

**Consultation on a revised contractual  
regime at stations - Proposed changes to  
the Station Access Conditions and  
Independent Station Access Conditions**

**March 2011**

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## Foreword

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1. The purpose of this consultation is to seek your views on proposals to reform parts of the contractual regime at stations. We are proposing changes to both the National Stations Access Conditions and the Independent Station Access Conditions for both England and Wales, and Scotland. This, therefore, is a formal Proposal for Change consultation in accordance with Condition B6 of the National Station Access Conditions and Part 2, Condition 7 of the Independent Station Access Conditions on a proposal to change those Access Conditions.
2. In recent years a number of factors have caused the profile of stations to rise. There has been the review of station standards carried out by Chris Green and Professor Sir Peter Hall resulting in the publication of their *Better Rail Stations* report. In Control Period 4 the government made available specific funding to bring about improvements at stations for the benefit of passengers; this saw the establishment of the National Stations Improvement Programme (NSIP). In turn, NSIP has encouraged greater partnership working between Network Rail and train operators in the form of Local Delivery Groups and through Integrated Station Planning. The Department for Transport has undertaken a review of franchising arrangements and it is envisaged that in the future a franchised train operator could take on greater responsibility for the management, operation and maintenance of its portfolio of stations through a full repairing lease. We also await the conclusions of the Rail Value for Money review, but can expect recommendations that stations (like other parts of the rail network) must be operated, managed and maintained in an efficient and cost-effective way.
3. We are in no doubt that the contractual arrangements at stations must be capable of supporting and encouraging the drive for better efficiency and for different ways of working. And they must not act as a barrier to investment by third parties.
4. We believe that the modifications that are proposed in this consultation will see the process for Station Change streamlined and simplified and will provide appropriate rights and responsibilities to those third parties wishing to invest at stations.

5. We are keen to hear from those who already use and are familiar with the current access regime at stations. But we are also very interested in hearing the views of those who may be interested in this area of regulation, for example local authorities, Passenger Transport Executives or private third-party developers who may be keen to propose and sponsor station enhancements either as a single project or as part of a wider development initiative.
6. The responses to this consultation will help us to decide on the most appropriate and effective changes to the current regime.

# 1. Executive summary

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- 1.1 The National Station Access Conditions (“SACs”) are the standard rules that govern the relationship between all contracting parties at a station. They cover matters such as the process for agreeing changes to a station, charging for access and the remedies available when things go wrong. There are separate conditions for the stations managed by Network Rail called the Independent Station Access Conditions (“ISACs”). These broadly follow the same format as the SACs. Throughout this consultation document, unless otherwise stated, any reference to SACs will be a reference to both the SACs and the ISACs.
- 1.2 Station Access Agreements set out the terms for access to a station. SACs are incorporated into those agreements and in that way apply to all parties that have a regulated agreement for access to a station.
- 1.3 A replacement for the SACs was developed over a number of years and in July 2006 the Stations Code was published; this aimed to improve the contractual framework for station access. Ultimately the industry told us that the Stations Code was no longer appropriate as a replacement for the SACs.
- 1.4 Following a consultation in mid-2009 we concluded in March 2010 that we would accept the industry’s proposal not to proceed with plans to implement the Stations Code. However, despite this we still considered it important to reform the contractual regime at stations in a number of areas, including a stream-lining of the process to make Station Change more efficient (and the ongoing value for money study has given greater impetus to this), and also to encourage continuing development of Great Britain’s stations. We therefore tasked Network Rail to work with industry to develop such proposals for reform of the current contractual regime at stations.
- 1.5 We have received and considered reform proposals from the industry, based predominantly on a proposal drafted by Network Rail which we have reviewed and had input into. We are now seeking your views on these proposed modifications by **midday on 8 June 2011**.

- 1.6 Following this consultation, we will issue our conclusions setting out the changes we will make to the SACs and giving our reasons for making those changes. We will then take the necessary steps to formally modify the SACs.

## 2. Background

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- 2.1 The current SACs came into force in 1996. The only significant modification has been a change to the ISACs made in 2008-09. This change made provision for the level of Qualifying Expenditure (QX) at those stations managed by Network Rail to be set for a period of five years. Otherwise the SACs have not been significantly altered for around 14 years.
- 2.2 In 2000 the then Rail Regulator proposed a reform of the current access arrangements at stations, which were described as complex and unwieldy. In 2004 a Stations Code was proposed and in July 2006 the final version of the Stations Code was published. This was the result of a number of years of work involving industry stakeholders.
- 2.3 Throughout 2007 Network Rail and most of the train operating companies signed the Stations Code Framework Agreement. This was the first step in moving to the Stations Code, and signing the Framework Agreement signalled the parties' intention to move to the new arrangements.
- 2.4 An industry working group comprising ORR, Network Rail and the Association of Train Operating Companies (ATOC) was established, and was working together to facilitate implementation of the Stations Code. However, by 2009 neither Network Rail nor any of the train operators had adopted the Stations Code and ATOC advised that the feedback was that train operators were no longer enthusiastic about pursuing the Stations Code.
- 2.5 In February 2009 Network Rail and ATOC wrote jointly to ORR, outlining those changes in circumstance which meant that the Stations Code was no longer a suitable replacement for the SACs. Network Rail and ATOC formally requested that ORR agree that the Stations Code should not be implemented. As it would have been a change to our published policy to agree with the industry and conclude that the Stations Code should not be implemented, we consulted the industry and wider stakeholders in mid-2009.
- 2.6 Shortly after our consultation on the Stations Code closed, the *Better Rail Stations* report prepared by Chris Green and Professor Sir Peter Hall was published. This made a number of recommendations, including that Network

Rail should take the lead in presenting the industry with an action plan for improving the management of stations across the network.

- 2.7 We considered that the contractual framework in place for stations was integral to any plan to improve the way that they are managed and operated. We therefore decided to delay reaching our final conclusions on the future of the Stations Code for a short time until we understood more about how Network Rail intended to respond to the recommendations in the *Better Rail Stations* report.
- 2.8 In March 2010 we then issued our conclusions on the Stations Code; we decided to accept the industry's proposal not to proceed with plans to implement the Stations Code. However, we did so mindful of the fact that the station contractual regime needed to be improved in a number of areas, even if the wider Stations Code was to be discontinued. This work has been given greater impetus by the ongoing value for money study
- 2.9 We therefore tasked Network Rail to take the lead in working with the industry to take forward a reform of the contractual regime at stations. The particular areas we highlighted for change were:
- facilitating effective partnership working between Network Rail and train operators, with better alignment of incentives (building on the work of the local delivery groups established as part of the National Stations Improvement Programme);
  - clarifying and simplifying the split of maintenance, repair and renewal responsibilities and creating flexibility to enable the most efficient ways to deliver improvement:
  - simplifying and speeding up the process for station change; and
  - facilitating third party involvement in stations.
- 2.10 We agreed a deadline of early October 2010 to receive the industry's proposals for reform.
- 2.11 Network Rail, ATOC and train operators agreed to establish a Stations Contract Reform Task Group (CTRG), comprising membership from Network Rail, ATOC and a number of train operators.

- 2.12 CTRG met eight times and had discussions about Station Change, about the rights of third parties and about the split of responsibilities for maintenance and repair at stations.

## 3. Current position

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- 3.1 On 8 October 2010 Network Rail and ATOC wrote to ORR to set out the conclusions from the work of the CTRG in considering the reform of station contracts.
- 3.2 Network Rail drafted, and submitted for consideration:
- an explanation of its proposed amendments to the Station Change process;
  - an explanation of its proposed amendments to the rights of third parties in respect to Station Change;
  - a commentary on the issue of the maintenance, repair and renewal responsibilities at stations; and
  - legal drafting for the proposed Station Change process and the rights of third parties in respect to Station Change.
- 3.3 This draft was not the joint industry proposal we had hoped for, since although there are points on which Network Rail and ATOC agree, there are also issues on which agreement is either not complete or is lacking entirely. However, ATOC did submit a response with the proposals, setting out its position on these areas of disagreement. This ATOC response is attached to this consultation and is included in Annex B. (It is important to note that ATOC's response was made at a time when a number of the principles of the proposed changes had been discussed by CTRG but the legal drafting, including the text of the Co-operation Agreements, had not been fully developed. Network Rail has updated its explanation of the proposed text as the drafting has developed, whereas ATOC has not updated its initial response, so its observations and comments set out in Annex B do not necessarily reflect the draft proposals now being consulted on).
- 3.4 On 9 November 2010 we wrote to Network Rail and ATOC jointly to seek clarification on a number of points to help us ensure that we understood the implications of the proposed changes to the current regime. We received their separate responses on 26 November 2010. We considered these carefully

together with the original submissions. Since then we have liaised with Network Rail to ensure that the proposed drafting changes are accurate and produce a cohesive alternative process for Station Change, and Network Rail has shared all of this revised drafting with ATOC.

- 3.5 When we tasked Network Rail to work with the industry to propose reform of the current contractual regime at stations, we were very clear that such reform was critical. We were equally clear that if the industry was not able to achieve this, we would consider using our unilateral powers in the SACs to implement change.
- 3.6 We consider that the modifications proposed by Network Rail, as amended following our reviews and suggestions (on both policy and drafting), constitute the streamlined and efficient Station Change process that we requested the industry develop. Although we acknowledge the objections raised by ATOC to a number of elements of the proposal, we consider that the draft modified Station Change process satisfies our requirements and that we could support its implementation under our existing B6 and Part 2, Condition 7 powers. We also believe that the proposed changes will work equally well if proposals are implemented to give train operators greater responsibility for the stewardship of station assets. Accordingly, the appropriate next step is to issue this consultation to formally seek the views of the wider industry. It is particularly important that we invite views from those third party organisations that may have an interest in sponsoring schemes to develop or enhance stations. And, of course, ATOC and the train operating community also have the opportunity to respond formally to this consultation.

### **Clarifying and simplifying the split of maintenance, repair and renewal responsibilities**

- 3.7 Within the proposals sent to us there was no proposal for the simplification of the default split of responsibilities for maintenance and repair/renewal as set out in the current SACs. Instead, the submission concluded that this issue will be dealt with as part of the ongoing work to explore through the franchising process, a different split in responsibilities at stations where a train operator would have greater responsibility in the form of a fully repairing and insuring station lease.

- 3.8 While we agree that the work on exploring a different split of responsibilities at stations (in which ORR is involved) is helping to identify many of the issues that such a change will bring about, only one model is being explored. We do not consider that it necessarily provides a solution to the fundamental issue around a default split of responsibilities at stations that prescribes that different parties should share responsibility for the same asset.
- 3.9 This is an area that we are determined to see simplified. However, to avoid it delaying progress on the matters on which we are now consulting you, we plan to take this forward as a separate work stream in early 2011.

## 4. Seeking your view

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- 4.1 ORR can make modifications to the SACs where certain procedural requirements regarding consultation have been fulfilled. In addition, we must also be satisfied that either or both of the following conditions has been satisfied:
- the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Railways Act; and
  - the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.
- 4.2 The proposed modifications to the Station Change procedures would result in significant changes to Parts B and C of the SACs and to Parts 2 and 3 of the ISACs, and the addition of new annexes containing template Co-operation Agreements. Modifications would also be required to the versions of the ISACs, the SACs and the annexes used in Scotland.
- 4.3 We would very much like to hear your views on the reform proposals. We are keen to hear from those who already use and are familiar with the current access regime at stations. But we are also very interested in hearing the views of those who may be interested in this area of regulation, for example local authorities, Passenger Transport Executives or private third-party developers that may be keen to propose and sponsor station enhancements either as a single project or as part of a wider development initiative.
- 4.4 In section 6 we set out a list of specific questions, although we also invite you to let us know if you have anything else you would like to tell us that our questions have not covered. Your responses will help us to decide on the most appropriate and effective modifications to the current regime.

## **Additional modifications**

- 4.5 The changes proposed earlier in this consultation would result in a number of consequential modifications to the SACs. These are shown in the links to the comparative versions of the SACs at Annexes D and F. However, there are also a number of other areas where the SACs need to be updated in any event to reflect the current industry structure e.g. replacing references to “Railtrack” with “Network Rail” and also to reflect the revised Access Dispute Resolution Rules that came into effect on 1 August 2010.
- 4.6 We wish to take this opportunity also to make these updating modifications and we would welcome your views on the proposed modifications which are set out in a table in Annex H.

## **Documents attached**

- 4.7 The following documents are attached for your consideration:
- Annex A – list of consultees
  - Annex B – submission from Network Rail, incorporating initial response from ATOC (but see paragraph 3.3)
  - Annex C – a link to the proposed revised SACs, including template Co-operation Agreements in annexes 13 and 14
  - Annex D – a link to the comparative version of the SACs tracking the proposed modifications
  - Annex E – a link to the proposed revised ISACs, including template Co-operation Agreements
  - Annex F – a link to the comparative version of the ISACs tracking the proposed modifications
  - Annex G – table of modifications proposed to the Scottish SACs and ISACs<sup>1</sup>

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<sup>1</sup> To reduce the number of attachments, we have not attached full versions of the Scottish SACs and ISACs. We will be happy to provide an electronic copy of these documents on request to anyone who would like to receive them.

- Annex H – table of proposed additional modifications to the SACs and ISACs

## 5. Potential impact

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- 5.1 The proposed modifications to the SACs are designed to clarify, simplify and speed up what the industry has told us is a complex and unwieldy Station Change regime. It is our clear expectation that the reforms proposed should create a more efficient and speedy Station Change process. The new process should give change sponsors more certainty in progressing schemes by classifying certain types of change exempt from the formal change processes and by separating issues relating to compensation (where they exist) into a parallel, but separate process that will not hold up implementation of a change. The new Station Change procedures also include more clearly defined rights for third parties involved in Station Change, with the aim of encouraging more third party-led development.
- 5.2 We have also proposed additional modifications to update the SACs to make them more reflective of current industry structures and processes. We do not envisage that those modifications should have an adverse impact on respondents.
- 5.3 However, we wish to hear from respondents on what impact – positive or negative - you believe that the proposed changes will have on you. Accordingly, while we have raised specific questions in section 6, we equally welcome respondents' views on any aspect of the proposed modifications, including if respondents consider we could go further in stream-lining the process.
- 5.4 The broad areas subject to modifications are as follows:
- Within the modified Part C change process, there are different categories of Station Change proposals (Exempt, Non-discretionary, Notifiable and Material), each with different consequences for an affected operator.
  - Modifications are proposed to the grounds for objecting to what is now a Material Station Change proposal. Financial compensation for the consequences of a Material Station Change will be addressed through the separate mechanism of a Co-operation Agreement between the proposer and each affected station user, and will not be a valid ground of objection.

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- Modifications are proposed to allow third party developers to make Material Change Proposals in their own name.

## 6. List of questions

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### **Differentiating between proposed changes to the national template SACs and specific Station Change proposals**

- 6.1 The proposed modified change process differentiates between changes to the generic, national template SACs, and changes which are needed solely because of specific station projects.
- 6.2 In the proposed draft, Part B will only apply to changes to the national template SACs. Although the need to hold Station Meetings has been deleted, the concept of majority approval has been retained, with a requirement that a change must be approved by no less than 80% of all relevant operators (which retains the existing definition). There will be a consultation period, followed by a decision period, to allow relevant operators to consider consultation responses before voting. Network Rail retains its ability to veto a proposed change.
- 6.3 Part C (Part 3 in the ISACs) will apply to proposed physical changes to stations and to proposed changes to the SACs and annexes for specific stations<sup>2</sup>. It may be that there are occasions when a change is required to Parts A to Q of the national template SACs (Parts 1 to 17 of the national template ISACs) solely because of physical works or the arrangements behind the delivery of enhancements at a specific station – in such cases, the intention is to use the Part C process rather than the Part B process, so long as the effect of that change is only applicable to the specific station (if it would have a more widespread effect in practice, then the Part B process, with its requirement for industry consensus, would remain the appropriate route). The detail of the proposed Part C process is discussed below.
- 6.4 ORR will retain its existing right to initiate changes to the SACs (currently Condition B6), whether the national template SACs or station-specific SACs and Annexes.

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<sup>2</sup> These may well be changes needed as a consequence of the physical changes contemplated.

6.5 Respondents are requested to submit their comments on this proposed differentiation between Part B and Part C changes (Parts 2 and 3 of the ISACs). In particular, we would welcome comments on the following points:

- The retention of a voting process for changes to the national template SACs, and whether the 80% threshold for approving a change proposal is appropriate.
- The deletion of the need to hold Station Meetings (as currently defined).

### **Categorisation of Station Change proposals in Part C**

6.6 The proposed modification divides Station Change proposals into four types: Exempt, Non-discretionary, Notifiable and Material. Each type has different consequences for an affected operator (in terms of an affected operator's entitlement to make representations or objections, or to receive compensation). Network Rail's attached paper at Annex B explains the reasons for differentiating between types of change.

6.7 Respondents are requested to submit their comments on this proposed categorisation. In particular, we would welcome comments on the following points:

- Is the £5,000 threshold proposed in the definition of "Financial Impact Test" for assessing materiality the correct threshold?
- Is there an alternative practical method of assessing materiality which respondents would favour?

6.8 It seems possible that an Exempt Activity may have the same substantial implications for an affected operator as a Material Change does; yet the classification of the change means that the affected operator has no right to make objections or representations, or to receive compensation for such an Exempt Activity.

- We invite respondents to set out their comments on whether it would be appropriate to allow operators to make representations (or even objections) in relation to an Exempt Activity, and/or to receive compensation in relation to the same.

- Would respondents benefit from Network Rail producing guidance in relation to what is covered by its proposed definition of “Exempt Activity”?

## **Direct involvement of third party developers**

- 6.9 The proposed change process provides for certain categories of third party developers to be allowed to propose station change schemes in their own name, without needing to persuade an industry party to do so on their behalf (as is the case under the current SACs).
- 6.10 In the proposed modification, in order to qualify as a Specific Contributor (with rights to make a proposal for a station change), a third party developer must meet a Relevant Contributor’s Qualification of £50,000; a statutory authority, agency or local authority with responsibilities to promote or facilitate the use of public transport may qualify as a Strategic Contributor if it meets a Relevant Contributor’s Qualification of £250,000.
- 6.11 There is no end timescale in relation to a Strategic Contributor’s interest, since this reflects its continuing interest and investment in the station portfolio. It also provides some comfort that where it has invested so substantially in the past, it will continue to have an interest once its funded works have been completed. In contrast, the nature and scale of a Specific Contributor’s interest is considered to be more appropriate to a one-off involvement. Such funders are likely to have a limited interest in future changes to the station.
- 6.12 Respondents are requested to submit their comments on the proposed direct involvement of third party developers. In particular, we would welcome comments on the following points:
- Is the direct contracting with third party developers satisfactory?
  - Is the distinction between the **type** of developer who can qualify as a Specific and Strategic Contributor appropriate?
  - Are the proposed qualification thresholds appropriate?

## **Grounds for objecting to a Material Change Proposal (C4.7 of the proposed SACs and 10.7 of the proposed ISACs)**

- 6.13 Regardless of whether affected operators are entitled to object to all types of Station Change proposals or just Material ones, there are limited grounds for making a valid objection.
- 6.14 In particular, failure to reach agreement on an appropriate level of compensation is not a ground for objecting to a Material Change Proposal. The intention of this is that affected operators will not be able to delay works from proceeding simply in order to seek higher amounts of compensation. All parties have the right to refer disagreements on compensation to dispute resolution.
- 6.15 Respondents are requested to submit their comments on the proposed grounds of objection. In particular, we would welcome comments on the following points:
- Are the grounds of objection as drafted sufficient?
  - Is this separation of financial compensation (and the provision of alternative accommodation) from the list of valid objections appropriate?

## **Registration and implementation of a proposed Station Change**

- 6.16 The proposed modification provides that a Station Change proposal must be registered with ORR in order to be effective and before it can be implemented. There is a limit on how long a registered proposal can remain effective without being implemented, before it lapses.
- Respondents are requested to submit their comments on the proposal that Station Changes should be registered with ORR.
  - Respondents are requested to submit their comments on the proposal that registered Station Changes cease to be effective if not implemented within a set period after registration.

## **Proposed deletion of Condition G6 (Condition 47 in the ISACs) - wayleaves**

- 6.17 The existing G6 (wayleave grants) has been deleted because this now falls within the procedure for a Notifiable Change. Since it only applies to Network

Rail it has been deleted to avoid duplication and potential confusion in the treatment of the grant of wayleaves and easements.

## **Costs issues in the Co-operation Agreement**

- 6.18 The proposed modified SACs (C4.13, and 10.13 in ISACs) retains provisions for consultees on Material Change Proposals to recover their costs reasonably incurred in evaluating and responding to those Proposals up to the date that the Co-operation Agreement is entered into (after which, such costs will be dealt with under that mechanism).
- 6.19 Alternative ways of compensating the Material Change Consultees for costs they incur as a result of the proposed change are set out under clauses 4 to 7 of the Co-operation Agreement (where the proposer is an industry party, and clauses 6 to 9 of the agreement where the proposer is a third party developer).
- 6.20 These include that a consultee may receive compensation either by way of a fixed amount agreed in advance of the works (which may be paid in instalments, it does not necessarily mean a lump sum will be paid in advance), or once its costs have been incurred (with provision for some payment to be made as costs are incurred, rather than waiting until the project is complete before final costs are calculated and paid).
- 6.21 The proposed Co-operation Agreement also provides for what should happen if a proposer fails to complete implementation of the Material Change. The proposed drafting provides that where a Material Change is not completed, consultees who have not received compensation by way of a fixed sum will still receive compensation for costs incurred, and that those who have already received a fixed sum based on the assumption that the works would be completed may have to repay some of that sum, together with some interest element.
- 6.22 Respondents are requested to submit their comments on the Co-operation Agreement. In particular, we would welcome comments on the following points:
- Are the alternative ways of compensating Material Change Consultees sufficient?

- In instances where part of a fixed sum is to be returned by a consultee because a Material Change has not been completed, is the addition of interest appropriate?
- If a Material Change once-commenced is left incomplete (for any reason), should there be provisions for reinstating the original position (which might lead to consultees incurring further costs)?

## **Provision of Alternative Accommodation in the Co-operation Agreement**

- 6.23 The Co-operation Agreement for Material Changes requires the proposer to provide alternative accommodation if required (clause 12 in the agreement for industry parties, and clause 14 in the agreement for third party developers). That alternative accommodation is stated to cover works to Core Facilities only (defined under SACs).
- 6.24 Network Rail considers the proposed clause is a more onerous obligation on a Station Change proposer than is currently provided for within SACs.
- 6.25 In its initial comments, ATOC considers all operational facilities removed as part of a Station Change proposal should be subject to an offer of alternative accommodation; that if the alternative accommodation which is provided results in increased operation or moving costs to an operator, then these should be included within the compensated costs; and that if no alternative accommodation can be offered due to physical constraints, then the proposer must offer a full indemnity for costs and losses associated with having to relocate to a site outside the station boundary.
- 6.26 Respondents are requested to submit their comments on the appropriate terms for the provision of alternative accommodation.

## **Additional modifications**

- 6.27 At Annex H we have set out a number of proposed additional modifications to the SACs. The purpose of these modifications is to update the SACs to make them reflective of current industry structures and to take account of the new dispute resolution process that came into effect on 1 August 2010.
- 6.28 Respondents are invited to provide any comments or observations they may have on these proposed additional modifications.

## 7. Next steps

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### Responses

- 7.1 This is a twelve week consultation starting today. The list of those we have consulted can be found at Annex A.
- 7.2 Please send any representations to the Stations and Depots team as soon as possible and **by no later than midday on 8 June 2011**. You can send representations either in hard copy to the address below<sup>3</sup>, or by e-mail to [stations.depots@orr.gsi.gov.uk](mailto:stations.depots@orr.gsi.gov.uk).
- 7.3 Please note, when sending documents to us in electronic format that will be published on our website, we would prefer that you email us your correspondence in **Microsoft Word format**. This is so that we are able to apply web standards to content on our website. If you do email us a PDF document, where possible please:
- (a) create it from the electronic 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.
- 7.4 We shall make all responses available in our library, we shall publish them on our website and we may quote from them. If you wish all or part of your response to remain confidential, you should set out clearly why this is the case. Where you do make a response in confidence, please attach a summary, excluding the confidential information, which we can use as outlined above. We will publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld.
- 7.5 Once we have considered all of the responses that we receive, we will issue our conclusions setting out the changes we will make to the SACs and giving our reasons for making those changes. We will then take the necessary steps

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<sup>3</sup> Stations and Depots Team, Office of Rail Regulation, One Kemble Street, London WC2B 4AN

to formally modify the SACs. Please note that any modifications that we make to the SACs will not become effective until a period of 180 days has elapsed from the date that we approve the modifications.

## **Future work**

- 7.6 As explained in paragraphs 3.7 - 3.9 above, we believe that further work is needed to simplify the default split of maintenance and repair/renewal responsibilities as prescribed in Appendix 4 and Appendix 5 to Annex 1 of the current SACs. We intend to take this work forward in 2011.

## ***Annex A – list of those consulted***

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Arriva Trains Wales/Trenau Arriva Cymru Limited  
Association of Train Operating Companies  
Bombardier Transportation UK Limited  
c2c Rail Limited  
DB Reggio Tyne & Wear Limited  
DB Schenker Rail (UK) Limited  
Department for Transport  
Direct Rail Services Limited  
East Coast Mainline Company Limited  
East Midlands Trains Limited  
Eurostar Limited  
First Capital Connect Limited  
First Greater Western Limited  
First ScotRail Limited  
First/Keolis Transpennine Limited  
Freightliner Heavy Haul Limited  
Freightliner Limited  
GB Railfreight Limited  
Glasgow Prestwick International Airport Limited  
Grand Central Railway Company Limited  
Heathrow Express Operating Company Limited  
Hitachi Europe Limited  
HS1 Limited  
Hull Trains Company Limited  
London & Birmingham Railway Company Limited  
London & Continental Railways Limited  
London & North Western Railway Company Limited  
London & South Eastern Railway Limited  
London Eastern Railway Limited  
London Overground Rail Operations Ltd  
London Underground Limited  
Merseyrail Electrics 2002 Limited  
Network Rail Infrastructure Limited  
North Yorkshire Moors Railway Enterprises plc  
Northern Rail Limited  
Rail Express Systems Limited  
Rail Freight Group  
Southern Railway Limited  
Stagecoach South Western Trains Ltd  
The Chiltern Railway Company Limited  
Transport for London  
Transport Scotland  
Venice Simplon-Orient-Express Limited  
Welsh Assembly Government  
West Coast Railway Company Limited

West Coast Trains Limited  
Wrexham Shropshire & Marylebone Railway Company Limited  
XC Trains Limited  
Advantage West Midlands  
Ashwell Property Group plc  
Ask Developments  
Ballymore Group  
Bridgend County Borough Council  
British Land Company plc  
Centro  
Chelsfield plc  
Cibitas Investments Limited  
County Councils Network  
Cross London Rail Links Limited  
Delancey  
Derbyshire County Council  
East Sussex County Council  
Gloucestershire First  
Grainger plc  
Greater Manchester Passenger Transport Executive  
Hammerson plc  
Hertfordshire County Council  
Hines  
Home Builders Federation  
HSBC Rail (UK) Ltd  
Jarvis Rail  
John Laing plc  
JPM Parry & Associates  
Kenmore  
Kier Property  
Local Government Association  
London TravelWatch  
Merseytravel  
Metro  
MTR Corporation Ltd  
Muse Developments  
NedRailways (UK)  
Nexus  
Nottinghamshire County Council  
Passenger Focus  
Passenger Transport Executive Group  
Peel Holdings Limited  
PMG  
Pre Metro Operations Limited  
Railway Forum  
Railway Industry Association  
Sellar Property Group  
South Yorkshire Passenger Transport Executive  
St Mowden Properties plc

Consultation on revised contractual regime at stations - proposed changes to the Station Access  
Conditions and Independent Station Access Conditions

Stanhope plc  
Strathclyde Partnership for Transport  
Targetfollow  
Taylor Wimpey plc  
Terramond  
Westfield UK  
Tom Winsor

## ***Annex B – submission from Network Rail incorporating initial response from ATOC***

Annex B continues on the following page.

John Thomas  
Director, Railway Markets & Economics  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

Kings Place  
90 York Way  
London  
N1 9AG  
T 0203 356 9198

8 October 2010

Dear John

## **RE: PROPOSALS FOR REFORM OF STATION ACCESS CONDITIONS**

In March this year I wrote to you to set out how Network Rail would take forward the issue of contractual reform of station contracts by the October deadline that ORR set in its letter to Iain Coucher of 25 February 2010.

In my letter (dated 31 March 2010) I placed contractual reform as just one element of a broad thrust of activity to consider and improve the communication of Network Rail's management of stations based around the themes of capacity, management and service. This letter responds solely on the issue of contractual reform of the Station Access Conditions, an element within the management theme. I would be happy to brief ORR on the progress of the other elements of our stations work that were described in my original letter at your convenience.

### **Process**

Since I wrote to you in March, Network Rail has undertaken a number of briefing sessions on our approach to stations and development including feedback on our Action Stations research. I have personally hosted two briefing sessions for TOC Managing Directors and two sessions for broader stakeholder participants including retailers, Local Authorities and developers. Network Rail has met with DB Schenker to discuss the Station Change proposals and with MUSE (private sector Third Party Developers who have been involved with proposals for the development of Wakefield Westgate) to understand issues Third Party Developers face.

The excellent working relationships have helped to discuss the issues the ORR asked us to consider and have helped to generate Network Rail's proposals set out in this letter. At the Joint Stations Board on 22 March 2010 we agreed, with ATOC



and Train Operators, to form a Stations Contract Reform Task Group (CRTG). This group is comprised of:

- Alec McTavish and Leigh Thompson, ATOC
- Ian Bullock, Arriva Trains Wales
- Richard Shotton, Virgin Trains
- Malcolm Page, Stagecoach South West Trains
- Stuart Parker, National Express
- Carol McFarlane and Sarah McManus from First Group
- Gabrielle Ormandy, John Pengelly and myself from Network Rail

Since the beginning of April the task group has met eight times and I would like to put on record Network Rail's gratitude to the individuals concerned for committing their time and effort to this initiative. Network Rail led the CRTG with the production of seven discussion papers on the issues of:

- Station Change
- Third Party Rights
- Maintenance and Repair

### **Network Rail Proposals**

This letter provides Network Rail's submission on contractual reform for the Station Access Conditions. As mentioned we have endeavoured to develop proposals that are supported by our customers. We believe that the CRTG has made good progress in discussing and understanding the issues with the current contractual regime. We have sought, as a group, to discuss and develop a commonly agreed set of proposals. I believe we were all optimistic that we would be able to reach broad agreement in most areas. However after further discussion between Train Operators, ATOC's commentary (received on 24 September) on the changes to the Station Change regime indicated that there was not the agreement we had hoped and anticipated.

CRTG met following the receipt of ATOCs comments and took the opportunity to talk through this submission and the necessary evolution of our proposals developed through legal drafting.

Following this discussion ATOC felt it appropriate to update their comments and these are attached as part of the submission for ORR's review and consideration.

The appendices to this letter are as follows:

- Appendix 1 provides a commentary on proposed amendments to the Station Change regime
- Appendix 2 similarly provides commentary on amending the rights of Third Parties in respect to Station Change
- Appendix 3 provides commentary on the issue of maintenance, repair and renew responsibilities at stations
- Appendix 4 proposes legal drafting for Station Change and Third Party Station Change rights
- Appendix 5 ATOC response on Station Change

It would seem a good opportunity to update some of the out-of-date terminology in the Station Access Conditions (such as the use of Railtrack and Franchising Director) which we have identified.

As you will be aware Network Rail and ATOC have also met Brian Kogan and/or Gerry Leighton of ORR four times to provide an update on the emerging issues and general progress. We have offered to meet them again to discuss these final proposals after they have had an opportunity to review them.

I have copied this letter to members of the CRTG identified above, Tom Smith of ATOC as joint chair of Joint Stations Board and Paul Plummer.

Yours sincerely



Mike Goggin  
Director, Stations & Customer Service

## Appendix 1 - Station Change

### *Perceived Issues*

At the first discussion on Station Change (the SAC contractual mechanism) the CRTG identified a number of issues with the current process as identified below.

- Implementing a “change” at a station was too complicated, often with confusion and misunderstanding about what “consents” are actually required and have been achieved. Station Change is only one part of the approval/consent regime to enact a change. An initial review by Network Rail suggested that there are any number from a potential 31 different consents/approvals which may be required to implement a scheme (see figure 1).
- The current complicated framework of consents and approvals can provide for confusion over progress and on occasion may allow individuals to cause delay or not accelerate proposals and to ‘hide behind the contract’ to prevent a change or exert pressure to achieve a more favourable outcome.
- The current process for Station Change is generally poorly understood as to its intent and impact and CRTG thought that there was inconsistency in the application and interpretation of Station Change by both Network Rail and Station Facility Owners.
- Currently there are a number of different types of “Station Change proposals” which are difficult to distinguish between i.e. Part B Conditions Change Proposal; Part C Material Change Proposal; Part C Major Change Proposal; and Part C Railtrack Change Proposal, plus Changes under the Independent Station Access Conditions which have similar purposes but different terminology.
- CRTG debated whether the current distinctions of Station Change are still required and useful. These Changes sit alongside many other requirements on the parties to formally consult in relation to various non Station Change matters, (e.g. G6, whilst allowing Network Rail to grant third party rights, it also requires that Network Rail consults with each operator and takes due regard of their interests).
- CRTG noted that there are a number of items which do not go through the full Station Change mechanism and that there are probably more that should not need to be dealt with under the full Station Change procedure but do need to be recorded and registered with ORR.
- CRTG agreed that objections to Station Change should be based around some objective criteria to seek to enable changes to occur with minimal delay and mitigate unreasonable ‘ransoms’ being claimed which may unnecessarily increase the cost of changes to the industry.

**Figure 1 – Illustrative list of potential approvals and consents required for a change at a station**

<p><b>Property</b></p> <ul style="list-style-type: none"> <li>• Variation of the SACs/station lease terms themselves</li> <li>• Freehold acquisitions, variations and disposals – external</li> <li>• Leasehold acquisitions, variations and disposals – external</li> <li>• Easements and wayleaves - acquisitions, variations and disposals – external and across the station</li> <li>• Subtenants and concessions within the station</li> <li>• Landlord consent for alterations, assignment and subletting (both rail industry and external)</li> </ul> <p><b>Design</b></p> <ul style="list-style-type: none"> <li>• Technical approvals – in principal (Form A) and detailed</li> <li>• Approval of materials, equipment and finishes</li> <li>• Size, scale and appearance of works</li> <li>• Standards compliance checks</li> </ul> <p><b>Construction</b></p> <ul style="list-style-type: none"> <li>• Method statements</li> <li>• CDM compliance and approvals</li> <li>• Access to site and hours of work</li> <li>• Provision of Temporary facilities</li> </ul> <p><b>Safety</b></p> <ul style="list-style-type: none"> <li>• Railways and Other Guided transport Systems(ROGs) assessments for variations/ new activities</li> <li>• Works permits (e.g. scaffold, hot work)</li> <li>• Fire safety assessment for variations/ new activities</li> </ul> <p><b>Police – security and parkmark approvals</b></p> <p><b>Rail Industry regulation and compliance</b></p> <ul style="list-style-type: none"> <li>• Franchise/concession agreement (new or variation)</li> <li>• Minor Modification</li> <li>• Full closure</li> <li>• Consent for property disposals (NR Licence compliance)</li> <li>• London Closure (for stations exempt from closure procedure)</li> </ul>	<p><b>Rail Industry regulation and compliance</b></p> <ul style="list-style-type: none"> <li>• Franchise/concession agreement (new or variation)</li> <li>• Minor Modification</li> <li>• Full closure</li> <li>• Consent for property disposals (NR Licence compliance)</li> <li>• London Closure (for stations exempt from closure procedure)</li> </ul> <p><b>External regulating bodies</b></p> <ul style="list-style-type: none"> <li>• Planning <ul style="list-style-type: none"> <li>○ Planning permission</li> <li>○ Listed building consent</li> <li>○ TPO consent</li> <li>○ Conservation area consent</li> <li>○ Permitted development submissions</li> <li>○ Advertisements approval</li> </ul> </li> <li>• Highways <ul style="list-style-type: none"> <li>○ New/amended access</li> <li>○ Closure/temporary closure</li> </ul> </li> </ul> <p><b>Building regulations approvals – for non-exempted works</b></p> <p><b>Environment</b></p> <ul style="list-style-type: none"> <li>• Discharge consents</li> <li>• Noise and operating controls</li> <li>• Demolition notification and approval</li> <li>• Energy Performance certificate</li> <li>• Waste disposal consent</li> <li>• Contaminants/pollution measures and controls</li> </ul> <p><b>Statutory services agreements–</b></p> <ul style="list-style-type: none"> <li>• Gas</li> <li>• Water</li> <li>• Electricity</li> <li>• Sewage and drainage</li> </ul> <p><b>Contractual ( non-property) – rail industry and external</b></p> <ul style="list-style-type: none"> <li>• Funding agreements</li> <li>• Works delivery agreements and contracts</li> <li>• Asset protection agreements</li> <li>• Asset purchase agreements</li> <li>• Basic services and development agreements</li> <li>• Compensation agreements</li> </ul>
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- Whilst the Station Change varies the SACs the current process does not take into account that other consents/actions may need to be undertaken before the physical station change can be implemented (e.g. land acquisition).

### ***Opportunities for improvement***

On the basis of the current issues identified by the CRTG Network Rail proposed that a revised Station Change regime should:

- a) reduce the need to apply the comparatively complex Station Change arrangements to non-contentious matters, whilst ensuring that such routine changes are properly and efficiently documented and recorded.
- b) simplify and clarify the process and timescales for Station Change arrangements for the more complex changes that would fall within its scope; and,
- c) recognise that change:
  - may evolve over time
  - may not always proceed
  - may be contingent on parallel process being completed:
  - requires clarity in relation to financial impact for stakeholders and proposers if implemented
  - needs a formal agreed record of the varied contractual position
  - needs to record proposed, lapsed and implemented changes
  - needs the physical implementation to be recorded
  - should be time limited where not implemented such that an approved Station Change is rescinded if not implemented within a certain period of its approval

### ***Retention of Part B – Modifications to Template SACs and Annexes***

Please note that reference to a revised Station Change regime in this submission is to the new regime under Part C, which includes changes to the Station Access Condition or Annexes relating to a specific station, or a specified set of stations, but not any change to the template generic form of the National SACs and Annexes 2011. As requested by the ORR, we have included new drafting to take account of the ORR's requirement for a consensus element to be retained where there is a proposal to change the body of the SACs. This drafting appears in a new Part B in the SACs (new part 2 in the ISACs), which retains the concept of a consensus, or majority, decision where changes are proposed to the generic template National SACs (or ISACs) and Annexes. However, where the station specific SACs or Annexes are amended (for example as a result of works carried out at the station, or alteration of boundaries, etc.) then those types of change will fall within the new Part C.

## **Network Rail's Proposition regarding Part C**

There are many different reasons why changes need to take place at a station. Not all of them need to be subject to the full scope of formal Station Change process, but there does need to be clarity about which changes are “material” and which are not.

A new working definition for Change is:

- any action which results in or requires the alteration of
  - the Station Facility or its constituent parts;
  - the operation of the Station or of trains to or from the Station;
  - the content of the Station Access Conditions or Annexes in relation to a particular station, or specific set of stations, and/or,
  - the grant of wayleaves, dedications or easements affecting the Stationbut not any works or activities carried out pursuant to an obligation under the SACs.

It is important that station change is dealt with in a structured and efficient manner. All parties involved in station management need to be able progress changes with reasonable speed and efficiency and have assurance that the resulting change is properly recorded and accepted. Beneficiaries to a station and its services need to be reasonably consulted and informed on proposed changes. Such consultation is best carried out in a process outside the strictures of a contractual mechanism which should operate as a backstop for enabling change to occur whilst reasonably protecting the interests of parties to the station's contracts.

See Figure 2 for a diagram detailing the four levels of change under Part C, and Figure 3 for a diagrammatic representation of the new process.

**We are suggesting four levels or types of change so that various activities can be dealt with, at an appropriate level of engagement. These are:**

### **1. Exempt Activity**

Many station changes are of a *de minimus* or routine minor nature; do not need to be formally recorded on the public register or in the SACs; and will be dealt with during normal business by the various parties. These are referred to as “Exempt Activity”. Examples include temporary closures of facilities, the substitution of facilities by more modern alternatives, or works or activities of a routine or operational nature by the responsible party. There needs to be clarity about what falls in to this group, which we believe does not exist currently. We have therefore proposed an amendment to the process to enable clarity to be obtained quickly. Also, equally, where an action has been taken in the belief it is non-material the ability to challenge that action subsequently would be time limited.

## **2. Notifiable Change**

The next level of change is “Notifiable Change”. Whilst these changes are also of low value and impact, they do require formal recording because they either necessitate or generate a change to the SACs or record that the necessary consultation process has been properly followed. The revised SACs and/or the Change have to be lodged in the ORR Public Register. Included in our proposition is the ability for parties to complete the registration of a Station Change where this has not been done by the proposer. This is based on our experience of the current regime where proposals are circulated and "agreed" but no formal record is lodged. This causes contractual difficulties particularly when franchises or personnel change. A current example is the large number of CIS/CCTV installations around the network for which the ongoing maintenance and repair responsibilities are unclear.

These changes also require that consultation is undertaken before implementation, and that other parties can make representations about the proposal. The Notifiable Change process will ensure that the consultation takes place as required, and that the resulting change can be recorded appropriately and consistently across the station estate, but is less onerous than the requirements of the current station change regime. We believe that a simplified Change process for such items will encourage contractual compliance, enable accurate records to be kept, and avoid the many low level disputes which occur in this area as a result of current practice.

## **3. Non-discretionary change**

Certain changes at a station can be imposed by third parties as a result of pre-existing rights, or as a result of statutory direction. It is important that these are implemented without delay, but they do need to be advised to all station parties and their existence recorded where SACs are changed as a result.

## **4. Material Change**

Finally there is a “Material Change”. This process will be used for all proposals which have a potential significant financial loss to one or more of the station parties for a Material Change to be necessary. A Material Change also needs to be consulted and recorded, and parties will additionally have rights to object to implementation on specific grounds.

## **Distinguishing between the levels of Change**

### **1. Financial Impact Threshold**

We are suggesting that there should be a Financial Impact Threshold (FIT). This seeks to establish a level of materiality below which simpler processes would apply. This is a test of whether the impact of the Station Change per annum is less than a certain value, on any party other than the proposer. It

will be used to distinguish between the different Change types. Network Rail suggest the figure of £5,000 pa is appropriate. All Changes above this threshold (except for Exempt Activities and Non Discretionary Changes) will be dealt with as a Material Change. However, where a series of linked proposals are made across several stations e.g. the installation of small CIS at many stations, the aggregate effect will be taken into account.

## **2. Determining the appropriate Station Change process**

Where there is doubt about the level of change that is appropriate, we are proposing that the change sponsor can serve a notice of intention to enable the matter to be clarified in advance of the change taking place. This will reduce the risk that actions taken in good faith are challenged at a later date and should enable non-contentious changes to be processed more quickly.

## **3. Retrospective Challenge to Completed Changes**

If action is taken to implement a station change and another station party considers that the appropriate process has not been followed, any challenge must be made within a specified timescale. In the absence of challenge, the change will be deemed effective. This will reduce the risk of retrospective challenge, and encourage resolution of disputes closer to the date of change.

Network Rail's intent in revising the Station Change regime and its legal drafting is to make station change an enabling process.

## **Objecting to change and resolving disputes**

We are suggesting that there would be limited grounds for objection to the actual proposal from going ahead, and that objections could only be made in relation to Material Change proposals in any event. Parties would not be able to object on financial grounds where the proposer is willing to enter in to a standard Co-operation Agreement setting out the basis on which compensation is payable.

The implementation of the Station Change would be progressed and any financial dispute would be resolved in parallel. The process would require that disputes are resolved more quickly than is the current experience.

The four key elements which we believe would improve the change process are:

- *Common process* – The process itself, together with the rights and remedies for all sponsors and responding parties would be the same for all, including cost recovery and dispute resolution. This will overcome the current confusion around which process applies to a specific change and the various nuances associated with the different types of change.
- *Co-operation Agreement* - We are of the view that there should be a recognised Compensation Code that will ensure predictability and consistency when dealing with the financial impact of Material Changes

and this is set out in the proposed forms of Co-operation Agreement. The compensation arrangement would be based on an equitable “no net loss” principal. It will reflect the length of the various parties’ interests; enable them to frame their claim in a structured manner; and ensure that claims are reasonable and justified. It would also enable “betterment” to be reflected where this results from the change and is financially quantifiable. It is recognised that compensation itself should not hold up the change process, but that if the parties cannot agree the amounts to be paid it has its own escalation and dispute process. The new process will use the new Access Dispute Resolution Rules. Experience has shown that the financial uncertainty associated with progressing station change proposals is a significant barrier to investment. The uncertainty stems from lack of a standardised approach to dealing with the various parties’ claims and losses, accounting for the disparate benefits which may result from scheme implementation and understanding the timescales and context in which such discussions should be agreed. Our proposal seeks to address this problem by setting out a standard format with clear timescales for resolution, and which treats all parties equally in a more holistic financial environment.

- *Grounds for Objection* - The only grounds to object to a change served by a rail industry party would be either that the information to consider the Material Change Proposal is incomplete or inaccurate; or that the Material Change Proposal if implemented would put the Consultee in breach of a Legal Requirement, its Franchise Agreement, Station Operator’s Licence or Network Licence. If the consultee is Network Rail, it may as a condition of its acceptance of a Material Change Proposal, require that an APA and (where the proposer is a third party), a property agreement is entered into with the Proposer. There would be additional grounds for objection where the change process is being used by third parties (see later section on Third Party rights).
- *Timescales* - The revised process would have more certain outcomes, with prescribed timescales during which either a decision is reached or the matter is escalated through the dispute process.

The new Station Change drafting should be robust enough to encompass potential changes to station responsibilities, and treat all station parties on an equal basis regardless of their role in the contractual relationship.

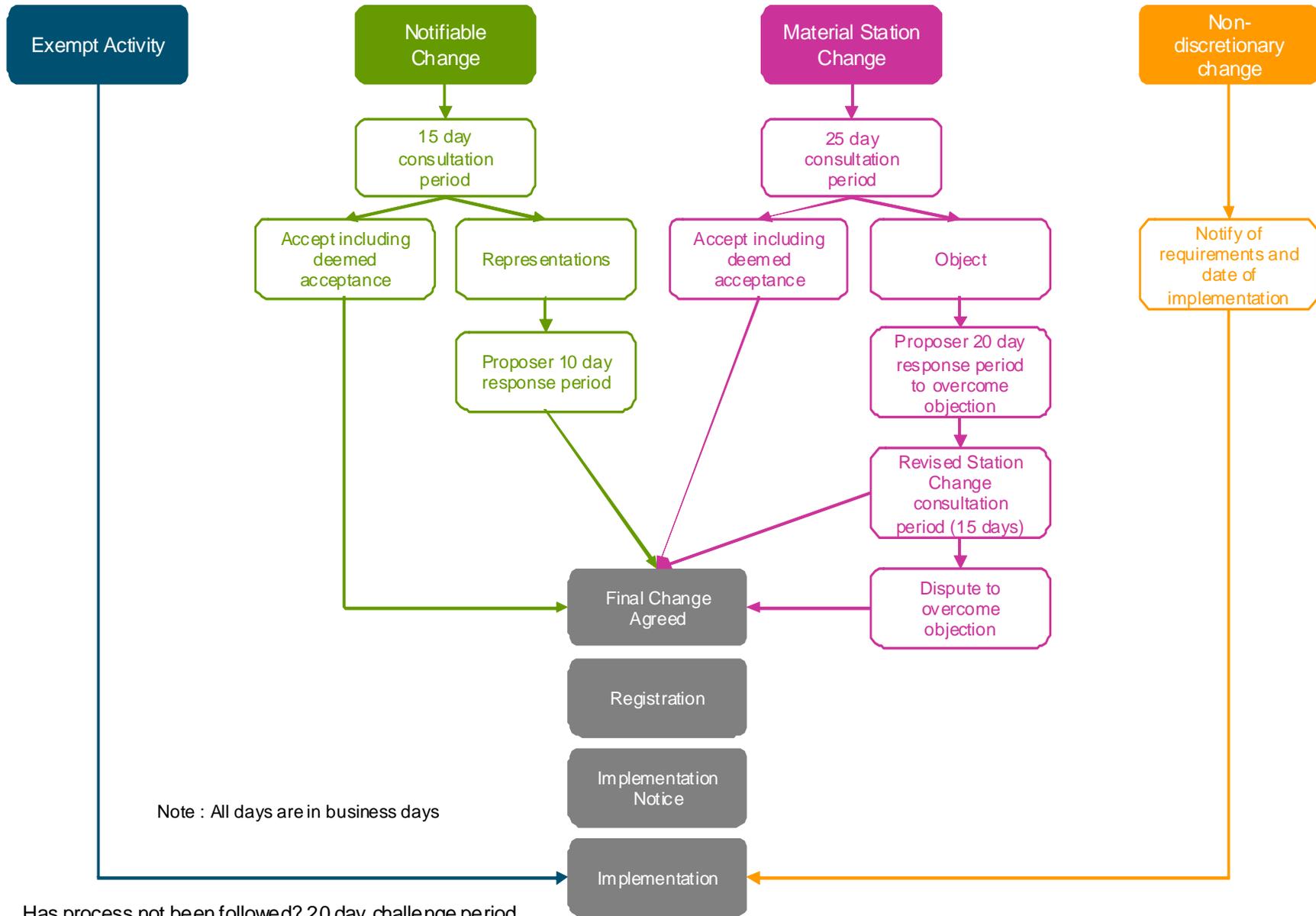
We would like to work with ORR, DfT and our customers to develop an industry tool that would support the management of Station Change (and potentially other industry consents/approvals) no matter who was the primary Infrastructure Controller of the station. In due course we would expect ORR to confirm its support to this end as this is an activity which we are not currently resourced to provide and which would required industry buy-in and participation.

Figure 2 – Part C Station Change Categories

Exempt Activity	Notifiable Change	Material Change	Non-Discretionary Change
<p><b>Objective</b> – can be undertaken without the requirement of a burdensome administration process</p>	<p><b>Objective</b> –the proposal has created a change impacting on the station. The proposal has a minor financial impact of £5k or less but sufficiently important re the station operation that it should be notified to the other party –otherwise formality is limited</p>	<p><b>Objective</b> – Provide for compensation agreement to deal with the impact of the change but can proceed unless the other party is put in breach of a legal requirement, franchise agreement or licence. It cannot prevent the change on grounds of financial impact alone.</p>	<p><b>Objective</b> – To allow change where this is required to comply with legislation or safety is required obligations of law or safety needs</p>
<ol style="list-style-type: none"> <li>Activity that does not fit within the categories of Notifiable Change or Material Change</li> <li>The materiality benchmark of the impact of the works for them to fit within Notifiable Change or Material Change to be Station Change is not satisfied for example <ul style="list-style-type: none"> <li>by replacement in modern equivalent form or</li> <li>works of a routine or operational nature</li> <li>the performance of obligations not expressed in the SACs to require Station Change compliance</li> <li>where the works are performance of repair or renewal obligations imposed in the SACs</li> </ul> </li> <li>Where there is more than one activity related to the project then the impacts are considered as a single change in relation to the impact of all activity.</li> <li>Not recorded in annexes etc</li> <li>No compensation</li> <li>Not notified to other party but if categorisation under question, Non Materiality notices to confirm the position</li> </ol>	<ol style="list-style-type: none"> <li>A financial impact limit ( £5K pa on the costs and profit of the impacted party) and fit also within one of the following categories: <ul style="list-style-type: none"> <li>Changes to the Station Lease or SACs (but not whole template changes – see Part B)</li> <li>Matters that would have been a Material Change Proposal i.e. materially impacting upon the condition standard and quantum of Common Station Amenities or Services</li> <li>Matters that would have been a Major Change Proposal i.e. material impact on the operation of trains to or from the Station or ability for passengers and others to reach trains</li> </ul> <p>Where there is more than one activity related to the project then the financial limit and impacts are considered in relation to the impact of all activity.</p> </li> <li>Excluded equipment change not subject to the £5K and matters in the nature of G6 e.g. Concessions dedications and easements in either case where instigated by Network Rail</li> <li>No compensation but must notify</li> <li>Notified to the other Party who may suggest it is a Material Change Proposal when it must either be treated as such or determined by the disputes resolution process.</li> <li>Change cannot be stopped</li> </ol>	<ol style="list-style-type: none"> <li>A financial impact above the £5k on the costs and profit of the impacted party and also either: <ul style="list-style-type: none"> <li>Changes to the Station Lease or SACs (but not whole template changes – see Part B)</li> <li>Matters that would have been a Material Change Proposal or Major Change Proposal</li> </ul> </li> <li>Details offered with compensation agreement</li> <li>objections on information issues or breach of legal requirement , licence or franchise is the only mechanism to stop proceeding but not compensation. Plus special grounds in relation to third party proposals to protect current rail industry operations and future plans.</li> </ol>	<ol style="list-style-type: none"> <li>To capture changes to stations to accommodate Law Change , Directions of Competent Authorities and Safety Obligations</li> <li>No compensation</li> <li>Notification but no objections can be lodged to prevent change</li> </ol>

**Figure 3 – Illustration of Proposed Station Change Process**

Is type of change required uncertain? - serve Materiality Notice – 5 days response period



## Appendix 2 - Third Party Involvement in Station Change

Two CTRG meetings were held to discuss the issue of Third Party involvement and rights in relation to Station Change. Additionally Network Rail met with a developer who has experience of seeking to invest at railway stations to understand their perspective.

### *Perceived Issues*

The conclusions of the CTRG discussions on third party rights were:

- Recognition that the industry needs to be facilitating private sector investment into the industry particularly as the public sector spending constraints are likely to be significant going forward;
- There is a need to differentiate between public funding bodies with transport/policy objectives and commercial developers who are investing to meet a commitment as part of a broader commercial scheme or seek to a commercial return;
- The industry needs to make sure that it has provided clear and easy access to, and better understanding of, station change arrangements and the contractual regime;
- The current process of shared value from developments that utilise the railway's offer should be maintained to seek to ensure no loss of income from this source to the industry; and,
- Where a third party seeks to make enhancements or alter the station there is a reasonable requirement that they should be in line with, or not inconsistent with, industry requirements and strategy. It was however, recognised that there may be occasions where industry plans and third party plans may conflict, and this may import costs onto rail industry parties.
- Concerns were expressed about the potential of planning blight (which can currently exist) increasing.

### *CASE STUDY: Wakefield Westgate*

Following a recommendation from one of the CTRG members, Network Rail visited Muse Developments to discuss their experience to date (scheme at Wakefield Westgate).

This development scheme has had a long history. It began in GNER/Railtrack days, and Muse found it difficult to engage with either GNER or Railtrack. Since then the TOC has changed a number of times, and Railtrack has become Network Rail.

The site assembly required use of rail land outside of the station lease area and as such Station Change was only one part of several rail specific consents, including ORR specific disposal approval; release/relocation of strategic freight site; minor mods for closure of the existing car park; asset protection agreement for car park construction

Change in TOC (a number of times) had not helped engagement and agreement of scheme.

Developer would like to see a process which is :

- a) Streamlined and predictable
- b) has clarity (timescales, liabilities, what information is required, what consents, non-hybrid standards etc)
- c) has guidance and consistency
- d) not subject to arbitrary decision making and open ended commitments

They felt that allowing funders to propose Station Change is likely to be a positive step towards enabling more formal recognition of developer involvement (but were not familiar with what this might entail). It at least might ensure a seat at the table.

## **Network Rail's Proposition**

### **1. The nature of third party interest**

It would appear that developers and government funded bodies have different needs, and it therefore it would seem sensible to differentiate between them.

#### ***“Strategic Contributor”***

Bodies with wide interest across many stations (generally public bodies with specific transport responsibilities, e.g. PTE's, local authorities, WAG etc) would be a “Strategic Contributor”, and would be given this status if they have published proposals which give a commitment to invest in a defined group of Railway Stations totalling at least £250k of capital expenditure. Strategic contributors would be consulted on a standing basis for all station changes in their defined area of interest, and they would be able to make representations about other proposals. They would also be able to promote Material Change proposals for any changes that they wish to fund.

#### ***“Specific Contributor”***

Bodies with interests in an individual station as a result of a specific local requirement (e.g. developers, corporate adopters, local regeneration agencies) would be a “Specific Contributor”, and would be required to commit to spending to at least £50k of capital investment at the station. Their role would be more limited than a Strategic Contributor. They would be able to promote Material Change proposals for any changes that they wish to fund. However, they would also be consulted on proposals in relation to the specific station identified, prior to implementation of their own proposal. They would not be consulted regarding Station Change at other stations, nor would they continue to be consulted regarding the specific station once their proposal had either been implemented or abandoned.

### **2. The type of Change which a third party might sponsor**

A third party scheme would always be a Material Change, with a Co-operation Agreement based broadly on the standard format. (See earlier comments and to include all operating and maintenance costs until end of franchise for TOC and control period for Network Rail, in both cases current when the works are completed). A Third Party Station Change would be expected to provide the same detail as a Station Change issued by an industry party.

### **3. Rail industry rights to object**

All Users/Network Rail and the SFO would have additional rights of objection for Third Party Schemes.

- a) the proposal does not provide a significant improvement to Common Station Service or Common Station Amenities or alternatively does not provide a cash contribution to an industry party (who should be required to re-invest the cash in the industry) and where the cash equivalent needs to be at least the minimum financial commitment level specified for third party funders;
- b) if the proposal is not consistent with the ORR's Investment Framework Policy and Guidelines;

- c) Network Rail, the SFO or any User considers that implementation of the proposal would be contrary to the safe and efficient operation of the station once completed; and/or
- d) The proposer has not given an unconditional undertaking to be bound by the Part C provisions in making its proposal.

The reason for the additional grounds of objection are to avoid conflicts between third party proposals and industry plans, and recognises that third parties when framing their proposals may not be full conversant with station operating requirements. The Third Party could take the objection to dispute if parties cannot reach an agreement on the resolution or legitimacy of the objections raised. This provides protection against the possibility of industry decisions not being justifiable.

### **3. Financial Arrangements with Third Parties**

The original proposal in the Stations Code that third parties enter into a “Station Funder Participation Deed,” has been developed, and now there is a requirement for a third party, in making a proposal to:

- 1) give an unconditional undertaking
- 2) make an irrevocable offer to enter into a Co-Operation Agreement,

to bring them within the contractual framework. As with industry proposed station changes, third parties would also need to enter into a financial Co-operation Agreement. This would be based on the template Co-operation Agreement for use by third party developers, in Appendix 4, which contains provisions by which the third party accepts the obligations and duties, as well as the rights, contained in Part C of the SACs.

Train operators are keen to facilitate greater third party funding into stations and, to this end, are supportive of the principles that underpin the NR proposal on third party rights. Equally, operators are of the view that, if rights are to be extended to third parties, the precise implications of such rights need to be clearly understood and the railway industry’s role in overseeing the future direction of station development maintained. In this context operators are keen to continue working with NR on the detail of how greater third party involvement can be given effect.

### **Appendix 3 - Maintenance & Repair**

CRTG did have a discussion on the current split of responsibilities for maintenance, repair and renewal at stations. There was general agreement that a revised allocation of responsibilities might bring better management clarity and efficiency to the industry. CRTG did not agree what the final regime might be but it was clear that some degree of flexibility as to allocation of assets/responsibilities might be appropriate to reflect specific issues, capabilities and aspirations of the parties involved.

Following the initial discussions the initiative has largely been overtaken by the Department for Transport workstream looking at Greater Anglia franchise and the piloting of full repairing and insuring leases for the franchisee. Both ATOC and Network Rail are fully engaged in this workstream alongside ORR and the Department and it is providing the understanding and initial learning of the many and complex issues that need to be resolved.

It should also be recognised that there may be other circumstances in which exclusion of stations from the franchise offer might be appropriate. There are already examples of other single party operators of stations (e.g. PTEs and Airports), and refranchising provides an opportunity to implement alternative models for delivery where specific circumstances indicate that this will give greatest benefit. There are also currently two pilots taking place with TPE and ATW which are testing the possibility of station operators taking over Network Rail responsibilities on a contractor basis for maintenance and repair works.

Having reviewed the current SACs, Network Rail believes that changes to the allocation of maintenance, repair and renewal responsibilities can be made within the current drafting relatively easily. However, the Greater Anglia workstream may identify additional issues or changes that need to be reflected in the SACs in due course.

## **Appendix 4 – Network Rail Proposed Drafting**

*Please see separate document prepared by Network Rail*

*Please note that the drafting prepared by Network Rail has been incorporated into the proposed revised SACs and ISACs, which can be found in the following Annexes.*

## Appendix 5 – ATOC Response to Station Change proposal

### Train operator position on Station Change

#### Summary

1. The attached paper outlines train operators' proposed amendments to Station Change and should be read in conjunction with Network Rail's proposals for a revised Station Change process. The train operators/owning groups involved in developing this position and which have inputted to the work of the Contract Reform Task Group alongside Network Rail are: Arriva Trains Wales, First Group, London Midland, National Express, South West Trains and Virgin.
2. Overall train operators acknowledge there are problems with the existing station change process, particularly the perception that the current arrangements are unwieldy and complex. To this end TOCs have, through the Contract Reform Task Group, worked hard to reach a single, unified position with Network Rail. However, whilst we support the broad thrust of Network Rail's proposals to devise a more streamlined and efficient process, Station Change covers a complex set of issues and it has not been possible to secure unanimous agreement on every aspect. Nonetheless, we believe there is agreement from both sides on the broad principles and train operators are keen to continue working with Network Rail on the detail to see if a way forward can be reached on those areas where currently our views do not precisely align.
3. Where there is a divergence of view we have in the attached paper still sought to set out constructive proposals for improvement in a number of areas and in some instances this involves a clarification of the existing Station Access Conditions e.g. using clearer guidance, or use of elements of the Stations Code.
4. As a more general comment we would draw ORR's attention to the rapidly changing landscape on both franchising policy and also responsibilities at stations, in particular the likely move towards fully repairing leases. The latter change, if enacted, would be significant. Within this broader context we would therefore encourage ORR to balance the competing priorities carefully; there may for example be some elements of station contract reform that could be deferred with little short term impact and which would allow a more immediate focus on securing a viable fully repairing lease model.

ATOC  
October 2010

## **Train operator proposals for amendments to Station Change**

### **1. Introduction**

- 1.1 This paper sets out the views of those train operators involved in the Contract Reform Task Group (CRTG) workstream on Station Change. Throughout discussions at CRTG, train operators have acknowledged the perceived problems with the existing process. Similarly we believe there is broad agreement with Network Rail on the key principles that should govern the Station Change process, notably that it should be simple to engage with and provide a quick, fair and time-bound resolution to change proposals.
- 1.2 However, there remain some points on which train operator and Network Rail views do not align. This paper therefore sets out train operators' position on the main elements of Station Change and a makes some proposals for reform/amendment where these are considered to be beneficial. In doing so we have made reference to a number of Network Rail's proposals in various areas and so this should be read in conjunction with Network Rail's submission.

### **2. Types of change and their impact**

- 2.1 Network Rail's proposals define a number of types of changes, each of which carries increasing requirements in terms of processing and consultation. Principally 'Exempt' or 'Notifiable' Changes (previously termed 'Permitted Changes' in an earlier proposal) would require a lesser degree of formal processing compared to a 'Material Change'. While we acknowledge the rationale behind these proposals – to ensure the process is efficient and that changes are properly accepted and recorded – we consider that the current SACs already provide a mechanism for separating relatively routine changes from significant changes that require a more formal process.
- 2.2 Specifically, changes falling within the definition of NR's 'Material Change' fall within the scope of the existing change procedure. Changes that fall outside this definition can be undertaken without the need to obtain Change Procedure approval. Therefore, non-material changes to the standard or quantum of common station amenities or services do not currently require change procedure approval. As such we do not believe it is necessary to introduce new administrative procedures to cover changes that can be made without the need follow any formal procedure currently.
- 2.3 In terms of deciding into which category a proposed change should fall, we believe that a proposed change should be defined by reference to materiality rather than to a specific list of items. Lists tend to import the danger of omission (or wrongful inclusion), particularly as technology advances and working practices change.
- 2.4 We consider that a single financial impact threshold, such as that proposed by Network Rail, would be difficult to determine. Stations vary enormously in size and complexity and TOCs on a management style franchise agreement are likely to take a different view of an appropriate threshold than those who take revenue risk. Both types of TOCs call at some stations. Furthermore, materiality is not always quantifiable by reference to financial impact. Customer perception and adverse effect on brand is of significant importance to most TOCs. Such non-financial factors would also need to play a part in determining materiality, as they do currently.

- 2.5 As a more general comment regarding Network Rail's proposal for a single type of 'Material Change', we believe that any such proposal must recognise the need to retain the broad commercial principles which apply to the current four different types of Change Proposal – Material, Major, Railtrack and Development (at Managed Stations). Principally, this means retention of the applicable cost contributions, the Network Rail indemnity and the Network Rail offer of alternative accommodation. We note that, in the wider context of increasing TOC responsibility at stations and potentially longer leases, the principle of providing an indemnity and an offer of alternative accommodation should also extend to TOCs where they are a scheme sponsor and where other TOCs are affected by the change they are proposing. (See also Section 3 below for additional comments).

***Train operator proposals :***

- 2.6 In light of comments in 2.1-2.5 above, we propose the use of clearer guidance alongside the existing SACs containing examples of what might amount to non-material change. Such guidance would need to stress that it would always be necessary to review the individual facts of a proposed change before arriving at a conclusion as to whether or not it would be necessary to obtain change procedure approval. The facts applying to each proposed change will differ from station to station and TOC to TOC – indeed the effects on each TOC may well be different for every change that is proposed, even at the same station.
- 2.7 We are also of the view that it is for the proposer of a scheme to take the decision as to whether a change is likely to be material or not and accordingly whether it is necessary to obtain change procedure approval. In this context we propose that the Station Access Conditions expressly provide that if a TOC consultee believes they will suffer financially from the implementation of a proposal and that the proposal should have been approved via the change procedure, then that TOC is able to claim from the proposer all of its costs and losses (including loss of revenue) incurred as a result of their considering the proposal and of the proposer's implementation of it. This would act as a disincentive for a proposer to take bullish decisions.

**3. Compensation**

- 3.1 As a general principle we strongly believe that, where a TOC suffers financially from the implementation of a proposal, that TOC should be compensated for their costs/losses incurred as and when those costs/losses are incurred. A TOC cannot be expected to bear such costs/losses themselves whilst dispute proceedings and/or the determination of a compensation dispute is pending.
- 3.2 In light of this, we do not agree with NR's proposal to remove the ability to object to a change proposal on financial grounds and for such financial disputes to be resolved through a separate, parallel process. Under this scenario, a proposed scheme may not benefit a TOC at all, yet they would incur costs and/or losses until the dispute had been determined or compensation agreement concluded, which could be a period of many months during which time significant costs/losses would be incurred.

***Train operator proposals:***

- 3.3 We propose the retention of an unconditional indemnity (as now) rather than a compensation agreement governed by a separate, parallel process. Further, we believe that the costs/losses that a TOC consultee will incur as a result of implementation of a proposal should be met by the scheme sponsor, even where this is another TOC. This should include revenue losses, but the consultee TOC's claim should have netted off the value of the benefit of the scheme to that TOC consultee. These costs/losses should form part of the sponsor's business case for the scheme. In addition it is our view that all scheme sponsors should be required to offer TOC consultees alternative accommodation where the scheme proposes the displacement of that TOC's current place of occupation.
- 3.4 If a sponsor does not want to agree compensation ahead of implementation, or offer an unconditional indemnity, they must wait until the dispute over the compensation payable has been determined before implementation commences. If works start with disputes over compensation remaining, the incentive on the scheme sponsor to act reasonably, or even fairly, with regard to an adversely affected TOC consultee is lost. Firm time limits for reference to disputes resolution, with the possibility of cost penalties, would prevent consultees from deliberately prevaricating.
- 3.5 The Station Access Conditions also currently provide for reimbursement by the scheme sponsor of all or a proportion of the costs incurred by a TOC consultee in considering the scheme and we see no reason to abolish this system altogether. For larger schemes, these costs can be considerable. We suggest that the current contribution levels of nil, 75% and 100% continue to apply where specific thresholds assessed by reference to the size of the scheme being proposed are exceeded. We believe that this approach, rather than the current one – which references the nature of the scheme and which can be open to creative interpretation – most closely aligns to the time and cost incurred by consultee TOCs in considering the impact on them of what is being proposed. Costs recoverable under these provisions must be reasonable.

#### **4. Grounds for objection**

- 4.1 We believe that the grounds for objection to a proposed change must balance the very real need to provide for instances where a party may be materially prejudiced by a proposal against the need to discourage spurious objections. In this context – and taking into account our views on compensation above – we believe the grounds for objection as set out in Network Rail's proposals to be too narrow. A number of instances could be conceived of in which a TOC might be materially adversely affected by a proposal yet the limited grounds for objection as proposed by Network Rail would not apply.
- 4.2 We further note that any outstanding objections and unaccommodated caveats must be capable of being referred to the disputes process for determination. Under such circumstances, a scheme should not be capable of implementation until the disputes process has been completed, as the outcome of the disputes process with regard to the objection/caveat may be that it (i) is to be addressed by a required condition to the proposal and/or (ii) addressed by payment of compensation, or (iii) that it has been overruled and dismissed. As noted previously, if works start with objections and disputes over compensation remaining, the incentive on the scheme sponsor to act reasonably is lost. Furthermore, the arbitrator may determine that the scheme may not proceed at all if an objection cannot be accommodated or adequately compensated.

#### ***Train operator proposal:***

- 4.3 We propose use of the grounds for objection to a station change that appear in the Stations Code (see Annex A attached to this paper). We believe these to be fair and appropriate.

**5. Disputes process**

- 5.1 We agree with Network Rail's proposals that, in case of disputes, the new Access Disputes Resolution Rules (ADRR) should be used. In addition we believe the principles underpinning the criteria for disputes resolution as enshrined in the current change procedure should continue to be used.

**6. Registration and implementation**

- 6.1 With regard to the registration of changes, we believe that only the amendments to the Station Access Conditions required to implement a proposal should require registration with ORR, as now. Changes to the station itself and any related documentation should be maintained in the Station Register, as provided for in the Station Access Conditions. In light of this we believe the treatment of registration of changes could usefully be clarified through the use of guidance notes.
- 6.2 We are in agreement with Network Rail that implementation of a scheme should be time-limited in order to avoid blight. We suggest a cut off period of two years, which would extend automatically unless terminated at any point after expiry of the two year period by an affected party. We note that under the current system a Proposal for Change can always stipulate if implementation is conditional upon satisfaction of specified conditions precedent, such as obtaining third party funding or required planning permission. Similarly if a scheme is not going to be implemented, we agree with Network Rail that the proposer should be able to withdraw the proposal and to notify all original and newly affected consultees.

**7. Administration of the change process**

- 7.1 As envisaged in Network Rail's proposal, we agree that a shared web-based system to administer the change process, including appropriate consents, would be beneficial in helping to speed up the process and track progress. We note that any such system must be simple to administer and also be capable of being operated by a TOC, for example in the context of fully repairing leases.

Annex A – Extract from Stations Code

**19.1.3 Grounds for notifying Objections and Representations**

Each Objection notified by a Relevant Station Party in respect of a Station Change Proposal, and each Representation which a Relevant Consultee notifies in opposition to a Station Change Proposal, shall be founded on one or more of the following grounds:

- (A) that the information supplied to Relevant Stakeholders in connection with the Station Change Proposal is not sufficient to allow them properly to evaluate the impact of the proposal;
- (B) that, in a manner specified by the Relevant Stakeholder, the interests of the Relevant Stakeholder have been materially prejudiced, or are more likely than not to be materially prejudiced, by a specified failure on the part of the Proposer to comply with particular provisions of Part 5 relating to the proposal;
- (C) that implementation of the proposal will result, or is more likely than not to result, in a material adverse effect, whether permanent or temporary, on:
  - (1) the operation of the Station or the Network;
  - (2) the use of the Station by any Relevant Operator's passengers;
  - (3) any Station Party or Relevant Consultee's respective:
    - (a) business;
    - (b) ability to perform any obligations or exercise any discretions which it has in relation to railway services; or
    - (c) ability to finance its business, the performance of any such obligations, or the exercise of any such discretions; or
  - (4) the interests of users and providers of railway services generally;
- (D) that the amount or other terms of the Relevant Indemnity or Relevant Undertaking offered by the Proposer are in some other respect insufficient or inappropriate for reasons specified by the Relevant Stakeholder;

- (E) that the additional revenue which the Relevant Stakeholder expects to gain as a result of implementation of the proposal will be, or is more likely than not to be:
  - (1) less than it will cost the Relevant Stakeholder to pay for, or contribute to, such implementation; or
  - (2) insufficient to support the raising of such finance as would cover the additional costs and risk which the Relevant Stakeholder would have to bear if the proposal were to be implemented;
- (F) that, in a manner specified by the Relevant Stakeholder, the implementation of the proposal will, or will be more likely than not to, materially disrupt, interfere with, or otherwise be incompatible with the implementation of other specified works on or at the Station;
- (G) in the case of any proposed modification to the Station Particulars which is not related to the carrying out of works proposed in a Station Change Proposal, that such modification will have a material adverse effect on the Relevant Stakeholder's interests; or
- (H) that the Proposer has failed to take account of the need to obtain a specified Additional Approval.

#### **19.1.4 Objections to be supported by evidence**

Every Objection or Representation shall, so far as practicable, be supported by evidence which is included or clearly referred to in it.

## ***Annex C – link to proposed revised SACs, including template Co-operation Agreements in Annexes 13 and 14***

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[http://www.rail-reg.gov.uk/upload/pdf/proposed\\_sacs\\_mar11.pdf](http://www.rail-reg.gov.uk/upload/pdf/proposed_sacs_mar11.pdf)

## ***Annex D – link to comparite version of the SACs tracking the proposed modifications***

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<http://www.rail-reg.gov.uk/upload/pdf/compared-sacs-mar11.pdf>

***Annex E – link to proposed revised ISACs, including template Co-operation Agreements which will become additional Annexes***

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<http://www.rail-reg.gov.uk/upload/pdf/proposed-isacs-mar11.pdf>

## ***Annex F – link to comparite version of the ISACs tracking the proposed modifications***

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[http://www.rail-reg.gov.uk/upload/pdf/compared\\_isacs\\_mar11.pdf](http://www.rail-reg.gov.uk/upload/pdf/compared_isacs_mar11.pdf)

## ***Annex G – table of proposed modifications to the Scottish SACs and ISACs***

### **Station Access Condition Documents - differences between those applying to England & Wales and the equivalent documents for Scotland**

<b>Document</b>	<b>Amendment to England &amp; Wales Document</b>	<b>Amendment in Scottish Document</b>
<b>National Station Access Conditions</b>	Cover : Remove "England and Wales"	Replace with "Scotland"
		Insertion of introduction before schedule to adapt deed to Scottish style of document with purpose for which conditions are being made
	In definition of "Change" (d) remove the words "dedications" and "easements"	Insert additional words "servitudes" and "burdening"
		In definition of "Material Change Consultees" (b) add word "the" before "Scottish Ministers"
		In definition of "Network Rail's Surveyor" add words "or the Scottish Branch of the Royal Institution of Chartered Surveyors"
	Remove reference to English planning acts definition	Insert Scottish planning acts definition
	Remove reference to "estate", "easement" and "privilege"	Insert reference to "servitude", and "conveyance"
		Insert definition of "the Scottish Ministers"
	In definition of "Secretary of State" remove reference to s. 1 of the Railways Act 1993	Insert section 4 as section 1 repealed
	In definition of "Template	Replace with "Scotland"

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	Change" remove "England and Wales"	
	In definition of "Template Change Consultees" remove "England and Wales"	Replace with "Scotland"
	Part B Condition B1 1.1 - remove "England and Wales"	Replace with "Scotland"
<b>Independent Station Access Conditions</b>		Cover: insert title for Scotland
		Insertion of introduction before schedule to adapt deed to Scottish style of document with purpose for which conditions are being made
		Insert definition of "Highways" referencing Roads (Scotland) Act 1986
	In definition of "Change" (d) remove the words "dedications" and "easements"	Insert additional words "servitudes" and "burdening"
		In definition of "Material Change Consultees" (b) add word "the" before "Scottish Ministers"
	In definition of "Material Change Proposal" (d) remove the words "dedications" and "easements"	Insert additional word "servitudes"
	In definition of "Notifiable Change Proposal" (d) remove the words "dedications" and "easements"	Insert additional word "servitudes"
	Remove reference to English planning acts definition	Insert Scottish planning acts definition
	In definition of "Property Agreement" remove reference to "estate", "easement" and "privilege"	Insert reference to "servitude", and "conveyance"
		Insert definition of "the Scottish Ministers"

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	In definition of "Secretary of State" remove reference to s. 1 of the Railways Act 1993	Insert section 4 as section 1 repealed
		Amend description of "Superior Estate Owner" in accordance with Scots Law
	In definition of "Template Change Consultees" remove "England and Wales"	Replace with "Scotland"
	Part 2 1. remove "England and Wales"	Replace with "Scotland"
	Part 2 2.1.1 remove "England and Wales"	Replace with "Scotland"
<b>Annexes to National Station Access Conditions</b>	Annex 8 Clause 6.2 remove reference to Counterparts	Insert clause for execution of duplicates and delivery of one to each party
	Annex 8 Clause 8 remove governing law as English law and jurisdiction from English courts	Insert governing law as law of Scotland and jurisdiction to Scottish Courts
	Remove reference to third parties	Insert clause prohibiting registration in the Books of Council and Session
	Remove English form of testing clause	Insert Scots law style testing clause
		Annex 9 Insert reference to the Omnibus Scottish Supplemental Agreement
	Annexes 13 and 14 Remove English form of co-operation agreements	Insert Scottish form of co-operation agreements
<b>Third Party Developer Co-operation Agreement</b>	Remove first part of page 1 of document in English from	Replace first part of page 1 with Scottish form
		In interpretation of ISACs insert "2011 (Scotland)"
	Clauses 13.2 and 13.3 remove "Secretary of State"	Replace with "the Scottish Ministers"
	Heading of Clause 16 remove word "Assignment"	Replace with the word "Assignment"
	Clause 20 remove	Insert clause for execution

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	reference to Counterparts	of duplicates and delivery of one to each party
	Clause 21 Remove reference to third parties	Insert clause prohibiting registration in the Books of Council and Session
	Remove English form of testing clause	Insert Scots law style testing clause
<b>Rail Industry Co-operation Agreement</b>	Remove first part of page 1 of document in English from	Replace first part of page 1 with Scottish form
		In interpretation of ISACs insert "2011 (Scotland)"
	Clauses 11.2 and 11.3 remove "Secretary of State"	Replace with "the Scottish Ministers"
	Heading of Clause 14 remove word "Assignment"	Replace with the word "Assignment"
	Clause 18 remove reference to Counterparts	Insert clause for execution of duplicates and delivery of one to each party
	Clause 19 Remove reference to third parties	Insert clause prohibiting registration in the Books of Council and Session
	Remove English form of testing clause	Insert Scots law style testing clause

## ***Annex H – table of proposed additional modifications to the SACs and ISACs***

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This annex sets out proposed modifications to the National Station Access Conditions, which are needed to ensure that the Conditions are up to date and reflect and refer to current legislation and terminology. Where relevant we will apply the same modifications to the equivalent Parts of the Independent Station Access Conditions

### **Description of proposed changes to the National Station Access Conditions**

<b>Condition</b>	<b>Change</b>	<b>Reason / comments</b>
1.1.6(b) and elsewhere throughout	“Regulator” to be changed to “ORR” (defined in 1.2), with consequential changes to “he” and “his”.	ORR replaced the Rail Regulator in 2004.
1.1.12	Reference to Companies Act 1985 to be changed to its replacement Companies Act 2006.	“subsidiary” and “holding company” are defined in section 1159 of the 2006 Act. “company” is given an interpretation under section 1159 of the 2006 Act for the purposes of that section. The 2006 Act also includes a general definition of “company” in section 1, although this (at September 2009) is not yet in force.
1.1.17 and elsewhere throughout	Railtrack references to be updated to Network Rail (defined in 1.2), unless the context is historic or part of a name such as the Railtrack Transfer Scheme. The definition of Railtrack in 1.2 to be retained for these reasons, but updated so as to explain the position in relation to Network Rail. Because there may still be references to Railtrack in the SAC Annexes or station leases, a new condition to be included (1.1.19), so that there is not a mismatch.	Railtrack changed its name to Network Rail in 2003.

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1.1.19	Original 1.1.19 to be deleted, as this is about the year ended 31 March 1995 and has ceased to be relevant.	
1.2, definition of Access Dispute Resolution Rules and elsewhere throughout	“Track Access Conditions” to be updated to “Network Code”. Definition of Network Code to be inserted, in substitution for that of Track Access Conditions (removed).	The Track Access Conditions were renamed in 2004. The Network Code definition is based on the drafting in Network Rail’s network licence.
1.2, definition of Affiliate	Reference to British Railways Board to be removed.	N/A following privatisation.
1.2, definition of BRB Scheme	Reference to BRB Scheme to be removed.	This related to BRB insurance arrangements in the course of privatisation.
1.2, definition of Competent Authority, and elsewhere throughout	“Franchising Director” to be updated to “Secretary of State”.	The relevant functions of the Franchising Director were transferred to the SRA by the Transport Act 2000 and thence to the Secretary of State by the Railways Act 2005. The Secretary of State is already a defined term in the SACs. (This change is of course relevant to the England & Wales SACs, rather than the Scottish version.)
1.2, definition of Conditions Efficacy Date	To be amended to reflect that it is likely to be a past date.	
1.2, definition of Effective Date, and elsewhere throughout.	Definition and provisions regarding Effective Date to be removed.	If this were to be updated, the date 4 February 1996 (when the first franchised rail service ran), could be substituted. The provisions dealing with Effective Date relate to a period now so long past, that there seems no point in preserving them (and so these are removed later as well).

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1.2, definition of Environmental Liability Commencement Date	To be updated so as to give the actual date when Railtrack ceased to be a public service operator.	
1,2 definitions of Excepted Equipment and Excluded Equipment	To be updated so as to refer to electronic communications apparatus under section 151 Communications Act 2003. In the Excepted Equipment definition, the reference to persons licensed under the former 1984 Act arrangements to be generalised, so as to update and also make the key point that this is third party equipment.	The relevant provisions previously referred to as in the Telecommunications Act 1984 have been repealed.
1.2, definition of Excluded Equipment	To be updated so as to refer to the statutory arrangements replacing those formerly applicable to safety cases.	The Railways (Safety Case) Regulations 1994 were replaced by the Railways (Safety Case) Regulations 2000, which were themselves revoked by the Railways and Other Guided Transport Systems (Safety) Regulations 2006. The change from “railway infrastructure” to “infrastructure” is because the 2006 Regulations define the latter, but not the former.
1.2, definitions, and elsewhere throughout	The definitions of Network Rail, Network Rail Certificate, Network Rail Change Proposal, Network Rail Emergency, Network Rail Environmental Indemnity, and Network Rail’s Surveyor to be tracked as though new provisions, but they are relocations (in alphabetical sequence) of similar definitions which began with “Railtrack”.	
1.2, definition of Industry Committee, and elsewhere	To be deleted.	

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throughout		
1.2, definition of Relevant Date	To be updated to reflect that the date of the first access agreement for the station is likely to be in the past.	
1.2, definition of Station Facility Owner's Surveyor	Reference to British Railways Board to be removed.	N/A following privatisation.
1.2, definition of Railway Group Standards	Definition to be updated.	The SACs definition was framed at a time when Railtrack was responsible for production of RGSs. The update reflects RSSB's current responsibility, and is based on the definition in Network Rail's network licence.
D5.1.2	Reference to the Effective Date to be deleted.	See comments under 1.2, definition of Effective Date.
E1.1.2	The whole of E1.1.2 to be deleted, with consequential renumbering.	See comments under 1.2, definition of Effective Date.
E1.2	The whole of E1.2 to be deleted.	This related to BRB insurance arrangements in the course of privatisation.
E1.3	Reference to the Effective Date to be deleted.	See comments under 1.2, definition of Effective Date.
E2.1	Reference to the Effective Date to be deleted, and words to be moved there from the beginning of E2.1.1 and E2.1.2 in order to preserve the paragraph numbering.	See comments under 1.2, definition of Effective Date.
E2.3	The whole of E2.3.1 to be deleted and consequential changes to be made to the rest of E2.3.	E2.3.1 deals with a period expiring on 4 February 1999, and so is no longer current.  The use of the term Effective Date is otherwise redundant (see comments under 1.2, definition of Effective Date), and so it is replaced here by

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		the actual date of first franchised services, 4 February 1996.
E3.2.1	The proviso relating to the position prior to the Effective Date to be deleted.	See comments under 1.2, definition of Effective Date.
E3.4	References to the position prior to the Effective Date (and hence to the Station Facility Owner insuring) to be removed.	See comments under 1.2, definition of Effective Date.
F11.2	To be deleted from the formula, the term $P_t$ and its definition.	This relates to the former property allowance scheme which was removed from track access agreements under the access charges review 2003 and so has had no application since then.
F11.2	To be deleted from the formula, the term “+ $(IOS_t \bullet PP_t)$ ” and the definitions $IOS_t$ and $PP_t$ .  <b>The revised formula will now read:</b> <b><math>LTC_t = S_t + L_t</math></b>	This relates to an element of long term charge which concerned incremental output statement schemes and which was introduced as part of the (then) Regulator’s review of Railtrack’s access charges for control period 2. Long term charge was reviewed by ORR as part of the periodic review for control period 4, and a component for IOS schemes did not feature in that review.
F11.4	The whole of F11.4 to be deleted.	It appears that this was intended for the first round of station leases only, so as to be able to iron out any problems then arising in relation to initial long term charges, and so is now unnecessary

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		The unlikelihood of F11.4 being required for the occasional new station which generates a need for approval of access conditions including a long term charge is reinforced by F11.4.2(d). It would be improbable that a failure by ORR to intervene in amending the LTC might render it unduly difficult for Network Rail to finance its activities generally. So F11.4 is not really usable in those cases, or indeed any cases now.
F11.5.1	Reference to 31 July 2005 to be deleted.	This date has now passed.
F11.5.1.3	The reference to 1 April 2006 to be updated to 1 April 2014.	The substituted date aligns with the next review date specified in track access contracts.
F11.5.1.4	The reference to the Strategic Rail Authority to be updated to the Secretary of State.	The functions of the SRA were so transferred under the Railways Act 2005.
F11.6	The whole of F11.6 to be deleted.	This relates to the former property allowance scheme which was removed from track access agreements under the access charges review 2003 and so has had no application since then.
F11.7	The definition of Incremental Output Statement List to be deleted.	See comments in relation to F11.2 and $IOS_t$ .
F11.7, definition of material amount	The reference to 31 March 2006 to be updated to 1 April 2014.	This aligns with the change to F11.5.1.3 set out above.
F11.7, definition	The reference to the Central	The Central Statistical

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of Retail Prices Index	Statistical Office to be deleted, and National Statistics substituted.	Office was amalgamated with other statistical bodies in 1996, and has ceased to operate under that name. The updating proposal corresponds with the drafting of the model clause track access contracts, in which "National Statistics" is treated as a short version of the Office for National Statistics.
G8.5	The reference to H.M. Post Office to be deleted, and Royal Mail Group Limited (or any of its subsidiaries) to be substituted.	The proposed update is for the purpose of reflecting brand changes in postal operation; and Post Office Limited is understood to be a subsidiary of Royal Mail Group Limited.
G8.7	The reference to the Arbitration Acts 1950-1979 to be updated to the Arbitration Act 1996.	
I2.1.7	The reference to the Railtrack Standard Letting Conditions 1995 (as amended or replaced from time to time) to be updated to the relevant issue of the Network Rail (or Railtrack) Standard Letting Conditions (as amended or replaced from time to time).	
N1.13.1	To be added after reference to the Law of Distress Amendment Act 1908, the words "or section 81 Tribunals, Courts and Enforcement Act 2007".	The 1908 Act is repealed, subject to bringing into effect the relevant part of the Tribunals, Courts and Enforcement Act 2007, which provides a revised remedy of giving notice to a subtenant for recovery of rent where the tenant is in arrears (and to which it is appropriate to refer

		instead).
N1.19	N1.19 (which requires maintenance and production of fire certificates) to be deleted, and the obligation to be updated to become one to produce to Network Rail on request copies of those matters which the Station Facility Owner is to record in relation to the Station by virtue of the Regulatory Reform (Fire Safety) Order 2005.	The 2005 Order repealed as from April 2006 the Fire Precautions Act 1971, under which the fire certification regime formerly operated. So fire certificates are no longer used, but the Order prescribes documentation to be maintained instead.
O5.7	Reference to the Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009 to be added.	The 2009 Regulations, as from 1 October 1 2009, have revoked and replaced the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, so far as concerns England.
Q2.3.3	Reference to Customs & Excise to be updated to H.M. Revenue & Customs.	Customs & Excise was restructured into HMRC in April 2005.

### Description of proposed changes specifically to the ISACs

Condition	Change	Reason/comments
41.5	The words "For the purposes only of paragraph (A)(c) or (B)(a),....." to be replaced with the words "For the purposes only of paragraph (A)(c) or (B)(b),....."	The current drafting of Condition 41.5 contains a typographical error that the proposed change will rectify.
55.1(H)	Condition 55.1(H) to be deleted.	Condition 55.1(H) makes reference to Conditions 81.1(E)(2) and 81.1(E)(3). The whole of Condition 81.1(E) was deleted when the ISACs were modified in 2008-09. Condition 55.1(H) is now therefore unnecessary.

**Description of consequential changes in SACs and ISACs to reflect the new Access Dispute Resolution Rules**

<b>Condition</b>	<b>Change</b>	<b>Reason / comments</b>
1.2 (SACs and ISACs) Definitions	New definition: "Forum" has the meaning given to it in the ADRR	Forum is the term now used within the ADRR (replacing Industry Committee).
1.2 (SACs and ISACs) Definition of "Industry Committee"	To be deleted	No longer a term defined within the ADRR.
1.2 (SACs and ISACs) Definitions	New definition: "Notice of Dispute" has the meaning given to it in the Access Dispute Resolution Rules (ADRR)	This is now a defined term within the ADRR and its inclusion within the access conditions will enable a further proposed change in Part G (described below).
F11.3.4 (SACs) 42.3.4 (ISACs)	Delete reference to "arbitration or..."	The references to specific routes of resolution have been removed to reflect the provisions contained within the ADRR, which came into effect on 1 August 2010.
F11.3.7 (SACs) 42.3.7 (ISACs)	Delete the entire condition.	The condition relates to Part E of the original version of the ADRR from 1996 (annexed to the Track Access Conditions). Part E then referred to Determination of the Regulator, but was subsequently amended over the years.
F12.3 (SACs) 43.3 (ISACs)	Delete reference to "determination by an arbitrator".  To be amended as follows: ...."the matters in dispute may be	The references to specific routes of resolution have been removed to reflect the provisions contained

	<p>resolved in accordance with the ADRR. In the event that the dispute is referred to ADRR, the parties to the dispute shall agree in a Procedure Agreement within the meaning of the ADRR that such determination shall:</p> <p>12.3.1 or (A) be made having regard to the matters as respects which duties are imposed on the ORR under section 4 of the Act; and</p> <p>12.3.2 or (B) establish the proposed amendments to these Station Access Conditions and the relevant Station Access Agreement, which shall be submitted to the ORR for approval under section 22 of the Act on behalf of the Station Facility Owner and each User”.</p>	<p>within the ADRR, which came into effect on 1 August 2010.</p>
33.2 (B) (2) (ISACs)	Delete the wording “by an expert”	The reference to a specific route of resolution has been removed to reflect the provisions contained within the ADRR which came into effect on 1 August 2010.
33.3 (C) and (D) (ISACs)	<p>Amend to read as follows:</p> <p>(C) “if the Station Facility Owner and the Passenger Operator fail to reach agreement with each other on the amount of the Fixed Charge by the commencement of the relevant Accounting Year, the Passenger Operator may serve a Notice of Dispute as to that amount at any time up to 15 days after the commencement of that Accounting Year for determination as required by Condition 33.4 and the amount of the Fixed Charges so determined shall be the Fixed Charge for the relevant Common Station Amenities or</p>	The references to specific routes of resolution have been removed to reflect the provisions contained within the ADRR, which came into effect on 1 August 2010.

	<p>Common Station Services for that Accounting Year; and</p> <p>(D) to the extent that the Passenger Operator fails within the relevant time period in Condition 33.3(C) to serve a Notice of Dispute, the Passenger Operator shall be deemed to have agreed to pay the Total Variable Charge, or, as the case may be, the Residual Variable Charge for the relevant amenities or services for the relevant Accounting Year”.</p>	
33.4 (ISACs)	<p>Amend to read as follows:</p> <p>“The parties to any dispute shall agree by way of a Procedure Agreement within the meaning of the ADRR that any determination pursuant to Condition 33.3(C) shall:</p> <p>(A) establish the amount of the Fixed Charges for the relevant Common Station Amenities or Common Station Services at the amount which shall be considered by the ADRR Forum to which the dispute is allocated.....</p> <p>(B) the matters as respect which duties are imposed on the ORR under section 4 of the Act and any guidance which may be issued by the ORR from time to time”</p>	<p>These amendments will require any determination (by way of a Procedure Agreement) relating to Fixed Charges for Common Station Amenities or Common Station Services to take into account a number of key issues, which would be lost if the determination were to follow the stipulated format as set out in the ADRR.</p> <p>By amending the condition in this way, the ADRR does not need to be changed.</p>
43B.6 (ISACs)	<p>Amend to read as follows:</p> <p>“Any referral under Condition 43B.4 or 43B.5 shall be in accordance with the ADRR and the parties in dispute shall agree, by way of a Procedure Agreement within the meaning of the ADRR, that:</p> <p>(A) the determination shall:</p> <p>(1) establish the Station Fixed QX Charge payable for the Station in</p>	<p>This amended condition will require any determination (by way of a Procedure Agreement) relating to Fixed QX to take into account a number of key issues, which otherwise would be lost if the determination were to follow the stipulated format as set out in the ADRR.</p>

	<p>respect of the Common Station Amenities and the Common Station Services for each Accounting Year of the relevant Control Period at the amount which shall be considered by the ADRR forum to which the dispute is allocated to be fair and reasonable and include appropriate payments...”</p> <p>(B) delete paragraph (relating to costs and expenses)</p>	<p>By amending the condition in this way, the ADRR does not need to be changed.</p> <p>Costs and expenses associated with dispute resolution are dealt with fully under the ADRR.</p>
<p>G8.7-G8.10 (SACs)</p> <p>49.7 - 49.10 (ISACs)</p>	<p>Amend to read as follows:</p> <p>G8.7 or 49.7 “Any dispute as to whether, having due regard to the factors specified in Condition [G8.6] [49.6], it is fair and reasonable that the Relevant Restriction should be created shall be determined in accordance with the ADRR”.</p> <p>G8.8 “If and to the extent that Network Rail and/or the Station Facility Owner comply with their obligations in this Condition G8 in respect of a relevant action, Part C does not apply to that relevant action”.</p> <p>49.8 “If and to the extent that the Station Facility Owner complies with its obligations in this Condition 49 in respect of a relevant action, Part 3 does not apply to that relevant action”.</p>	<p>The references to specific routes of resolution have been removed to reflect the provisions contained within the ADRR which came into effect on 1 August 2010.</p>
<p>67.6 (ISACs)</p>	<p>Amend to read as follows :</p> <p>(A) “The person or persons who are to act on behalf of the Passenger Operators for the purposes of this Condition 67 shall be that person or those persons (but not more than two) each being an employee of a Passenger Operator whose names</p>	<p>The existing condition contains wording relating to 1 April 1996, and is now redundant.</p> <p>The references to specific routes of resolution have been removed to reflect the</p>

	<p>are jointly notified to the Station Facility Owner by the Passenger Operators from time to time”.</p> <p>Delete sections (B) and (C)</p> <p>(D) (3) “...as may be necessary to reflect those matters and if that agreement is not reached within such 30 days, the matters in dispute shall be referred by the Station Facility Owner to be resolved in accordance with the ADRR”.</p>	<p>provisions contained within the ADRR, which came into effect on 1 August 2010.</p>
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**Description of proposed minor changes**

<b>Condition</b>	<b>Change</b>	<b>Reason/comments</b>
Arrangement of Parts (Contents)	Changes to condition headings to reflect other changes.	
Throughout	Missing or defective punctuation to be corrected	