviewing the network code;
- *chapter 6* sets out the next steps; and
- *annex A* sets out a proposal for aligning the access and timetabling processes.

Reponses to this document

2.16 We welcome views on any of the issues raised in this document but, in particular, the questions we have specifically identified. All responses to this consultation should be submitted in either hard copy or electronic format to the timescales indicated in **Box 1** below to:

Paul Stone
Access Executive
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Email to: paul.stone@orr.gsi.gov.uk

Telephone: 0207 282 0112

[3] As well as our duties under the Railways Act 1993, we must also consider any track access application against the provisions of regulation 18 (framework agreements) of the Railways Infrastructure (Access & Management) Regulations 2005 (the Access and Management Regulations) which transposed European Directive 2001/14/EC on the allocation of capacity in railway infrastructure.

Box 1 - CONSULTATION TIMESCALES

Please note that there are **two deadlines** relating to the proposals in this document. The reasons for this are set out in this box.

- For questions 2, 3, 4 and 5 relating to the *specification and prescription of rights in Schedule 5* – the consultation period will be six weeks, so responses should be received no later than **17:00** on **7 March 2012**; and
- For *all other questions*, the standard 12 weeks will apply, so responses should be received no later than **17:00** on **18 April 2012**.

Given that the aspiration to make revisions to Schedule 5 formed a part of the final conclusions of the industry's review of access planning, and was also discussed in our 23 September 2011 letter, we believe that consultees have sufficient knowledge of the issues and that a shorter consultation period will allow sufficient time for all parties to make reasonable representations. Our decision to hold a shorter consultation period has also been informed and influenced by comments made to us by industry stakeholders that this is an area where we need to come to a decision quickly to provide comfort and assurance to the industry and its customers.

We will hold an industry seminar on **15 February 2012** to clarify any issues and to help inform consultees' responses. Further details of the workshop can be found at paragraph 7.2.

2.17 Please note that when sending documents to us electronically, we would prefer Microsoft Word format. This is so that we are able to apply web standards to content on our website. If you email us a document in PDF format, please:s

(a) create it from the electronic Microsoft Word file (preferably using Adobe Acrobat) as opposed to an image scan; and

(b) ensure that the PDF's security method is set to 'no security' in the document properties.

2.18 All responses will be made public via our external website. We may also use quotes from them in our responses. If you would prefer for any part of your response to remain private, you should let us know, providing reasons, in your response. Where a response is made in confidence, it would be helpful if you could provide a statement summarising the submission but excluding the confidential information, so that we can publish this instead. We will publish the names of respondents in future documents on our website, unless you indicate that you wish to remain anonymous.

2.19 We will carry out a full impact assessment before implementing any specific proposals. Although we consider that there will be positive benefits arising from any changes, it is not possible to quantify these until:

(a) we know what options and proposals we are taking forward;

(b) the industry has had an opportunity to comment, an action plan has been established; and

(c) responsibilities have been agreed.

We therefore propose to publish a full impact assessment alongside the agreed action plan.

2.20 Please contact us using the details in paragraph 2.17 above if you have any further questions regarding the consultation arrangements, or indeed, any other aspect of this document.

3. Scope of work

3.1 This chapter sets out the proposed areas of activity on which we are seeking your views, and the areas in which work is already underway.

Scope

3.2 In developing these proposals, we have:

(a) taken account of the comments received from the industry:

(i) through work carried out over the last couple of years, for example our Review of Access Policy, our lessons learned report on the East Coast Main Line and the industry's own Review of Access Planning;

(ii) through the findings of the RVfM Study;

(iii) through our recent informal meetings following up our letter of 29 September 2011; and

(iv) also more generally, through our day-to-day dealings with Network Rail and TOCs regarding their applications for new or amended TACs;

(b) had regard to the fact that there are well established structures and processes in place for approving access to the rail network, including model contracts for passenger and freight services, as well as for freight customers. In this respect, we have noted that measures, such as the introduction of wider ranging General Approvals and handing over consultation arrangements for most applications to Network Rail, have generally worked well, and have been welcomed by the industry; and,

(c) carried out an internal analysis of our track access application processes to:

(i) see how well our processes are working;

(ii) identify the issues we have dealt with, the time and resources required and the added value in terms of public interest as a result of our input;

(iii) identify failings and shortcomings in our processes and where these could be improved; and

(iv) see whether the overall system was encouraging partnership between parties and the industry taking more responsibility for such matters.

3.3 In light of the above, we believe that there are key areas on which this review should focus. These proposals have been constructed with the aim of essentially making life easier for the industry, and are in the spirit of both the RVfM Study and our own agenda of simplification and relieving unnecessary burden.

3.4 It should be noted that there are areas that have been excluded from the scope of this review because they are being picked up elsewhere. These include:

(a) any changes to Schedules 4, 7 and 8 of the TAC relating respectively to the possessions, charging and performance regimes, which are being considered as part of the Periodic Review 2013 ("PR13") and associated incentives work;

(b) with the exception of the structure and specification of access rights in Schedule 5 of TACs (see paragraphs 4.4-4.20 below) all other matters relating to freight access rights, including the 'right to roam[4]', which are now being considered as part of a wider package of proposals (the 'freight deal'); and

(c) the development of a model contract for open access passenger operators – we will return to this after we have concluded on our on-rail competition document. These conclusions will be published in a document setting out our regulatory framework for the forthcoming Periodic Review (to be published in spring 2012).

3.5 Another common theme to emerge from our discussions was that the relationships between the various elements within the industry, particularly between Network Rail and TOCs and to a lesser extent, between TOCs, are not always as they should be. It is apparent that there are still deep-seated behavioural and cultural differences and issues that need to be resolved. Although some of these are referred to in this document, for example, in relation to Part G of the network code, generally this is not something on which we are in a position to become involved. Network Rail and TOCs need to establish what underlies these differences and what actions and changes need to be introduced to resolve them with a view to developing good, sound, long-term working relationships based upon openness, fairness and trust.

Box 2 – OUR PROPOSALS
We are very keen to reiterate that the proposals contained in this document are just that – you should not consider the contents of this document to be draft policies, except where we indicate that we have already taken steps to commence work. Nor do all of the options and proposals in this document necessarily represent the firm views of ORR (with the exception of those proposals where our views are specifically stated).

[4] Unlike passenger operators, who have defined routes in their TACs, freight operators have the ability through their TACs to seek access to the entire Great Britain railway network.

4. Proposed areas of activity

4.1 This chapter of the document looks at a number of proposals that together will bring about real change, particularly in terms of access and timetable planning. They are in many ways interlinked and depend upon each other being taken forward. It should be stressed that, at this stage, these are all proposals on which we are looking for the industry's views as to their practicality and usefulness as well as any potential issues. They include:

(a) reviewing the structure and specification of rights in Schedule 5 of TACs, including the format of Schedule 5 itself;

(b) looking at the barriers to less specification, including Network Rail's role;

(c) a proposal to bring more alignment between the track access and timetabling processes;

(d) proposals to make changes to the processes for making access applications, including the extent to which we review them; and

(e) looking at the possibilities for extending the scope of existing General Approvals.

The chapter ends by considering a number of issues that have been raised with us in respect of station and depot access contracts.

The structure and specification of access rights

Background

4.2 In 2009, as part of a business plan commitment on reviewing the efficient use of capacity on the network, the industry undertook a review of access planning. An Industry Working Group ("IWG") conducted the review, which considered, amongst other things, how track access rights were expressed (in Schedule 5 of TACs) and put forward proposals to make track access rights less specific with the detail being addressed as part of the timetable process - the objective being to enable more effective optimisation of capacity utilisation whilst allowing TOCs to retain/obtain the paths that they need.

4.3 A wide range of views was expressed by consultees, with no consensus on the way forward. Some stakeholders were not prepared for TOCs to hold less prescriptive rights because of the impact they believed it would have on revenue, arising from the reduced certainty and increased risks. It was thought that factoring in greater risk might reduce the level of premium offered by bidders in the franchise renewal process, whilst Network Rail might also take advantage of the situation to downgrade the timetable.

4.4 The final conclusions of the review said that:

> *"whilst no overall agreement was reached across the industry in relation to the proposals put forward, we still believe that there is scope for simplifying the expression of access rights."*

It continued:

"however, given current views, we think it would not be appropriate to pursue this workstream at present", and concluded that:"ORR will continue to consider the level of detail required in Schedule 5 of track access contracts on a case by case basis".

4.5 Further work on reviewing Schedule 5 was put on hold pending the outcome of the RVfM Study. The C&Ps set out clear, concise and transparent processes and guidance on how we expect the industry to deal with track access applications and how we will decide them. This includes very clear guidance about the importance of using our model contracts, including Schedule 5, in respect of which the C&Ps state:

"We generally require the adoption of the expression of rights as set out in the model Schedule 5s because of the benefits that flow from a standardised expression of rights in terms of clarity for the operator and Network Rail's future ability to model illustrative timetables and establish the extent of available capacity."

It is important that we first take your views before making any changes to our policy.

ORR's position

4.6 Our view remains that some TOCs' Schedule 5s contain overly prescribed rights which are not far short of the level of detail contained within the working timetable. Such a level of prescription means that capacity may not necessarily be used as efficiently as it might to the benefit of most rail users and the taxpayer. It also reduces the amount of flexibility:

(a) Network Rail has to make changes to the timetable; and

(b) TOCs have to make changes to their services.

4.7 In reaching our view, we have had regard to the requirements of The Railways Infrastructure (Access and Management) Regulations 2005) ("the Regulations") (specifically, Regulation 18) which is clear about the content and format of framework agreements. It is not our role to write timetables and TACs should not contain specification that is so tightly defined that it effectively dictates the timetable. Accordingly, we would prefer to see a move to reduce the level of specification of access rights in TACs, involving the use of rights to quantum, calling pattern and specified equipment only, to allow the industry more flexibility to meet the ever changing demands of the railway.

4.8 We also believe that contractual protections currently in place for TOCs mean that they do not require the level of specification that they currently enjoy. If a TOC feels that a sub-optimal timetable has been produced, which does not meet its requirements or results in an adverse effect on performance, or where it feels Part D has not been correctly applied, then there are mechanisms in place to challenge such decisions, through:

(a) Part D of the network code, which sets out the timetabling process. Part D is particularly important in this context. Following a rewrite last year, it now provides clear, transparent and more efficient processes. It also incorporates Strategic Capacity, which, although it has yet to fully bed in, will in time provide the industry with more flexibility and better utilisation of capacity;

(b) Part J of the network code, which provides a number of mechanisms by which the access rights of a TOC can be changed. This has recently gone through considerable review, and a formal proposal for change[5] ("PfC") is currently with the industry, again with a view to making it simpler and more effective;

[5] The process for making changes to the network code through a proposal for change is outlined in Part C of the network code.

(c) existing industry disputes mechanisms (through Part M of the network code). TOCs will always have these to fall back on and again changes have been made to speed up the process. We are also seeking to deal with appeals more rapidly and publish decisions within weeks rather than months; and

(d) Network Rail's licence, which requires Network Rail to satisfy the reasonable requirements of persons providing services to railways and funders, including requirements:

(i) to co-operate with potential operators or funders on allocation of capacity; and

(ii) to run an efficient and effective timetabling process.

4.9 We recognise that there may be difficulties in achieving the proposed change in approach given that the vast majority of TOCs currently enjoy a high level of specification in their existing TACs. However, it is important that the industry looks at this issue more strategically; not only in the context of the wider needs of the railway, its passengers, customers, other users and the taxpayer, but also against the background of the significant change that is taking place in the industry at the moment, including a move towards more partnership working and alliancing. For our part, we would do so on a basis that is fair to all and provides TOCs with the certainty that they require to run their businesses, recognising the commercial issues involved.

RVfM Study view

4.10 The RVfM Study indicates that if the railway in Great Britain is to make the cost savings that its authors believe is both possible and necessary, there will have to be some major changes to the way it is structured, the way it functions and the incentives underpinning the relationships between the individual companies and organisations. For example, Section 6.3.5 of the RVfM Study says that the changes:

> *"might include…the ORR reviewing the existing financial incentive mechanisms in track access contracts (Schedule 4, Possessions, and Schedule 8, Performance Regimes) to ensure that train operators and NR have joint incentives to improve outcomes rather than simply protecting the status quo".*

Also potentially affecting the way rights are expressed in Schedule 5, Section 6.3.7 of the RVfM Study says:

> *"the Study considers that the industry, together with the ORR and the DfT, should review incentives and responsibilities for the efficient management of capacity. There needs to be at least as much focus on train utilisation (the number of passenger km per train km) as there is on track utilisation (the number of train km per main track km). Existing approaches appear to focus much more on track utilisation and the provision of train paths."*

4.11 The Study recommends that RDG, Network Rail, the Department for Transport ("DfT") and ORR review this area. We will be picking these issues up both through PR13 and this work.

Industry view

4.12 During our informal dialogue over the last few months we have received a strong message about what stakeholders would like to see, including suggestions for change. It would be a fair summation to say that there is a clear difference between the views of Network Rail and the TOCs. The former is in favour of moving towards more relaxed specification of rights, but the latter generally want to maintain their current level of specification. TOCs have said that they would have serious concerns with any such relaxation and are keen to ensure that the balance between the needs of TOCs and Network Rail's ability to plan the network's timetable is maintained.

Barriers to less prescription

4.13 We have received representations that overly-specified franchise obligations by funding authorities have left TOCs no choice but to require a greater degree of hardwiring in Schedule 5, and that a move towards quantum rights only might leave a TOC unable to meet its franchise commitments. This is apparently particularly the case during refranchising, where bidders make commitments on new services which it later proves very difficult to put into practice. It is felt that funders and Network Rail do not discuss the requirements of new franchises far enough in advance.

4.14 It has also been suggested that Network Rail's culture is one of caution and a lack of risk-taking on reliability. It was seen by some TOCs as perverse that the infrastructure provider is tasked with overseeing slack timetables which cope with poorly performing infrastructure. There was also a concern amongst some TOCs that a move to less prescriptive rights could see the erosion of some key aspects of a TOC's services, such as a standard pattern timetable.

Question 2
Q2. Consultees are invited to comment on the level of specification in Schedule 5 of TACs and the specific barriers which, in their view, might prevent a move towards a less prescriptive specification of rights.

Network Rail's role

4.15 A number of representations and concerns were made over whether Network Rail was the appropriate body to compile the timetable, including a significant amount of feeling that it was unable to take a 'market view', and did not have a strong appreciation of the commercial risks faced by TOCs. Questions were also raised over Network Rail's ability to apply the Part D timetabling process.

4.16 The question of whether Network Rail should be responsible for the timetabling process is not a new one and regularly comes up during reviews of this nature but with, it seems, little consensus on a suitable alternative. We remain firmly of the view that Network Rail has a clear responsibility to provide capacity, timetabling and performance services to the rail industry and should be resourced to provide the necessary assessments to a high professional standard. Rather than looking to move responsibility from Network Rail we believe that the right thing to do is to identify, assess and remove the barriers which preclude mutual trust and confidence in the timetabling process. In line with the RVfM Study, the industry should be working together in partnership.

Question 3
Q3. Consultees are invited to comment on where they believe responsibility for conducting the timetable process should lie and why. In doing so, consultees should provide specific examples of difficulties they have experienced during the timetable process and suggest ways in which these could be addressed.

'Commercial purpose'

4.17 We also received a suggestion that a move towards looser specification of access rights could be more achievable with the insertion of a 'commercial purpose' clause into TACs. This would involve a short amount of text being added to Schedule 5 outlining the commercial purpose of the TOC, and explaining the rights it required with specific reference to its franchise obligations, particularly its service level

commitment. Such a clause would also help Schedule 5 to move away from superfluous detail and footnotes (see paragraph 4.18(c) below). The rights enshrined in Schedule 5 are realised through the timetable, which in turn is driven to differing extents by the Engineering Access Statement, the procurement of rolling stock and resource diagrams to name but some.

Question 4
Q4. Do consultees agree with the suggestion of a 'commercial purpose' clause? If so, what do they think it should include?

Schedule 5

4.18 We believe that there is significant scope to reduce and simplify the format and content of Schedule 5 to the TACs, particularly in respect of the tables. There was considerable support from the industry representatives we met for a review of Schedule 5, many of whom felt that in its current format it was too complicated and confusing. Therefore, we propose the following changes:

(a) the merging of the current Schedule 2 (The Routes) with Schedule 5;

(b) clarifying the definitions used to complete Schedule 5 to improve its accessibility;

(c) as far as possible, significantly reducing, if not removing altogether, the use of footnotes in Schedule 5;

(d) removing from the model TACs a number of the tables that are rarely used, particularly those in paragraph 8 of Schedule 5 (this would not prevent TOCs reinstating them if they felt their application required it); and

(e) looking to merge or group information into fewer tables.

4.19 Many consultees told us that there was significant scope for reducing the information provided in Schedule 5. However, there was no consensus on which characteristics should be removed. To facilitate this discussion, we propose the removal and/or simplification of the following columns:

(a) calling patterns (simplified, particularly when there is only one TOC on the route);

(b) turnaround times (not normally populated as these are specified in the Timetable Planning Rules);

(c) platform rights (not normally populated);

(d) journey time protection (maximum, maximum key, fastest key). Most consultees suggested that the whole area of journey times should be reviewed to make the characteristic more straightforward and simpler to understand;

(e) the specified equipment (see also the section in this document on reviewing Part F of the network code); and

(f) earliest and latest train data (which are subject to the Engineering Access Statement).

Question 5

Q5. Do consultees agree that there is scope to simplify and reduce the amount of information currently provided in Schedule 5? If so, consultees are invited to comment on our specific proposals and to put forward any other suggestions they have to improve the structure and content of Schedule 5.

4.20 We have also made it clear in our latest versions of the application forms (passenger/freight) and our C&Ps that clearer and better information should be provided as part of the consultation process when Schedule 5 is being amended through a supplemental agreement. Specifically, applicants are now obliged to provide a 'mark up' or 'comparite' rights table which clearly shows the changes from the previous table(s). This is intended to address the views of many parties that they are currently unable to adequately determine the practical effects of a proposed change in another TOC's access rights on their own rights.

Box 3 – CONSULTATION ARRANGEMENTS ON THE STRUCTURE AND SPECIFICATION OF RIGHTS

Our consultation on the issue of the structure and specification of rights runs for only six weeks. Please therefore note that the deadline for responses on questions 2, 3, 4 and 5 is 7 March 2012. As already explained, we feel that it is appropriate to adopt a shorter deadline for responses for these questions to give TOCs a greater degree of certainty on how access rights will be expressed in the future. Once we have come to a view, which we expect to do in April 2012, we will incorporate any changes, including those to Schedule 5 itself, into our C&Ps and model contracts. All future access applications wil be assessed against that published policy, including any applications which are pending since our letter of 23 September 2011.

RT3973

4.21 We received a number of representations relating to the application of RT3973 and specifically its relationship to TACs. RT3973 is a railway standard form of advice to train crews, by which Network Rail grants a freight operator permission to operate trains on its network which exceed the operational constraints. An RT3973 is valid for up to two years and gives details of routes to which it applies, as well as any special speed restrictions that must be applied to trains running under this permission. RT3973 and its variants deal with containers and swap bodies, trains that exceed the normal length limits, heavy axle trains, nuclear trains, and other exceptional loads.

4.22 Whilst an RT3973 is a contractual matter between the freight operator and Network Rail, some freight operators have identified where an RT3973 has been 'granted' by Network Rail by including a reference to it in the Special Terms column of the Rights Table in Schedule 5. To date, we have been content to approve such inclusions given, in the main, that this constitutes an amendment to the TAC agreed between the parties to it.

4.23 We consider that references in the TAC to the granting of an RT3973 have meaningful value, as it forms part of a 'permission to use' granted by Network Rail which is outside the normal operating constraints. This will be a matter for the parties to manage. However, we are concerned that where historical references to such forms remain in the Special Terms column, where they have not being deleted when they have expired, they should not be taken as inferring that a 'current' RT3973 is held. To avoid uncertainty over whether an RT3973 permission is 'current', we propose that the parties include the expiry date in the Special Terms column and initiate a review of any requirement to continue it prior to it expiring. Where Network Rail's permission is extended or renewed, the expiry date will need to be amended accordingly.

4.24 We also propose to include such changes in the permitted adjustments made under our General Approvals in order to minimise the extra workload involved.

Question 6
Q6. Do consultees have any comments on our proposed approach to RT3973?

Alignment of the track access and timetabling processes

4.25 There has been concern across the industry for some time now about the misalignment of the industry timetabling process and our track access processes in respect of passenger train operators. Before a passenger TOC can operate a service, it must:

(a) obtain a path in the working timetable in line with the process in Part D of the network code; and

(b) secure a contractual permission to use the network for that service (i.e. an access right) with ORR's approval.

4.26 The timetabling process begins over a year in advance of the start of the timetable itself. One of its key milestones is the Priority Date, which occurs 40 weeks before the start of the timetable (D-40). The Priority Date has a critical role in determining the priorities of requests for train paths (access proposals) from TOCs. Where there is insufficient capacity to accommodate all access proposals, priority is allocated based on the criteria specified in Part D of the network code.

4.27 In terms of alignment and efficient process, the current timetabling and track access processes would work in an aligned manner if operators:

(a) in respect of access rights, made applications for, and obtained, the access rights that they need for their services in advance of the Priority Date; and

(b) in respect of the timetabling process:

(i) made access proposals by the Priority Date using the access rights they have already obtained (and in doing so benefit from the relevant priorities set out in D4.2.2); and

(ii) did not make further access proposals (which are unsupported by access rights) after the Priority Date.

4.28 If this were the case, there would be no need for applications after the D-40 Priority Date to operate services in the timetable commencing at D-0, as all operators would have the necessary permission to use already in place. In practice, operators continually refine their services, seeking to respond to the needs of customers and make optimal use of their resources. So, whilst most operators make access proposals at the Priority Date using access rights secured previously, they also tend to make further access proposals for new or revised services, as they endeavour to respond to demand or the outputs from the timetabling process, which at that stage may be unsupported by access rights. These proposals might be made before or after the Priority Date. The operator then needs Network Rail to agree to sell the access rights and follow the procedure for obtaining approval.

4.29 **Annex A** sets out the background to the existing processes and explains the cause of the misalignment between the timetabling and access approval processes in more detail. In short, however, the misalignment arises because the two processes have different roles, but currently compete. The timetabling process is about the short-term provision of capacity in the form of the timetable. Whereas, the track access process should be solely about the longer-term allocation of capacity. The misalignment is caused because access applications are required to confer a permission to use the network in the shorter-

term for services which have been validated through the timetable process. We are looking to remedy this with a proposal to restructure the processes so that they no longer compete.

4.30 We think this could be done by introducing a provision to give passenger operators the right to operate train paths that are unsupported by quantum access rights but which have been validated/accepted into the timetable and which have cleared the timetabling appeals process. (We refer to this provision as 'SPOTS' – 'short-term permission to operate timetabled services').

4.31 If SPOTS were implemented, operators would continue to seek access rights for services where they require certainty that they will be able to operate them in future timetables. They would do this by securing rights before the relevant Priority Date. For services in the shorter-term, however, they could rely on SPOTS. This would be similar (but not quite the same) as the arrangements for freight operators to run services on a short-term basis.

4.32 **Annex A** explains the SPOTS proposal in more detail, including the benefits and disbenefits and the policy issues and consequences for how access for services is regulated which would need to be considered and addressed. For example, although we have provided Network Rail with an overview of our proposal, it would need to consider how SPOTS would fit with the existing timetable planning arrangements (and whether any changes would be required). It would also need to consider whether there would be sufficient transparency for third parties, so that there is awareness of the paths sought under SPOTS and an adequate period in which to object.

4.33 Overall, provided there is sufficient transparency of services proposed under SPOTS, we think there would be little diminution of protection for third parties. The timetabling appeal process would provide for objections (e.g. if there were concerns about performance implications of a new service). Consistent with the RVfM Study, we would be giving industry greater responsibility with the backstop of the appeals process or licence enforcement if things go wrong. There would also be benefits for passengers in terms of greater certainty. This is because the public timetable issued at D-12 (or 'T-12' as it is referred to in licences) would not be subject to the need for ORR to approve access applications that were submitted late.

4.34 However, we would need to work with the industry to ensure that SPOTS is indeed workable and would be used. Therefore, before we invest further time and resource on this, we would like to hear from Network Rail and TOCs as to whether or not they see any value in developing the SPOTS proposal further. For example, would passenger train operators make use of SPOTS and, if so, would they have any specific concerns with the proposals? We encourage you to read the full proposal set out in Annex A to inform your thinking.

4.35 The question related to SPOTS is necessarily pitched at a high level. We wish to understand the industry's views on the proposal before any more resource is committed to working up the detail.

Question 7
Q7. Do consultees agree that the 'SPOTS' forms a basis for resolving the misalignment between the timetabling and access approval process? In responding, it would be helpful if consultees could explain: • **if they are not supportive, why and whether they have any alternative proposals; or** • **if they are supportive, whether they have any specific concerns or see potential issues not already identified in Annex A. Are there any solutions to these issues?** • **If there are concerns with the proposal, could this be mitigated by limiting the scope of the SPOTS provision to a train operator's existing routes and stations?**

The process for making access applications

4.36 Chapter 3 of our C&Ps explains the procedures we expect to follow in considering applications for contracts granting access for freight and passenger services. As a result of feedback we have received, we have made a number of immediate changes to the application process. We expect that a combination of all the measures outlined in this document, allied to other proposals in this document, will significantly reduce the number of applications which require focused regulatory scrutiny, and further reduce the timescales of those applications which we will still have to scrutinise. These changes have been reflected in the latest version of our C&Ps published on 23 December 2011.

4.37 In this section, we cover proposals on the process for making applications.

Pre application meetings with ORR and other stakeholders

4.38 Previous versions of our C&Ps have encouraged parties to seek meetings with us prior to an application for a new contract or amendment that could prove controversial or that had unusual issues that needed to be addressed. We have also pointed out that TOCs should discuss (and agree, where possible) their requirements with Network Rail in the first instance. It is our experience that these informal discussions do not always happen, and there is sometimes a general unwillingness to 'pick up the phone' and discuss requirements, informally if necessary, well in advance of an application being made. In line with us taking a clearer and more co-ordinated approach to access consultations, we wish to reiterate the importance of preliminary discussions of a TOC's requirements.

4.39 As well as operators discussing their access terms with us and Network Rail, applicants must also consider the impact of their proposals on other relevant users (not necessarily limited to other TOCs) and should engage at an early stage with them, particularly where more major projects are concerned.

Pre consultation meetings with ORR

4.40 To ensure a more co-ordinated, aligned and speedier approach to consultations we have made arrangements with Network Rail that they will notify us when they issue a consultation. This will allow us to carry out an early review and identify significant issues before they are formally submitted to us. We anticipate that this will cut a significant amount of time out of the process for approving an application. Any preliminary comments which we make would not fetter our discretion in considering the formal application.

Timescales

4.41 We have also introduced clearer and firmer timescales by adopting a more project-managed basis to the application process. We have set out indicative dates within six and eight (assuming the industry consultation has already been undertaken) week estimates with specific milestones. We will keep these

timescales under review, and would expect that these constitute the maximum for an application, rather than the minimum. Our timescales may, of course, be extended for more contentious applications.

Monitoring of applications

4.42 We maintain a weekly tracking system for all current and forthcoming applications which we currently only share with Network Rail and the DfT. We consider that there is scope for sharing this with all TOCs, subject of course to any commercial confidentiality restrictions. This document provides details of the application, who is dealing with it in ORR and Network Rail and the current state of play. Sharing this system more widely would allow all industry parties to view the status of an application, have greater visibility of what is proposed (subject to comercial considerations) and highlight any blockages in the process, wherever they may lie. If there is an appetite for this approach, we would initially trial this through an electronic version via an email every Friday, but we will also consider the possibility of posting it on our website so that it may be viewed by the general public and other interested parties.

Code of Practice consultation timescales

4.43 Condition 15(b) of the Code of Practice (Annex A to the C&Ps) provides that the standard consultation period for proposed changes to existing contracts and all new contracts is 28 days. We have received a number of representations stating that this period is frequently reduced by Network Rail, without sufficient warning or explanation. Whilst condition 17(b)(i) provides for Network Rail to shorten the consultation period and outlines the circumstances in which this is permitted, the representations we have received suggest that Network Rail is not meeting its obligations and is shortening consultation periods without good reason.

4.44 In our view, the Code of Practice is quite clear. With the new arrangements that we have now put in place (see paragraph 6.7(b)), we will be able to monitor any deviation from the Code of Practice. There is also an onus on TOCs to ensure that they inform Network Rail if they are unhappy about the timescales and require more time.

Question 8
Q8. Consultees are invited to let us have any further comments on the access application process, including evidence of where it has not worked, together with any further suggestions on how they would like to see it improved.

Proportionate criteria for reviewing applications

4.45 We currently expect to have regard to six focused criteria when considering whether applications under sections 18 or 22 of the Act should receive focused regulatory scrutiny. These criteria, discussed in detail in paragraph 3.133 of our C&Ps document, comprise briefly:

(a) applications containing non-standard charging provisions, additional or revised charges, franchise remapping and changes to commercial terms;

(b) applications containing departures from the model clauses or the use of any of the tables in paragraph 8 of Schedule 5;

(c) applications involving a dispute between the applicants and a third party arising from the pre-application consultation;

(d) applications containing an issue which is not covered by the established policy framework in the C&Ps, or where there is a proposal to disapply any part of the network code;

(e) applications which raise concerns about the efficient allocation of capacity, which are inconsistent with a Route Utilisation Strategy ("RUS") or other relevant ORR decision, or where proposed rights would involve the use of congested infrastructure; and

(f) applications where a notification has been made to us under part LA of the network code, where services would not be monitored throughout their journey or where changes are proposed to Appendices 1 and/or 3 of Schedule 8.

4.46 Where we consider that an application meets one or more of these criteria, we will scrutinise it in more detail and, where necessary, discuss the application with the parties. From our reading of the RVfM Study and the discussions we have had, there appears to be an appetite within the industry to take on more responsibility itself with us 'stepping back'. We are happy to support this approach, subject to ensuring that our statutory duties are not compromised.

4.47 We therefore propose to revisit our proportionate approach, to determine whether or not there is scope for us to reduce the level of our involvement without compromising the position of stakeholders or our statutory duties. Depending upon any responses received, we would expect to be able to carry out this work very quickly.

Question 9
Q9. Do consultees agree that we should revisit our proportionate approach criteria with a view to handing more responsibility to the industry?

Extension of the scope of General Approvals

4.48 Sections 18(1)(c) and 22(3) of The Railways Act 1993 ("the Act") enable us to give our prior approval of new access contracts and to the amendment of existing contracts. The documents that give effect to these powers are called 'General Approvals'. Under a General Approval, the Act allows us to give our approval prospectively, without the need for specific submission and approval, to:

(a) the making of access contracts of a specified class or description;

(b) amendments of a specified description to a particular access contract; and

(c) amendments of a specified description to access contracts generally or to access contracts of a particular class or description.

4.49 There are several General Approvals currently in force permitting parties either to enter into or amend their TACs without the need for our specific approval. The use of these General Approvals is subject to the conditions set out within them[6]. Over recent years we have increased the scope and coverage of General Approvals. As far as we know, there have been no significant problems resulting from this.

4.50 Given the recommendation from the RVfM Study that Network Rail and TOCs should take greater responsibility for their own contractual arrangements, we are considering the extent to which we could increase the scope of General Approvals and provide for more new contracts (under section 18 of the Act) and amendments to contracts (under section 22 of the Act) to be agreed using them.

4.51 We can see that this would bring benefits through streamlining processes and reducing the timescales for obtaining a valid TAC or amendment, where there are no particularly contentious issues arising. It would

[6] These General Approvals are available on our website for passenger, freight and freight customers.

also remove the cost in terms of time and administration of needing to apply to ORR. We would then be better able to focus its efforts and resources where it can add more value, such as on disputed applications, appeals or other areas of policy work.

Proposal to extend the scope of General Approvals

4.52 In terms of how this might work, we would continue to expect the contract or amendment in question to be based on the relevant model TAC/model clauses. In particular:

(a) we would set out the permitted departures from the model contract that were allowed under the General Approval (such as the insertion of information into tables in Schedule 5). Any bespoke changes would not be covered and the contract or amendment would need our specific approval, as now; and

(b) a full industry consultation would be required (where third parties could be affected), as is currently the case with certain types of amendment. If there were any unresolved issues, the proposed contract or amendment would need to be submitted to us for resolution.

4.53 The extent to which we can increase the scope of General Approvals is linked, in particular, to the structure of Schedule 5. We would need to be satisfied that the contracts/amendments that could be agreed under a new General Approval would be consistent both with our duties under section 4 of the Act and the requirements of the Regulations. For example, if we issued a General Approval now for any contracts to be agreed using the existing Schedule 5 and its potential for a high level of prescription, there would be the very real prospect that contracts might be agreed (intentionally or inadvertently) with hardwired access rights for long periods. These would breach regulation 18(9) of the Regulations, as well as reducing flexibility and preventing the best use of the network (which would also be counter to the aims of the RVfM Study).

4.54 Therefore, the more we can reduce the prescription of access rights in Schedule 5 (as set out in paragraphs 4.2-4.17), the more scope we will be able to provide through a General Approval. This proposal should therefore be seen as part of a wider package of reforms linked to changes proposed elsewhere in this document.

4.55 Another potential issue is that Network Rail and a TOC may agree a contract or amendment that would apply for a number of years but which contains an error not picked up during consultation. For example, in the past, during our review of access applications there have been cases of new rights or rights tables in Schedule 5 being inserted without removing previous rights or tables which were supposed to have been deleted. With a General Approval, we will not be in a position to provide this sense-check. In many cases, such errors may be minor but in others there may be more significant consequences. For example, on routes with limited capacity, such an error could lead to the TOC inadvertently benefiting to the detriment of third parties on that route (and being unwilling to surrender the rights). We would be interested in your views on this possibility and any suggestions for suitable safeguards.

4.56 For passenger TOCs, we could also increase the cap on the additional permitted charges in Schedule 7 that can be agreed using a General Approval. The cap is currently quite low and perhaps as a result this aspect of the current passenger General Approval has not been used as much as it might have been.

4.57 For the avoidance of doubt, implementing this proposal would not change the ability of TOCs to submit an application for our specific approval under sections 17, 18, 22 or 22A of the Act if they did not wish to make use of the General Approval or if they could not reach agreement with Network Rail.

Next steps

4.58 If consultees are in favour of introducing such a General Approval, we would need to consider the detail of this further and the interaction with other reforms (in particular, in relation to reducing prescription

in Schedule 5). We would then expect to consult on a more detailed proposal. We would also look to consolidate existing passenger track access General Approvals as we are about to do for freight.

Question 10
Q10. Do consultees support the principle of extending the scope of track access General Approvals to include more new contracts under s18 and a greater number of s22 amendments? Are there any views on how far we should go with this or views on potential issues or risks?
Question 11
Q11. Do consultees have any other suggestions for extending the scope of our General Approvals?

Station and depot access contracts

4.59 During our informal meetings, we received very few representations on our approach to station and depot access, despite adopting a similar process – this does not necessarily mean that there are no areas which would benefit from reform. There is another strand of work which is concerned with how responsibilities for renewal and repair at stations are handed over from Network Rail to the incumbent franchisee. However, that work is not within the scope of this consultation.

Question 12
Q12. Consultees are invited to raise any further issues relating to the reform of contractual arrangements and consultation processes for stations and depots.

Station access agreements

4.60 We have received feedback on the way in which station access agreements are managed, particularly following a franchise change. One party noted that there was a significant burden associated with producing a new set of station access agreements, particularly if that TOC was a beneficiary at a number of different TOCs' stations, and queried whether anything could be done to reduce this burden.

4.61 Whilst we agree that such a scenario might be burdensome, we have introduced measures to guard against this. For example, parties may use our stations and depots General Approvals to enter into a new agreement (or agreements) without the need for regulatory scrutiny, provided certain preconditions are met.

4.62 We note that franchise changes occur infrequently, with re-mappings occuring even less frequently. Ongoing work by funding authorities with a view to letting longer franchises will decrease the frequency still further.

4.63 Additionally, assuming that the terms of the access agreements remain unchanged, in the case of a franchise changeover, it may be appropriate for us to issue a novation General Approval, to remove the need for duplication of paperwork. Parties should contact our stations and depots team for more information on novation General Approvals.

Question 13
Q13. Do consultees consider that the regulatory requirements prompted by a change in franchise, or another similar event, is greater than it could be? If so, how might the impact of such an event be reduced or mitigated?

Depot capacity

4.64 We have received representations that Network Rail has not made efforts to identify depot capacity when requested. With increasing amounts of rolling stock on the network, all of which require regular maintenance, an early view on whether the current depot is equipped to handle an increased demand is likely to be beneficial. This is particularly the case given the process necessary to identify and construct new depot sites, should they be required. In addition, the Passenger Rolling Stock Depot Planning Guidance element of the Network RUS has been issued, and, at our request, it includes a section on the capacity and utilisation of existing depots and stabling sidings. European legislation, through the First Package Recast is proposing to strengthen the need for provision of information on access to freight facilities.

Question 14
Q14. Do consultees consider that it would be useful for Network Rail to undertake an assessment of depot capacity in order to identify long-term needs. Do consultees believe that it would be more appropriate to carry this out when requirements for new or additional rolling stock are being identified?

Asset protection agreements

4.65 Asset protection agreements ("APAs") set out terms under which TOCs may conduct works affecting Network Rail-controlled infrastructure (not restricted to stations). The terms cover payment for the services Network Rail performs to facilitate such work, as well as indemnifying Network Rail against loss or damage suffered as a result of the TOC's works. Some parties have made representations that APAs are cumbersome, difficult to arrange with Network Rail and that overall there is a lack of transparency. In particular, there is an apparent duplication of some provisions concerning safety issues which overlap with similar provisions dealt with by The Railways and Other Guided Transport Systems (Safety) Regulations 2006 ("ROGS").

4.66 It remains a matter of discussion between Network Rail and the Association of Train Operating Companies ("ATOC") whether APAs will form part of the lease at stations and, if so, what the terms will be. Station leases are not regulated documents, and as such we would not typically become involved in any dispute relating to the lease. If a template APA is included, it is likely to differ from the template APA approved by us and available to any third party.

4.67 As part of our industry reform project, we are also undertaking a review, in partnership with the industry, of the transfer of station responsibilities from Network Rail to the Station Facility Owner (the franchised TOC who runs the station). This work is likely to have an impact on the status of APAs as Network Rail become less involved in the contractual arrangements at stations.

Question 15
Q15. Consultees are invited to comment on the functionality of APAs, and on specific amendments which could be considered to facilitate their ease of use.

5. Amendments to the network code

5.1 It is likely that the proposals in this document (and, indeed, any further proposals arising as a result of this consultation) will require amendments to the network code. The network code is a set of rules for the day-to-day running of the railway, incorporated by reference into each TAC. In addition to any such changes, we are also undertaking a review of various parts of the network code, with a view to improving the accessibility, clarity and functionality of these parts by simplifying processes and procedures and reviewing the structure and content for ease of use. We have already undertaken reviews of:

(a) Part D (approved 24 March 2011) (the translation of access rights into the construction of the timetable);

(b) the Decision Criteria in Part D currently going through the formal PfC process; and

(c) Part J (changes to access rights), also currently going through the formal PfC process.

5.2 We propose that other areas of the network code should be considered for review. The sections below outline the feedback received on each Part of the network code, and any work done to date, any work we have said we will undertake, and any work we are proposing should be undertaken.

Part C

5.3 Part C outlines the process for making modifications to the network code itself. Based on comments we had received from various stakeholders about the effectiveness of Part C, we indicated that it was our intention to undertake a full review of Part C, with the aim of simplifying the processes and timescales, whilst improving overall accessibility. However, our review has led us to conclude that this would not be a good use of the industry's time and resource.

5.4 During October and November 2011, we met with the Secretary and members of the Class Representatives Committee[7] ("CRC"), to seek their views on where and how Part C could be improved. It became apparent that the problems with Part C revolve around industry behaviour and the way in which it engages in the process, rather than any shortcomings in the process itself. For example, it was generally felt that there was little industry interest. This was evidenced by the lack of PfCs being promoted by TOCs, the lack of engagement with any PfC put forward and the lack of any senior representation at CRC meetings. These points have been confirmed by our own recent experiences in trying to get PfCs through the process.

5.5 Unless we receive strong representations to the contrary, we propose taking no further action on reviewing Part C.

[7] The CRC is responsible for considering and (where appropriate) approving Proposals for Change to the network code and the Access Dispute Resolution Rules.

Box 4 – CRC
Given that there are problems with the process that need to be ironed out we strongly encourage the CRC at its next meeting to have this issue on the agenda and discuss and consider ways in which the industry can (and should) be more engaged. To inform the CRC's consideration we will write to it setting out the findings of our review.

Question 16
Q16. Consultees are invited to comment on the necessity of a review of Part C, and on who should take responsibility for any further work on Part C.

Part F

5.6 Part F provides a procedure through which introduction of new railway vehicles, changes to existing railway vehicles, or introduction of existing railway vehicles over additional routes, can be assessed for material effect and implemented. Our stakeholder meetings revealed a wide range of views on the functionality of Part F. Some parties, generally those who had less cause to use it, were content with Part F as it was.

5.7 However, a significant number of parties cited ongoing difficulties with the operation of Part F, many of whom questioned whether it was needed at all because of the various hoops TOCs have to go through to get vehicles accepted. They cited:

(a) the process outlined in the ROGS regulations to achieve safety verification;

(b) Network Rail's own technical and safety acceptance, dealt with by the Network Rail Acceptance Panel ("NRAP");

(c) the Technical Standards of Interoperability ("TSI") process, as required by the Rail Vehicle Accessibility Regulations ("RVAR") and The Railways (Interoperability) Regulations 2011; and finally

(d) the Part F Vehicle Change process.

5.8 Most stakeholders acknowledged that Part F is also concerned with the commercial impact of vehicle change and that this needed to be picked up, but suggested that this could be done through consulting on such issues as part of one of the earlier stages (set out at 5.8 (a) to (c) above). Even if this were not possible, Part F did not need to be so convoluted and could be either considerably shortened or the relevant issues incorporated into a revised Part G. The view of one party was that a TOC should be able to run any vehicle contained within Network Rail's Sectional Appendix, without making changes to the associated TAC. In such circumstance, if the performance characteristics of the vehicle were inferior to those of the vehicle currently on the route, the expectation should be for that to be dealt with under the relevant performance regime.

5.9 We have some sympathy with the view that, provided parties have conducted the relevant industry consultation processes, and gained acceptance through ROGS, NRAP and TSI, they should not have to effectively repeat this process through Part F. We are certainly willing to consider any vehicle change that has gone through an extensive approval process being reflected in the TAC through a General Approval

(as part of our proposed introduction of a wide-ranging General Approval – see paragraphs 4.48-4.58) rather than the submission of a supplemental agreement, as is currently the case.

5.10 If we conclude that Part F should be retained then we would propose a wide ranging review to make the process clearer, more straightforward and quicker. Apart from a general overhaul, comments received suggest that such a review should also consider whether:

(a) the timescales in Part F require revision, including specifically whether consultation should close once all consultees have responded;

(b) Network Rail should be able to propose vehicle change;

(c) Part F can be reduced to remove duplication of effort; and

(d) Part F should be aligned more closely with Part G, especially considering our ongoing review.

5.11 We propose that any review of Part F, including consideration of the responses to the following consultation question, could be taken forward by the IWG reviewing Part G (see paragraphs 5.12-5.14). We would be pleased to receive representations from parties if they do not believe it is appropriate for these reviews to be handled at the same time.

Question 17
Q17. Do consultees agree that there is a case for reviewing the need for Part F? If so, consultees are invited to set out what elements of Part F need to be retained, if any (either in a reduced Part F or as part of Part G). If any consultee disagrees, it would be helpful if they could say why and what change, if any, they would like to see. Consultees should also comment on whether it would be appropriate for any review of Part F to be taken forward by the Part G IWG.

Part G

5.12 Part G sets out the process which access parties must go through when certain types of change to the network occur or are proposed. We have received a substantial number of representations on both the way in which Part G works and, more significantly, the way in which it is applied. It is clear that many of the issues and problems experienced by the industry are influenced by longstanding behavioural and cultural factors and consultees should bear this in mind when responding. Nevertheless, it is clear that there are problems with the process and that Part G would benefit greatly from a rewrite. To assist consultees and to help inform their responses we have provided a list of the kind of issues raised, which is available on this page of our website. Please note, this list is not exhaustive, and consultees are invited to contribute their views on any aspects of Part G which they consider require review. Equally, we invite you to indicate if you disagree with these representations.

5.13 The need for such a review has been confirmed by the strength of feeling and criticism of the Part G process from stakeholders, particularly in relation to the issues of misaligned incentives and different contractual interpretations.

5.14 Therefore, we propose a wide ranging review focusing on issues of process, timescales and functionality. We will also take the opportunity to undertake a general refresh and update in a similar manner to that recently carried out on Part D. We propose to establish a small IWG to consider all the issues. We envisage that such a group would contain a representative from Network Rail and two from TOCs, to capture relevant 'technical' knowledge, as well as those with experience of Part G itself. We would provide the administrative support, including a secretary and a policy representative on the IWG and we would arrange for the necessary legal support for drafting and general advice. In our view, it is

important that the IWG is chaired by a senior-level person, ideally from the industry and with a knowledge and understanding of Part G.

Question 18
Q18. Consultees are invited to comment on the issues they have experienced during the network change process which would need to be addressed as part of a review.

Part H

5.15 Part H sets out the requirement for Network Rail, through consultation, to establish a Railway Operational Code, with the objectives of sustaining and restoring the operation of train services in the working timetable. Although we have received no specific informal representations on the functionality or content of Part H, we consider that Part H may benefit from a general update, given the amount of time elapsed since it was previously reviewed.

Question 19
Q19. Do consultees have any comments on the use of Part H? Would Part H benefit from a general update and refresh to take account of current circumstances?

Part K

5.16 Part K, which was introduced in 2004, provides for the two-way flow of key information between access parties on both a regular and ad hoc basis. We have received representations from a number of stakeholders that Part K is rarely, if ever, used, and adds no real value to the sharing of information between parties. Although no parties raised any specific concerns with the operation of Part K (perhaps due to this lack of use) it has raised questions as to whether it is needed and whether it should be removed from the network code. We therefore wish to seek industry views on whether Part K adds value as a useful contractual tool. If not, should it be removed? Alternatively, it may be the case that it is not being used because it is not fit for purpose, in which case there could be an argument for reviewing it.

Question 20
Q20. Do consultees believe that Part K adds value to the contractual regime? If not, should it be reviewed or removed altogether from the network code?

Part L / LA

5.17 Part L (incorporating Part LA) provides for LOCs (Local Output Commitments) and JPIPs (Joint Performance Improvement Plans), which are implemented with the objective of Network Rail and the relevant TOC agreeing and reviewing performance targets and improvement plans over the course of a year for a particular part, or parts, of the network. For the purposes of this section, references to Part L should also be assumed to refer to Part LA.

5.18 Again, we have received no specific informal representations from stakeholders about Part L, but we consider that Part L may benefit from a general update and refresh, to take account of current

circumstances. For example, the current Part L contains no references to FIPs (Further Improvement Plans) which function as a mid-year update to JPIPs, and are in common usage. Any review of Part L should also consider whether those TOCs currently using LOCs should move on to JPIPs, allowing Part L to be further streamlined and the whole industry to work to one process. We would welcome consultees' views on moving away from LOCs, in favour of JPIPs, and further views on whether there is scope for consolidating these various mechanisms, including whether they can be amalgamated with any work on network availability.

Question 21
Q21. Do consultees feel that Part L would benefit from a general update and refresh to take account of current circumstances, including the addition of FIPs, and the opportunity taken to move TOCs using LOCs to JPIPs?

Network availability

5.19 Network availability relates to the impact of disruptive engineering possessions, whereby a part of the network is taken out of service for maintenance, renewal or enhancement work to take place. Network Rail, in consultation with us, has been working for some time on its possessions strategy, with a view to undertaking work in shorter, less-disruptive possessions, often on weekday nights. This concept is often referred to as the 'seven day railway', and covers a range of changes aimed at addressing network availability issues. Network Rail and TOCs have also recently introduced JNAPs (Joint Network Availability Plans) which will identify the specific commitment plans for improving overall network availability for each TOC's services.

5.20 None of these issues are currently explicitly incorporated in the network code. We believe that it would be helpful if they were, either as part of a new Part L or as a new part.

Question 22
Q22. Do consultees agree that issues such as network availability and JNAPs should be incorporated into the network code?

5.21 We have outlined above the areas of the network code that we think should be reviewed or where further consideration is required. However, we would like to hear of any other aspects of the network code that consultees believe would benefit from a review or refresh.

Question 23
Q23. Do consultees believe that there are other parts or individual conditions of the network code that would benefit from review? If so, please say which, how and why. Are there any aspects of the current access contractual regime which should be incorporated into the network code?

6. Progress to date

6.1 This chapter of the document briefly explains those areas where we have either already started, or are about, to make changes. These include changes to our documentation and website on which we would welcome views, e.g., are they helpful and is there anything else we can do. This chapter also sets out a number of other issues that came out of our recent discussions in relation to Network Rail's own processes on which we would welcome views.

ORR's internal administrative arrangements

6.2 We have undertaken a review of our own processes, procedures and documentation, to ensure that they are as efficient and transparent as possible, particularly given the suggestions we have received from stakeholders, primarily voiced through the ECML lessons learned review.

Application forms

6.3 We have for some time used application forms to accompany both passenger and freight access applications under sections 17-22A of the Act. Whilst these forms have been well received by the industry, we feel that having a total of eight forms is unnecessarily bureaucratic and potentially confusing. As a result, we have already condensed the application forms down into two versions:

(a) the new Form P should be used for all *passenger* access applications made to us under sections 17-22A of the Act. Applications made for charter services should also use the Form P; and

(b) the new Form F should be used for all *freight* access applications made to us under sections 17-22A of the Act.

6.4 In developing these new application forms, we have incorporated the feedback received from stakeholders. In particular we noted the widespread view that the structure of the forms could lead to duplication of information. We also noted that the way in which some questions were phrased could lead to uncertainty over what information should be provided. We have now stipulated the specific provision of some information (e.g. marked up rights tables) where the industry felt more clarity was required. More generally, we have carried out a refresh of the content, removing, adding and combining questions as appropriate to bring more clarity and to ease the burden on applicants.

6.5 **We expect all future applications to us to be made using the new forms** and, when filling them in, applicants should still cross-refer to our C&Ps. We believe that the new forms are an improvement, but we would welcome any further views you may have on them.

Question 24
Q24. Do consultees have any comment on the format, structure and content of our new application forms, and do you have any other suggestions for improving them further?

Criteria and procedures

6.6 Our C&Ps sets out the criteria and procedures we expect to follow in processing applications for TACs. This document is a vital tool in recording the outcomes of policy work, procedures established through case law and in summarising in one place the function of TACs, and our role in approving them. As such, it needs to be kept under constant review, and receive regular updating. Although this has not always been the case, we are determined to ensure that the C&Ps are maintained on a more regular basis – this process started with the publication of revised C&Ps on 23 December 2011.

6.7 The new C&Ps reflect a number of policy changes that have been made over the last few years as well as a number of new changes designed to address some of the RVfM Study recommendations, including:

(a) strengthening the drafting to require applicants to seek pre-consultation meetings with both Network Rail and other potentially affected parties (and ORR, if necessary);

(b) amending the drafting to reflect the fact that Network Rail copies all consultations to us, so that we have advance warning of any issues prior to submission to us;

(c) clarifying our publication arrangements regarding what we habitually publish on our external website, and what redactions, if any, we will make;

(d) explaining the role of external consultants in major projects or workstreams;

(e) introducing and specifying project management arrangements for significant projects to ensure that these are handled efficiently and effectively. These measures include:

(i) a sole point of contact for significant projects to ensure a consistent approach;

(ii) introduction of clear deadlines and timescales for TOCs to submit applications in order to give them certainty and to remove the possibility of 'game playing' (this approach has already been implemented in our review of track access applications on the West Coast Main Line);

(iii) clarifying our involvement at industry meetings and our role as an observer; and

(iv) clarifying the role we expect to play in terms of overall stakeholder engagement.

6.8 We intend to undertake a much wider review of our C&Ps during 2012. We are aware that the C&Ps are, in part, the consolidation of a number of different documents, with the inherent repetition and lack of flow that this brings. Our review will restructure the C&Ps to remove this repetition and introduce a more natural 'flow'. It will also improve the accessibility and 'user-friendliness' of the document, making the contents more navigable and understandable. We will be working closely with our webteam to bring about these changes, but in the meantime, we would welcome suggestions from consultees on any specific improvements they would like to see.

Box 5 – C&Ps
You are encouraged to: • inform us if you spot any errors; • advise us if you identify a particular issue is missing; • advise us if you feel a particular area requires clarification; and • suggest any changes to improve accessibility and functionality Please contact Paul Stone (details above in paragraph 2.17), in the first instance.

'Starting mainline rail operations'

6.9 In November 2008, we published 'Starting mainline rail operations: A guide to the regulatory framework' which was designed to assist making new entrants to the market aware of their obligations around access, licensing and health and safety. We are currently reviewing this document, with a view to republishing it in early 2012.

The ORR website

6.10 We received a significant amount of criticism about the quality and accessibility of our external website. In particular, there was considerable criticism about the track access section of our website, including comments that it is difficult to navigate, too clunky and cumbersome, too confusing, the search engine facility is unhelpful and, more importantly, it is difficult to locate many documents quickly.

6.11 We have an ongoing programme of work to ensure the site is up-to-date and accessible. A series of periodic audits and publication schedules, and the implementation of a website strategy and content management policy should ensure we have the right content in the right places, but we are also open to recommendations for improvements. A survey on the home page of the website is also available until the end of February 2012 to invite feedback.

6.12 In the meantime, to address some of the more immediate concerns, we have revised the structure of the access and network code pages of the website. As a result, we have:

(a) made the pages clearly accessible from the home page;

(b) similarly, ensured that frequently accessed documents (e.g. current applications, previous decisions, our C&Ps etc) are more prominent and accessible;

(c) reduced the number of steps it takes to get to individual pages and documents;

(d) removed or archived a significant amount of content, indicating where appropriate where it can still be found (e.g. the National Archives, Network Rail's own website etc.); and

(e) reviewed each page to ensure that it is up-to-date and in plain English.

Question 25
Q25. Do consultees consider that the changes we have made to the access and network code webpages have made them more user friendly and accessible? Are there any further improvements consultees would like to see to our website (not necessarily confined to the access and network code pages)?

Model contracts

6.13 We introduced model clauses for TACs in 2002 (passenger) and 2004 (freight), and have kept them regularly updated to take account of the industry's changing circumstances. The most recent versions of these model contracts were published in October 2011. In the intervening years we have also introduced model contracts for charter operators, connections and freight customers. Generally, they have been well received and the feedback does not suggest that there is a demand for change.

6.14 In this document we propose changes to Schedule 5 of the model contracts to simplify their structure and content, irrespective of the wider view taken on the overall specification of rights, and say that Schedules 4, 7 and 8 are being reviewed as part of PR13. However, we would like your views on whether any further changes could be made to model contracts to clarify them, simplify them, or increase their functionality, including any aspects that are not used and/or are considered unnecessary.

Question 26
Q26. Do consultees have any views on further changes which could be made to the model contracts to ensure that they remain accessible, clear, useful and fit for purpose?

Ports and Terminals freight facility access model contract

6.15 There is no current template model access contract for use between an TOC and a facility owner (e.g. a port or freight terminal) for the purposes of regulating facility access, where that facility is not exempt by virtue of The Railways (Class and Miscellaneous Exemptions) Order 1994, or for some other reason. However, given recent requirements for regularising access to such facilities, the industry has developed its own form of access contract which it has used widely and which has been approved under the terms of our Freight (Ports and Terminals) General Approval. Therefore, we do not propose to publish a template facility access contract.

Question 27
Q27. Do consultees agree with our approach to allow the industry to continue to develop its own approach to the format of access contracts for access to facilities off Network Rail's network?

Other matters

6.16 This section covers other matters raised during our informal discussions. Consultees are invited to submit any further views.

Network Rail's website

6.17 Many stakeholders cited difficulties with accessing and navigating Network Rail's website (comments which we have already shared with Network Rail). This included, but was not limited to, finding information

on track access applications and network code modifications. Consultees also highlighted that the overall speed at which the website processed requests was poor. This is of course a matter for Network Rail who will no doubt wish to respond to these criticisms. We understand that Network Rail has acknowledged the problem and is looking into what can be done to improve the situation.

Network Rail's internal sign-off processes

6.18 We also received a significant number of representations about Network Rail's internal sign-off processes, particularly in relation to freight track access applications, which is seen to be unduly and unneccessarily slow. In some cases it is acknowledged that there may be a need to obtain the Route Director's sign-off, for example, for an application which covers multiple routes, although stakeholders questioned the need for this to be done in all cases. As a result, there can be considerable delays in the application process, often leading to the associated services being introduced or amended by a TOC before the consultation has even been launched. This effect is particularly pronounced for freight access rights.

6.19 Again, Network Rail acknowledges that there are issues which it is tackling. We understand that with the arrival of the new Network Rail Freight Director, problems on the freight side have largely been resolved and freight operators should start to see some improvement. To assist Network Rail, we think that it would be helpful if TOCs could provide examples of their experiences of Network Rail's sign-off procedure and where delays have occurred to provide Network Rail with a clearer picture of where the problems lie. We would expect Network Rail to consider these and put in place the necessary remedial actions.

Question 28
Q28. Consultees are invited to provide specific examples of their experiences of Network Rail's sign-off process for applications, together with any suggestions as to how the situation can be improved.

Declarations of congested infrastructure

6.20 Under regulation 23 of the Regulations, Network Rail is obliged to declare parts of the network as 'congested' once certain conditions are met. Such a declaration then requires Network Rail to undertake a capacity analysis of the affected route. A number of stakeholders questioned whether Network Rail is doing enough to declare parts of the network as 'congested', given an ongoing trend for certain access proposals to be unfulfilled because there is insufficient capacity to accommodate them.

6.21 We have also received representations that Network Rail may also not be doing enough to remove designations of congested infrastructure where this is no longer the case.

Question 29
Q29. Consultees are invited to comment on whether Network Rail should be making more extensive use of declarations of congested infrastructure, including removing the 'congested infrastructure' label if it is appropriate to do so.

7. Next steps

7.1 This document sets out a programme of review and potential change which will require a time and resource commitment from the industry to achieve, but one which we believe can be completed within a relatively short space of time and one that will produce many benefits. Whilst we have started informal discussions with stakeholders, we expect to have more contact, both formal and informal, during the course of the programme.

Your responses

7.2 To take this work forward, we welcome comments on any aspect of this document, but in particular on the specific questions that we have raised. As already explained, to facilitate wider discussion of the proposals raised within this document, we will be holding a one day workshop at ORR's London office on 15 February 2012 to which invitations were sent out in December 2011. If you missed the invitation or have not yet responded and wish to attend could you please let Paul Stone know using the details listed in paragraph 2.17 by no later than **17:00 on 3 February 2012**.

7.3 After the deadlines for responses have passed, and following the workshop, we will consider your responses and decide on changes which should be made to policy or process.

Timescales

7.4 Please note that dates are indicative at this stage and subject to change or addition, depending on the outcomes of this consultation. We will keep colleagues informed in any case where there is likely to be significant deviation.

January 2012 – establishment of a Part G review IWG

25 January 2012 – we publish this document

15 February 2012 – industry seminar

7 March 2012 – deadline for responses on Schedule 5 proposals

w/c 12 March 2012 – we publish responses on Schedule 5 proposals

18 April 2012 – deadline for responses to all other proposals

w/c 23 April 2012 – we publish responses to all other proposals

April 2012 – publication of final conclusions relating to the specification of access rights in Schedule 5

March-July 2012 – preparation of draft network code proposals for change (Parts F and G)

May 2012 – publication of joint statement with funders

May 2012 – publication of final conclusions outlining changes and actions to be taken on ownership (including timescales)

May 2012 – publication of industry-agreed action plan

September 2012 – formal submission of network code PfC (if necessary) (following industry consultation)

Implementation of policy

7.5 We do not intend that any change in policy will take place until after the revised documentation has been published, is in place and the industry has been notified. Therefore, we will continue to consider applications received during the course of this consultation in line with our existing published policies. This includes our current position on granting extensions to track access rights beyond December 2013. If a prospective applicant has any questions then we would be happy to discuss these, but it should first discuss its requirements with Network Rail.

Network code

7.6 Some of the changes proposed in this document are likely to result in changes to the network code (not including those specifically related to reviews of parts of the network code which are already being undertaken as part of this work). If this is the case, these will be taken forward in parallel with the revisions to our documentation. Any resultant change to the network code will be subject to the usual democratic industry change process contained in Condition C5 of the network code (receipt and notification of proposals for change) and we will, as far as possible, try to ensure that any proposals for change are dealt with in parallel.

Regulatory impact

7.7 Whilst some of our proposals may, in the short term, require some adjustment and extra effort, we do not consider that they will add any new regulatory burden on the industry in the medium to longer term. In fact, quite the opposite should be true. We consider that by reviewing our policies and procedures at this juncture, we are facilitating an outcome which:

(a) reflects a fair balance between what is required of the industry and what ORR needs in order to meet our statutory obligations;

(b) sets out our policies in a clear and transparent way, reducing the administrative burden on applicants by making it easier for them to understand what is required when making applications; and

(c) has a positive benefit for both the industry and ORR in terms of certainty, efficiency, resources and costs.

7.8 Nevertheless, we will prepare a draft impact assessment for publication alongside the action plan. In doing so we will quantify the costs and savings that we believe will accrue from this work. We will be in a better position to establish the impact and associated costs once the industry has had an opportunity to comment on these proposals, an action plan has been established and responsibilities have been agreed. In the meantime, it would be useful if consultees could provide their views on the costs of the current contractual regime and what savings can be made.

Question 30

Q30. Do consultees have any comments on the impact assessment, particularly in terms of:

- **any additional evidence of the current costs of the existing contractual regime, e.g. overheads, resources, legal costs; and**
- **what they consider to be the costs and benefits of the proposals?**

General

7.9 As indicated earlier, we are aware that the proposals set out in this document will not tackle all the issues raised by stakeholders in connection with access arrangements. It is our intention that they should allow progress to be made in the short term, which will improve the functioning of these arrangments for all stakeholders. If there are other areas or issues that you think could usefully be tackled now then you should let us know.

Question 31

Q31. Consultees are invited to submit comments on any issues they may have which are not considered by this document, including consultation and contractual matters, the network code, and ORR's own processes.

Annex A: Proposal for aligning the access and timetabling processes

We wish to make it clear that the proposals in this annex relate to passenger operators only.

Background – the current relationship between track access and the timetabling process

1. Before a passenger train operator can operate a service it must:

   (a) obtain a path in the working timetable in line with the process in Part D of the network code; and

   (b) secure a contractual permission to use the network for that service (i.e. an access right) with ORR's approval[8].

2. The timetabling process in Part D of the network code begins over a year in advance of the start of the timetable itself. One of its key milestones is the Priority Date, which occurs 40 weeks before the start of the timetable (D-40). The Priority Date has a critical role in determining the priorities of requests for train paths (access proposals[9]) from train operators.

3. If train operators submit their access proposals to Network Rail by the Priority Date, subject to the conditions set out in condition D4.2.2, they will be afforded a degree of priority in the timetabling process should there be insufficient capacity to accommodate all the access proposals received by Network Rail.

4. Where there is insufficient capacity, priority is allocated to access proposals made by the Priority Date in the following order[10]:

   (a) first, to those proposals which correspond to firm rights which are in place at the Priority Date and cover the whole of the relevant timetable period;

   (b) second, to those proposals which correspond to firm rights which are in place at the Priority Date but which will expire before or during the relevant timetable period and in respect of which Network Rail considers the expiring firm rights will be renewed; and

[8] Under the Railways Act 1993, there is no legal requirement to have approved access rights to operate a service. However, where rights are not approved the train operator 'runs void'. Given that this gives the operator no contractual protection in the event of a dispute, it is important that access rights are obtained and approved. Furthermore, Part D of the network code requires all paths in the timetable to be supported by access rights otherwise Network Rail must remove them from the working timetable the day prior to operation. There are also requirements in the Access and Management Regulations requiring contractual arrangements to be in place before capacity is utilised – regulation 16(10).

[9] Access proposals were formerly known as 'bids' prior to October 2010. Additionally, operators can make 'Rolled Over Access Proposals' where they do not seek to vary the paths they held in the previous working timetable. In this document, for simplicity 'access proposal' is intended to cover Rolled Over Access Proposals, as well.

[10] This list has been simplified and excludes any access proposals by Network Rail for engineering work.

(c) third, to those proposals which correspond to contingent rights or any expectations of rights, provided Network Rail considers that those rights will be in force during the relevant timetable period.

5. Finally, fourth priority is given where there are rights or an expectation of rights in respect of which an access proposal is submitted after the Priority Date but before D-26. In this case, where more than one access proposal is notified, capacity is allocated in the order in which access proposals are made.

6. Train operators can still make access proposals after the Priority Date and after D-26 without yet holding access rights. However, they run a greater risk that they will not be able to obtain a train path if there is insufficient capacity to accommodate all of the access proposals that are made. Nonetheless, provided that there is sufficient capacity to accommodate all requests made to it in line with the decision criteria in Part D, Network Rail is required to offer a train path to the applicant. Provided that the train operator then obtains a corresponding access right from Network Rail (with our approval), it will be able to operate the service.

7. So, in conclusion, for a train operator, obtaining an access right for a particular service provides:

   (a) the necessary permission to use the network in respect of that service; and

   (b) a reasonable degree of certainty for the operator that it will be able to operate that service in future timetables if it makes an access proposal by the corresponding Priority Date using that access right.

The ideal world scenario – alignment under the current timetabling and access process

8. In terms of alignment and efficient process, the current timetabling and track access processes would work in an aligned manner if train operators:

   (a) in respect of access rights, made applications for, and obtained, the access rights that they need for their services in advance of the Priority Date; and

   (b) in respect of the timetabling process:

      (i) made access proposals by the Priority Date using the access rights they have already obtained (and in doing so benefit from the relevant priorities set out in D4.2.2); and

      (ii) did not make further access proposals (which are unsupported by access rights) after the Priority Date.

9. If they did this, then there would be no need for applications after the D-40 Priority Date to operate services in the timetable commencing at D-0 as all TOCs would have the necessary rights and permission to use already in place.

The reality – why the timetabling and track access processes are misaligned

10. In practice, the ideal scenario never happens. Train operators are continually refining their services, seeking to respond to the needs of their customers and make optimal use of their resources (in terms of rolling stock and crews).

11. So, whilst most train operators make access proposals at the Priority Date using access rights secured previously, they also tend to make further access proposals for new or revised services, which at that stage are unsupported by access rights, as they endeavour to respond to demand.

These proposals might be made before or after the Priority Date. The train operator then needs Network Rail to agree to sell the access rights and follow the procedure for obtaining approval[11].

Competing constraints: D-12 and timetable validation

12. Whilst the absolute deadline for obtaining access rights is at timetable commencement (D-0), operators should obtain the rights before including their services in the public timetable and selling tickets. The new public timetable is normally published at D-12 (more popularly known as 'T-12') in line with condition 2 of Network Rail's network licence.

13. To achieve the D-12 timescale, the industry consultation carried out for the track access approval process needs to start no later than D-24 (for straightforward applications) or D-30 (for more contentious applications)[12], with the train operator having obtained Network Rail's agreement to sell the relevant access rights. However, this rarely happens in practice.

14. Firstly, before agreeing to sell the access rights, Network Rail wishes to be satisfied that it will be able to comply with them. To do this, it rarely offers rights until corresponding paths have been validated in the timetable.

15. As the first working timetable is not issued by Network Rail until D-26 and further refinements are made after this date, train paths are not validated in time for D-30 or D-24 when applications would need to be made by to meet the D-12 deadline. It is also the case that train operators make further access proposals after D-26 which delay the timescales for obtaining access rights. There is also the timetable appeals process which takes place after D-26.

16. The consequence of this is that applications for access rights are then typically made around or after D-12. Thus, a key milestone in the process is missed which leads to the train operator either:

    (a) publishing the timetable at D-12 with approval of its application for access rights still pending. This is bad practice because there is the possibility that the rights will not be approved (i.e. because of a dispute from the consultation or a major regulatory issue with the application). If this happens, the services will be removed from the timetable and passengers who bought tickets for those services or planned to use them will be inconvenienced; or

    (b) waiting until it has secured access rights before publishing the timetable and selling tickets. This is inconvenient for passengers as they have less time to plan ahead, and the train operator could be in breach of its licence condition and franchise agreement with regard to publication of timetables. Indeed, some applications are not approved until immediately before the timetable commencement date.

17. Most applications that give rise to initial third party concerns are normally resolved to all parties' satisfaction. However, there are invariably some applications where there are still unresolved issues remaining in the period just before the timetable commencement date. In these cases, we must make a decision on what should happen. A major factor we must consider is the inconvenience that would be caused to passengers if published services are withdrawn.

18. In nearly all cases, a short-term compromise is found to enable the rights to be approved – for example, where we approve the rights but for only one timetable, providing time for the parties to try to find a longer-term solution.

19. It should also be noted that disputes tend to relate to the longer-term implications of the access rights, with third parties more concerned about the impact the access rights would have for

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[11] If Network Rail does not agree, then the train operator would need to consider a section 22A application. However, for the purposes of this paper it is not necessary to consider this scenario further.

[12] These are the timescales we recommend parties build in to their planning processes, as set out in paragraph 3.49 of our C&Ps, available at http://www.rail-reg.gov.uk/upload/pdf/408.pdf.

subsequent timetables rather than the one that is imminent (such as a concern that the rights would prevent Network Rail from satisfying existing firm rights in future).

20. Indeed, if the concern did relate to the train path in the imminent timetable, the proper process for addressing that concern would be through the timetabling appeal process, not the track access approval process. We tend not to look favourably on a third party which raises concerns during an access application when the timetabling appeal process should have been used.

Conclusion on misalignment

21. In conclusion, the existing process leads to a significant number of applications that are not submitted in time for approval by the D-12 deadline. This means:

    (a) passengers are inconvenienced, either through:

        (i) not being able to plan ahead because services are not advertised in reasonable time ahead of operation; or

        (ii) through the potential for advertised services which are unsupported by access rights to be withdrawn from the timetable if a major issue prevents them from being approved; and

    (b) the approval process is to an extent undermined through the pressure on us and other parties to find a compromise solution so that the services can operate.

22. It is also worth noting that:

    (a) applications for approval of rights by the timetable commencement date create a peak in workload for Network Rail and train operators (both for their applications and in respect of reviewing other TOCs' applications during consultation). These applications also create a peak in workload for us;

    (b) most timetable applications are relatively straightforward and do not raise regulatory issues; and

    (c) the main reason operators seek approval of access rights at this late stage is so that they have the necessary permission to use the network. There is no short-term benefit in terms of priority in the timetable[13]. It can be inferred from this that they accept this lower priority.

Proposal to resolve the misalignment

23. The causes of the misalignment between the timetabling and access approval processes are detailed above but, in short, are due to the fact that the two processes have different roles that currently cut across each other.

24. The timetabling process is about the short-term use of capacity in the form of the timetable. The track access process on the other hand should be solely about the longer-term allocation of capacity. However, the fact that access applications are required to confer permission to use the network in the shorter-term for services which have been validated through the timetabling process causes the misalignment. To remedy this, we could restructure the processes so that they no longer cut across each other.

25. This could be done by introducing a provision to give passenger operators the right to operate train paths which are unsupported by quantum access rights but have been validated/accepted into the timetable and which have cleared the timetabling appeals process. (Henceforth, this provision is referred to as 'SPOTS' – 'short-term permission to operate timetabled services'.)

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[13] However, if their timetable supplemental gives them rights for more than one timetable period, they will be able to secure greater priority in subsequent timetable development processes.

Detailed explanation

26. If SPOTS was implemented, train operators would continue to seek access rights for services where they require certainty that they will be able to operate them in future timetables. They would do this by securing rights before the relevant Priority Date.

27. However, where operators make access proposals for train paths that are unsupported by access rights either before or after the Priority Date, provided that Network Rail accepts those access proposals and they are not successfully appealed, operators would be able to operate the paths without having to first obtain approved quantum access rights.

Benefits of this approach

28. The benefits of SPOTS are set out below.

The track access and timetabling processes would be fully aligned

29. SPOTS should provide for the finalised public timetable to be published at D-12 with certainty that all the services will be able to operate. This will benefit passengers who will be able to plan ahead with more assurance.

30. After a train operator has obtained a train path using SPOTS, if it wants longer-term certainty that it will be able to continue to operate that service, it would make a track access application in time to secure approval by the next Priority Date. This would enable the track access process to focus on whether that use of capacity is the most appropriate, without the pressure of an imminent timetable commencement date.

Concerns about longer term issues with capacity would not be confused with the issue of whether a service should run in the next timetable.

31. SPOTS would ensure that the timetabling appeal process was used to resolve short-term capacity issues, removing any opportunity for a third party to seek to use the track access process to (inappropriately) raise objections.

32. So, if a third party objected to an operator having a particular path in the timetable, it would use the Part D appeal process. If it had a concern about the longer-term use of capacity for that service, this would be dealt with through the track access process if and when the operator sought firm rights.

33. This would remove the pressure on us and the involved parties to resolve a dispute (potentially through a sub-optimal compromise) so that access rights could be approved and services already included in an impending timetable would operate. We note that there have previously been concerns from freight operators that passenger services (having greater political visibility compared to freight services) are more likely to be given the benefit of the doubt if there is an outstanding dispute with a freight operator just before the timetable commencement date.

There would be a reduction in bureaucracy and workload

34. Network Rail and train operators would not need to complete track access applications and supplemental agreements, except when seeking longer-term rights in time for the Priority Date. This would save time, effort and money. It would also benefit those who are consulted on applications as there should be fewer applications for them to review.

35. Also, train operators that wished to do so could just seek to ‘roll-over’ some of their services in the timetable and not seek quantum access rights for these, provided that they were relaxed about having less certainty. This would probably only apply to those operators on routes with little competition or which are not particularly capacity constrained. This approach might also suit those operators who are ‘less contractually minded’ and who would just use the timetabling process if they could.

36. There would also be some reduction in work for us, though of course there would still be applications for the Priority Date and in respect of other aspects of the TAC (e.g. Schedules 4, 7 and 8) which would need to be considered.

37. It would facilitate a clearer set of timescales for applying for access rights to fit with the timetabling process milestones. As mentioned in paragraph 22(c), train operators who secure access rights for train paths after the Priority Date in respect of the subsequent timetable obtain little or no benefit in terms of priority (as described in paragraph 4). Introducing SPOTS would mean that, where the Priority Date deadline has been missed, train operators would not need to apply for access rights to ensure they had a permission to use.

38. SPOTS would facilitate the introduction of better timescales for access applications including a deadline for applications in respect of the next timetable. The deadline would merely reflect the reality that an application submitted in insufficient time to get approval by the Priority Date would confer little benefit on the applicant, as the SPOTS provision could be used instead.

Implications, caveats and policy issues

39. The SPOTS proposal would lead to a significant change in the way that track access for passengers services is regulated. As such, it would give rise to a number of policy issues and consequences that would need to be considered and addressed. It would certainly require amendments to Part D of the network code. Those issues identified already are discussed below.

Revenue abstraction

40. As operators could run trains without specific rights, there would need to be a protection against operators running services that could be primarily abstractive[14]. It would be important to ensure that SPOTS is not perceived as a mechanism for making speculative 'ORCATS raids'.

41. A provision in Part D could be included to provide for some form of regulatory referral where a potentially 'primarily abstractive' access proposal is made. We could make it clear in our guidance that any party making an access proposal that is potentially primarily abstractive will need to provide certain information to us by a specific date to enable us to make a decision in good time before D-12 on whether the services should be operated or not.

42. Alternatively, reforms to access charges for open access operators in the next control period may make this unnecessary if the 'not primarily abstractive' test is abolished[15].

Transparency

43. By removing the need to go through the track access process to gain approval of services for one timetable, the transparency of the track access consultation process would be lost. We would not be able to implement SPOTS unless we were satisfied that there would be sufficient transparency in the timetabling process; third parties would need to know whether their interests could be adversely affected so that they could make an informed decision on whether to make an appeal.

44. As the draft timetable is circulated to all timetable participants, it should be clear whether the services of other operators that have been included in that timetable could impact on their interests. However, revisions do get made to this draft timetable and these would need to be sufficiently transparent to third parties.

45. We understand that the industry information systems currently in place provide for operators to be notified of changes to the timetable in real time. There is also the possibility that this information

[14] Though given their commercial position, open access operators would probably want the certainty of firm rights rather than rely on SPOTS – particularly if additional rolling stock was required to operate the service.

[15] Please see our consultation on the potential for increased on-rail competition.

could be further enhanced, by including information on whether the train path in question is supported by quantum rights. We would need to liaise further with Network Rail on this.

ORR policy issues

46. We would need to include provisions, either in Part D or the SPOTS mechanism, to provide for the removal of train paths from the timetable which conflict with key ORR policy issues or would lead to Network Rail breaching an existing access contract.

47. For example, our policy on rebate mechanisms for network investments provides for train operators who invest significantly in on-network enhancements to be paid a rebate where a third party competing train operator benefits from that enhancement. At present, a competing third party operator would need our approval of specific access rights to run such services and a condition of this would be the inclusion of a rebate mechanism in their contract.

48. Under SPOTS, obtaining approval of specific access rights would not necessarily be required before operating a service. We would need to ensure that there is a protection either in Part D or the SPOTS provision that makes clear that, in a situation such as this, train paths obtained through SPOTS cannot be operated unless the train operator in question has included a rebate mechanism in its contract. We would need to explore further how this could best be done but we could adopt either of the following more general approaches:

    (a) there could be a caveat in Part D stating that Network Rail could remove train paths obtained under SPOTS from the timetable if their operation would lead to Network Rail breaching an existing access contract; or

    (b) we could maintain a document incorporated into Part D or the TAC which prescribes the use of SPOTS for specific classes of services.

Schedule 4 possessions and Schedule 8 performance regimes

49. With SPOTS, there is the potential that services would be operated without proper Schedule 4 or 8 parameters having been first agreed. We could include re-opener provisions to enable these matters to be agreed by the parties, though we would be open to considering other solutions. We would want to be satisfied that sufficient monitoring arrangements were in place for any services that are to operate under SPOTS.

Operational performance

50. If we were to introduce SPOTS, we would be handing much more responsibility to the industry for short-term timetable decisions. Our only role would be through dealing with appeals referred to us under the timetabling process and through approving the decision criteria that Network Rail must follow when producing the timetable. We would need to be satisfied that there would be sufficient safeguards to ensure adverse outcomes (such as a major deterioration in performance) are unlikely.

A case study

51. In this context, the recent case of Southern Railway's 2010 application for rights on the Brighton Main Line (BML) provides a good case study against which to test SPOTS. Here, Network Rail had accepted Southern's access proposal into the timetable and First Capital Connect (FCC) appealed against Network Rail's decision on performance grounds. The industry's Timetabling Panel ruled against FCC, and FCC then appealed to us. FCC also objected to the subsequent track access application that Network Rail and Southern made to us for access rights to operate these train paths.

52. We focused on the track access process to consider this dispute[16]. We concluded that there was a significant likelihood that performance on the BML and beyond would be materially affected if the proposed services were to operate. Taking all relevant factors into account, we considered that it would be against the public interest for these services to operate and so did not approve the rights. The train paths were then removed from the timetable.

53. With SPOTS, it would not have been necessary for a track access application for approval of firm rights to be made to us. Given this, there could therefore be a concern that, under SPOTS, the services might have been able to operate despite this being against the overall public interest.

54. However, even if there had not been a track access application, because FCC had (quite appropriately) made a timetabling appeal, we would still have been able to decide whether the contested services should operate and ensure the right outcome. We would have reviewed whether Network Rail's decision to accept Southern's access proposal was consistent with the decision criteria in Part D. It is highly likely that we would have overturned Network Rail's decision. So, the result would have been the same.

55. More generally, if Network Rail makes systematically bad decisions in the timetabling process which have an adverse impact on performance, we could also take action against it under its network licence.

56. In conclusion, there would be little diminution of protection for third parties in respect of performance if SPOTS was implemented. Indeed, it would be consistent with giving the industry greater responsibility in this area with the backstop of licence enforcement if things go badly wrong.

Use It Or Lose It

57. With SPOTS, there would be a risk that passenger operators might secure paths in the timetable that they did not in the end use. We would need to review whether Part J of the network code would be sufficient to address this or whether it needs to be amended (or another mechanism developed). Alternatively, the possible introduction of a form of reservation charge through PR13 might address this.

Mid-timetable changes

58. The SPOTS proposal is primarily intended to be used for access proposals made prior to the commencement of a new timetable. There is of course the potential that it could be used for mid-timetable changes.

59. However, given that access proposals could be made at short-notice prior to the planned date of operation, there would be a risk that there would be insufficient time for third parties to consider the potential impact on their services. It is also the case that most passenger TACs already provide contingent rights for additional services to cope with demand for special or seasonal events, so there would be less of a need to use SPOTS for mid-timetable changes.

60. For any other mid-timetable changes to passenger services, we are of the view that existing arrangements (use of General Approvals or applications for specific approval to us) should remain, although we would welcome views on this.

Consideration of perverse incentives

61. We would need to consider whether SPOTS would introduce any perverse incentives by train operators. If we develop the SPOTS proposal further, we would develop some case studies against which to test this.

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[16] A decision not to approve the access rights would have rendered the timetabling appeal irrelevant and so it was sensible to focus on the track access application.

62. If implemented, it would be sensible to provide for us to be able to 'switch-off' or amend the mechanism as a precaution if it was not working effectively. If the mechanism were included in Part D we would of course be able to amend it through condition C8. If we did have to take this action, we would expect to ensure that train operators are given sufficient notice.

Other potential concerns/questions

How will people know what capacity is available?

63. Under SPOTS, it would no longer be possible to tell how many services passenger operators were running from just looking at their access contracts. However, the quantum rights in the access contracts would reflect the services for which operators have longer-term rights. The working timetable or the Integrated Timetable Planning System (ITPS) would need to be used to see how much capacity remained available. However, this situation is little different to now as freight operators can run services on a short-term basis without specific rights. As now, it would be possible to look at access contracts to see what longer-term rights train operators held.

What happens if the capacity used to operate a service under SPOTS is later sought by another train operator in a subsequent timetable?

64. Operating a service under the SPOTS provision would give no future right to obtain the same path (SPOTS is about short-term use of capacity). So, there would be the possibility that a train operator using SPOTS to operate a train path in one timetable, and who wants to continue using the same train path in the next timetable, might find another operator seeking to use the same capacity (either using SPOTS itself or by seeking specific access rights for longer-term use of that capacity).

65. In this scenario, if the other party was itself relying on SPOTS, then the timetabling process would decide who should get the capacity. Alternatively, if the other party made an application for specific rights for the capacity, presumably the incumbent operator (without quantum rights) would object during the track access consultation and would probably make an application itself. Ultimately, we would need to take a decision on the most appropriate use of the contested capacity and approve access rights on that basis.

66. This is not so different to what happens now when there are contested applications for the same capacity. So, in this respect, SPOTS would be consistent with enabling us to allocate capacity in line with its statutory duties.

67. If a train operator using SPOTS wished to guarantee the use of a train path in future timetables, it would need to make an application for longer-term access rights in the usual way. Clearly, the need to do this would vary depending on how limited capacity was on the part of the network in question. Operators on busy routes will feel a greater need to guarantee longer-term rights to capacity than operators on less well utilised lines.

68. If SPOTS was implemented, we would work with Network Rail and train operators to ensure that there was a smooth and efficient process for dealing with any cases where capacity being used for a SPOTS service was contested. For example, as now, we would expect the non-incumbent to speak to Network Rail about its proposals and there could be provision for early notice/discussions between all three parties to seek to resolve the matter or ultimately for both operators to make applications to us for longer-term rights by the Priority Date.

69. We would also want to look at how we could limit the possibility that a service operating under SPOTS might not be able to operate in a subsequent timetable (assuming the operator wanted this) as a result of competition for the same capacity. We could, for example, ensure there are adequate planning arrangements in place to identify where there might be capacity constraints so that the train operator is conscious of this and is not caught out by any surprises.

How would SPOTS work in parts of the network which are highly capacity constrained?

70. It would be vital that SPOTS can work effectively on tightly constrained routes. Here, train operators would be likely to seek firm rights to have certainty that they will be able to operate their services.

However, if SPOTS was in place on, say, the ECML at present, and was used, it is likely that there would be rival access proposals for the same scarce capacity. Network Rail would then need to decide how the capacity should be allocated on a short-term basis in the timetable, in line with the decision criteria in Part D, and subject to any appeals.

71. We would want to ensure that SPOTS would be consistent with us being able to undertake the capacity exercises that we have undertaken with industry parties previously (for both on the ECML and WCML). We would welcome stakeholders' views on this.

SPOTS would merely change the timing of peak workloads rather than reducing the burden of making applications.

72. It is certainly the case that some operators who operate services under SPOTS would want to obtain firm rights to give themselves more certainty in future timetables. This would lead to a peak of applications around the relevant Priority Date rather than prior to timetable commencement. However, even where this happened, SPOTS would provide benefits:

(a) there would be much less pressure to agree a compromise arrangement for disputed applications where approval has been sought by the Priority Date (because failure to approve in time for this date would not necessarily lead to train services not running);

(b) linked to the above point, SPOTS would ensure that there was certainty over the services in the timetable at D-12, benefiting passengers; and

(c) it is likely that at least some operators would be content just to roll-over train paths without making applications. So, there should be at least some reduction in the peak workload.

Conclusion

73. Overall, we believe that this proposal has the potential to resolve the misalignment between access and timetabling as well as provide for a more streamlined and less bureaucratic way of enabling train operators to gain permission to run their services. As such, it would be consistent with the RVfM Study's aim of greater responsibility for the industry in this area with the backstop of licence enforcement if things go wrong. Importantly, it would benefit passengers by providing greater certainty at D-12.

74. We think that it could be introduced with little diminution of protection for third parties. To be clear, we will not seek to implement this approach unless we are satisfied that there is sufficient transparency for third parties. We would need to work with the industry to ensure that SPOTS is workable and would be used. In doing so, opportunities for further improvements in the timetabling/access processes may be identified.

75. Therefore, before we invest further time and resource on this, we would like to hear from Network Rail and train operators as to whether they see any value in developing the SPOTS proposal further. For example, would passenger train operators make use of SPOTS and, if so, do they have any specific concerns with the proposals? Do freight operators have any particular views? If there are potential issues with SPOTS, are there any solutions? Please see **Question 7**.