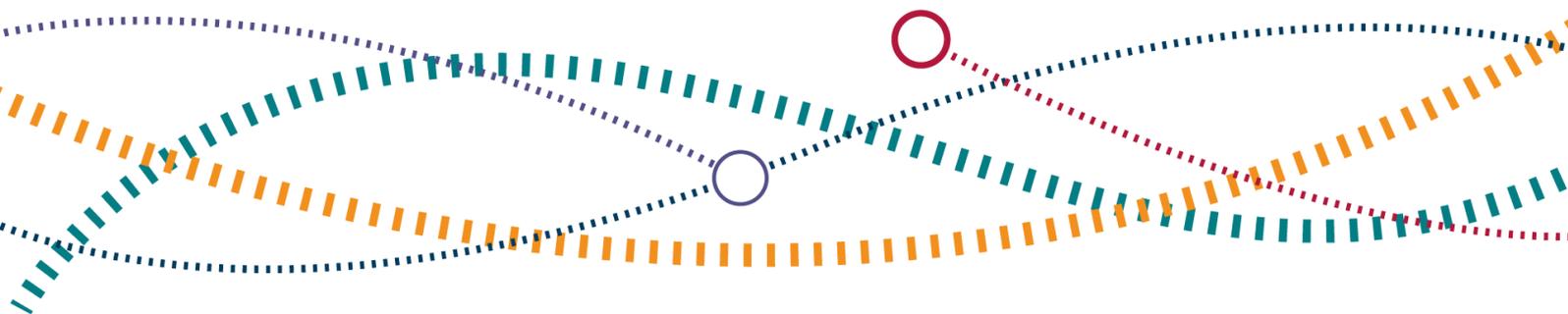




Implementing PR23: conclusions to consultation on drafting changes to access contracts

15 February 2024



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1. Introduction

- 1.1 This document sets out the conclusions to our [July 2023 consultation](#) (hereafter our “**July 2023 consultation**”) on drafting changes to access contracts between Network Rail and companies that use its infrastructure. The July 2023 consultation sought views on how we proposed to implement our 2023 periodic review (PR23) decisions in track and station access contracts for the next control period (CP7).

Background

- 1.2 PR23 is the process through which we determine what Network Rail Infrastructure Limited (“**Network Rail**”) should deliver in respect of its role in operating, maintaining and renewing the GB rail network in the period from 1 April 2024 to 31 March 2029 and how funding should be best used to support this. This feeds through into:

- 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 will pay for access to its track and stations during CP7.

- 1.3 On 31 October 2023, we published our [PR23 final determination](#) (the “**final determination**”), setting out our overall decisions. We also refer to two specific publications that form part of the final determination publications throughout this document:

- [PR23 final determination: policy position – access charges](#) (the “**PR23 policy position: access charges**”); and
- [PR23 final determination: policy position – Schedules 4 and 8 incentives regimes](#) (the “**PR23 policy position: Schedules 4 and 8**”).

- 1.4 Many of these decisions affect provisions in access contracts (such as the access charges and financial incentive arrangements). These contracts therefore need to be amended to implement our decisions.

- 1.5 In July 2023, we consulted on the changes that we considered were necessary or expedient to make to the standard provisions in track access contracts (including changes to Traction Electricity Rules) and station access contracts to implement PR23 with effect from 1 April 2024. These proposed changes:

- were based on our June 2023 [draft determination](#);
- reflected drafting changes taken forward following our October 2022 [consultation](#) (the “[October 2022 drafting improvements consultation](#)”) on improvements to the drafting of the model freight, passenger and charter track access contracts; and
- set out other necessary changes as we move into the new control period, for example, dates amended so that they are correct for CP7.

1.6 We received twelve responses to our July 2023 consultation, from:

- (a) SE Trains Limited (“**Southeastern**”);
- (b) Heathrow Airport Limited (“**Heathrow Airport**”);
- (c) GB Railfreight Limited (“**GBRf**”);
- (d) Northern Trains Limited (“**Northern**”);
- (e) MTR Elizabeth Line Limited (“**MTR Elizabeth Line**”);
- (f) DB Cargo (UK) Limited (“**DB Cargo**”);
- (g) Arriva Rail London Limited (“**London Overground**”);
- (h) First Rail Holdings Limited (“**First Rail**”);
- (i) Govia Thameslink Railway Limited (“**GTR**”);
- (j) London Underground Limited (“**London Underground**”);
- (k) First Greater Western Limited (“**GWR**”); and
- (l) Network Rail Infrastructure Limited (“**Network Rail**”).

1.7 Several responses to our July 2023 consultation commented on policy rather than the drafting proposals. These responses were reviewed alongside others before publication of the final determination.

1.8 This document:

- (a) discusses the main points raised by stakeholders in response to our July 2023 consultation and concludes on them; and

- (b) highlights material differences from our July 2023 consultation, in terms of the final changes that will be made to operators' access contracts and model access contracts from 1 April 2024 onwards and any other material matters.

Structure of this document

1.9 The rest of this document is structured as follows:

- Chapter 2 sets out common drafting changes that will be made to **track access contracts** (passenger, freight operator, freight customer operator and charter);
- Chapter 3 sets out drafting changes that will be made to **passenger access contracts** – (public service operator (PSO) and open access operator);
- Chapter 4 sets out drafting changes that will be made to the **freight operator, freight customer and freight operating company customer access contracts**;
- Chapter 5 sets out drafting changes that will be made to **charter access contracts**;
- Chapter 6 sets out drafting changes that will be made to **station access contracts** for which Network Rail is the facility owner or lessor (with the exception of those with full repairing and insuring leases, as Network Rail does not have responsibility for maintenance, repair or renewal for these);
- Chapter 7 sets out drafting changes that will be made to the **Traction Electricity Rules**; and
- Chapter 8 sets out drafting changes that will be made as a result of our October 2022 drafting improvements consultation.

1.10 This document outlines all the proposals detailed in our July 2023 consultation and our final decisions. We did not receive responses in relation to all the proposals.

Next steps in the implementation process

1.11 The process for effecting changes to access contracts to implement the final determination is via a series of notices served under Schedule 4A of the Railways Act 1993. On 20 December 2023 we issued our review notices to all affected parties. The review notices and the covering letter are available from the following links:

- [Covering letter: Implementation of the 2023 periodic review](#)
- [Review notice: Station Long Term Charges](#)
- [Review notice: Traction Electricity Rules](#)
- [Review notice: Freight Customer Track Access Agreements](#)
- [Review notice: Freight Operator Track Access Agreements](#)
- [Review notice: Charter Passenger Operator Track Access Agreements](#)
- [Review notice: Open Access Passenger Operator Track Access Agreements](#)
- [Review notice: Public Service Passenger Operator Track Access Agreements](#)

1.12 The review notices set out how operators' track and station access contracts should be amended from 1 April 2024, pending the completion of the implementation process. These changes reflect our conclusions to our July 2023 consultation and our position at the final determination. In particular, these notices:

- reflect the new CP7 model terms for track access contracts, amended, where appropriate, to account for any relevant bespoke arrangements currently in place, or insert any relevant new bespoke arrangements required for CP7. The process for establishing bespoke arrangements is set out in our July 2023 consultation at paragraphs 1.14 to 1.17;
- implement the outcome of the recalibration process followed for PR23, including changes to the Schedule 4 and 8 parameters specific to each operator and changes to parameters for traction electricity charges (for more information see our [2023 periodic review final determination: consolidated list of decisions](#)); and
- provide for [Network Rail's CP7 Price Lists](#) to apply from 1 April 2024. These Price Lists will be updated to reflect inflation.

1.13 Network Rail had until 9 February 2024 to object to any of the changes set out in the review notices. On the 9 February 2024 it advised us that it would not be objecting. Accordingly, the next steps in the process are for us to:

- issue '**notices of agreement**', confirming that Network Rail has not objected to the review notices, and providing those operators that hold track or station

access contracts with Network Rail 28 days (from the date of service) in which to decide whether to give notice that they wish to terminate their contract. These notices were served on 12 February 2024; and

- after the expiry elapse of this 28-day period (in March 2024), issue ‘**review implementation notices**’ confirming the proposed changes set out in our review notices, and directing the parties to the relevant access contracts to enter into supplemental agreements in order to comply with and give effect to the directions set out in the review implementation notices.

1.14 Further detail on the statutory process for implementing PR23 is set out in Annex D of our July 2023 consultation.

1.15 As well as the notices that we issue to implement PR23, we will be publishing to coincide with the start of CP7:

- CP7 versions of our model track access contracts; and
- revised versions of our [track access guidance](#), to reflect the arrangements for CP7.

1.16 By 28 February 2024, we expect to approve the separate grant mechanisms for England & Wales and Scotland that were set out in the network grant documentation agreed by the Department for Transport (DfT) and Network Rail, and Transport Scotland and Network Rail, in December 2024. These mechanisms allow network grants to be separately adjusted in accordance with the budgetary flexibility rules for England & Wales and Scotland as referred to in our [PR23 final determination: policy position on the financial framework](#) (“**PR23 policy position: financial framework**”).

1.17 CP7 begins on 1 April 2024. Changes to access contracts, including new access charges, will take effect from that date.

Consultation on amendments to the model freight track access contracts

1.18 Separately, and in addition to changes related to the implementation of PR23, we also intend to make further changes to the freight model track access contracts to bring them up to date. We are currently consulting on our proposal to remove Paragraph 5 of Schedule 5. This [consultation on amendments to the model freight track access contracts](#) closes on 28 February 2024.

1.19 The consultation document also sets out two minor amendments that we intend to implement for CP7, these are:

- amend clause 18.4.2 to allow for name and address details at page one of the contract and at Schedule 1 to be updated by giving notice to relevant parties; and
- delete clause 18.8 (Crossrail) and Schedule 11 (Crossrail modifications) in the model freight operator contract.

2. Changes to track access contracts (passenger, freight and charter)

Introduction

- 2.1 This chapter discusses the decisions that we made, following our July 2023 consultation and final determination, regarding common changes to the track access contracts of passenger (both PSOs and open access operators), freight (meaning in this chapter freight operator and freight operating company customer access contracts, unless otherwise specified) and charter.

Changes to Schedules 4, 7 and 8

Change to inflation indexation formulae

- 2.2 Our July 2023 consultation proposed amending the formulae used to index the charges, payment rates and other relevant parameters in Schedules 4, 7 and 8 by inflation. Specifically, this would involve removing the initial indexation factor (IIF) in all relevant places in Schedules 4, 7 and 8 where the IIF is applied. The definition of “Initial Indexation Factor” was also to be deleted from the definitions in Schedules 4, 7 and 8 where applicable. Consequential amendments for different types of access contract were also set out in our July 2023 consultation.
- 2.3 This change was necessary to account for the fact that Network Rail’s CP7 Strategic Business Plan (SBP) was developed using the final year of CP6 (2023-24) as the base year. This was not the case in PR18, when the penultimate year of CP5 was used as the basis for Network Rail’s CP6 plan.

Stakeholder views

- 2.4 Only GTR responded to this proposal. It supported the proposal to remove IIF from the formula used for Schedules 4, 7 and 8 as there is no functional requirement to retain it and commented that removing IIF will simplify the formula.

Our decision

- 2.5 We confirm that we will go ahead with this proposal. Review notices do, and model contracts will, reflect the changes proposed in our July 2023 consultation at paragraphs 2.3-2.4 (albeit with some minor drafting improvements from the versions we consulted on).

2.6 In addition, indexation formulae for Schedule 4 and 8 parameters were updated to accommodate the possibility that figures in annexes and appendices would be updated through a within-control period recalibration. It was therefore necessary to update the indexation formulae to refer directly to updated annexes and appendices rather than simply to uplift the previous year's figures. Changes to model contracts will be as detailed below (review notices also accommodate these changes, although in some instances the bespoke nature of operators' access contracts means that nuances apply):

- (a) Charter: sub-paragraph 7.2 (Indexation of Indexed Figures) of Schedule 8;
- (b) Freight Operator and Freight Operating Company Customer: sub-paragraph 2.7 (Price Variation) and paragraph 1 (Definitions) of Schedule 7. Definitions for the following terms have been inserted into Schedule 7:
 - (i) Disruption Sum;
 - (ii) Enhanced Planned Disruption Sum;
 - (iii) Indexed Figures A;
 - (iv) Indexed Figures B;
 - (v) Late Notice Cancellation Sum;
 - (vi) Network Rail Cap;
 - (vii) Network Rail Payment Rate;
 - (viii) Normal Planned Disruption Sum;
 - (ix) Train Operator Cap; and
 - (x) Train Operator Payment Rate.

With the exception of the definitions of "Indexed Figures A" and "Indexed Figures B", these terms have previously been used within this schedule, but were, to date, undefined within it. The definitions of "Indexed Figures A" and "Indexed Figures B" have been inserted to replace the now deleted definition of "Indexed Figures". This has been deleted to accommodate changes to sub-paragraph 2.7. Consequential amendments have been made to the definitions of "Electrification Asset Usage Rate", "Freight Specific Charge Rate" and "VUC Default Rate".

- (c) PSO and Open Access: paragraph 14 (Indexation) of Schedule 4 and paragraph 13 (Payment rates) of Schedule 8.

Schedule 8

Provision for recalibration within control period

2.7 Paragraphs 2.7-2.8 of our July 2023 consultation set out proposals for how we would give effect to the proposal to introduce a provision into each of the passenger, freight (freight operating and freight operator company customer) and charter Schedule 8 regimes to allow for the update of Schedule 8 parameters during the control period.

Stakeholder views

2.8 We received three responses to this proposal: from GBRf, Network Rail and GTR.

2.9 GBRf did not agree with the proposal for mid-control period recalibration of Schedule 8. It said that the Schedule 8 regime encourages what it sees as “good” performance from operators and infrastructure suppliers, that the importance of this should not be underestimated and that the current regime should not be diluted by frequent recalibration.

2.10 Network Rail in its response said that provisions for recalibration within control period need to reflect flexibility in amendments to Appendix 1 as and when they are warranted. It recommended amending the relevant new paragraphs to include the wording, “ORR may amend Appendix 1 where it considers that there is sufficient evidence to warrant an amendment”, rather than refer specifically to a material change in circumstances.

2.11 GTR supported the inclusion of a reopener provision to recalibrate Schedule 8 in the event of a material change in circumstances.

Our decision

2.12 In our PR23 policy position: Schedules 4 and 8, we confirmed our decision to proceed with this new provision to allow for the update of Schedule 8 parameters during the control period.

2.13 After consideration of responses from consultees, and in accordance with the final determination, the drafting we consulted on has been amended. Our review notices direct access contracts to be revised to enable ORR to amend relevant provisions of Schedule 8. This is either where there has been a material change in circumstances or to give effect to any recalibration carried out in accordance with

the planned recalibration ahead of year 3 of CP7, as outlined in paragraphs 3.22-3.26 of our PR23 policy position: Schedules 4 and 8. Drafting will also be included in model contracts.

Other amendments

Relevant dates

2.14 The review notices do, and all model access contracts (including the freight customer model) will, amend relevant dates in all the access contracts to reflect that CP7 will run from 2024 to 2029, and references to CP6 will be changed to CP7 where appropriate. No comments were received.

Discontinued provisions (REBS and Capacity Charge)

2.15 In our July 2023 consultation, we stated our intention to remove references to the relevant route-level efficiency benefit sharing (REBS) mechanism (see paragraph 2.11) and Capacity Charge (see paragraph 2.12) from all access contracts which were entered into during CP5 or before.

2.16 Following the decision in PR18 to remove these provisions, where necessary, arrangements were retained to ensure charges incurred prior to 1 April 2019 remained liable to be paid when invoiced during CP6. We proposed that these could now be deleted.

Stakeholder views and our decision

2.17 GTR provided the only response to this proposal, noting that it agreed and considered these terms to be obsolete. The requirement to remove references to “REBS” and “Capacity Charge” from operators’ access contracts has been reflected in the review notices.

Schedule 9

2.18 Our July 2023 consultation at paragraph 2.13 onwards proposed amending the indexation formula within the definition of ‘Liability Cap’ in Schedule 9 of the freight operator, freight operating company customer, freight customer and charter model track access contracts as well as those operators’ contracts where the cap had not been negotiated. This amendment would ensure default caps were consistent regardless of when a contract was entered into. For the passenger model contracts, we proposed an amendment to the definition of ‘Contract Year’. No changes were proposed to operators’ passenger contracts because in all instances the ‘Liability Cap’ has been negotiated. Further detail is provided at paragraph 2.13 onwards of our July 2023 consultation.

Stakeholder views

2.19 Network Rail provided the only response to this proposal asking for early sight of the proposed changes to the indexation formula as it developed. It subsequently confirmed that it had no comment on the proposal as outlined in our July 2023 consultation.

Our decision

2.20 The need to amend the indexation formula has been reflected in the freight operator, freight customer and charter review notices and will be included in all three freight and the charter model contracts. However, amendments have been made to the drafting consulted on to bring the formula into line with the formula for indexing other charges in the access contracts. Changes to the model passenger contracts have been inserted as proposed in our July 2023 consultation.

3. Changes to passenger access contracts

Introduction

- 3.1 This chapter discusses the decisions that we made, following our July 2023 consultation and the final determination, regarding our proposed amendments relevant only to passenger track access contracts. We set out our decisions on:
- (a) changes which affect both open access operator and PSO access contracts;
 - (b) changes which only affect open access operator access contracts; and
 - (c) changes which only affect PSO access contracts.

Changes which affect both open access operator and PSO access contracts

Schedule 4: Timetabling process changes: reopener provision

- 3.2 As set out in paragraphs 3.3 onwards of our July 2023 consultation, Network Rail had made a timetable change proposal (to the Network Code), known as Better Timetables for Passengers and Freight (BTPF). This change proposal would allow Network Rail to make up to three timetable changes per year, which may have had a significant impact on Schedule 4.
- 3.3 Our July 2023 consultation noted at paragraph 3.7 that we considered that the procedure set out in Schedule 10 to access contracts would allow ORR to make any necessary amendments to Schedule 4 should the change proposal go ahead.

Stakeholder views

- 3.4 We received two responses to this proposal: from Network Rail and Northern. Network Rail noted that amendments had not yet been proposed by ORR and it assumed that ORR would use Schedule 10 to implement any relevant amendments.
- 3.5 Northern noted that the BTPF change proposal was not going ahead and sought clarification about whether references to its implementation would be removed from ORR's decisions on Schedule 4.

Our decision

3.6 As detailed in our July 2023 consultation and our PR23 policy position: Schedules 4 and 8, no additional reopener provision has been or will be included within Schedule 4 as Schedule 10 of track access contracts already provides ORR with powers to make changes to Schedule 4 within control periods that are required as a result of changes to the Network Code.

Schedule 4: Other amendments

3.7 In accordance with our proposal at paragraph 3.8 of our July 2023 consultation, the passenger review notices and the open access operator model contract for CP7 reflect the need to replace the reference to ‘clause’ with a reference to ‘paragraph’ at paragraph 2.8(a) of part 3 to Schedule 4. No comments were received.

Schedule 4: Reopener for consequential changes to Schedule 4 following within-control period changes to Schedule 8

3.8 In our July 2023 consultation at paragraphs 3.26-3.28 we proposed including a reopener provision in PSO access contracts to allow Schedule 4 Access Charge Supplements (ACSs) to be recalculated as a result of a change to Schedule 8 parameters during CP7. No comments were received.

3.9 As set out at paragraphs 2.7-2.13 of this conclusions document, our approach to changing Schedule 8 parameters during CP7 has evolved. As a consequence of this (and as confirmed in our PR23 policy position: Schedules 4 and 8) it was necessary to include a reopener provision and for that reopener to allow for elements of Schedule 4 in addition to ACSs to be amended in the case of a significant change to Schedule 8 parameters during CP7.

3.10 The new paragraph 15 of Part 3 to Schedule 4 for PSO access contracts that we included in our July 2023 consultation has been adapted to enable changes to be made to Schedule 4 in respect of the ACS, but also to the definitions of “SPD Revenue Threshold No. 1” and “SPD Revenue Threshold No. 2”, Annex A of Part 3 (notification factors) and Annex D of Part 3 (defined service group revenue). There is the possibility that these would need to change as a consequence of recalibrating Schedule 8.

3.11 With the exception of the reference to the ACS (which is not included in open access contracts), drafting to accommodate this reopener will be included in open access contracts.

Schedule 7: Variable Usage Charge (VUC) default period

- 3.12 Train operators applying for a new VUC rate use the default VUC rate while their application is in progress. If they have been overcharged for the VUC during the period that the application is in progress, they can apply for a refund once the new VUC rate is approved. Currently, train operators can apply for a refund backdated to the start of the control period.
- 3.13 Following a proposal from Network Rail, our July 2023 consultation proposed (at paragraph 3.9-3.10) to amend the definition of “VUC Default Period” set out in Part 1 of Schedule 7. This change would set the maximum period during which train operators can be refunded for the use of VUC default rates to 12 months from the introduction of a vehicle to the network.

Stakeholder views

- 3.14 We received three responses to this proposal: from London Overground, GBRf and GTR.
- 3.15 London Overground supported this proposal. GBRf had concerns around the proposal to change the default period as the process for applying for and agreeing VUC rates can take many months. GBRf 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. GTR suggested that the existing policy, where a refund can be claimed going back up to five years to the beginning of the control period, should stay as it is. GTR did not provide any further information to support its proposal.

Our decision

- 3.16 Following a review of the responses and as we confirmed in our PR23 policy position: access charges, we are not taking this proposal forward. 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. The review notices do, and the model access contracts will, reflect this decision.

Schedule 7: Removal of Partial Fleet Metering (PFM)

- 3.17 In paragraph 3.11 of our July 2023 consultation, we set out our intention to remove the PFM charging approach from the start of CP7. No operator had applied to use this charging approach under the Traction Electricity Rules since it was introduced in PR13.

Stakeholder views and our decision

3.18 GTR provided the only response to this proposal saying it had no objections to it. We confirmed in our PR23 policy position: access charges that the PFM charging approach will be removed to streamline the charging approaches for traction electricity (EC4T). We have incorporated the consultation drafting into the review notices to give effect to this decision, and model contracts will be updated accordingly.

Schedule 7: Removal of new bespoke and generic modelled EC4T consumption rates

3.19 In paragraphs 3.12 and 3.13 of our July 2023 consultation, we said we were minded to remove both the facility to obtain a new bespoke modelled consumption rate and the generic modelled consumption rates from the start of CP7. Removing the facility to obtain a new bespoke modelled rate would mean that there would be no further supplements to the Traction Electricity Modelled Consumption Rates List in CP7.

Stakeholder views

3.20 Network Rail provided the only response to this proposal flagging that the proposed drafting would not provide for 'in progress' applications for new bespoke consumption rates to be completed in the first year of CP7. Network Rail highlighted specific amendments and additions to Schedule 7 that, in its view, would need to be made to address this.

3.21 When responding to our PR23 draft determination, three other stakeholders commented on this proposal: c2c, Northern and Greater Anglia all supported it as they consider it would encourage on-train metering (OTM) take-up. However, while supporting this proposal, Northern and Greater Anglia also raised concerns that it could increase the financial risk to operators. They stated that the risk could flow from cascaded legacy stock, moving some vehicles onto a new route or technical issues with meters and the time it takes to get the OTM system running.

3.22 This proposal was also discussed in [Network Rail's conclusions](#) on its consultation on track access charges recalibration for CP7. Respondents to that consultation broadly supported it.

Our decision

3.23 We discussed our responses to these concerns in our PR23 policy position: access charges and related [impact assessment](#). In conclusion, we confirmed that we would be removing both the facility to obtain a new bespoke modelled

consumption rate and the generic modelled consumption rates from the start of CP7. The model contracts will reflect this decision.

- 3.24 For existing operators, the review notices also reflect this decision, but provide for contingency arrangements as requests for supplements to the CP6 Traction Electricity Modelled Consumption Rates List can be made until 31 March 2024 and might therefore need to be dealt with during CP7. This removes any need to make amendments or additions to Schedule 7 as per Network Rail's response.

Schedule 7: Removal of RPI

- 3.25 As proposed in paragraph 3.14 of our July 2023 consultation, we will delete the definition "RPI" from Part 1 of Schedule 7 of the model contracts as this defined term is no longer used. No comments were received. This amendment is also reflected in review notices in relation to those operators' contracts where this defined term is no longer used.

Changes to open access operator access contracts

Front end

- 3.26 As proposed in paragraph 3.15 of our July 2023 consultation, we have moved the definition of "Public Holiday" from Schedule 4 and Schedule 5 to Clause 1 of the open access model contract as this definition is used throughout the access contract and the duplication is not required. No comments were received. This amendment has also been reflected in the open access operator review notice for specified operators.

Schedule 4: Opt-in mechanism

- 3.27 In paragraph 3.16-3.19 of our July 2023 consultation, we set out that we would introduce a Schedule 4 opt-in mechanism for open access operators for CP7. This mechanism would provide an opportunity for open access operators to opt in to receive full Schedule 4 compensation in return for paying an ACS. If an operator chose to opt in, its contract would be amended to incorporate the PSO Schedule 4. No comments were received.
- 3.28 The review notice reflects the decision by two open access operators to opt in. In a change to our July 2023 consultation, and as set out in our PR23 policy position: Schedules 4 and 8, open access operators will have an opportunity to amend their decision where an amendment is made to the calculation of Schedule 4 ACSs following a within control period recalibration under Schedule 8.

Schedule 4: Definition of “Journey Time”

3.29 In a change to the model open access contract we consulted on, we have deleted the definition of “Journey Time” from paragraph 1 of Schedule 4. The definition was inaccurate and inconsistent with another definition of “Journey Time” included in Schedule 4. This amendment has been included in the open access review notice and will be incorporated into the model access contract.

Schedule 8: Sustained poor performance (SPP) mechanism

3.30 In paragraphs 3.20-3.21 of our July 2023 consultation, we set out proposed drafting amendments to give effect to the policy proposal to adopt the SPP mechanism into open access operators’ access contracts. No comments were received. We confirmed in our PR23 policy position: Schedules 4 and 8 that the sustained poor performance mechanism will be extended to open access operators in CP7. The model contract for open access operators therefore includes new paragraphs containing the SPP mechanism, for adoption in CP7. Review notices do, and model contracts will, reflect the changes proposed in our July 2023 consultation at paragraphs 3.20-3.21 (with some minor drafting improvements from the versions we consulted on).

Changes to PSO access contracts

Schedule 4: Opt-in/opt-out mechanism

3.31 Previously, all PSOs have had Schedule 4 as part of their access contracts, and have paid an ACS in order to receive compensation. The opt-out mechanism would allow them to opt out of Schedule 4, meaning that they would not pay an ACS or receive any compensation under Schedule 4. In paragraphs 3.22-3.25 of our consultation, we set out drafting proposals to give effect to a Schedule 4 opt-out mechanism for PSOs for CP7.

Stakeholder views

3.32 We received four responses to this proposal: from Southeastern, GTR, Network Rail and First Rail.

3.33 Southeastern stated that its understanding of this change was that the ability to opt out could be requested by all operators prior to the start of CP7. It considered that the drafting does not allow opt out for existing operators prior to CP7. It also asked whether the intention was for operators to be able to opt out prior to each future control period, or just CP7.

- 3.34 GTR supported the proposed amendments to the access contracts but requested assurance that the finalised ACS would not deviate greatly from the indicative charges which would be used to make the decision.
- 3.35 Network Rail noted that the date of the supply of indicative ACSs should refer to September rather than August 2023, reflecting the point at which these were provided.
- 3.36 First Rail commented that:
- (a) the provisions seemed to confuse award and commencement, and the real-life scenarios of direct awards and timescales on competed awards and mobilisations;
 - (b) the triggers needed to distinguish the commencement date of operations under the new franchise agreement from when the agreement is awarded or entered into;
 - (c) the requirements for three months' prior notice may be constraining where there is a franchise award as confirmation of award and mobilisation deadlines may be tighter than this;
 - (d) consideration should be given to including where there is a transfer of franchise agreement obligations from DfT to Great British Railways (GBR). It also asked for consideration to be given to including an explicit direct award circumstance (i.e. when there is no competition); and
 - (e) the drafting reference to re-tendering a franchise agreement appeared to be "strained" and consideration should be given to a reference to a replacement of all, or part of, the franchise agreement, following its expiry or other termination event.

Our decision

- 3.37 All operators were given the opportunity to opt out of Schedule 4 in advance of CP7 (indicative ACSs were provided in September, as noted by Network Rail). The decisions of PSOs were reflected in the respective review notice.
- 3.38 The intention was for the indicative and final ACS numbers to be as aligned as possible to enable operators to make an informed decision on whether to opt out.
- 3.39 A meeting was held with First Rail to discuss the points that it raised. Following this, updates were made to the Schedule 4 drafting, updating the timescales

based on its feedback. The Schedule 4 drafting was also updated to include an explicit direct award trigger, without there being a competition, and a trigger to allow PSOs to amend their decision where an amendment is made to the ACS following a within control period recalibration under Schedule 8.

Schedule 4: Definition of “Recovery Allowance”

3.40 In a change to the PSO model access contract we consulted on, we have deleted the definition of “Recovery Allowance” from paragraph 1 of Schedule 4. This defined term was no longer used in PSO access contracts. This amendment has been included in the PSO review notice and the term will be deleted from the PSO model access contract.

Schedule 7: Network grant and related provisions

3.41 In paragraphs 3.29-3.31 of our July 2023 consultation, we set out how we proposed to implement a reduction to the length of time, between a dilution event being triggered and additional FTAC payments from operators, from three months to one month.

Stakeholder views

3.42 We received two responses to this proposal: from Northern and First Rail.

3.43 Northern was concerned that one month’s notice is insufficient time for it to plan cashflow and this is why the period was three months. Northern also noted that this would require sign-off through governance with DfT.

3.44 First Rail questioned whether this change would be practical as it would need to be processed via DfT to ensure the payment was funded. It also noted that the English and Welsh grant dilution provisions do not work if GBR becomes the franchising authority as the train operating company (TOC) will no longer have a funding route to DfT and therefore the TOC could potentially face this liability. In its view, it would be preferable if this became a GBR matter and the provision is disapplied when it takes over as the franchising authority.

Our decision

3.45 We noted that the industry would in practice have more than one month’s notice of a grant dilution event, because a grant dilution event would be caused by a funder (which is also the commissioning authority for the majority of passenger services with grant dilution clauses in their contracts).

3.46 In our PR23 policy position: financial framework, we confirmed our decision to shorten the delay between a dilution event occurring and an increase in FTAC

payments from three months to one month. We considered this was necessary to reduce the duration of Network Rail's exposure to a funding shortfall, particularly as it can no longer directly borrow from the capital markets. This decision has been reflected in changes to model contracts and review notices.

3.47 With regard to First Rail's comments about GBR, it is not clear at the moment that there would be a change to the way that Network Rail and TOCs are funded, that would mean a grant dilution clause is not necessary or would not work.

3.48 We also considered operators would be able to deal with the implications of a grant dilution event within one month. Paying these additional FTAC amounts would be necessary for Network Rail's continued operations, without which trains would not be able to run, significantly reducing operators income. So, this would be a priority for them.

Schedule 7: Reference to Tables E2B and E2C and other amendments

3.49 As detailed in our July 2023 consultation at paragraph 2.9 (on which we received no comments from stakeholders), we noted that an update was needed to the definition of Table E2B. The model contracts will, and the review notices do, update the reference in Schedule 7 to 'Table E2B' in the English and Welsh access contracts and 'Table E2C' in Scottish access contracts to refer to 'Table 1'. A definition of Table 1 has also been inserted as this is the name now used to describe the relevant table in the letter from ORR to Network Rail dated 2 November 2023.

3.50 In addition to the drafting amendment set out in the paragraph above, the model contract and the review notices also reflect the need for a minor drafting change to correct a typographical error in paragraph 1.1(a) of Part 3A of Schedule 7 to replace the reference to 'fails' with 'falls'.

Schedule 7: Removal of the FTAC 'wash-up' mechanism

3.51 At paragraphs 3.32-3.35 of our July 2023 consultation we set out proposals to implement our decision (as detailed in our October 2022 [conclusions document on access charges](#)) to remove the volume incentive mechanism known as a 'wash-up' from the calculation of the fixed track access charge (FTAC). This mechanism adjusts an operator's annual FTAC in proportion to variations in timetabled train miles, relative to a pre-determined baseline.

3.52 This means that operators' FTACs will continue to be set as an annual charge, based on traffic forecasts derived in advance of the start of CP7.

Stakeholder views and our decision

3.53 GTR provided the only response to this proposal, supporting the removal of any reference to the FTAC ‘wash-up’ mechanism from the track access contract and for the relevant amendments to be made to the FTAC calculation formula. This decision to remove the ‘wash-up’ mechanism as set out in paragraphs 3.32-3.35 of our July 2023 consultation will be reflected in model contracts and has been reflected in review notices.

Schedule 8: ‘Switch-off’ mechanism for GBR’s future PSOs

3.54 In our July 2023 consultation at paragraphs 3.36-3.40 we set out proposed drafting amendments that would give effect to a proposed policy for the implementation of a ‘switch-off’ mechanism to allow for the removal of relevant Schedule 8 payments between GBR and its contracted operators. This mechanism would only apply if GBR is established and if there is sufficient legislative change to permit the removal of payments. Our July 2023 consultation confirmed that the drafting would be incorporated into those PSO contracts where the operator is currently contracted by DfT.

Stakeholder views

3.55 We received two responses to this proposal: from Heathrow Airport and London Overground. Both responses focused on the policy proposal, rather than the drafting proposals.

3.56 Heathrow Airport noted that while there is certainly some motivation for the option to switch off Schedule 8, there would need to be sufficient legislative change before this can be implemented. It also raised questions around the potential impacts if this was progressed.

3.57 London Overground sought confirmation that no changes will be made to Schedule 8 for London Overground as it will not be a part of GBR. It also wanted to know whether the introduction of GBR would trigger a material change relating to the overall Schedule 8 regime.

Our decision

3.58 In our PR23 policy position: Schedules 4 and 8 we confirmed our decision to proceed with the removal of relevant Schedule 8 payments between GBR and its contracted operators, in the event that there is sufficient legislative change to permit this. ORR would only give effect to the mechanism if we were satisfied that there were sufficiently strong performance incentives in place. There is no prior assumption that the introduction of GBR would trigger a recalibration of the

Schedule 8 regime.

- 3.59 The PSO review notice gives effect to this decision but drafting amendments (as set out in paragraphs 3.36-3.40 of our July 2023 consultation) to accommodate this policy will not be made to the PSO model access contract, as the decision relates only to those PSOs that are contracted by DfT.

Schedule 8: Other amendments

- 3.60 To address a typographical error in two of the formulae in paragraph 9.1 of Schedule 8 (definition of NRWAML) we proposed, in our July 2023 consultation, amending “MNLr” to “MLNR” in the model contract.

Stakeholder views and our decision

- 3.61 Network Rail provided the only response, commenting that it had also identified this error. The PSO model access contract has been amended in accordance with this proposal (see paragraph 3.41 of our July 2023 consultation). The PSO review notice directs affected operators to amend their access contracts.

4. Changes to freight access contracts

Introduction

4.1 This chapter discusses the decisions we made, following our July 2023 consultation and the final determination, regarding our proposed amendments relevant to each of the three types of freight track access contracts (freight operator, freight customer operator and freight customer). These changes are in addition to those already highlighted in chapter 2.

Front end

4.2 We are proceeding with our July 2023 consultation proposal to update the baseline figure in the definition of “Service Variation Sum” in line with Network Rail’s recalibration of the parameters in Schedules 4 and 8 of track access contracts. The freight operator review notice gives effect to this decision. The freight operator and freight operating company customer model contracts will be amended accordingly.

4.3 We are proceeding with our July 2023 consultation proposal to delete the definition of “RPI” from Clause 1.1 of freight customer access contracts. The freight customer review notice gives effect to this decision. The freight customer model will be amended accordingly. No comments were received.

Schedule 4

Opt-out mechanism

4.4 At paragraphs 4.6-4.7 and Annex B of our July 2023 consultation we set out proposed drafting that would give effect to a proposed Schedule 4 opt-out mechanism for freight operators. Our PR23 policy position: Schedules 4 and 8 confirmed this option which would provide operators with the flexibility to adjust to industry reform in line with their commercial circumstances.

Stakeholder views and our decision

4.5 GBRf provided the only response to this proposal noting that as it (and other freight operators) do not pay an Access Charge Supplement, there would be no incentive for them to opt out of the Schedule 4 mechanism. However, it raised

concerns that the dilution of overall Schedule 4 payments would lead to a lack of incentive on Network Rail to minimise disruption to freight customers.

- 4.6 We confirmed in the final determination that this option was available. No freight operators opted out of Schedule 4 for CP7 and therefore no drafting amendments have been included in respect of this policy proposal.

Timetabling process changes: reopener provision

- 4.7 Please see paragraphs 3.2-3.6 above which set out our conclusions.

Schedule 7

Removal of Coal Spillage Charge Rate definition

- 4.8 As proposed in our July 2023 consultation at paragraph 4.10, we will delete the definition of “Coal Spillage Charge Rate” from Part 1 of Schedule 7 of the model freight operator access contract as it is no longer used. The review notice reflects this decision. This drafting amendment follows our decision in PR18 to remove the coal spillage charge. No comments were received.

Amendment to formula for biomass infrastructure cost charge (ICC)

- 4.9 As proposed in our July 2023 consultation at paragraphs 4.11-4.12 we confirm that we are removing part (b) of the definition of a “Freight Specific Charge Rate”, but reference to ‘ESI Biomass Vehicles’ will remain within the definition. This is because the biomass ICC will not be subject to a phase-in profile in CP7 and so the formula for calculating the biomass ICC can be aligned with the formula for other freight ICCs. This decision is reflected in the freight operator review notice and will be reflected in the freight operator and freight operating company customer model access contracts. No comments were received.

Variable Usage Charge (VUC) default period

- 4.10 Train operators applying for a new VUC rate use the default VUC rate while their application is in progress. If they have been overcharged for the VUC during the period that the application is in progress, they can apply for a refund once the new VUC rate is approved. Currently, train operators can apply for a refund backdated to the start of the control period during which a new VUC rate application has been made.
- 4.11 In our consultation (at paragraph 4.14) we proposed to amend the definition of “VUC Default Period” set out in Part 1 of Schedule 7. This change would set the

maximum period during which train operators can be refunded for the use of VUC default rates to 12 months from the introduction of a vehicle to the network.

Stakeholder views and our decision

4.12 For the stakeholder views and our decision please see paragraphs 3.14-3.16 of this document.

Removal of new bespoke and generic modelled EC4T consumption rates

4.13 In our July 2023 consultation at paragraph 4.15 we set out drafting proposals to give effect to the proposed policy to remove the facility to obtain a new bespoke modelled EC4T consumption rate from the start of CP7 and consequently, there would be no further supplements to the “Traction Electricity Modelled Consumption Rates List” in CP7.

Stakeholder views and our decision

4.14 For the stakeholder views and our decision please see paragraphs 3.20-3.24 of this document.

Addition of traction electricity default modelled consumption rate

4.15 As set out in our July 2023 consultation at paragraphs 4.16 to 4.17 Network Rail said that it will introduce a set of default modelled EC4T consumption rates for freight operators in CP7. These rates will replace an existing set of generic consumption rates which have been removed from the Traction Electricity Modelled Consumption Rates List in CP7. This change aligns the EC4T billing regime for freight more closely with that for passenger operators.

4.16 No comments were received on this proposal. The freight operator and freight customer operator model access contracts will, and the freight operator review notice does, give effect to this proposed amendment subject to a minor amendment to the definition of “New Modelled Train”.

Removal of RPI

4.17 Our July 2023 consultation proposed to delete the definition of “RPI” from Part 1 of Schedule 7 of the freight model access contracts as it is no longer used. Consistent with the proposals in our July 2023 consultation, the freight operator and freight operating company customer model access contracts have been updated to this effect. The freight operator review notice instructs those operators whose contracts no longer use the term to delete it. Some operators will retain the

definition as it is used in Schedule 9 of their contracts. No comments were received.

Schedule 8

Prolonged disruption sum

- 4.18 PR23 policy position: Schedules 4 and 8 set out the decision to remove the prolonged disruption sum from the freight Schedule 8 regime. It had been highlighted by industry stakeholders that the Schedule 8 prolonged disruption amount was no longer in use.
- 4.19 Consistent with the proposals in our July 2023 consultation, the freight operator and freight operating company customer model contracts have been updated to give effect to this decision. The freight operator review notice directs operators to amend their contracts to give effect to this decision. No comments were received.

Incident cap exposure levels

- 4.20 PR23 policy position: Schedules 4 and 8 set out the decision to remove the freight and charter incident cap option for a 30% exposure level to delay minutes beyond the cap. This was because the option had not been taken up by any operator in CP6. Zero exposure will be the only option for operators in CP7. No comments were received.
- 4.21 With one minor amendment to reinsert the heading of paragraph 4, the proposals in our July 2023 consultation will be given effect via updates to the freight operator and freight operating company customer model contracts. The freight operator review notice directs operators to amend their contracts to give effect to this decision.

5. Changes to charter access contracts

Introduction

- 5.1 This chapter discusses the decisions that we made, following our July 2023 consultation and the final determination, regarding our proposed amendments relevant only to charter access contracts (in addition to those already highlighted in chapter 2).

Schedule 7

Amendment to formula for calculating slot charge

- 5.2 Charter operators pay a slot charge to Network Rail. The slot charge for steam-driven services varies depending on the length of the journey (with journeys that are defined as exceeding 250 miles attracting a higher charge per journey).
- 5.3 In our PR23 policy position: access charges we confirmed that we are content with combining the slot charges for steam services into a single uniform rate for all journey lengths as proposed by Network Rail.
- 5.4 Consistent with the proposals in our July 2023 consultation at paragraphs 5.3-5.5, the charter model contract will be updated to give effect to this decision. The charter review notice directs operators to amend their contracts to give effect to this decision. No comments were received.

Schedule 8

Incident cap exposure levels

- 5.5 In our PR23 policy position: Schedules 4 and 8 we made the decision to remove the freight and charter incident cap option for a 30% exposure level to delay minutes beyond the cap. This was because the option had not been taken up by any operator in CP6. Zero exposure will be the only option for operators in CP7.

Stakeholder views

- 5.6 Network Rail provided the only response to this proposal. It suggested that:
- (a) the words "and Exposure Level" should be deleted in the headings of Paragraph 9 and Paragraph 9.1 of Schedule 8; and

- (b) a definition of “Planned Service Incident Cap Access Charge Supplement Rate” should be added and should refer to the table in paragraph 9.2 of Schedule 8.

Our decision

- 5.7 The drafting that will be incorporated into the model charter access contract and has been incorporated in the charter review notice reflects ORR’s original proposal updated to account for Network Rail’s comments.

6. Changes to station access contracts

Introduction

- 6.1 This chapter discusses the outcome of our July 2023 consultation in respect of the changes needed to station access contracts to implement our PR23 decisions.

Station Long Term Charge (“LTC”)

Recalibration

- 6.2 Network Rail has recalibrated the LTC for CP7 based on our final determination and in December published its final Price List of station LTC for CP7. This will be updated to reflect inflation.

Stakeholder views

- 6.3 We received two responses to this proposal: from London Overground and London Underground.
- 6.4 London Overground responded to this decision by flagging its concern with the degree of change within the draft price list and the model used relating to its station portfolio. It highlighted examples of increased costs that it has experienced due to the recalibration model used and that it has seen a significant increase in expenditure attributed to increased costs across its station portfolio.
- 6.5 London Overground also stressed that due to changes in the level of footfall at stations this has caused a levelling up of stations to maintain standardisation of each category per region. This has led to a £3 million increase in cost base year-on-year and it wanted ORR to define how this was assessed in terms of overall cost impact to TOCs.
- 6.6 In terms of station renewals, London Overground noted that with renewal items deferred from CP6 that are unlikely to be undertaken in CP7, there is a risk that investment in CP7 will also be deferred from the investment programme creating a backlog of projects and accumulation of risk.
- 6.7 In its response to our July 2023 consultation, London Underground was concerned with the degree of change within the draft price list and model used relating to its station portfolio. As with the London Overground response, examples were

provided of increased costs at its stations and the impacts of levelling up of station categorisations.

- 6.8 London Underground also highlighted a lack of investment seen within the strategic business plans for CP7 and a lack of investment seen in CP6 within the London Underground portfolio, asking the question as to why it was paying more than other operators across the UK. It also asked for further explanation with regards to the reasoning for the large increases that it had highlighted.

Our decision

- 6.9 As set out in our final determination, we remain of the view that the changes in the LTCs for stations in CP7 were consistent with the overall station LTC methodology and reflect how Network Rail manages its station portfolio, as well as the expected allocation of expenditure to different stations in the long run.
- 6.10 In paragraph 4.13 of our PR23 policy position: access charges we noted that Network Rail will be producing a guidance document which will provide further explanation of 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 early in CP7, if not before.

Indexation arrangements

- 6.11 At paragraphs 6.3-6.7 of our July 2023 consultation, we set out the proposed amendments to the indexation arrangements relating to the LTC. These proposals reflect the change we are proposing to make to inflation indexation arrangements in Schedules 4, 7 and 8 of operators' track access contracts. This is to remove the initial indexation factor in the formulae which adjust charges and payment rates by CPI inflation each year.

Stakeholder views

- 6.12 Network Rail provided the only response to this proposal stating that the proposed wording does not represent the agreed approach to uplifting from the contractual price base to year 1 prices. It provided a proposed deletion of specific wording to rectify this.

Our decision

- 6.13 As the wording highlighted by Network Rail had already been identified as needing deleting by ORR, the drafting amendments proposed in our July 2023 consultation have been included in the stations review notice and will be incorporated into the Independent Station Access Conditions and National Station Access Conditions.

7. Traction Electricity Rules

Introduction

7.1 This section sets out the relevant changes to the Traction Electricity Rules (TERs). These rules are incorporated into the track access contracts of passenger and freight operators.

Section 14

Partial Fleet Metering (PFM)

7.2 Our July 2023 consultation noted at paragraph 7.4 our intention to remove the PFM charging approach from the start of CP7. To give effect to this change, we proposed to delete paragraph 14 of the TERs and several associated definitions.

Stakeholder views

7.3 Network Rail provided the only response to this proposal which suggested that we also delete the definition of ‘Initial Opt-in Notice’ as it was only used in paragraph 14 which has been deleted.

Our decision

7.4 We agree with Network Rail’s suggestion. The TERs will, and review notice does, reflect this updated drafting.

Section 18

Cost and volume wash-up

7.5 Our July 2023 consultation at paragraph 7.5 detailed proposed changes to the TERs to accommodate the removal of the loss incentive mechanism from the calculation of EC4T ‘wash-up’ payments.

Stakeholder views

7.6 In its response, London Overground queried what would be put in place to incentivise Network Rail to reduce transmission losses prior to the changeover to a fully metered train system. The issue raised by London Overground had already been discussed in our October 2022 [conclusions](#) (see paragraphs 2.61-2.64) in which we concluded that retaining or redesigning the loss incentive mechanism would not effectively support the objective of incentivising Network Rail to reduce transmission losses.

Our decision

7.7 We confirmed this decision in our PR23 policy position: access charges. The drafting amendments we proposed will be incorporated into the TERs, and the review notice reflects the drafting we consulted on.

Annex 3

Distribution System Loss Factors (DSLFs)

- 7.8 Network Rail has recalibrated the traction electricity Distribution System Loss Factors (DSLFs) as part of the access charges recalibration for CP7. Following the publication of its conclusions, Network Rail published a further note in which it set out the CP7 DSLFs for each Electricity Supply Tariff Area (ESTA) ([see table 2](#)).
- 7.9 As set in our July 2023 consultation, these new DSLFs will be included in Annex 3 of the Traction Electricity Rules and the review notice reflects this. No comments were received.

Generic modelled consumption rates

- 7.10 At paragraph 7.8 of our July 2023 consultation, we noted the intention to delete the generic modelled consumption rates from the Traction Electricity Modelled Consumptions Rates List in CP7. This policy was confirmed in our PR23 policy position: access charges. Consistent with this, we will delete reference to these rates from the definition of 'Train Category' in part 1 of the Traction Electricity Rules and the review notice reflects this. No comments were received.

8. Consultation Annex A Proposed Amendments

Introduction

- 8.1 In Annex A of our July 2023 consultation we set out the conclusions to our [October 2022 drafting improvements consultation](#). Rows A-H of Table A.1 of Annex A of the July 2023 consultation provided details of proposed drafting amendments which were reflected in the draft model access contracts we consulted on.
- 8.2 We received comments from stakeholders on two of the drafting proposals which we set out below in more detail. In respect of the other drafting proposals, no comments were received, but minor improvements have been made from the versions of the models that we consulted on. This drafting will be incorporated into model access contracts, and the review notices set out how operators should adopt this drafting into their access contracts.

Consultation Annex A

Drafting change reference C

- 8.3 Drafting change reference C outlined that we were proposing to amend a reference from 10 days to 14 days in Schedule 4, paragraph 13.2 of passenger access contracts.

Stakeholder views

- 8.4 GWR provided the only response to this proposal. It said that the length of time for a train operator to respond to a statement from Network Rail should be increased from 14 to 15 days. The rationale for this change revolved around the impact of bank holidays on the response period. Network Rail raised no objections to this proposal.

Our decision

- 8.5 We have adopted GWR's proposed amendment, so the model access contracts will, and review notices do, reflect the 15-day timeframe.

Drafting change reference E

8.6 Drafting change reference E proposed amendments to paragraph 10 of Schedule 4 of passenger access contracts to provide more structure for resolution to claims by building in timeframes.

Stakeholder views and our decision

8.7 Network Rail suggested incorporating the word 'paragraph' in the proposed drafting. Model contracts will, and review notices do, reflect this updated drafting.



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