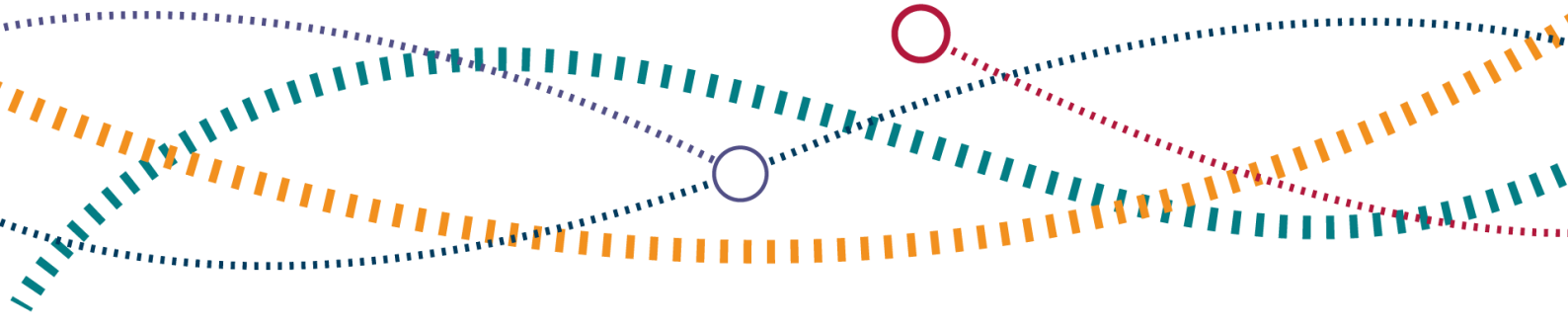
PR23 final determination:

Policy position – access charges

31 October 2023



About this document

This access charges policy document is one of five policy positions documents of our final determination for the 2023 periodic review (PR23).

PR23 determines what the infrastructure manager for the national rail network, Network Rail, is expected to deliver with respect to its operation, support, maintenance and renewal (OSMR) of the network during control period 7 (CP7), which will run from 1 April 2024 to 31 March 2029, and how the available funding should be best used to support this.

This strongly influences:

- the service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
- the charges that Network Rail's passenger, freight and charter train operator customers pay to access its track and stations during CP7.

Our final determination sets out:

- our decisions on Network Rail's outcome delivery and its planned expenditure to secure the condition and reliability of the network;
- changes to access charges and the incentives framework; and
- relevant policies on the financial framework, managing change and holding to account.

In addition to **this document**, we have also published as part of our final determination:

Document type	Details
Summary of conclusions and overviews	Our decisions on what Network Rail will need to deliver and how funding should be allocated: • Summary of conclusions and overview for England & Wales • Summary of conclusions and settlement for Scotland

Document type	Details
Consolidated decisions	A summary of our final decisions across Great Britain
Introduction	An overview of PR23 and background to our final determination
Settlement documents	Detailed final decisions for the System Operator and each of Network Rail's regions in England & Wales: • Eastern region • North West & Central region • Southern region • Wales & Western region See our summary of conclusions and settlement document for detailed information for Scotland.
Supporting documents	Technical assessments of: • Health and safety • Outcomes • Sustainable and efficient costs • National Functions • Other income
Policy positions	How we intend to regulate Network Rail during CP7 in relation to: • Financial framework • **Access charges** • Schedules 4 and 8 incentives regimes • Managing change • Holding to account With the exceptions of managing change and holding to account, our policy position documents include our assessment of stakeholder views on our proposals. Stakeholder views for managing change and holding to account are published in a separate document.

Document type	Details
Impact assessments	A consolidated set of assessments of the impact of our final policies on access charges and contractual incentives on affected parties

Next steps

We will now implement our final determination. Implementation is the process through which we amend operators' track and station access contracts to give effect to new access charges and incentives (such as Schedule 8 benchmarks and payment rates) determined through the periodic review. We expect to issue our review notices in December 2023 and, subject to Network Rail's acceptance, issue notices of agreement and review implementation notices in time for CP7 to commence from of 1 April 2024.

We expect Network Rail to publish a delivery plan for CP7 that is consistent with our final determination. We have published a notice alongside our final determination which sets out expectations for the scope and timing of the delivery plan.

Contents

1. Introduction and summary

1.1 Central to the periodic review is the review of access charges paid by train operators (passenger, freight, charter) to use Network Rail's track and stations. These charges ensure that Network Rail recovers the cost of maintaining and renewing the network fairly from different users (as well as from taxpayers). They also influence the decisions that Network Rail, train operators and funders make, which affect the overall cost of the network and how efficiently it is used. Charges can therefore play a role in making the industry more efficient and improving outcomes for passengers, freight customers and taxpayers.

1.2 Network Rail is expected to receive approximately £16 billion (in 2023-24 prices) from access charges during control period 7 (CP7, which will run from 1 April 2024 to 31 March 2029) which constitutes around 34% of total income. The balance is made up of network grant funding from the Department for Transport, grant funding from Transport Scotland, and other commercial income such as property rental.

1.3 There are three broad types of charge paid by operators:

- Infrastructure cost charges (ICCs), which recover a portion of the fixed costs of rail infrastructure i.e. costs which do not vary with network use in the short-term. These are comprised of the fixed track access charge (FTAC), the ICC for freight services, and the ICC for open access services.
- Variable charges, which recover costs that are directly incurred by Network Rail when train services are operated over its network.
- Station charges, which recover the costs of operating, maintaining and renewing the stations that are owned by Network Rail.

1.4 Of these, fixed charges are the most significant providing around £7 billion, or 14% of Network Rail's income, and consisting almost entirely of the FTAC paid by publicly contracted operators. Electricity for traction (EC4T) is expected to account for £5 billion, or 10%. Station charges are expected to account for £2 billion, or 5% of income, while variable usage charges (VUC) are expected to amount to £2 billion, or 4%.

Table 1.1 Network Rail revenue from charges

2023-24 prices	CP7 total	Proportion of gross revenue
FTAC	6,657	14%
VUC	2,069	4%
EAUC	140	0%
Electricity for Traction (EC4T)	4,964	10%
Managed Station QX	568	1%
Station LTC	1,726	4%
Network grant	28,559	59%
Other[1]	3,347	7%
Gross Revenue	**48,031**	**100%**

[1]*Other includes: Schedules 4 and 8 income, Schedule 4 access charge supplement income, Other freight income, Stations lease income and station facility charges, Depots lease income and facility charges, Other facility / supplemental charges (Evergreen, West Coast and Crossrail Supplementary Access Charge), Other open access income, Other non-regulated income (insurance premiums), Property rental, Property sales and Other income (Network Rail High Speed net income).*

1.5 During our considerations we have carefully weighed our statutory duties, in particular:

- Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, which establishes the principles which underpin Network Rail's charging framework and specific charging rules. These state that charges for the minimum access package must be set to reflect "the cost that is directly incurred [by Network Rail] as a result of operating the train service". To obtain full recovery of its costs, Network Rail can under certain conditions levy 'mark-ups' above directly incurred costs. The level of these charges takes account of the ability of relevant market segments to bear an ICC.
- Our wider duties under Section 4 of the Railways Act.

1.6 The above statutory duties and charging principles are detailed in Annex D.

1.7 In October 2022, we concluded on Network Rail's charging framework for CP7. We confirmed that we will largely maintain the existing framework in its current form, while making a limited number of changes to simplify the framework and to ensure it remains effective once Great British Railways (GBR) is in place. We also noted that we would keep some decisions under review until our draft determination, as it was more appropriate to reach a final view closer to the start of the next control period.

1.8 Since the publication of our October 2022 conclusions, Network Rail has been carrying out the recalibration of charges for CP7. In May 2023, it published its conclusions on recalibration, confirming the methodologies used to carry out the recalibration exercise.

1.9 In June 2023, we issued our draft determination in which we:

- presented our draft decisions on the aspects of the **CP7 charging framework** that we had kept under review since our October 2022 conclusions. This included our policy on capping and phasing-in of Variable Usage Charge (VUC) rates for freight and charter operators; and on the charging approaches for traction electricity (EC4T).
- set out our view on **Network Rail's recalibration exercise**, based on the latest information that Network Rail provided to us on its recalibration of variable and station charge rates.
- presented our draft decisions on the level of **infrastructure cost charges (ICCs)** paid by certain freight and open access services.

1.10 Network Rail published its draft price lists in July 2023, reflecting the draft decisions set out in our draft determination.

1.11 In August 2023, we consulted on establishing a new market segment for open access services to major airports.

1.12 We have now considered stakeholders' views on the draft decisions set out in our draft determination and further consultation on open access airport services. We summarise below the key points raised by stakeholders and the changes to our draft determination positions that we have made in light of stakeholder responses.

Summary of responses to the draft determination

1.13 Open access operators said that our proposed interurban services ICC of £5 per train mile (2023-24 prices) was too high, whereas Network Rail felt it was too low. There was also a mixed response to our proposal to establish a new market segment for open access services to major airports.

1.14 In respect of variable charges, most responses focused on the variable usage charge and in particular on Network Rail's recalibration exercise, under which these charges were expected to increase by around 9% on average over CP7 (across all traffic types). Several respondents challenged the basis for this increase in charges, questioning the methodology that Network Rail had followed to recalibrate the charge and whether this reflects a genuine increase in the direct costs of maintaining and renewing the network.

1.15 Some passenger operators said that any increase in VUCs should be phased-in over the course of CP7, rather than applying from the start of the control period.

1.16 Freight respondents, while broadly supportive of our proposed approach to capping / phasing-in increases in VUCs, raised concerns with the future profile of VUC rates that is implied by this policy.

1.17 Some respondents also commented on the increase in station long term charge (LTC) rates that has resulted from Network Rail's recalibration exercise. Others were in agreement over the rationale for these increases.

Summary of changes since the draft determination

1.18 Following the publication of Network Rail's CP7 draft price lists in July 2023, we worked with Network Rail, engaged with industry, further explained our policies and gave stakeholders the opportunity to better understand the implications of our proposed policies, before submitting responses to our draft determination. During this engagement, Network Rail explained the recalibration analysis that informed its draft price lists and our draft determination.

1.19 In light of stakeholders' views, we have reviewed this analysis following which we refined our policy proposals. A summary of the main decisions related to our access charges proposals following this review is provided in Annex C.

1.20 Our policy position is unchanged on all charges. In particular:

- VUCs for passenger services will remain cost-based.

- Freight VUCs will be capped below cost on the trajectory set at the 2018 periodic review (PR18).
- ICCs for interurban and airport open access services will be set at a flat real £5 per train mile.

1.21 Freight ICCs (in pounds per thousand gross tonne miles (£/kgtm)) will fall in real terms except electricity supply industry (ESI) biomass which will be held at the same level as in control period 6 (CP6) in real terms. The reductions in the ICC for ESI coal and iron ore offset the increases in the VUCs for those commodities (given our policy decision to hold overall expenditure broadly flat for these commodities). The reduction in spent nuclear fuel will be approximately 50% on CP6 levels.

1.22 While VUCs are increasing by £42 million over CP7 compared to what they would have been had CP6 rates been held constant, ICC rates for freight are being held constant or decreasing. In the case of ESI coal and iron ore, there is a saving of around £1 million due to our offsetting rises in the VUC by capping the ICC rates for these commodities. Furthermore, our decision to cap the increase in spent nuclear fuel's ICC rate results in a saving of around £11 million over CP7 compared to what would have been paid at CP6 rates. The combined ICC saving amounts to around £12 million over CP7. The combined effects of both the increase in VUCs and the relative decrease in ICCs results in a net increase in freight charges over CP7 of around £30 million (based on Network Rail's CP7 traffic forecasts).

1.23 As we explain later in this document (in Chapter 3), the increase in freight VUCs will still result in them being held below direct costs for the duration of CP7. So while VUCs increase relative to CP6 levels (as described above), relative to the direct costs incurred, our VUC capping and phasing in policy avoids a further £33 million in charges for freight operators.

1.24 The structure of charges for stations and electricity for traction and electricity asset usage will remain unchanged, although the rates will change as summarised below.

1.25 In our draft determination we said that the level of a number of charges will change because of Network Rail's recalibration exercise. It is this recalibration exercise which has driven the changes in rates summarised below.

Variable Usage Charge

1.26 After our draft determination, we worked with Network Rail to improve the robustness of the analysis by updating input variables and assumptions to reflect the latest available data and (understanding) to ensure the VUC most closely represents the costs directly incurred.

1.27 The updated VUC recalibration produced lower increases than those presented in our draft determination. The average increase for passenger uncapped rates changed from 6.6% to 3.0% in real terms (i.e. after CPI inflation). The average increase for freight uncapped rates changed from 12.9% to 8.6%, while the average increase for charter rates changed from 8.8% to 7.6%. However, given the cap on freight and charter VUCs these increases will not translate into average charges paid in CP7.

1.28 Throughout CP6, VUC rates were uprated using a lagged CPI index based on the average value of the previous calendar year's CPI inflation (for freight) and previous November (for passenger). This lagged inflation index can produce a mismatch when compared to actual annual movements in CPI inflation. This will be the case if the actual CPI inflation rate in a year is significantly different from the previous year's CPI inflation rate, as happened in CP6. This indexation approach has therefore led to an inflation shortfall between the VUC rates operators paid and what the actual charges would have been had the indexation reflected contemporaneous CPI inflation.

1.29 We estimate that if we adjust for this inflation there would be a 0.0% increase in passenger VUC uncapped rates, 2.6% increase in freight VUC uncapped rates and 4.5% increase in charter VUC uncapped rates on average. (However, as noted above, given the cap on freight and charter VUCs these increases will not translate into average charges paid in CP7 for these groups.)

Electrification Asset Usage Charge (EAUC)

1.30 We have also worked with Network Rail to update the EAUC model to reflect: (i) the latest CPI inflation assumptions i.e. Bank of England May 2023 forecast; (ii) an updated traffic forecast which implies a reduction in passenger electrified vehicle miles and an increase in freight electrified vehicle miles; and (iii) the updated cost base, which saw a reduction in annual average pre-efficient renewal costs.

1.31 Based on the updated recalibration, EAUC rates are set to increase, in real terms, by between 5% (alternating current (AC) passenger rate) and 57% (direct current (DC) freight rate). This is compared to the 13% and 55% increase presented in our draft determination.

Open Access services to airports

1.32 In the draft determination, we said that we intended to further consider the relevance of a specific 'mark-up' (ICC) for open access services to airports in Great Britain. We published a consultation on 1 August 2023 in which we proposed to permit Network Rail to levy an ICC on open access services from major rail stations in Great Britain and set this ICC at £5 per train mile (in 2023-24 prices). We are confirming this rate in our final determination.

Charter slot charge

1.33 In the draft determination, we stated that we would not be making any changes to the charter slot charge but noted that Network Rail was considering combining the slot charges for steam services into a single uniform rate. Recognising that this would simplify the billing process and no stakeholder concerns were raised, we have also decided this change will be implemented from the start of CP7.

Qualifying Expenditure (QX)

1.34 In our draft determination, we stated that we will continue to approve the management fee element of the QX charge for managed stations. Network Rail has said it will not change the management fee methodology element regulated by ORR. We have decided this is reasonable and proportionate. Negotiations are ongoing on the unregulated fixed fee element. As we do not determine the fixed fee element, it does not need to be set in our final determination.

Treatment of CPI inflation

1.35 Consistent with the rest of the 2023 periodic review (PR23) final determination, the final price lists will be expressed in a 2023-24 price base. To do this, Network Rail will make the following assumptions about CPI inflation in 2023-24.

- **Passenger VUCs, EAUC rates and station LTCs**: These rates will be based on the May 2023 Bank of England (BoE) forecast of 2023-24 CPI inflation. This is different to the CPI inflation assumption used to derive the draft price lists (November 2022 Office for Budget Responsibility (OBR) forecast), which was consistent with Network Rail's Strategic Business Plan (SBP) and our draft determination policy position on access charges. As the May 2023 BoE update is forecasting a higher rate of inflation for 2023-24 than the November 2022 OBR forecast, this is likely to result in an increase in the rates (all other things equal) expressed in 2023-24 prices.

- **Freight and charter VUCs**: Unlike the approach for passenger VUCs, EAUC rates and station LTCs, these rates will be uplifted to 2023-24 prices using

the cumulative indexation factor that has been applied to freight and charter VUC rates during CP6[1]. This is the same CPI inflation assumption used to derive freight and charter VUCs for the draft price lists. As explained in Chapter 3, this reduces the increase in freight and charter VUCs.

- **Freight and open access ICCs**: will also be uplifted to 2023-24 prices using the cumulative indexation factor that has been applied to passenger VUC rates during CP6[2].

1.36 All rates will be further uplifted to 2024-25 prices before the start of CP7 to reflect the impact of CPI inflation for year 1 of CP7, using the 'lagged' indexation approach that is set out in train operators' track access contracts.

Next steps

1.37 We will review and approve Network Rail's charges during autumn 2023. The purpose of this stage of the review will be to confirm that Network Rail has correctly implemented the agreed recalibration methodologies, as well as our decisions on the charging framework, in deriving the price lists. It will also seek to ensure that the calculations are accurate; the focus will be on identifying any major issues and ensuring Network Rail's own quality assurance processes have been followed.

1.38 Following this, Network Rail will publish its final price lists in December 2023, consistent with the decisions made in our final determination. These will be published alongside Review Notices setting out the full set of detailed changes that will be applied to affected contracts.

1.39 We intend to commence work with Network Rail and industry early in CP7 to review the charging models and particularly the VUC methodology.

Structure of this document

1.40 The rest of this document sets out our final decisions on all charging issues. Chapter 2 sets out our decisions on infrastructure cost charges, Chapter 3 provides our decisions on variable charges and Chapter 4 sets out our decisions on station charges.

[1] See paragraph 3.11 of Network Rail's draft price list assumptions note.

[2] See paragraph 3.11 of Network Rail's draft price list assumptions note.

2. Infrastructure cost charges

Summary

Network Rail is expected to receive around £6.7 billion (2023-24 prices) in income from infrastructure cost charges (ICCs) during CP7, the vast majority of which (more than 99%) is from the fixed track access charge (FTAC). Of this total, forecast CP7 ICC income from open access is £25 million and from freight services is £26.2 million (based on Network Rail's CP7 traffic forecasts).

For CP7, all passenger operators on concession-style agreements will continue to pay the FTAC. This will be set as a lump-sum annual charge, based on a very similar split of FTAC and network grant for England & Wales and Scotland as in CP6 and Network Rail's fixed cost allocation methodology.

For open access operators, we are maintaining the ICC that is levied on interurban services in real terms. This is equivalent to an ICC of £5 per train mile, in 2023-24 prices.

We will allow Network Rail to levy an ICC of £5 per train mile on open access services to major airports in Great Britain.

For freight operators, we will continue to permit Network Rail to levy an ICC for services transporting ESI coal, as well as iron ore, spent nuclear fuel, and ESI biomass. The specific rates for each of these ICCs, in £/kgtm, will reduce in real terms except for ESI biomass which will remain constant in real terms.

ICC rates for freight are being held constant or decreasing. In the case of ESI coal and iron ore, there is a saving of around £1 million due to our offsetting rises in the VUC by capping the ICC rates for these commodities. Furthermore, our decision to cap the increase in spent nuclear fuel's ICC rate results in a saving of around £11 million over CP7 compared to what would have been paid at CP6 rates. The combined ICC saving amounts to around £12 million over CP7 (all figures based on Network Rail's CP7 traffic forecasts).

Fixed Track Access Charge (FTAC)

2.1 We confirmed in our October 2022 conclusions document that we will retain the FTAC in CP7 for all passenger operators on concession-style agreements. We said that the FTAC paid by each operator, which is net of any network grant payments, will continue to be based on Network Rail's existing fixed cost allocation

methodology developed for CP6, subject to some minor changes that Network Rail will consider as part of its recalibration exercise.

2.2 We confirmed in our draft determination that Network Rail's updated fixed cost allocation methodology will be used as the basis for allocating the FTAC between operators in CP7. Network Rail has now recalibrated its fixed cost model, based on a slightly amended methodology, to reflect updated costs and traffic forecasts for CP7. It published a draft Schedule of Fixed Charges, setting out the FTAC that will be paid by each operator in CP7, in August 2023.

2.3 In deriving the price list, Network Rail assumed that in England & Wales, the Department for Transport (DfT) will make available network grants as set out in its statement of funds available (SoFA) (£27.5 billion in cash terms) and FTAC of £5.4 billion in cash terms, so total cash funding of £33.0 billion. The network grant has been subtracted from operators' pre-network grant FTAC in proportion to their share of total FTAC.

2.4 Network Rail assumed that in Scotland, network grants would be £2.4 billion and FTACs would be £1.9 billion, so total funding of £4.2 billion in cash prices.

2.5 The balance of funding between FTAC and network grant in Scotland will affect the FTAC paid by two services: ScotRail Trains Limited and Caledonian Sleeper, which are provided by the Scottish Government.

Summary of stakeholder views

2.6 The responses related to the arrangements for paying network grant and grant dilution are covered in our PR23 final determination: policy position on the financial framework (see Chapter 4).

2.7 Transport Scotland confirmed that it is making available £2.3 billion in cash prices (£2.2 billion in 2023-24 prices) for network grants, which differs to Network Rail's assumption in the price list as noted above. This would mean that FTACs would be £1.9 billion as total funding in the SoFA is £4.2 billion. The total funding is £76 million lower than we assumed in our draft determination, as we have now agreed with Transport Scotland and Network Rail that the total funding of £4.2 billion will cover CP7 expenditure including the May 2023 BoE CPI inflation forecast.

Our determination on the FTAC

2.8 In calculating the balance between network grants and FTACs for the whole control period, for England & Wales, we have assumed that the network grant payments (as set out in the SoFA) will be made. This is consistent with Network

Rail's assumption in the price list noted above and means that the difference between the net revenue requirement, and variable charges, Schedule 4 access charge supplement (ACS), EC4T and network grants, is equal to the amount of FTACs. DfT has confirmed that, for the calculation of FTACs for our final determination, any change in VUC funding, following a change to charge rates and/or forecast volumes compared to its SOFA assumption, will be offset by a change in its FTAC funding. This means that in England & Wales, changes in VUC funding or other relevant charges do not affect total funding for Network Rail.

2.9 The process we have followed for Scotland is similar to England & Wales. In calculating the balance between network grants and FTACs for the whole control period for Scotland, we have used the level of network grant payments that Transport Scotland has informed us it wants to make. This is not consistent with Network Rail's assumption in the price lists as noted above. Transport Scotland has confirmed that, for the calculation of FTACs for our final determination, changes in VUC funding following a change to charge rates and/or forecast volumes, will not be offset by a change in its FTAC funding. This means that in Scotland, changes in VUC or other relevant charges, do affect the total funding for Network Rail Scotland.

2.10 We have reviewed Network Rail's forecast annual expenditure profile over CP7 from its response to the draft determination and we note several dips:

- **England and Wales** - dips in year 4 of c. £0.3 billion and in year 5 c. £0.6 billion (in 2023-24 prices).
- **Scotland** - a dip in year 4 of £30 million (in 2023-24 prices).

2.11 We are looking for Network Rail to reduce the variance in its expenditure profile after the final determination and will use the revised profiles in the network grant documentation.

2.12 Using these profiles is a simple way of keeping the split between network grant and FTAC the same as in the SoFA for England & Wales and as recently notified to us by Transport Scotland. Using these profiles minimises the impact on train operators but means that, to keep total funding consistent with the SoFA, the network grant is the balancing figure as expenditure is different in each year of CP7. This means that, before the effect of the amendments referred to above, for:

- **England & Wales** - there is a reduction in FTAC of circa £80 million in the first year of CP7 from the last year of CP6 because of changes to variable income and/or there is a reduction in expenditure compared to the

assumptions in PR18. After that, the FTACs are the same throughout CP7 (in 2023-24 prices), although there are some rounding differences.

- **Scotland** - there is a decrease in FTAC in the first year of CP7 from the last year of CP6 of circa £20 million because of changes to variable income and/or there is a reduction in expenditure compared to the assumptions in PR18. After that, the FTACs are the same throughout CP7 (in 2023-24 prices).

2.13 We show in Annex B, what the FTACs would be if there was no network grant.

ICC for open access services

2.14 In our October 2022 conclusions document, we confirmed that we would continue to permit Network Rail to levy an ICC on interurban services as defined in PR18[3].

2.15 In our draft determination, we set out a draft decision on the level of this ICC based on an assessment of what level of mark-up the interurban market segment could bear in CP7. This reflects the requirements of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ('the 2016 Regulations'), which state that the effect of levying a mark-up "must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear"[4].

2.16 To do this, we considered the evidence on forecast net revenues generated by interurban services in year 1 of CP7. The net revenue generated by these services (broadly defined as passenger fare revenue minus operating costs) provides an indication of the mark-up that can be borne, while continuing to profitably operate. We considered what proportion of existing interurban services are forecast to generate a net revenue in excess of the existing ICC as an indication as to what proportion of the commercially viable interurban market segment can profitably operate services in CP7 in the presence of an ICC set at this level.

[3] An interurban service is defined as one for which: at least one station served has average entries / exits above 15 million passengers per year, or the station served is within two miles of a station meeting that criterion; at least one other station served has average entries / exits above 10 million passengers, or is within two miles of a station meeting that criterion; and two of the stations meeting these demand thresholds are at least 40 miles apart. The full set of journeys that qualify as interurban is set out in this origin and destination matrix (Option 1).

[4] Paragraph 2(3) of Schedule 3 of the 2016 Regulations.

2.17 We also considered other factors besides net revenues which would affect operators' ability to bear such as the impact of prospective competitive entry or the need to make a return on investments over the long-term. We consider these factors are accounted for in the conservative way in which we have set the ICC rate.

2.18 Furthermore, in considering the most appropriate ICC to set in accordance with the requirements outlined above, we also had regard to our general duties as outlined above in Chapter 1.

2.19 Taking all the above into consideration, we considered that it would be appropriate to broadly maintain the ICC in real terms for CP7 (i.e. £5 per train mile, in 2023-24 prices). We said this level of ICC would:

- reflect the updated market-can-bear analysis, which indicates that the majority of interurban services would be capable of generating net revenues above this (after accounting for the impact of the Coronavirus (COVID-19) pandemic);
- be consistent with our decision taken in PR18, where we set the charge conservatively, but for a rail passenger market which was less challenging than that faced by open access operators today; and
- balance the risks of setting the charge too high (in terms of deterring open access applications) against the drawbacks of setting it too low (primarily the impact on Secretary of State funds, and on facilitating greater access to the network).

2.20 We therefore proposed to set the ICC for interurban open access services at **£5 per train mile** for CP7 (in 2023-24 prices).

2.21 We also said that this charge would be subject to the same phase-in arrangements that are currently in place in CP6 (and set out in Table 2.1 below).

Table 2.1 **Transitional arrangements for new open access services liable for an ICC in CP7**

Year of operation of new service	Year 1	Year 2	Year 3	Year 4	Year 5
% of ICC set for CP7	0%	0%	25%	50%	100%

Summary of stakeholder views

2.22 Network Rail, Arriva UK Trains, First Rail Holdings and Rail Partners all supported our ICC decisions for inter-urban services. Arriva UK Trains and Rail Partners also supported our decision to maintain phasing in for new entrants. However, both Arriva UK Trains and Rail Partners noted a concern about the full impact that levying an ICC could have on the open access market and that its impact should be monitored to ensure it is not deterring further entry and to inform ORR's future ICC policy.

Our conclusions on the ICC for interurban services

2.23 We received no objections to our draft determination proposals on the ICC for interurban services. Taking account of this, and for the reasons set out below and in our draft determination, we therefore intend to retain our decision on the ICC for interurban services as set out in our draft determination.

2.24 We note that the existing (fully phased-in) ICC for year 5 of CP6 is £4.96 per train mile. This has been indexed during CP6 from an original rate of £4 per train mile in 2017-18 prices using the lagged indexation approach set out in operators' track access contracts. If this charge was adjusted to reflect the latest forecast of inflation to 2023-24, it would be £5.10 per train mile in 2023-24 prices. An ICC of £5 per train mile falls between these values, and avoids spurious accuracy, so we consider it is consistent with our conservative approach to setting the charge, broadly maintaining it in real terms.

2.25 In making this decision we have had regard to our statutory Section 4 duties and other considerations as outlined in Annex D.

ICC for airport-based services

2.26 In our draft determination, we said that we were giving consideration to whether open access services serving major airports could also bear a mark-up. We said that we would undertake further work in relation to the relevance of a mark-up for these services and would provide an update on this by the end of July 2023.

2.27 We published a consultation on this issue in August 2023. We proposed to define a new market segment for open access services to major airports, capturing services for which: (a) at least one station served has average entries / exits above 15 million passengers per year, or is within two miles of a station meeting that criterion; and (b) at least one station (or stations(s)) that directly serves an airport has average entries / exits above 5 million passengers.

2.28 We proposed to set an ICC of £5 per train mile for CP7 (in 2023-24 prices) for this market segment, in line with our proposed ICC for the interurban market segment. We also proposed to phase in this ICC for new services in this market segment.

Summary of stakeholder views

2.29 Heathrow Express, Heathrow Airport Ltd, the Airport Operators Association, MTR Corporation (UK) Limited and others all strongly disagreed with our decision to introduce an ICC on airport services. Network Rail, MTR Elizabeth Line and First Rail Holdings agreed with the introduction of an ICC for airport services. Both Network Rail and MTR Elizabeth Line said that the ICC should be higher than the £5 per train mile proposed.

Consultation process

2.30 Certain respondents, notably Heathrow Express, Heathrow Airport Ltd and the Airport Operators Association expressed concern about the time made available for consultation and that it had been consulted on after ORR concluded its ICC policy for inter-urban services. Heathrow Express said it considered ORR's proposals had been introduced without sufficient and rigorous analysis, supporting evidence or stakeholder consultation, departing from good regulatory practice.

Market segment definition

2.31 Heathrow Express and the British Chambers of Commerce said they did not agree with our market segmentation definition. They questioned why there was a lower station entries/exit threshold than for the interurban services market segment. Heathrow Express said that the definition was aimed at capturing it as the sole operator on the Paddington to Heathrow Airport route. Heathrow Express also questioned the entry/exit data used to set the threshold, arguing it is based on data that does not take account of the impact COVID has had on air passenger demand.

2.32 However, Network Rail and MTR Elizabeth Line said that ORR had defined the market segment too broadly and that there should be a separate market segment for Heathrow Airport given its unique nature in terms of the proportion of long-haul flights, passenger numbers and, in particular, business passengers.

ORR's approach to its market can bear analysis

2.33 Heathrow Express said that ORR's analysis lacked a thorough modelling of Heathrow Express's ability to bear an ICC and that our approach was inconsistent

with the approach taken by Steer[5] in setting the inter-urban ICC. The British Chambers of Commerce questioned whether ORR is in a position to introduce an ICC given uncertainty around the impact of MTR and possible changes to Heathrow Express's track access rights.

2.34 Business London also said it considered ORR had not carried out enough of an assessment of ability to bear. Heathrow Express and British Chambers of Commerce both said that ORR should publish its analysis for external scrutiny.

ICC rate

2.35 Heathrow Express said ORR had not taken sufficient account of the financial impact of an ICC on its profitability, particularly given uncertainties facing its business such as the impact of COVID on air passenger demand, in particular the downturn in business travel. The British Chambers of Commerce also questioned ORR's understanding of the business environment Heathrow Express is operating under. Both Heathrow Express and the British Chambers of Commerce said that ORR's analysis took no account of the impact of competition from the MTR Elizabeth Line.

2.36 Heathrow Express said that in assessing ability to bear and in any assessment of fixed costs recovery, account should be taken of past investment. Heathrow Express stated it had invested over a billion pounds in infrastructure over the past 25 years.

2.37 By contrast both Network Rail and MTR Elizabeth Line said that the proposed ICC was too low. Network Rail highlighted that if Heathrow Express is to meet its current total fixed avoidable costs, the ICC would need to be around £11-13 per train mile. It also highlighted that at £5 per train mile, Heathrow Express would be paying less (if it moved to a model passenger track access contract) in total fixed costs than it does under its existing contract. Network Rail also said that setting the ICC lower than what otherwise might be borne potentially distorts competition between airports as operators could gain a competitive advantage if they are not meeting the full costs they might otherwise be able to bear.

Phasing

2.38 Heathrow Express argued that it should be exempt from the ICC as an existing operator. However, it said that if ORR is to levy the charge, it should be subject to

[5] Steer are the consultants who conducted ORR's market can bear assessment as part of PR23. Its report can be found on this link: Market can bear analysis for passenger services, Steer April 2022

the phasing-in arrangements available to new operators. The British Chambers of Commerce said phasing-in should be for the first five years of operation.

Impact on investment

2.39 A number of respondents said an ICC could deter investment in rail-airport services and infrastructure, particularly at a time when aviation is still recovering from the impacts of COVID. Heathrow Southern Railway Ltd, for example, mentioned its proposed Southern Access to Heathrow project, and that increasing costs by levying an ICC would reduce available investment funding and undermine its business case for the project. Heathrow Airport Ltd raised similar concerns in respect of the impact an ICC could have on the business cases for both the Southern Access and Western Rail Link to Heathrow projects.

Impact on competition

2.40 Heathrow Express, the Airports Operators Association, British Chambers of Commerce and others said that an ICC could distort competition by raising barriers to entry, making rail less competitive with other modes and could also potentially distort competition between airports by raising transport costs of getting to and from airports.

Modal shift from rail

2.41 Heathrow Express, the Airports Operators Association and others expressed concern that increasing costs by levying an ICC, potentially leading to higher fares, would deter passengers from using rail to access airports. They argued, this would cause passengers to use less environmentally friendly modes such as cars.

CAA Regulation of Heathrow Airport and impact of ICC on Heathrow Airport Ltd's business

2.42 Certain respondents, notably, Heathrow Airport Ltd, Heathrow Express and others said that ORR's policy took no account of the recent Civil Aviation Authority (CAA) price control of London Heathrow Airport. Heathrow Express highlighted that Heathrow Airport Ltd is regulated by the CAA under a 'single-till' system, which means income from Heathrow Express is included in Heathrow Airport Ltd's single-till regulatory settlement (as Heathrow Airport Ltd owns Heathrow Express). Heathrow Express said the CAA had not taken account of the ICC in reaching its regulatory settlement for the airport.

2.43 Heathrow Airport Ltd also expressed concern that ORR had not taken account that it is currently operating at loss, as a result of COVID.

Our assessment of an ICC for airport-based services

Consultation process

2.44 Some respondents raised the concern that our consultation process had given insufficient time for stakeholders to fully respond to our proposals.

2.45 We have not previously considered the relevance of a specific mark-up for open access services to airports. This is because there have been no open access operators providing airport links other than Heathrow Express – an operator running services between London Paddington and Heathrow airport – which has been operating under a bespoke track access agreement (rather than a model passenger track access agreement covering the normal suite of regulated access charges)[6].

2.46 Since publishing our October 2022 conclusions document, Network Rail issued its CP7 Strategic Business Plan. This noted that Heathrow Express may be moving onto a model track access contract with Network Rail from the start of CP7. The potential change in Heathrow Express' contractual position highlighted whether open access services on airport rail links could bear a mark-up. However, as this came up later in the process it meant we could not consult on it until August 2023.

2.47 We recognise this consultation came late in the periodic review process and after we had originally concluded on the open access inter-urban market ICC. However, the consultation lasted four weeks and we consider this sufficient time for respondents to consider and respond to a single-issue consultation. We also informed stakeholders in our draft determination that we published in June 2023 that we were undertaking further work in relation to the relevance of a mark-up for open access services to major airports and would provide an update by the end of July. We had discussions with Heathrow Express (as the operator on the Paddington to Heathrow Airport route that could be affected by the introduction of an ICC), both before and after the consultation was published.

Market segment definition

2.48 Some respondents questioned ORR's market segment definition, including that it was inconsistent with the way we defined the inter-urban market segment and that we defined the market to specifically target Heathrow Express. Others considered we defined the market too broadly and that there should be a Heathrow Airport services market segment given the unique nature of Heathrow Airport.

[6] Other airport services are run by operators on concession-style agreements (which pay the FTAC).

2.49 As stated in our consultation, we continue to use station demand and straight-line distance as the criteria for defining market segments. We consider these criteria as simple and objective and likely to capture services with broadly similar characteristics. However, for the reasons set out in our consultation we do not consider straight-line distance to be relevant to market segment definition in the case of airport services.

2.50 It is important to note the aim of establishing a market segment is to bring together services with similar characteristics in terms of operating costs, service quality and fares as a means to establishing a framework for the analysis of ability to bear. This inevitably involves a degree of judgement.

2.51 We consider there is a clear justification for grouping together services that serve airports given the nature of passengers whose use of rail services is clearly linked to the operation and use of airports.

2.52 We consider a threshold at the airport station of 5 million passengers (entries/ exists) is appropriate given the nature and type of passenger using airport services, where fares are generally higher on average than in the interurban market. These services therefore have higher average net revenues.

2.53 We set passenger thresholds to ensure that an ICC is not applied to services within a market segment that could not bear an ICC. In response to Heathrow Express's concern about ORR basing the Heathrow Airport station entry / exits thresholds on the latest available data, the latest available data is for 2019-20. Our analysis shows that an airport market segment based on a lower threshold of 5 million passengers per year at the airport station captures services within this market segment that could bear an ICC of £5 per train mile. At the non-airport end of the route, a higher threshold of 15 million passengers captures services that could bear an ICC of £5 per train mile.

2.54 We do not agree with the contention that our market segmentation captures only Heathrow Express. We have defined an airport services market segment that captures all operators on routes to and from the airports included in the market segment definition. This is not confined to Heathrow alone (relevant routes also comprise London to Stansted and Gatwick airports), let alone a single operator on the route to Heathrow.

ORR's approach to its market can bear analysis

2.55 Some respondents said that ORR had not followed the Steer approach to assessing what the market can bear. They also claimed ORR had not made its analysis available for external scrutiny.

2.56 ORR followed the same market can bear methodology as the Steer analysis, in that our assessment of ability to bear is made with reference to operators' net revenues. Net revenue is broadly defined as passenger fare revenue minus operating costs.

2.57 Steer's analysis included an assessment of net revenues for Gatwick and Stansted Express services. It did not include Heathrow Express as it did not have revenue data from the LENNON[7] database, which was the revenue source used. In order to conduct our net revenue analysis of the Paddington to Heathrow route we used Heathrow Express's published accounts for revenue and costs information.

2.58 We fully explained our approach in our consultation and highlighted that all the data used was publicly available. As such it was possible for stakeholders to replicate the net revenue analysis we had undertaken.

2.59 Our model has been reviewed by Steer and found to provide a reasonable estimate of net revenue for this market segment.

2.60 Our analysis shows that based on net revenues, the Heathrow, Gatwick and Stansted Express services' net revenues could support an ICC rate of £5 per train mile.

ICC Rate

2.61 As stated above, our analysis underpinning the ICC rate was clearly set out in our consultation and the underlying data is readily available. We have set the level conservatively given uncertainties around factors such as the degree of recovery from COVID and the impact on Heathrow Express of competition from MTR Elizabeth Line. This is in line with our approach for setting inter-urban ICCs.

2.62 The ICC recovers forward looking fixed avoidable costs so we do not take account of past investments when considering ability to bear or the level of fixed avoidable cost recovery.

[7] LENNON is the UK's rail industry's fares revenue database.

2.63 We recognise the case put forward by Network Rail and MTR Elizabeth Line that the ICC rate could be higher (based on existing operators' net revenues, by which we understand them to be referring to Heathrow Express). However, we are setting a rate for the whole market segment. In doing so we are mindful of the uncertainties mentioned above and of not setting a rate so high as to potentially deter entry by operators that might be operating on lower margins who might otherwise enter the market. All charges are reviewed at each periodic review and are set at a level appropriate to the information about revenue, costs and impact on operators at the time of the review. This means the charge could be higher or lower after our next review in PR28.

Assessment of potential impacts on revenue

2.64 Our central net revenue estimate shows that the airport services market segment can bear an ICC of £5 per train. However, we also undertook sensitivity analysis to take account of the impact of COVID and competition from MTR Elizabeth Line on Heathrow Express in order to assess whether these factors would prevent Heathrow Express from bearing an ICC of £5 per train mile.

2.65 Heathrow Express' latest accounts (2022) show that it is operating at about 80% of its pre-COVID revenues. This is in line with rail industry revenue recovery in general and represents the extent to which Heathrow Express's revenues have recovered since COVID. Our central estimate is based on these latest accounts and so includes the impact of COVID to date.

2.66 We also made assumptions about future revenue growth. Our central estimate assumes no growth between now and 2024-25. Any growth (above CPI inflation) will, everything else being equal, increase net revenue.

2.67 We have also undertaken sensitivity analysis on the impact of competition from MTR Elizabeth Line. Although we cannot be certain about the level of impact, our analysis shows Heathrow Express net revenue resilient to a significant decrease in revenue as a consequence of competition from MTR Elizabeth Line and which takes no account of Heathrow Express's ability to respond to competition.

2.68 Heathrow Express also raised a concern about the impact of potential changes to its access rights on its revenue. We have not modelled this as we do not have sufficient information to do so. However, we note that it is not guaranteed that Network Rail will change access rights significantly if the parties were to move to a model contract, and Heathrow Express's timetable would continue to have protections from changes under Part D of the Network Code. Furthermore, we

have set the ICC rate at a conservative level that we consider captures such uncertainties.

Phasing

2.69 Heathrow Express said that as an existing operator it should be exempt from the ICC. Others argued that if an ICC for Heathrow Express is to be introduced it should be phased-in, in line with ORR's ICC phasing policy.

2.70 Heathrow Express is already paying a fixed charge. We therefore do not consider it appropriate to exempt it from paying an ICC if it were to move onto a model track access contract (under which it would no longer be paying such a fixed charge).

2.71 We established a phasing-in mechanism for new operators entering a market, recognising the significant mobilisation costs and risks of starting a new operation and becoming established in the market. Heathrow Express is an established operator. We therefore do not consider it appropriate to phase in an ICC for Heathrow Express, particularly as it is already paying a fixed charge markup.

Modal shift from rail

2.72 Several respondents expressed concern that an ICC would lead to higher rail fares, reducing demand and causing a switch to less environmental modes, undermining airports service access strategies.

2.73 We accept that, in the case of Heathrow Express, if an ICC leads to higher fares this could reduce demand. However, we generally expect the most price sensitive passengers would switch to MTR Elizabeth or the underground rather than other modes, such as cars or taxis.

Impact on investment

2.74 Some respondents raised the concern that levying an ICC on airport services would reduce funds available for investment in rail services and/or infrastructure or undermine business cases for doing so.

2.75 We recognise an ICC increases operators' costs but our analysis shows that operators in this market segment can afford to pay an ICC, contributing to the recovery of fixed costs.

2.76 Also, our policy aims to facilitate increased on-rail competition between passenger services over the longer-term, by allowing open access operators to benefit from potentially greater access to the network, while requiring that they contribute towards Network Rail's recovery of fixed costs where they are able to do so. This

is because the ICC payable by a new entrant is deducted from the level of abstraction used in calculating the not primarily abstractive (NPA) test that open access operators must pass to secure track access rights. The ICC could therefore be instrumental in an application passing the test, that would otherwise have failed if it did not pay an ICC. This could increase investment in rail services and/ or infrastructure.

Impact on competition

2.77 Some respondents pointed to ORR's duty to promote competition arguing that levying an ICC could distort competition by deterring future entry. Network Rail, by contrast, said that setting the ICC too low distorts competition in favour of existing operators and also potentially between airports.

2.78 We recognise that an ICC could potentially deter future entry. However, as discussed above, we have determined an ICC that is affordable and could encourage competition by requiring that entrants contribute towards Network Rail's recovery of fixed costs where they are able to do so.

2.79 In response to Network Rail, as we have set the ICC at a level the market can bear across a range of operators with different cost structures, we have taken a conservative approach, in part, to reduce the risk of deterring potential entrants.

2.80 Finally, ORR has to balance a range of its Section 4 duties in reaching its decision, which includes a duty to have regard to Secretary of State funds which we consider alongside our duty to promote competition.

CAA Regulation of Heathrow Airport Ltd and impact of ICC on Heathrow Airport Ltd's business

2.81 Heathrow Express and Heathrow Airport Limited both raised the concern that ORR had not taken account of the recent CAA price control of Heathrow Airport and not taken account of Heathrow Airport Ltd's current unprofitability due to the pandemic. Our role in a periodic review is to only consider Heathrow Express as the rail operator, as we are responsible for regulating rail services. We do not consider how other parts of its business are regulated or Heathrow Airports Ltd's financial position. In any case we would expect that any material change in Heathrow Express's income (if that were to arise) would be considered at the next CAA price control.

Our conclusion on an ICC for airport services market

2.82 We have carefully reviewed stakeholders' responses to our airport services market ICC proposals. We recognise that our proposals have elicited reactions both for

and against our proposals. Having carefully weighed the different arguments, and for the reasons set out in the section above, we consider an airport market segment can bear an ICC of £5 per train mile. We therefore permit Network Rail to levy an ICC of £5 per train mile on services operating within the market segment defined as airport services in CP7.

2.83 In making this decision we have had regard to our statutory Section 4 duties and other considerations as outlined in Annex D.

ICC for freight services

2.84 We said in our draft determination that we will continue to permit Network Rail to levy an ICC on services carrying iron ore; spent nuclear fuel; electricity supply industry (ESI) biomass and for ESI coal.

2.85 In our draft determination, we presented draft rates for each of these ICCs in thousand gross tonne miles (kgtm) as set out in Table 2.2 below.

2.86 For ESI coal and iron ore, we calculated the ICC rate so as to broadly maintain the overall level of track access charges (excluding any EC4T payments) between CP6 and CP7, as we did in PR18. This reflected the available evidence that we commissioned for PR23, which indicates that there have been no major changes in ability to bear for these commodities. Taking account of the impact on ability to bear from the increase in VUC rates, as set out in paragraph 1.22. and in Chapter 3 below, we capped the ICC which will result in approximately £1 million of savings over CP7 for operators carrying these commodities.

- For spent nuclear fuel, we said the ICC would be set to recover the total traffic-avoidable fixed costs that are allocated to services transporting this commodity (although the draft rate that we included in our draft determination was illustrative, as it was based on PR18 fixed cost allocations).
- For biomass, we updated the available evidence on ability to bear for freight services carrying this commodity. We proposed on this basis to maintain the ICC for biomass traffic in real terms.

2.87 There are two possible values that could be consistent with maintaining the biomass ICC in real terms: (1) the rate which is paid in year 5 of CP6 (£1.74 per kgtm (2023-24 prices), or (2) the rate set at PR18 of £1.4 per kgtm in 2017-18 prices, uplifted to 2023-24 prices based on the latest forecast of inflation through

to 2023-24[8]. This would produce a slightly higher value of £1.84 per kgtm. Given that we proposed in our draft determination to set this ICC equivalent to the year 5 CP6 rate (£1.74 per kgtm), and recognising there is a degree of uncertainty in assessing ability to bear a mark-up, we confirm our draft determination decision to adopt the first approach. The biomass ICC for CP7 will therefore be set at **£1.74 per kgtm**.

Table 2.2 Freight operator ICC rates for CP7 (2023-24 prices)

Commodity	Year 5 CP6 rate (£ / kgtm)	CP7 rate (£ / kgtm)	Network Rail average annual ICC income in CP7[9] (£m)
ESI coal	1.87	1.25	0.2
Iron ore	1.91	1.28	0.2
Spent nuclear fuel	41.27	21.23	2.4
ESI biomass	1.74	1.74	2.5

Summary of stakeholder views

2.88 Freightliner, DB Cargo (UK) and Rail Partners welcomed our decision to offset the increase in VUC by adjusting ICC rates, and therefore limit the overall increase in freight charges.

Spent nuclear fuel ICC rate

2.89 At the time of the draft determination, we were only able to provide an illustrative ICC rate for spent nuclear fuel as Network Rail had not completed its assessment of spent nuclear fuel's total fixed avoidable costs. Network Rail has completed this work, which has resulted in a significant increase in spent nuclear fuel's allocated fixed avoidable costs compared to CP6. Network Rail explained that the increase from £0.7 million to £6.1 million per year was due to an increase in spent nuclear fuel traffic combined with a decrease in other commodities used on those lines, which means spent nuclear fuel is allocated a greater proportion of traffic avoidable fixed costs. This would have led to an ICC rate considerably in excess of the illustrative rate used in the draft determination.

2.90 We have carefully considered whether to implement the increase in full or cap it at the draft determination rate. We have decided to cap the ICC at the draft

[8] The difference between these values is because rates are indexed by a lagged inflation factor during a control period, rather than forecast inflation.

[9] Based on Network Rail's CP7 traffic forecasts

determination rate. This is because we have received information about the significant increase in costs late in the periodic review process. We consider such a significant change in costs would need closer scrutiny and to be consulted on and there was not the time available to do so. Therefore, the spent nuclear fuel ICC rate for CP7 will be **£21.23 per kgtm**.

2.91 Our decision to cap the ICC for spent nuclear fuel at the draft determination rate will mean operators carrying spent nuclear fuel will pay around £18.7[10] million less over CP7 compared to what they would have paid had the charge risen to the latest recalibration estimate of £54.82 per kgtm. Compared with the CP6 ICC rate of £41.27 per kgtm, operators will save £11.1m[11] over CP7 as a result of the cap.

Our conclusion on the level of freight ICCs

2.92 In our draft determination, we presented draft rates for each of these ICCs (in thousand gross tonne miles, or kgtm) as set out in Table 2.2 above.

2.93 We received comments as summarised above and there were no objections to our freight ICC draft determination proposals. Having taken account of these comments, and for the reasons above and in our draft determination, we therefore confirm our decision on freight ICCs.

2.94 In determining our PR23 ICC levels for freight we have had regard to our statutory Section 4 duties and other considerations as outlined in Annex D.

[10] Based on Network Rail's CP7 traffic forecasts.

[11] Based on Network Rail's CP7 traffic forecasts.

3. Variable charges

Summary

Network Rail is forecast to receive around £7.2 billion in variable charges income during CP7 (in 2023-24 prices). This largely comprises of around £2.1 billion in variable usage charge (VUC) income, around £5.0 billion in traction electricity (EC4T) charge income and £0.1 billion in EAUC.

Network Rail's recalibration of the VUC indicates that cost-reflective VUC rates are set to increase in CP7. This means passenger VUCs will increase by 3% in year 1 of CP7 and be flat thereafter.

In light of this, we have reviewed our phasing-in policy for increases in VUC rates paid by freight and charter operators. We have set average VUC rates to increase during CP7 at the same rate as that set in PR18. VUC rates will then increase further in CP8 with a view to being fully cost-reflective by the end of CP8. While the increase in freight VUCs is approximately £42m relative to CP6 levels, the decision to cap freight VUCs below cost during CP7 avoids freight operators paying around £33m relative to what would be paid if VUCs were charged at the full direct cost.

This revised policy will limit the financial impact on freight operators of additional increases in VUC rates, over and above those planned for in CP6, while ensuring rates more closely reflect the direct costs incurred in using the network. We estimate that Network Rail will recover around 87% of directly incurred costs from freight traffic in CP7, compared to around 80% in CP6.

We are also confirming our decision to streamline the charging approaches for EC4T by removing the partial fleet metering (PFM) charging approach, removing the loss incentive mechanism from the EC4T reconciliation process and, in respect of modelled consumption, removing generic consumption rates as well as the facility to obtain a new bespoke modelled rate from the start of CP7.

Variable Usage Charge (VUC)

3.1 The VUC recovers the operating, maintenance and renewal costs that Network Rail incurs as a result of small (or marginal) changes in traffic levels, assuming

network capacity remains fixed[12]. It does not reflect the costs of providing or changing the capability or capacity of the network.

3.2 The VUC recovers costs relating to three types of activity: track, civil engineering and signalling. The vast majority of these costs are track related (84%) with civil engineering and signalling representing 13% and 3% respectively[13].

3.3 We confirmed in our draft determination that we will retain the existing approach to setting the VUC for PR23. In particular, we confirmed that we will not make any changes to the cost categories recovered through the VUC, or the underlying track damage formulae used to calculate VUC rates.

3.4 Having considered Network Rail's draft price list published in July 2023, as well as stakeholders' responses to our draft determination, this document confirms these decisions as part of our final determination. We also confirm that we will maintain the existing trajectory of VUC increases as envisaged when we set our VUC capping/phasing-in policy for freight and charter in PR18 and we will not correct the inflation shortfall that has occurred in CP6. Passenger operators will continue to pay cost-reflective rates as per Network Rail's PR23 recalibration.

3.5 Following our draft determination, we have worked with Network Rail to update its recalibration to account for our draft decisions. The output of this recalibration means that the average increase for uncapped passenger rates is 3.0%, the average increase for uncapped freight rates is 8.6% and the average increase for uncapped charter rates is 7.6%. The updated average increases in uncapped rates are lower than those presented in our draft determination.

3.6 We will not introduce any capping or phasing-in for passenger operators, whose charges will therefore increase by 3.0% in real terms compared to CP6. However, as explained above, we will maintain the existing phasing-in trajectory for freight and charter operators. This means that over CP7, freight and charter charges will increase by 17.5% (i.e. 3.3% annually) and 8.6% (i.e. 1.7% annually) respectively, on average, compared to CP6.

3.7 For freight, there is significant variation in the increases in VUC rates for different vehicle and commodity types, with some rates increasing by significantly more than 17.5% while some are lower than PR18. This is because in PR18 different

[12] In practice, rail infrastructure operating costs are widely understood not to vary materially with traffic. From control period 4 (CP4), the charge has been set to recover only certain maintenance and renewal costs that vary with traffic.

[13] For more details, see Network Rail consultation on regulated access charges in CP7.

types of vehicles/commodities had different levels of caps to their charges. As we move to PR18 cost reflective rates, these caps are removed progressively, implying that those rates that received a higher cap will increase more than those that received no or smaller caps.

3.8 The rest of this chapter provides an update on further analysis that we undertook following our draft determination as well as the proposed changes to our decisions as a result of this analysis. We then summarise stakeholders' responses before setting out our final decisions.

Changes since our draft determination

3.9 In July 2023, Network Rail published its CP7 draft price list. This reflected our draft decision on phasing-in of further VUC increases for freight and charter operators, as well as the charging of fully cost-reflective rates for passenger operators.

3.10 The PR23 recalibration that informed the price list and our draft determination was based on Network Rail's forecast maintenance and renewal costs, efficiency assumptions (including headwinds), inflation assumptions and traffic forecasts as included in its Strategic Business Plan (SBP). The average increase for passenger uncapped rates was 6.6%, the average increase for freight uncapped rates was 12.9% and the average increase for charter rates was 8.8%.

3.11 In our draft determination, we identified two main factors which we considered were the source of these increases, namely: i) forecast track costs that were slightly higher in PR23 relative to VUC-related track costs in PR18; and ii) lower traffic forecasts for CP7.

3.12 Following our draft determination, we worked with Network Rail to engage with industry where we explained our policy and gave stakeholders the opportunity to better understand the implications of our policy, before submitting responses to our draft determination. During this engagement, Network Rail was also able to explain the recalibration analysis that informed its draft price list and our draft determination.

3.13 At the same time, we worked with Network Rail to update the recalibration analysis with the following new information:

- Updated traffic baseline: Network Rail has updated the recalibration model with its most current traffic forecasts which are 1.1% lower than the baseline traffic used in the draft determination.

- 5% traffic increment: the VUC rates are calculated in a series of steps using the Vehicle Track Interaction Strategic Model (VTISM)[14]. One of the steps in the calculation involves running the model with an increment on the base traffic tonnage predicted for the end of CP6. This allows Network Rail to compute the short-run marginal increase in capex (track renewals) and opex (track maintenance) costs necessary to maintain the same track performance for 35 years[15]. In PR18, the analysis we commissioned from Arup showed that the choice of the increment affects the VUC rates, with higher increments tending to produce higher rates. As part of that analysis, Arup assessed the three traffic increment scenarios that Network Rail had considered in VTISM representing +5%, +10% and +20% traffic growth. These produced a range of VUC charges that increased with traffic levels. Arup concluded that the +5% scenario that Network Rail had decided to use in its final plans was more reasonable, based on the premise that VUC should most closely represent the short-run marginal cost increase. The analysis that informed our PR23 draft determination was completed with a traffic increment of +9%. We considered our PR23 approach on this should be consistent with both the Arup recommendation and our PR18 policy. Therefore, we asked Network Rail to update the VTISM model with a +5% traffic increment instead.

- Updated annual maintenance and renewals expenditure on the assets that are related to the VUC charge, in line with our draft determination (PR23 draft determination: Supporting document - sustainable and efficient costs: Part I, table 1.7). This, combined with existing PR18 VTISM cost traffic variability assumptions and the CP6 methodology for calculating variable charges, has reduced VUC-related costs by 5.5% from £2.1 billion in our draft determination to £2.0 billion.

- CPI Inflation forecast: Passenger VUC rates were recalculated based on the May 2023 Bank of England forecast of 2023-24 CPI inflation. This is different to the inflation assumption used to derive the draft price list (November 2022 OBR forecast), which was consistent with Network Rail's SBP and our draft determination policy position on access charges. We continued to calculate freight and charter VUC rates based on uncapped rates calculated in PR18,

[14] VTISM is an engineering model owned by the Rail Safety and Standards Board (RSSB) and used by Network Rail to calculate VUC rates.

[15] The variable cost is the difference between the cost estimated with an increase in traffic minus the cost estimated with 0% traffic growth.

uplifted to 2023-24 prices using cumulative lagged indexation that has been applied to freight and charter VUC rates during CP6.

3.14 As noted in paragraph 3.5, the updated VUC recalibration has produced lower increases than presented in our draft determination.

3.15 As the VUC charge is set to recover the costs imposed by additional traffic on the network, only a proportion of the maintenance and renewals costs detailed in Network Rail's SBP flow into the VTISM and then the VUC model. The proportion is based on engineering advice for each of the many components (for example, there are over 1,800 individual vehicles in the model, each with its own impact characteristics). The large number of input variables to the VTISM model and the complex mechanism through which they interact with one another during and between control periods works against apportioning the drivers of the increase between freight and passenger in a precise manner.

3.16 Nonetheless, our analysis shows that the vast majority of the above increases in uncapped VUC rates are caused by inflation indexing. Throughout CP6, VUC rates were uprated using a lagged CPI index based on the average value of the previous calendar year's CPI inflation (for freight) and previous November (for passenger). This lagged inflation index will produce a mismatch when compared to actual annual movements in CPI inflation (unless inflation is constant).

3.17 To be able to estimate the impact of CPI inflation adjustment on our policy, the uncapped PR18 VUC rates are inflation uprated to 2023-24 prices in two ways: we first use the (lower) contractual rate, i.e. lagged indexation factor (1.206 for freight, and 1.239 for passenger and charter), and then use the (higher) May 2023 Bank of England forecast of 2023-24 CPI inflation (i.e. 1.276).

3.18 Excluding the effect of CPI inflation above, there would be a 1.5% increase in VUC uncapped rates on average, a 0.0% increase in passenger rates, a 2.6% increase in freight rates and a 4.5% increase in charter rates.

3.19 Apart from the effect of CPI inflation and how we adjust for it, the other factors contributing to these increases in uncapped VUC rates include the lower traffic baseline. As detailed in Network Rail's consultation on regulated access charges in CP7, the VUC rates for each vehicle are calculated in two main steps:

(i) in the first step, Network Rail uses the VTISM model to estimate the total annual wear and tear costs that Network Rail will incur, expressed as a single average rate for Great Britain for both passenger and freight traffic, in terms of £/kgtm value. This is done by dividing the estimated

VUC related maintenance and renewals costs by forecast total (passenger and freight) traffic; and

(ii) in the second step, the estimated total wear and tear costs are apportioned between vehicle types, based on damage formulae designed to estimate the wear and tear impact of different vehicle types based on their characteristics (e.g. weight, speed and unsprung mass).

3.20 The first step of the calculation means that if total traffic is reduced from one control period to the next, all else remaining constant (in particular the costs), the average network-wide rate increases (because the denominator in the ratio has decreased). Network Rail forecasts show that total traffic will decrease by c. 12% in CP7, compared to CP6. This is further explained in paragraph 3.49.

Summary of stakeholders views

3.21 The majority of stakeholders welcomed our decision to retain the existing freight and charter VUC phasing-in policy as set in PR18. However, a number of concerns were also raised by respondents, particularly by freight operators. In this section we summarise the issues raised and set out our response for each.

Alternative transition profile for freight VUC

3.22 Network Rail's response was mixed. While it broadly supported our draft decisions on access charges, it disagreed with extending the VUC capping and phasing-in proposal to cover a period of 20 years (control period 5 (CP5) to control period 8 (CP8) inclusive). It said that while not "technically open-ended", 20 years was too long a period, and therefore may not be within the spirit of the legislation.

3.23 Network Rail considers that ORR's decision does not deliver PR18 cost-reflective rates by the final year of CP7 (in real terms). According to Network Rail, this is because of the way the inflation updating has lagged actual inflation during CP6. Network Rail suggested that ORR should explore an approach that would see full cost reflectivity achieved either by the end of CP7 or reached either by year 2 or year 3 of CP8.

3.24 Network Rail also disagreed with the proposed treatment in CP7 of freight VUC rates that are currently uncapped (almost a quarter of VUC freight rates in CP6). Under our revised policy, these rates would be held constant in real terms across CP7. Network Rail suggested in these instances, it would be appropriate to either reflect the fully-cost reflective rates based on the PR23 recalibration exercise at the start of CP7, or introduce a different phasing-in policy where those rates which are currently uncapped in CP6 would be fully cost-reflective by the final year of

CP7. It argued this would avoid rates being held constant unnecessarily, reduce public subsidy and also reduce the impact of any real terms increases in these rates in future recalibrations.

3.25 However, freight operators including Freightliner and DB Cargo disagreed with Network Rail's position and suggested that the unwinding of caps should be done over much longer time periods.

3.26 Northern did not support the capping policy and stated that freight and charter operators should pay cost reflective VUC rates like passenger operators. Transport Scotland considered that the continued phasing-in of VUC charges during CP7 may disincentivise Network Rail from encouraging growth in freight services. This is due to the costs of running freight services not being fully reimbursed to Network Rail.

Our response

3.27 When developing our proposed capping/phasing-in policy we considered a range of transition profiles including moving to cost reflective rates in CP7, extending the phasing-in to the end of CP8, and limiting the increase in rates to 10% over and above unwinding of caps, amongst others. These are discussed in our PR23 final determination: policy position – impact assessments document that we are publishing as part of our final determination. We also considered indexing variable charges for freight and charter in a way that corrects for the CP6 inflation adjustment effect from year 1 of CP7.

3.28 The trajectory of our proposed transition profile to cost reflective charging has been set in light of our statutory duties as detailed in Annex D. In particular, we have taken account of our duties to promote efficiency and economy on the part of persons providing railway services, have regard to the funds available to the Secretary of State, promote the use of the railway network and enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

3.29 We have also considered the requirement in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and the Commission Implementing Regulation (EU 2015/909) that direct costs must be recovered from operators. Our interpretation of this legislation is that, while costs directly incurred have to be recovered from train operators, we have the flexibility to allow for such changes to the level of the VUC to be brought in over a period of time.

3.30 However, capping and phasing-in must not be open-ended or indefinite; there must come a time when full direct costs are charged. We also consider that phasing-in should be credible over time and not, for example, imply an extremely unlikely change in charges at the next review.

3.31 With regard to the treatment of freight VUC rates that are currently uncapped, we consider holding these rates constant in real terms over CP7 will avoid complicating the VUC charge. Overall though, the increases in other VUC rates over CP7 means that the VUC charge will move closer to recovering total directly incurred costs from freight traffic by the end of CP7. Based on the latest recalibration outputs, we estimate that Network Rail will recover around 87% of directly incurred costs from freight traffic in CP7, compared to around 80% in CP6.

3.32 Furthermore, the way that caps would continue to (and not to) apply under our chosen policy, still broadly preserves the relativities in the cost of network use between different vehicle types, as set in PR18. This means that there are near-term benefits to operators from using more track-friendly vehicles. Network Rail's suggestion to introduce a different phasing-in policy in CP7 for those rates currently uncapped in CP6 would change these relativities.

3.33 We recognise that, as suggested by Transport Scotland, subsidised access charges could disincentivise Network Rail from encouraging growth in freight services. However, we considered this potential effect in PR18 and concluded that it was unlikely to be a material consideration when considering capping VUC rates (See PR18 Impact Assessment). Whilst VUC rates will not be fully cost-reflective in CP7, our analysis shows that this will not make it unduly difficult for Network Rail to fund its activities as it is not a significant amount relative to the settlement.

3.34 As described in paragraph 2.8 and 2.9, changes in VUC income for England & Wales do not change total funding for Network Rail, whereas changes in VUC income in Scotland do change total funding for Network Rail Scotland. However, Network Rail's CP7 SBP was based on an assumption of flat rates (in real terms) and the effect of our policy means that Network Rail will receive around £42.2 million more in VUC income (of which £1.2 million relates to Network Rail Scotland), compared to the SBP assumptions. Network Rail recognised this income in its response to our draft determination. This compares to approximately £4.6 billion of total funding (from all sources net of electricity for traction) for Network Rail Scotland and £43.1 billion for Great Britain.

3.35 We have carefully considered the comments made by all the respondents on this. For the reasons set out above, and in the draft determination, we have decided to retain the transition profile outlined in our draft determination.

Consistency of VUC increases with freight growth targets and net zero agenda

3.36 Whilst welcoming the VUC phasing-in policy, freight operators including Freightliner, DB Cargo, Railfreight Group, and GB Railfreight expressed concerns that the increases arising from Network Rail's PR23 recalibration are inconsistent with freight growth targets and the net-zero agenda. Although they welcomed ORR's decision to cap this increase in CP7, they consider that this decision merely moves the cliff-edge to CP8 and the uncertainty that it creates risks impacting on investment across the freight sector.

Our response

3.37 As outlined in our draft determination, the aim of our capping and phasing-in policy proposals was to strike the right balance between our statutory duties and to also comply with the existing legislative requirements. We also had regard to wider government policies that affect rail freight as outlined in our impact assessment.

3.38 We consider that our freight and charter VUC capping and phasing-in policy is consistent with funders' freight growth ambitions and the targets confirmed in this final determination (see PR23 final determination: Supporting document – outcomes). The freight growth trajectories that we have set, of 7.5% for England & Wales and 8.7% growth for Scotland, are based on analysis commissioned by Network Rail which considered a range of scenarios covering a range of wider market and economy effects as well as freight track access charges. The central case assumed that freight VUC rates would continue to increase to uncapped levels as calculated in PR18, which is consistent with our policy.

3.39 This capping and phasing-in policy means the CP7 VUC rates will be lower than the cost-reflective rates based on Network Rail's PR23 recalibration. We do not agree that implementing this policy amounts to postponing the cliff-edge to CP8 or that it creates uncertainty which risks impacting on investment across the freight sector.

3.40 We are aware that the 2016 Regulations require that direct costs must be recovered from train operators, although the Regulations give us flexibility to allow for changes to cost reflective VUC rates to be brought in over a period of time. However, the Regulations also stipulate that this must not be open-ended or

indefinite and there must come a time when direct costs are fully recovered. Therefore, we envisage that these increases to cost reflective rates should happen in CP8.

3.41 The capping and phasing-in policy that we are implementing allows time for operators to prepare for such an increase after CP7, which is expected to minimise its impact. This provides a credible long-term trajectory which will give operators and rolling stock companies clearer expectations on the future level of charges.

Potential for modal shift from rail to road

3.42 Freight respondents argued that the proposed increases in charges will cause the rail freight sector to become less competitive, resulting in a modal shift from rail to other modes of transport, notably to road haulage which, they say, continues to benefit from a stable policy position.

Our response

3.43 We recognised that higher charges may impede rail freight volumes and result in a modal shift from rail to other modes of transport. As part of our final determination, we are publishing our impact assessment where we consider the potential wider external negative impacts (for example, on the environment) that might arise as a result of a reduction in rail freight traffic volumes following an increase in charges.

3.44 Alongside our draft determination, we also published a study which we commissioned from MDS Transmodal (MDST) to help us understand better the likely impacts on freight traffic volumes of increases in VUC rates. The study consisted of updating MDST's March 2022 study on rail freight demand elasticities with respect to track access charges to reflect the latest available information on the relative costs of transporting goods by different transport modes.

3.45 This updated evidence showed that the impact on rail freight volumes of phasing-in the increase in VUC to cost-reflective levels as forecast in PR18 remains broadly in line with the expected impacts we considered when we developed this policy.

Robustness of the PR23 recalibration model

3.46 Passenger operators including ScotRail, London North Eastern Railway (LNER), MTR-UK and First Trains questioned the robustness of the VUC recalibration methodology and the increase in VUC rates that came out of it. These stakeholders questioned how the forecast reduction in traffic should affect VUC

rates. For example, MTR-UK argued that if VUC is truly meant to recover marginal cost then it should be the same whether predicted traffic levels go up or go down. This view was also supported by freight operators including Freightliner and DB Cargo.

Our response

3.47 We worked with Network Rail to review the recalibration model in light of our draft determination and responses from stakeholders. As explained above (see paragraph 3.5), this review has led to a reduction in the increases in uncapped VUC rates presented in our draft determination.

3.48 In our draft determination, we confirmed our decision that we will retain the existing approach (as outlined in paragraph 3.4) to setting the VUC for PR23. This means that the VUC methodology that Network Rail used to inform its draft price list and our draft determination is consistent with that used for PR13 and PR18.

3.49 There is a complex relationship between overall traffic levels and the pattern of maintenance and renewals: costs do not simply rise or decline linearly with traffic. As Network Rail explained in its conclusion document, higher overall traffic levels tend to result in slightly lower marginal costs for all vehicle types, while lower traffic levels tend to result in slightly higher marginal costs for all vehicle types.

3.50 Step one in the VUC calculation methodology (as outlined in paragraph 3.19 (i)) means that, other things being equal (especially VUC-related costs), the average £/kgtm VUC rate for Great Britain will tend to fall slightly if overall traffic levels rise (i.e. increase in the denominator), and rise slightly if overall traffic levels fall (decrease in the denominator). This is not a reflection of a change in allocations between vehicle types or operators; it is a reflection of a change in the average marginal cost of wear and tear that Network Rail is estimated to incur across all vehicle types and operators.

3.51 This does not have a direct impact on the results from the second step of the VUC methodology because average costs are apportioned in the same way. However, because this apportionment is applied to the results of step one, the end result is that all VUC rates for individual vehicles will tend to fall slightly if step one resulted in lower average costs due to overall rise in traffic levels. Similarly, VUC rates tend to rise slightly if step one resulted in higher average costs due to an overall reduction in traffic levels. Again, these changes in rates reflect changes in the costs that Network Rail incurs, not changes in allocations between vehicle types or operators.

3.52 As part of PR18, we commissioned Arup to assess whether Network Rail had used the VTISM model in an appropriate manner to calculate the average VUC track maintenance and renewal cost rate for Great Britain. As part of the mandate, Arup also assessed the computational accuracy of Network Rail's CP6 VUC model. Based on its review, Arup supported the process that Network Rail had undertaken to calculate the VUC and concluded that VTISM was used in a reasonable way.

3.53 As the VUC methodology that Network Rail used in its PR23 recalibration is consistent with that used in PR18, we consider that the evidence provided in Arup's assessment remains valid. This, in addition to our own assessment as part of PR23, gives us confidence that the methodology that Network Rail used to recalibrate the VUC rates for PR23 is reasonable.

3.54 However, this aspect of the modelling approach is one of the areas on which we will focus our review starting early in CP7. We will start this review by engaging with all interested stakeholders to help identify the scope of the review and welcome their involvement throughout the review as we prepare for CP8.

Other VUC issues: VUC default rates refund

3.55 In our draft determination, we stated that we support Network Rail's proposal to limit the period during which train operators can be refunded for the use of default rates to a maximum of 12 months from the introduction of a vehicle to the network. We note that we misquoted Network Rail's proposal which was to limit the period during which train operators can be refunded for the use of default rates to a maximum of 12 months from the date that ORR issues its approval for the new VUC rate.

3.56 We received three responses on this proposal: GB Railfreight had concerns around the proposal to change the default period as the process for applying for and agreeing VUC rates can take many months. GB Railfreight said that the applicable date should be from the date of the first application, not the date of the agreed or published new prices as train operators would be financially penalised if Network Rail and ORR delay agreeing the new rates. Govia Thameslink Railway (GTR) suggested that the existing policy, where a refund can be claimed going back up to 5 years to the beginning of the control period, should stay as it is. GTR did not provide any further information to support its proposal. Network Rail supported the proposal.

Our response

3.57 We consider that ORR and Network Rail endeavour to approve applications for new VUC rates in a timely manner. However, GB Railfreight's concerns around the length of time applications can take to process are also valid.

3.58 GB Railfreight's suggestion of linking the refund to the date on which the application is made would require clarity around what constituted a full and complete application. Rather than undertake that exercise now, noting the short timescale we have had to complete the final determination, we do not intend to initiate the change to the refund period at this time. This does not negate our intention to incentivise the production and prompt processing of complete and accurate submissions. We intend to monitor progress on this over CP7 and if issues remain, we will examine how the regulatory framework can be adapted to improve the production of complete and accurate applications and their prompt processing.

3.59 Therefore, for CP7, we are not introducing Network Rail's proposal to limit the period operators can obtain a refund for use for the default to 12 months. Operators will be able to continue to recover any overcharge to the later of either the introduction date of each individual new / modified vehicle or the start of the control period.

Implications of VUC phasing-in policy

3.60 In considering the policy implications of an increase in VUC rates, we have had regard to the legal requirements underpinning the VUC as described in Annex D. We are also mindful that funders have placed a strong emphasis in PR23 on the growth and development of freight services, as set out in both HLOSs for England & Wales and Scotland.

3.61 Against this background, we have separately considered the implications for each type of operator[16].

Passenger VUCs

3.62 For publicly-contracted passenger operators, the impact of changes to the level of VUCs is mitigated by their current contractual arrangements. As explained in

[16] Based on the high-level market segments established in the 2016 Regulations. These segments all differ in terms of access regime and the nature/purpose of the service. The charging scheme should take account of these differences and we do not consider that adopting a different approach across these different operators is unduly discriminatory. Indeed, it would risk undue discrimination if we were to not reflect such differences in a charging scheme.

paragraph 2.8 and 2.9, we expect that the overall financial impact for DfT would also be offset by lower FTAC payments by publicly-contracted passenger operators to Network Rail (due to higher forecast Network Rail VUC income). However this would not be the case for Transport Scotland, as the level of FTAC payments would remain the same.

3.63 Open access operators would see an increase in their charges due to higher VUC rates. However, this group is not forecast to incur a material increase in charges due to the increase in VUC rates in CP7. We estimate that the specific increase in VUC rates for these operators would be between 0.0% and 5.0%. This, combined with the increase in EAUC rates, represents an increase of between 0.0 and 0.2% in the main open access operators' total expenditure[17].

3.64 We do not therefore consider it necessary to consider a cap or phasing-in of the increase in VUC rates for these passenger operators, particularly when set against the benefits (in terms of promoting the use of the network and securing Network Rail's funding) of setting VUC rates at a level which reflects the full costs of network use. As such, we will not be introducing any capping or phasing-in arrangements for passenger operators.

Freight VUCs

3.65 A significant number of individual VUC rates for freight traffic are currently capped below their fully cost-reflective level. Under this policy, the increases in VUC for freight (and charter) services that were due to take place at the start of CP6 (following recalibration) are being phased-in over CP6 and CP7.

3.66 The impact of phasing-in the remaining increases in VUC rates to reach the uncapped levels as calculated in PR18 will be a further increase in rates of approximately 17.5% on average (in real terms) over the course of CP7, relative to current rates being paid in year 5 of CP6. On a straight-line basis, this is equivalent to an annual average real terms increase of 3.3% over CP7.

3.67 If the phasing-in profile was set so that VUC rates reach the latest PR23 cost-reflective rates by the end of CP7 (including adjusting for the inflation shortfall in CP6), the total increase faced by freight operators would be significantly greater than this. This is because, as explained in paragraph 3.5, the latest recalibration outputs show an average increase in cost-reflective rates of around 8.6% (in real

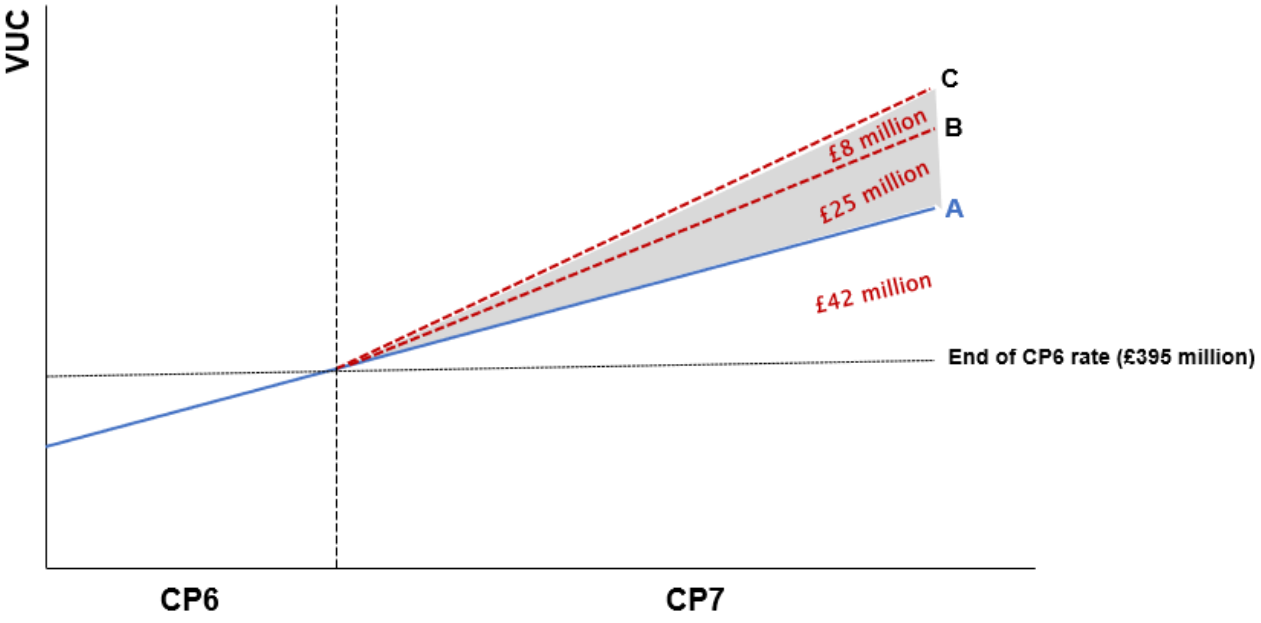
[17] Based on total expenditure (staff, fuel, rolling stock and other expenditure) for 2021-22 as reported in ORR's latest UK rail industry financials document.

prices) for freight. The total average increase in VUC rates from current levels to reach cost-reflectively would be around 27.6% (in real prices) by the end of CP7.

3.68 In CP6, we have been adjusting VUC rates for inflation using an index based on the previous year's inflation. Given the high inflation observed in recent years, this means freight VUC rates have been lower than they should be if actual inflation were to be used. In Figure 3.1 below, we refer to this difference as an "inflation shortfall".

3.69 Figure 3.1 illustrates the profile of increases in VUC rates if we fully unwind all caps to equal the latest cost-reflective rates for CP7, compared to the existing trajectory to reach cost-reflective rates as calculated in PR18 (with and without correction for the inflation shortfall). It also shows the additional VUC income from freight operators that Network Rail would expect to receive under each profile, relative to holding rates constant at CP6 exit levels.

Figure 3.1 Illustration of phase-in profiles for freight VUC rates subject to capping



A - Final CP7 trajectory: PR18 cost reflectivity by end CP7 **without correcting CP6 inflation shortfall** – 18% increase over end CP6

B - PR18 cost reflectivity by end CP7 with CP6 **inflation shortfall corrected** from Y1 CP7 – 24% increase over end CP6

C - **PR23 cost reflectivity** by end CP7 with CP6 **inflation shortfall corrected** from Y1 CP7 - 28% increase over end CP6

Note: Diagram is not to scale.

3.70 We have considered the impacts of these VUC increases on freight operators, focusing on the incremental impact of the higher cost-reflective VUC rates over and above the phasing-in of VUC increases, as forecast in PR18 (trajectory A in Figure 3.1).

3.71 Full cost-reflectivity would result in freight operators paying around £33.1 million more in VUC payments over the course of CP7 than in CP6. This is represented by the grey shaded area in Figure 3.1. We estimate that around £1.3 million of this £33.1 million difference relates to income for Network Rail Scotland (with the rest relating to England & Wales). The majority of this increase (£25.3 million) represents additional payments that freight would make to Network Rail if we were to correct for the inflation shortfall from year 1 of CP7.

3.72 We commissioned MDST to update its March 2022 study on rail freight demand elasticities with respect to track access charges to reflect the latest available information on the relative costs of transporting goods by different transport modes[18]. This report was published alongside our draft determination. This updated evidence showed that the impact on rail freight volumes of phasing-in the increase in VUC to cost-reflective levels as forecast in PR18 remains broadly in line with the expected impacts we considered when we developed this policy[19]. However, the impact on volumes is more significant if VUC rates increase over and above this trajectory. Due to the variation in the increases in cost-reflective rates for different commodity types, some commodities would see an increase in cost-reflective VUC rates of closer to 20%. In several cases, the estimated demand impacts associated with an increase in VUC rates to these levels are twice as much, compared with the phase-in profile that was envisaged at PR18.

3.73 We have also considered these impacts in the broader context of PR23. In particular, traction electricity rates are higher now than when we set our capping / phasing-in policy in PR18, while EAUC rates are also set to increase in CP7. While these factors are only relevant to electrified freight services[20], they nevertheless affect the overall competitiveness of rail freight.

3.74 In light of the above, we consider it would be appropriate to maintain capping arrangements for VUC rates paid by freight traffic in CP7. Moreover, we will not be correcting in CP7 for the inflation shortfall created in CP6, which would increase the charge by 5.8% or £25.3 million (trajectory B in Figure 3.1).

3.75 We note that around a quarter of individual freight VUC rates are currently uncapped in CP6. To avoid complicating the VUC charge, these rates will be held

[18] In particular, MDST has updated a number of input assumptions drawn from DfT's Transport Analysis Guidance, such as driver wages, fuel costs and road/rail duty.

[19] For most commodities, the impact on volumes has fallen slightly compared to the estimates produced in March 2022. This can be seen by comparing Table 8 in MDST's March 2022 report with the revised Table 8 presented in the appendix.

[20] Electrified traction accounted for 11% of total freight train kilometres in 2022-23. Source: ORR data portal.

constant in real terms over CP7. Overall, though, the increases in other VUC rates over CP7 means that the VUC charge will move closer to recovering total directly incurred costs from freight traffic by the end of CP7. Based on the latest recalibration outputs, we estimate that Network Rail will recover around 87% of directly incurred costs from freight traffic in CP7, compared to around 80% in CP6.

3.76 Our decision is a response to new information provided through Network Rail's recalibration on the direct costs of remedial wear and tear work as well as from stakeholders' responses to our draft determination. There has been a clear expectation within industry that further increases in VUC rates will be phased-in over CP7, as we have signalled this both in PR18 and throughout our PR23 charges review. This has afforded freight operators and their customers advance notice and time to adjust to a higher level of charges. Our policy is specifically intended to address the impact of a further increase in VUCs, over and above that which has been envisaged thus far.

Conclusion on freight capping and phasing-in policy

3.77 We will maintain the existing trajectory of VUC increases as envisaged when we set our capping/phasing-in policy in PR18, instead of increasing to the new (higher) cost-reflective rates as recalibrated for PR23.

3.78 We have also decided not to correct for the inflation shortfall that has occurred in CP6, due to VUC rates being uplifted to 2023-24 prices using a lagged measure of CPI inflation. We consider that this is more consistent with maintaining the existing trajectory of (real terms) increases in VUC rates.

3.79 Table 3.1 below summarises the expected increase in average VUC rates under this policy, relative to fully unwinding all caps by the end of CP7.

Table 3.1 Average increase in VUC rates relative to year 5 of CP6 (in real terms)

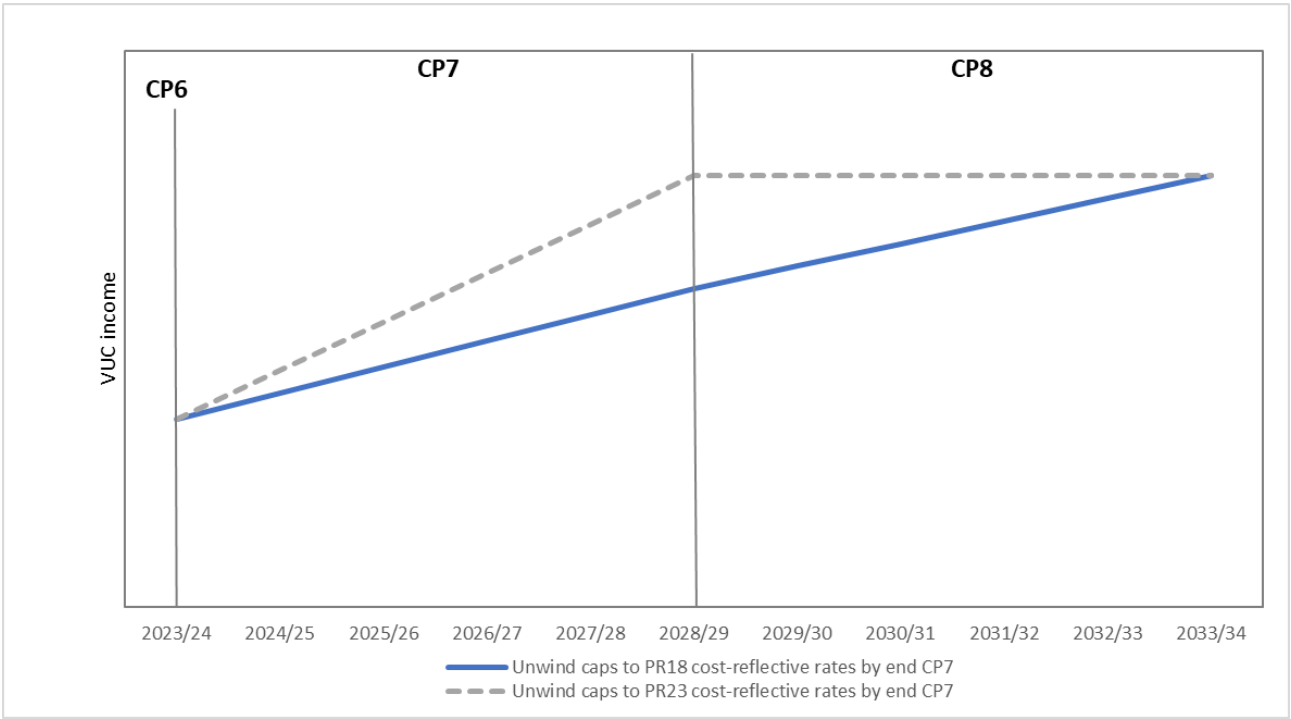
	Uncapped increase	Capped increase
Total increase in average rate by final year of CP7	27.6%	17.5%
Annual increase in average rate over CP7	5.0%	3.3%

3.80 We have assessed the impact of our revised capping and phasing-in policy for freight operators, Network Rail and funders – relative to fully unwinding all caps to

reach PR23 cost-reflective rates by the final year of CP7. We have published an impact assessment alongside this document setting out these impacts.

3.81 Our capping policy for freight and charter VUCs is consistent with the legal requirements that any caps on variable charges must be time-limited. This is because the remaining caps that apply to VUC rates are expected to be unwound over CP8. As such, it keeps freight users on a pathway to paying the full directly incurred cost of network use, as required by legislation. An illustration of a potential profile to achieve full cost-reflectivity by the end of CP7 is shown in Figure 3.2 below.

Figure 3.2: Illustrative profile of freight VUC payments over CP7 and CP8[21]



3.82 It is important to note that while this profile illustrates a potential trajectory of charges in CP8, they will need to be recalibrated as part of the next periodic review and decisions regarding the level of the VUC for operators will be revisited at that time.

3.83 To this end, we intend to commence early work with Network Rail and the industry during CP7 to review the modelling approach to VUCs. This work will be undertaken early in CP7.

[21] For simplicity, the implied profiles in Figure 3.2 are calculated assuming constant traffic levels over the entire period.

3.84 The ORR is committed to supporting the growth and development of the rail freight industry, a position that is consistent with that of DfT and Transport Scotland. During this periodic review, we have sought to apply considerable flexibility in our approach to variable usage charges in CP7, supported by stakeholders' input into how the legislative requirements and our statutory duties, discussed earlier, could be interpreted.

Charter VUCs

3.85 As with freight operators, VUC rates paid by charter operators are capped below their fully cost-reflective rate. This includes VUC rates paid by North Yorkshire Moors Railway and the Jacobite services run by West Coast Railways, which we have treated as being akin to charter services for the purposes of this policy, given the nature of their services (primarily steam heritage services provided over the summer).

3.86 In PR18, this capping policy meant that average increases in charter rates over CP6 were capped at 5% from the end of CP5 to the final year of CP6. Based on Network Rail's latest recalibration outputs, we estimate that the average increase under a revised trajectory to achieve PR23 cost-reflectivity by the end of CP7 (with the CP6 inflation shortfall corrected) would be around 16.8%.

3.87 This is compared to an average increase of around 11.8% if rates instead increased to reach the cost-reflective levels as calculated in PR18 (with the CP6 inflation shortfall corrected). Increasing rates to reach PR18 cost-reflectivity by the end of CP7 without correcting for the CP6 inflation shortfall would result in an average increase of around 8.6%.

3.88 We consider that it is proportionate to align our capping and phasing-in policy for charter operators with our policy for freight. This is consistent with our approach in PR18. The aim of our capping and phasing-in policy is to appropriately balance our statutory duties and to also comply with the existing legislative requirements. We are also mindful of the small level of charges income generated by the charter VUC and of the need to maintain simplicity in the overall charges framework. This means that all VUC rates will continue to increase along the existing trajectory as envisaged in PR18. As with freight, the inflation shortfall that occurred in CP6 will not be corrected and these rates will continue to be CPI inflation adjusted using the lagged inflation index over CP7. We envisage that the remaining caps that apply to VUC rates will be unwound over CP8.

Other VUC issues

3.89 As part of our final determination, we reaffirm our support to changes to the administration of the VUC in CP7, which Network Rail proposed in its conclusions on the PR23 recalibration consultation. These include removing vehicles from the CP7 VUC price list that have not operated on Network Rail's network at any point over the last six years.

3.90 We are also confirming that we will work with Network Rail to update the VUC guidance for CP7 to include, among other things, a clause which stipulates that a new VUC rate will be calculated for existing vehicle types that are downgraded to a lower than heavy axle weight (HAW) route availability (RA). We expect Network Rail to make this guidance available to the industry in advance of the start of CP7 and will update industry in due course.

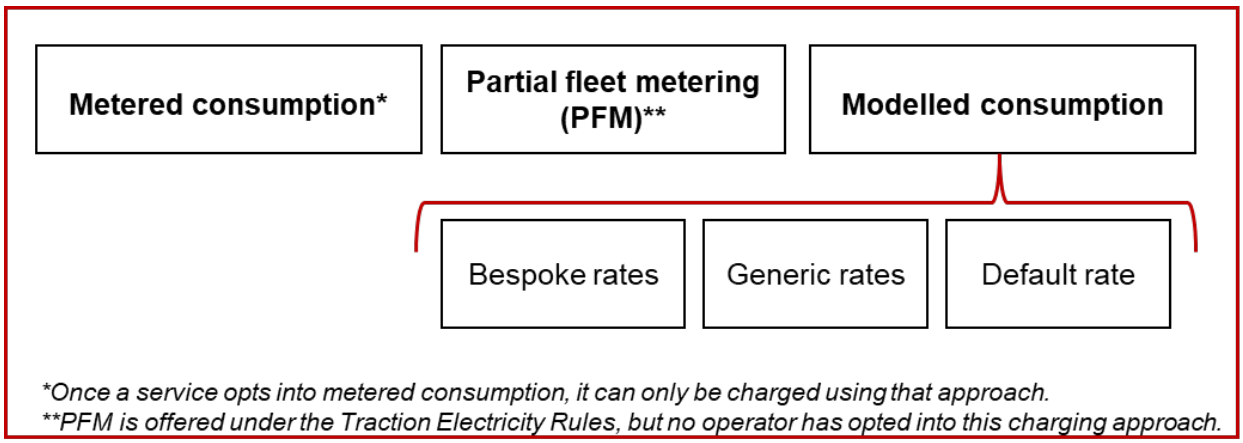
Traction Electricity (EC4T) Charge

3.91 The traction electricity (EC4T) charge recovers the cost of electricity supplied by Network Rail to power trains.

3.92 The amount that is paid in EC4T charges depends on electricity prices – rather than being a charge set for the whole control period. The calculation of the charge is based on one of three approaches: (a) metered consumption, based on readings taken from meters on trains; (b) modelled consumption, based on estimated consumption, subject to an end of year volume reconciliation exercise; or (c) partial fleet metering (PFM), which extrapolates metered consumption from metered trains to estimate consumption for un-metered trains.

3.93 Modelled consumption can itself be estimated using one of the following types of consumption rates: (a) 'bespoke' rates; (b) generic rates; and (c) default rates.

Figure 3.2 Summary of EC4T charging approaches



3.94 In our draft determination, we provisionally confirmed some changes to these charging approaches[22]. These changes are intended to simplify EC4T billing arrangements, as well as to encourage operators (particularly those introducing new services to the network) to make greater use of metered consumption. Metering is the most cost-reflective and accurate charging approach for traction electricity and strengthens operators' incentives to optimise their traction electricity consumption on the network, as they pay the actual cost of their energy consumption.

3.95 Specifically, the changes we are making are:

(i) Removing the PFM charging approach: This was on the basis that PFM appears to be complex but of little value to operators given that no operator has chosen to use it since its introduction in PR13[23].We said that we would keep this decision under review until later in PR23, taking account of whether there has been any take-up of PFM during the rest of CP6 and if there has been any change in the prospect of its potential use in the future.

(ii) Removing the facility for new train services to obtain 'bespoke' modelled consumption rates as well as removing generic rates from the price list from the beginning of CP7. This was meant to incentivise train operators to take up on-train metering (OTM). We recognised that this policy would more effectively provide operators with an incentive to adopt OTM if we also removed the availability of generic consumption

[22] We also confirmed that we would remove the loss incentive mechanism from the calculation of EC4T 'wash-up' payments in our October 2022 conclusions on the charging framework for CP7.

[23] This change was also broadly supported in our July 2021 consultation.

rates in CP7. This is because the availability of generic consumption rates could lead operators to instead adopt them rather than opting into OTM. This would undermine the intended benefits of this proposal and could inadvertently lead to a less cost-reflective charging regime.

3.96 The rest of this section summarises stakeholders' responses to our draft determination, before setting out our final determination decisions on each of these proposed changes.

Removing the partial fleet metering (PFM) charging approach

Summary of stakeholders views

3.97 We received two responses on these proposals from Northern and Greater Anglia. Both respondents supported the proposal to remove PFM as a charging approach.

Our response

3.98 Since publishing our draft determination, we have continued to monitor the potential uptake of PFM. We are not aware that any operator has applied to use this charging approach under the Traction Electricity Rules. Furthermore, we are aware that some train operators are currently using OTM on part of their fleet so are able to opt into PFM, but are instead using modelled consumption rates to pay for EC4T usage on the rest of their fleet.

3.99 Removing the PFM will simplify the current EC4T charging framework and the Traction Electricity Rules and, given the low prospect of take-up of PFM, is unlikely to have any other impacts on how the EC4T charge is administered. We do not consider removing it will affect operators' incentive to increase use of OTM. Stakeholders who responded to our draft determination agreed with our assessment and supported this proposal.

Our final determination

3.100 In light of this, and that no operator has used this approach since it was introduced in PR13, we do not see a significant prospect of PFM take-up in the future. Therefore, taking into account our Section 4 duties (as outlined in Annex D), we are confirming that we will remove the partial fleet metering (PFM) charging approach for CP7.

Removing bespoke and generic consumption rates

Summary of stakeholders' views

3.101 c2c supported streamlining EC4T and changes to the charge that encourage greater use of on-train metering.

3.102 While supporting the removal of bespoke and generic modelled rates, especially because they consider that this is expected to encourage on-train metering take-up, Northern and Greater Anglia also raised concerns, mainly related to the impact that they consider this could have on their own businesses.

3.103 Northern stated that removing the facility for new services to obtain bespoke modelled consumption rates while also removing generic modelled consumption rates could expose them to a disproportionate risk flowing from cascaded legacy stock or moving some vehicles onto a new route. Greater Anglia raised concerns about the financial risk that operators may face following the removal of bespoke and generic modelled consumption rates citing technical issues with meters and the time it takes to get the OTM system running.

3.104 The proposal to remove the facility for new train services to obtain 'bespoke' modelled consumption rates as well as removing generic consumption rates from the price list from the beginning of CP7 was also discussed in Network Rail's conclusions on its consultation on track access charges recalibration for CP7. Respondents to that consultation broadly supported this proposal.

Our response

3.105 We are publishing an impact assessment alongside our final determination which shows that the impact of removing generic rates would be relatively limited, and in particular would not prompt a significant number of services to be automatically moved to a default consumption rate at the start of CP7. Operators with affected services have until the start of CP7 to obtain a bespoke modelled rate[24], which will be more accurate than their generic consumption rate, or move onto metered consumption.

3.106 As explained in our October 2022 conclusions document, we expect that some new services introduced during CP7 will use new rolling stock. We understand that all new rolling stock comes fitted with on-board meters. Moreover, we are aware that meters go through extensive quality assurance processes, and we have not

[24] In its conclusion document, Network Rail said that if an application for a new bespoke consumption rate is in progress before the end of CP6, then the operator will be allowed to complete the application during the first year of CP7.

yet seen any evidence that they are either inaccurate or difficult to use. We consider that the teething problems that may occur in the process of setting up the metering interface, as suggested by Greater Anglia, are a normal part of adopting a new technology and should be addressed by industry, rather than abandoning the use of meters just because less accurate modelled consumption rates are an available alternative.

3.107 Regarding existing rolling stock, we asked train operators to share with us information regarding the size of their fleet that cannot be fitted with meters, and the reasons for this. The information we received suggested there are no major barriers that would prohibit existing rolling stock, which is already being used on Network Rail's network, to be fitted with meters. Based on this evidence, we do not agree with Northern that this policy could expose them to a disproportionate risk flowing from cascaded legacy stock or moving some vehicles onto a new route.

3.108 As noted in our October 2022 consultation, in the event of any delays to setting up metered billing processes, operators would not be prevented by this policy from using traction electricity on the network, as they could be temporarily billed for EC4T consumption using a default modelled consumption rate while waiting for metered consumption systems to be set up.

Our conclusion

3.109 Taking into account our statutory duties and the reasons set out above and in our draft determination, we will remove both the bespoke and generic modelled consumption rates from the beginning of CP7. We consider this is a proportionate change, which will encourage train operators to take up on-train metering.

3.110 For the avoidance of doubt, this means there will be no provision to begin applying for, and have approved, a new bespoke modelled rate from the start of CP7. Existing modelled consumption rates that are currently in use can continue to be used to bill operators for EC4T consumption in CP7.

Electrification Asset Usage Charge (EAUC)

3.111 The Electrification Asset Usage Charge (EAUC) recovers the variable costs (costs that vary with changes in the level of electrified traffic) of maintaining and renewing electrification assets. We confirmed in our draft determination that the EAUC would be retained in its current form.

3.112 The main steps in calculating EAUC rates are as follows: (i) forecasting average annual maintenance and renewals costs of electrification assets over 35 years (for

alternating current (AC) and direct current (DC assets respectively); (ii) calculating the proportion of these costs that are variable; (iii) allocating variable costs to passenger and freight operators based on their forecast share of electrified vehicle miles; and (iv) dividing these cost allocations by forecast electrified vehicle miles (for passenger) and forecast electrified thousand gross tonne miles (for freight) to derive a set of charges per electrified vehicle mile / kgtm for passenger and freight.

3.113 In our draft determination, we discussed the outputs of the EAUC recalibration that Network Rail has undertaken as part of PR23. Network Rail has since followed the existing methodology but updated to reflect the latest cost and traffic forecasts contained within its SBP. Based on this information, EAUC rates were set to increase in real terms by between 13%, equivalent to £0.003 per vehicle mile (for passenger AC traffic), and 55%, equivalent to £0.146 per kgtm (for freight DC traffic). The primary reason for these increases was a forecast change in the volume and mix of forecast electrified traffic on the network.

3.114 In our draft determination, we stated that we were broadly content with Network Rail's approach to the recalibration of this charge but that we would continue to work with Network Rail to refine some aspects of this recalibration.

Changes since our draft determination

3.115 Network Rail published its draft price list in July 2023, which reflected our draft determination decisions on EAUC. Since then, we have worked with Network Rail to update the model that informed our draft determination and Network Rail's draft price list.

3.116 The model was updated to reflect: i) the latest CPI inflation assumptions, i.e. the Bank of England May 2023 forecast of inflation; ii) the updated traffic forecast, which implies a reduction in passenger electrified vehicle miles and an increase in freight electrified vehicle miles; and iii) the updated cost base which saw a small reduction in the 35-year annual average pre-efficient renewal costs (from £56.2 million per year to £54.5 million per year).

3.117 The updated recalibration has led to an increase in EAUC rates, in real terms, by between 5%, equivalent to £0.001 per vehicle mile (for passenger AC traffic) and 57%, equivalent to £0.152 per kgtm (for freight DC traffic) relative to CP6.

Summary of stakeholder views

3.118 We received one response from LNER who challenged the adequacy of the existing methodology as it implies that, according to LNER, a reduction in one operator's services could lead to an increase in other operators' charges.

Our response

3.119 As described above, the calculation of the EAUC applies a simple methodology as it calculates the costs which will be incurred and uses this to calculate a simple average unit cost. This calculation is therefore a function of both the calculated cost and the level of traffic. Hence as traffic varies, so will the cost. As outlined in the draft determination, if total costs decline, but not by as much as traffic, the unit rate will rise. LNER is therefore correct, a change in one operator's services may lead to a change in another operator's charge.

3.120 In PR18, we considered reviewing this methodology and considered the option of merging the EAUC with the VUC. Stakeholders did not support this proposal arguing that the review would not be proportionate given that this is a small charge (Network Rail is forecast to receive around £140 million in CP7 from the EAUC charge (2023-24 prices). In PR18, and indeed in PR23, Network Rail consulted on the existing methodology, which was supported by stakeholders.

Our conclusion

3.121 We consider it reasonable and proportionate to keep the existing EAUC methodology as proposed in our draft determination. We note that only one operator questioned our draft determination proposal. Therefore we will retain the present EAUC methodology for CP7.

Charter slot charge

3.122 The purpose of the charter slot charge is to recover Network Rail's costs for activities undertaken specifically for charter services for which it is not otherwise funded (e.g. bespoke gauging activities).

3.123 We said in our draft determination, that we will not be making any changes to the charter slot charge through PR23. We noted that Network Rail was considering combining the slot charges for steam services into a single uniform rate for all journey lengths. We noted that this change was supported by stakeholders in their responses to Network Rail's consultation on regulated access charges in CP7 and that Network Rail supported implementing this change in CP7. We stated that we were content with this change.

3.124 Responding to our draft determination, no stakeholder raised any concern about this proposal. Taking into account our Section 4 duties, and recognising that this would simplify the billing process for charter operators, we have decided that, from the beginning of CP7, slot charges for steam services will be combined into a single uniform rate for all journey lengths.

3.125 Although the calculation of these charges is not directly affected by our assessment of Network Rail's SBP, we also confirm that the slot charge rates set out in Network Rail's recalibration conclusions document will be the final rates in place for CP7 (in 2023-24 prices)[25].

[25] See Table 5 of Network Rail's conclusions document.

4. Station charges

Summary

Network Rail is expected to receive around £2.3 billion (in 2023-24 prices) in station charges during CP7. The Station Long Term Charge (LTC) comprises the majority (around £1.7 billion) of the station charges income and Qualifying Expenditure (QX) the remaining £0.6 billion.

Network Rail has recalibrated the LTC for CP7 based on our October 2022 conclusions document and the methodology outlined in its recalibration conclusions document. We are broadly content with the work on this. Our final approval of recalibrated LTCs will be provided once we have received and examined Network Rail's final submission in December to ensure it reflects the decisions in our final determination.

Network Rail is also in the process of agreeing the Qualifying Expenditure (QX) charge with operators at managed stations. The QX charge is made up of two parts: a 'fixed' element, recovering costs such as station staff, cleaning and refuse collection costs; and a 'management fee' element which recovers overhead costs and allows for a reasonable profit. Only the latter 'management fee is regulated by ORR. We have agreed that Network Rail should retain the same management fee as in CP6, which is set at 7.26% of the fixed QX charge.

Station Long Term Charge (LTC)

4.1 We said in our October 2022 conclusions document, that we would make two small changes to how the long-term charge (LTC) is set. Specifically, these changes amend the list of large / complex stations for which an LTC will be calculated using station-specific expenditure forecasts; and set the operational property element of new stations at 10% of that for equivalent existing stations for a fixed five-year period from the date of opening.

4.2 Network Rail has recalibrated this charge for CP7, consistent with these decisions[26]. It has also amended the calculation of station LTCs for non-large /

[26] We note that our list of large / complex stations – as set out in Table 3.1 of our October 2022 conclusions document – listed Highbury and Islington station as a single station. This station is shared between two Station Facility Owners (SFO)s and has two LTCs. Network Rail has calculated both LTCs using station-specific forecasts of expenditure, reflecting the division of assets between SFOs. This means that the total number of large / complex stations is 33, rather than 32 as stated in our conclusions document.

complex stations – which have previously been based on route-level expenditure forecasts – to reflect region-level expenditure forecasts. This reflects Network Rail's internal restructuring that took place at the start of CP6.

4.3 We have worked with Network Rail to understand the recalibrated outputs and ensure they are consistent with its SBP. This shows that total forecast income from station LTCs is around 20% higher than in CP6. The primary reason for this is an increase in forecast operational property renewals spend, which has gone up by around 20% and is the largest component of this charge[27].

4.4 As part of our draft determination, we reviewed Network Rail's operational property expenditure forecasts. We said we were content with these plans.

4.5 While the total revenue from LTCs is increasing by an average of around 20%, some stations will increase by more than the average and some stations by less.

4.6 There have been some significant changes in individual station LTCs for CP7[28]. We understand the main reason for this is that, as explained above, the increase in forecast operational property spend varies significantly by region – so, for example, the LTCs for stations in Wales & Western would increase on average by more than other regions as it has a greater increase in relevant expenditure.

4.7 Additionally:

- Some stations have moved into different categories, which is how stations are grouped based on estimates of annual station usage. This places busier stations into a higher station category which pays more due to it being allocated more of the regional-level expenditure.
- The move from route-level to region-level expenditure forecasts means that stations and their associated maintenance, renewal and repair expenditure are grouped together and then allocated at a regional rather than route level. Although this will not affect total station expenditure, it does affect the allocation of expenditure to individual stations particularly where different routes within a given region had significantly different station portfolios.

[27] This is partly offset by a fall in forecast station information and security systems (SISS) expenditure.

[28] This is distinct from the overall change in LTCs due to increases in underlying maintenance, repair and renewal (MRR) costs recovered through this charge (which, as explained above, we consider to be reasonable and consistent with Network Rail's overall SBP).

Summary of stakeholder views

4.8 Some stakeholders raised concerns around the approach to setting the charge and its outcomes, particularly as related to some of their stations. While acknowledging that the rises for some stations are significant, we are satisfied that they result from correctly applying the agreed methodology and policy. The drivers for the increase are therefore those outlined above. However, in the case of Highbury & Islington, the rise is accentuated by it having been inappropriately categorised and undercharged during CP6.

4.9 MTR Elizabeth Line was concerned that the charge does not reflect work undertaken to enhance stations as part of the Crossrail project, which should result in lower renewal and maintenance costs. The charge is a long-term charge calculated on a category average basis. By grouping like stations in a region together, it results in a relatively smooth charge which avoids the sharp rises and declines that would be experienced if it were based on exactly what was spent on each station in each control period. Over the long term, periods where the charge exceeds investment for a station can be expected to be cancelled out by periods of under charging.

4.10 The response from Southeastern Railway noted the proposed transfer of St Pancras International station low level to High Speed 1 Low Level. The response asked for further information on where the responsibility for charging LTC/QX would lie between Network Rail and HS1. The transfer will form part of ORR's detailed review of stations costs during the periodic review for HS1 (PR24). As part of the periodic review, we will seek to make sure station charges remain efficient.

Our conclusion on station LTCs

4.11 We remain of the view that the changes in the LTCs for stations in CP7 are consistent with the overall station LTC methodology described above and reflect how Network Rail manages its station portfolio, as well as the expected allocation of expenditure to different stations in the long run.

4.12 Our formal approval of recalibrated LTCs will be provided later this autumn, once Network Rail has finalised its recalibration exercise and we are satisfied that it reflects all the decisions made in our final determination. Network Rail will then publish its final price list in December, setting out the full list of station LTCs for CP7. We do not expect these LTCs to be significantly different to the draft price list published in July 2023.

4.13 We also note that Network Rail is producing a guidance document which will provide further explanation on the calculation of LTCs. We support this as it should improve understanding of how LTCs are calculated for different station types, and help to facilitate more informed discussions between industry parties. Network Rail has confirmed that this will be published on its website before the start of CP7.

Qualifying Expenditure (QX)

4.14 The purpose of the Qualifying Expenditure (QX charge is to recover the day-to-day running and operational expenditure at Network Rail managed stations.

4.15 The QX charge is made up of two parts:

- a 'fixed' element, recovering costs such as station staff, cleaning and refuse collection costs; and
- a 'management fee' element which recovers overhead costs and allows for a reasonable profit.

4.16 Only the management fee element at managed stations is regulated by ORR; the fixed element is determined by negotiation between Network Rail and the operators.

4.17 Network Rail has requested that we approve its proposal on the management fee component of the QX. They have proposed that to retain the same management fee as used in CP6, which was set at 7.26% of the fixed QX charge and comprises:

- a profit element of 6% of the fixed QX charge; and
- an overheads and central costs element of 1.26% of the fixed QX charge.

4.18 We consider that retaining the level of the management fee from CP6 to CP7 is reasonable and proportionate and is in line with the approach to the fixed QX charge that was expected to be adopted in CP7.

Our conclusion on Qualifying Expenditure

4.19 We approve Network Rail's proposal for CP7 to retain the same management fee applicable to its managed stations as used in CP6 and set at 7.26% of the fixed QX charge, comprising:

- a profit element of 6% of the fixed QX charge; and

- an overheads and central costs element of 1.26% of the fixed QX charge.

Annex A: Full summary of stakeholder responses

A.1 This Annex summarises the responses that we received to our draft determination policy positions document on access charges, ordered thematically.

Infrastructure cost charges

Fixed Track Access Charge

A.2 Responses relating to the Fixed Track Access Charge (FTAC) were received from Transport for London (TfL), MTR Elizabeth Line and Northern.

A.3 TfL, MTR Elizabeth Line and Northern all noted a concern that FTAC would increase if the network grant was not agreed.

A.4 Northern raised a concern with the decision to reduce the maximum length of time between a dilution event and an additional FTAC payment from operators from three months to one month. The concern is this provides insufficient time to plan cash flows and gain sign-off through its governance processes with DfT.

Infrastructure Cost Charges for Open Access Services

A.5 Responses relating to Infrastructure Cost Charges (ICC) for open access services were received from Arriva UK Trains, First Rail Holdings, MTR-UK (the holding company), MTR Elizabeth Line, Network Rail, Network Rail (Wales and West), Rail Partners, Heathrow Express, Heathrow Airport Ltd, Heathrow Southern Rail, the Airport Operators Association, Business London and the British Chambers of Commerce.

Interurban market

A.6 Network Rail, Arriva UK Trains, First Rail Holdings and Rail Partners all supported our ICC decisions for inter-urban rail.

A.7 Rail Partners supported the proposed ICC and retention of the phased approach, but raised a concern that, as there is only one open access service providing direct links to airports and there have not been any recent applications to introduce new services, it is unclear whether this market could bear the additional cost and this proposal could deter investment, limiting competition in these markets.

A.8 Arriva UK Trains also supported the retention of the phased approach as it allows demand to develop where new markets are served and recognises the mobilisation costs faced by new open access operators. They were also supportive of ORR's position to ensure that ICC charges do not exceed the total traffic avoidable costs. They flagged a concern however that the ICC could impact further open access opportunities and asked that ORR continue to monitor the situation to inform future policy in this area.

Airport services market

A.9 A number of respondents, notably Heathrow Express, Heathrow Airport Ltd and the Airport Operators Association objected to the introduction of an ICC for airport services. Objections or concerns about the ICC proposal were also raised by MTR-UK (the holding company), Rail Partners, Heathrow Southern Rail, Business London and the British Chambers of Commerce.

A.10 Network Rail and MTR Elizabeth Line supported the introduction of an ICC for airport services, but also considered Heathrow Airport should be treated as a separate market segment and as such be charged a higher ICC, equal to its allocation of Network Rail's avoidable fixed costs on the Paddington to Heathrow Airport route.

A.11 Heathrow Express, the British Chambers of Commerce, the Airport Operators Association and Heathrow Airport Ltd raised concerns that the time made available for consultation on the ICC for open access services to major airports was not sufficient for stakeholders to consider and respond to the proposals fully.

A.12 Heathrow Express raised the concern that ORR had not sufficiently assessed the ability to bear an ICC. It also expressed concerns about the robustness of the revenue analysis, taking account of competition from Crossrail, COVID impacts and change of track access right protections.

A.13 The British Chambers of Commerce raised concerns about the evidence base which it would like to see independently reviewed and published. It would also like to see more work undertaken to assess the wider market conditions for Heathrow Express, particularly given the opening of Crossrail. It considers this needs to be done before a decision is made. Business London also raised a concern about the level of market analysis undertaken by ORR.

A.14 Heathrow Express and the British Chambers of Commerce questioned ORR's airport service market segment definition, in particularly the lower threshold of 5 million passengers per year at the airport station leg. Network Rail and MTR

Elizabeth Line argued ORR had defined the market too broadly, arguing there was a case for a Heathrow Airport only market segment.

A.15 MTR-UK objected to the proposal to levy an ICC on open access operators serving Heathrow Airport on the basis that it will reduce investment prospects. MTR-UK has developed a proposition to finance a new southern rail link to Heathrow Airport as a Category 1 Market Led Proposal through operation of a set of open access train services over the new infrastructure, including a new service group between London Waterloo and Heathrow Airport. The ICC charge would raise the operating cost of the service and reduce the amount of money which can service a capital investment, reducing the viability of the case and prospects for investment.

A.16 Heathrow Southern Rail, as promoters of the construction of a southern rail link from Heathrow, also objected on the basis of the impact on the viability of the investment case. Heathrow Airport Ltd raised a similar concern about the Heathrow Southern and Western rail link projects.

A.17 The Airport Operators Association was concerned that this proposal will not support the long-term shift to rail use by airport customers as it could deter operators from providing airport rail services and the ICC could also lead to increases in ticket prices, making rail a less attractive alternative to car-based options.

ICCs for freight services

A.18 Responses relating to ICCs for freight services were received from Freightliner, DB Cargo and Rail Partners.

A.19 Freightliner noted they only have limited coal movements and do not operate in the other markets identified for ICCs. They welcomed the decision to reduce the ICCs to offset corresponding increases in VUC rates. They also cautioned making future determinations based on historic investment as this would risk jeopardising future investment.

A.20 DB Cargo welcomed the reduction in ICC rates but noted that due to the increase in VUC rates overall charges paid by freight operators will increase. DB Cargo believes this could make rail freight less attractive to prospective customers and is contrary to the DfT and Transport Scotland commitments to rail freight growth.

A.21 Rail Partners welcomed the reduction in ICC rates but noted that due to the increase in VUC rates, overall charges paid by freight operators will increase.

They consider this will make rail freight less attractive to prospective customers and is contrary to government commitments to rail freight growth.

Variable charges

Passenger Variable Usage Charge (VUC)

A.22 Responses relating to passenger VUC increases were received from c2c, First Trains, Greater Anglia, LNER, MTR-UK, ScotRail and Rail Partners.

A.23 Passenger operators including ScotRail, c2c, LNER, Arriva and MTR-UK questioned the robustness of the VUC recalibration methodology and the 7% increase in VUC rates. Specifically, these stakeholders questioned how a forecast reduction in traffic could affect VUC rates. For example, MTR-UK said that if VUC is truly meant to recover the short run marginal cost then it should be the same whether predicted traffic levels go up or go down. This concern was also highlighted by Rail Partners.

A.24 First Trains questioned the underlying assumption of the lower passenger train forecasts for CP7 and whether these might prove to be pessimistic. Greater Anglia had concerns over whether an increase in VUC due to higher levels of maintenance activities during the control period would facilitate network performance improvements. They also had specific concerns about the VUC calculations relating to bi-modes.

Freight and Charter VUC charges

A.25 Responses relating to the freight and charter VUC charges were received from Network Rail, Transport Scotland, DB Cargo, Freightliner, GB Railfreight, Rail Freight Group, Northern and Rail Partners.

A.26 Network Rail broadly supported our draft decisions on access charges, However, it disagreed with extending the VUC capping and phasing-in proposal saying that extending it to cover a period of 20 years (CP5-CP8 inclusive), while not technically ‘open-ended’, covers too long a period, and therefore may not be within the spirit of the legislation. Moreover, Network Rail considers that ORR’s decision does not deliver PR18 cost-reflective rates by the final year of CP7 (in real terms) because of the decision not to correct for the inflation shortfall that occurred in CP6 and continuing to apply the lagged contractual approach to indexation. Network Rail suggested that ORR should explore an approach that would see full cost reflectivity achieved either by the end of CP7 or reached either by year 2 or year 3 of CP8.

A.27 Network Rail also disagreed with the treatment of freight VUC rates that are currently uncapped in CP6, in CP7. Under our revised policy, these rates would be held constant in real terms across CP7. Network Rail suggested in these instances, it would be appropriate to either reflect the fully-cost reflective rates based on the PR23 recalibration exercise at the start of CP7, or introduce a different phasing-in policy where those rates which are currently uncapped in CP6 would be fully cost-reflective by the final year of CP7. It argued this would avoid rates being held constant unnecessarily, reduce public subsidy and also reduce the impact of any real terms increases in these rates in future recalibrations.

A.28 Transport Scotland considered that continued phasing-in of VUC charges during CP7 may act as a disincentive to Network Rail to encourage growth in freight services as the costs of running such freight services are not being fully reimbursed to Network Rail.

A.29 Freightliner noted the significant real terms track access charge increases and asked ORR to consider these in the round. Whilst the company welcomed the decision to cap the VUC increase in CP7, it said this just moves the 'cliff-edge' into the next control period and could impact on investment in the sector. Freightliner also queried the calculation of the VUC and noted it was unclear how network mileage changes should impact on freight VUC.

A.30 DB Cargo welcomed the decision to retain the PR18 phase-in trajectory but noted that ORR still intends for freight VUC caps to be unwound through CP8. It considers that this unwinding will be detrimental to the freight industry and asked for early engagement with ORR and funders during CP7 ahead of PR28 to identify a long-term solution to rail freight charges, which satisfies regulatory and legal requirements, while supporting the growth of rail freight services and governments commitments to decarbonisation.

A.31 GB Railfreight questioned increasing VUC charges when the CP7 base plan is predicted to have service levels of 88% of pre-COVID CP6 levels. GB Railfreight considers either the calculations or the methodology are incorrect. It also raised concerns over the proposal to change the "default period" for altering VUC rates. It stated the current process can take many months so if the methodology was to change it would want the applicable date to be that of the first application, not of the agreed new prices, to avoid companies being penalised for the agreement time.

A.32 Rail Freight Group welcomed the ORR's decision to cap VUC rates for CP7 at the expected level but remains concerned over the overall increase in costs and

impact on freight customers, given the current economic conditions and the future impact in CP8. It also queried the basis of the increase, e.g. higher track costs applied to VUC when Network Rail's overall maintenance and renewals have fallen and why freight VUC is higher than passenger VUC.

A.33 Rail Partners welcomed the decision to retain the PR18 phase-in trajectory but noted that ORR still intends for freight VUC caps to be unwound through CP8. It believes this unwinding will be detrimental to the freight industry and asked for early engagement with ORR and funders during CP7 ahead of PR28 to identify a long-term solution to rail freight charges which satisfies regulatory and legal requirements while supporting the growth of rail freight services and governments commitments to decarbonisation..

A.34 The majority of freight respondents argued that the proposed increases in charges will cause the rail freight sector to become less competitive, resulting in a modal shift from rail to other modes of transport, notably to road haulage which, they say, continues to benefit from a stable policy position.

A.35 Northern noted that freight and charter operators would not see VUC rates increase to cost-reflective levels and believes that those operators should be treated in the same way as passenger operators.

Electrification Asset Usage Charge (EAUC)

A.36 London North Eastern Railway (LNER) highlighted its concerns over the existing methodology used to determine the EAUC as it thought it implied a reduction in one operator's services could lead to an increase in other operator's charges.

Traction electricity (EC4T) charge

A.37 Responses relating to EC4T charges were received from c2c, Greater Anglia and Northern.

A.38 c2c supports initiatives that encourage efficiency and transparency. In particular, c2c is supportive of streamlining the traction electricity charge and the use of metering.

A.39 Greater Anglia supports the removal of the partial fleet metering (PFM) option, but not the removal of the facility to obtain bespoke EC4T modelled rates for new trains. It states it is not possible to fully understand the functionality of on-train meters and their interface with the Track Access Billing System (TABS) prior to the delivery of the new units and the need for time to iron out any technical issues that could otherwise cause material financial risk.

A.40 Northern did not support removal of the generic consumption rates and was concerned that this will cause disproportionate risk to it. The concern stems from a scenario where legacy rolling stock without OTM is cascaded to the operator, resulting in default rates until OTM is fitted or if they need to move the Class 769s (deemed unsuitable for OTM fitment) to a different route. Given its maximum 6-car operation it believes the default rates would overestimate Northern's consumption.

Station charges

Station Long Term Charge

A.41 Responses relating to the Station Long Term Charge (LTC) were received from Arriva Trains, London Underground Limited (LUL), MTR Elizabeth Line and Southeastern Railway.

A.42 LUL states it is facing an overall 74% increase in charges under the new regime. This is largely driven by the reclassification of Highbury & Islington to a category A station, but the consultation response also cites concerns over the level of increase to a number of other specified stations including where there is no/low levels of renewal activity planned.

A.43 Arriva Trains raised issues around station charges. The company is concerned with the degree of change within the draft price list and model used relating to its station portfolio. It thought the increase in the LTC was due to the recalibration model used and that the increase did not include any LTC paid to other operators for calling at other stations. It highlighted the example of Willesden Junction, which it stated has moved to category A from B and had a cost increase from £81,198.79 to £1,454,031.95. Arriva also stated that Arriva Rail London has 49 stations, 34 have not moved in station category, yet their costs have increased by a weighted average of 92%.

A.44 MTR Elizabeth Line raised concerns about the high level of the LTC applied to a number of its stations. It is concerned this does not reflect work undertaken to enhance these stations as part of the Crossrail project, which should result in lower renewal and maintenance costs.

A.45 Southeastern Railway noted the proposed transfer of St Pancras International station low level to High Speed 1 Low Level. The response asked for further information on where the responsibility for charging LTC/QX would lie between Network Rail and HS1.

Annex B: Comparison of fixed track access charges in CP7 including and excluding network grant

Table B.1 Comparison of fixed track access charges in CP7 including and excluding network grant

	Including Network Grant					Excluding Network Grant		
£m (2023-24 prices)	Assumed FTAC %	Assumed Network Grant %	Fixed Track Access Charges	Network Grant	Total	Assumed FTAC %	Assumed Network Grant %	Fixed Track Access Charges
Great Britain	19%	81%	−6,657	−28,559	−35,217	100%	0%	−35,217
England & Wales	16%	84%	−4,931	−26,319	−31,250	100%	0%	−31,250
Scotland	44%	56%	−1,726	−2,240	−3,966	100%	0%	−3,966

Annex C: Summary of key decisions on CP7 charging framework

Summary of key decisions on CP7 charging framework

C.1 A summary of our final decisions on the CP7 charging framework is shown in Table 7.1 below and where information to explain our reasoning for each decision can be found.

Table C.1 Key decisions on CP7 charging framework

Charge		Decision	Consultation	Decision Reference
ICCs	FTAC	Retain charge but remove wash-up mechanism from the calculation.	Proposed in our July 2021 consultation (paragraph 3.16) and April 2022 further consultation	Concluded in our October 2022 conclusions document (paragraph 1.1 and 1.5)
		Network Rail will recalibrate charges based on revised fixed cost methodology as the basis for operator FTAC's.	Proposed in our July 2021 consultation (paragraph 3.7) and April 2022 further consultation (paragraph 2.9)	Concluded in our October 2022 conclusions document (paragraph 1.1) and PR23 draft determination: policy position on access charges paragraph 2.3)
	Freight ICCs	Retain the existing market segmentation based on freight commodities.	Proposed in our April 2022 further consultation (paragraph 2.102)	Concluded in our October 2022 conclusions document (paragraph 1.41)
		Continue to permit Network Rail to levy an ICC on: ESI biomass; iron ore; and spent nuclear fuel.	Proposed in our April 2022 further consultation (paragraph 2.102)	Concluded in our PR23 final determination: policy position - access charges (paragraph 2.93)

Charge		Decision	Consultation	Decision Reference
		Continue to permit Network Rail to levy an ICC on ESI coal	Proposed in our October 2022 conclusions document (paragraph 1.43)	Concluded in our PR23 final determination: policy position - access charges (paragraph 2.93)
	Open access ICCs	Retain the existing definition of an interurban service as established in PR18 and continue to permit Network Rail to levy an ICC on interurban services.	Proposed in our April 2022 further consultation (paragraph 2.54)	Concluded in our October 2022 conclusions document (paragraph 1.15)
		Introduce a new market segment covering open access services to major airports for purpose of levying an ICC different to other interurban services	Proposed in our August 2023 consultation (paragraph 2.11-2.12)	Concluded in our PR23 final determination: policy position - access charges (paragraph 2.82)
		Retain the existing phase-in arrangements for new interurban services.	Proposed in our April 2022 further consultation (paragraph 2.67)	Concluded in our October 2022 conclusions document (paragraph 1.32)
Variable charges	VUC	Not to make any changes to the cost categories included in this charge	Proposed in our April 2022 further consultation (paragraph 3.21)	Concluded in our October 2022 conclusions document (paragraph 2.1)
		Not to make any changes to the underlying track damage formulae used to calculate VUC rates	Proposed in our April 2022 further consultation (paragraph 3.33)	Concluded in our October 2022 conclusions document (paragraph 2.5)

Charge	Decision	Consultation	Decision Reference
	Allow VUC rates to be amended for existing vehicle types that are downgraded to a lower than heavy axle weight (HAW) route availability (RA) during CP7	Proposed in our April 2022 further consultation (paragraph 3.58)	Concluded in our October 2022 conclusions document (paragraph 2.18)
	Maintain our below-cost capping policy for freight and charter operators on the same gradual trajectory to cost reflectivity as set at PR18.	Proposed in our July 2021 consultation (paragraph 4.13), April 2022 further consultation (paragraph 3.16) and October 2022 conclusions document (paragraph 2.10)	Concluded in our PR23 final determination: policy position - access charges (paragraph 3.77 and 3.88)
Traction electricity (EC4T) charge	Remove the facility to obtain bespoke EC4T modelled consumption rates for new train services from the start of CP7, and remove generic consumption rates from the modelled consumption rates list.	Proposed in our April 2022 further consultation (paragraph 3.75) and October 2022 conclusions document (paragraph 2.27)	Concluded in our PR23 draft determination: policy position on access charges (paragraph 3.58)
	Remove the partial fleet metering approach to billing this charge.	Proposed in our July 2021 consultation (paragraph 4.47), April 2022 further consultation (paragraph 3.82) and October 2022 conclusions document (paragraph 2.56)	Concluded in our PR23 draft determination: policy position on access charges (paragraph 3.51)

Charge		Decision	Consultation	Decision Reference
		Remove the loss incentive mechanism used in the EC4T reconciliation process.	Proposed in our July 2021 consultation (paragraph 4.50), April 2022 further consultation (paragraph 3.87)	Concluded in our October 2022 conclusions document (paragraph 2.61)
	EAUC	Retain the EAUC in its current form.	Proposed in our July 2021 consultation (paragraph 4.52) and April 2022 further consultation (paragraph 3.95)	Concluded in our October 2022 conclusions document (paragraph 2.68)
	Charter slot	No changes to charter slot charge methodology but all slot charges for steam services will be combined into a single uniform charge.	Proposed in in our October 2022 conclusions document (paragraph 2.73)	Concluded in our PR23 final determination: policy position - access charges (paragraph 3.124)
Station charges	Long Term Charge (LTC)	Amend the list of large/complex stations for which a LTC would be calculated using station-specific expenditure forecasts.	Proposed in our July 2021 consultation (paragraph 5.14) and April 2022 further consultation (paragraph 4.20)	Concluded in our October 2022 conclusions document (paragraph 3.1)
		Set the operational property element of new stations at 10% of that for equivalent existing stations for a fixed five-year term from the date of opening.	Proposed in our July 2021 consultation (paragraph 5.22) and April 2022 further consultation (paragraph 4.41)	Concluded in our October 2022 conclusions document (paragraph 3.9)

Charge		Decision	Consultation	Decision Reference
	Qualifying Expenditure (QX)	No change to the management fee methodology. In CP6, this was set at 7.26% of the fixed element of the QX charge.	Considered in our July 2021 consultation (paragraph 5.32)	Concluded in our PR23 final determination: policy position - access charges (paragraph 4.19)

Annex D: Legal Framework

Legal Framework

D.1 Our decision making is defined by the legislation under which we operate and in particular:

- Section 4 of the 1993 Railway Act; and
- The Railways (Access, Management and Licensing of Railway Undertakings) Regulation, 2016.

D.2 ORR's statutory Section 4 duties include:

(a) 4(1)(b) promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;

(b) 4(1)(c) promote efficiency and economy on the part of persons providing railway services;

(c) 4(1)(g) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance; and

(d) 4(5)(c) to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railway services.

D.3 The 2016 Railways (Access, Management and Licensing of Railway Undertakings) Regulations provisions include:

- Schedule 3 – principles of access charging:
  - Paragraph 1(1): The infrastructure manager must ensure that the application of the charging scheme…..results in equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market.
  - Paragraph 1(4): The charges for the minimum access package……must be set at the cost that is directly incurred as a result of operating the train service.
- Schedule 3 – exceptions to the charging principles:

- Paragraph 2(1): In order to obtain full recovery of the costs incurred the infrastructure manager…..may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.
- Paragraph 2(3): The effect of [a mark-up] must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

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