

**Responses to Implementing PR23: consultation on drafting changes to access contracts**

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Sent by email

25<sup>th</sup> August 2023

Dear Sir/Madam,

**Response to Implementing PR23: consulting on drafting changes to access contracts.**

Section 3 – Changes to passenger access contracts

Relating to Schedule 8 'switch off' mechanism for GBR's future PSO's. As Arriva Rail London (ARL) will not be under the GBR mechanism, can the ORR confirm that no changes will be made to Schedule 8 for ARL or will the introduction of GBR trigger a material change relating to the overall Schedule 8 regime?

Relating to VUC rates, ARL does not disagree with the reduced period for applying for a refund. It does have concerns relating to the on average 7% increase in the VUC rate, which the ORR note is driven by a substantial reduction in network traffic. Given the appetite across the industry to increase passenger volumes across the control period, this reduction may not materialise & for ARL, who's passenger volumes have almost recovered, is added cost. ARL would like to understand the methodology used to complete the VUC calculation in more detail.

Section 6 – Changes to station access contracts

Relating to station long term charge recalibration, ARL is concerned with the degree of change within the draft price list & model used relating to its station portfolio.

Appendix A shows that ARL LTC costs increase by £6,377,062.19 due to the recalibration model used. This cost represents direct LTC costs with ARL as the SFO, it does not include any LTC paid to other operators for calling at other stations.

When assessing the overall cost variances across the UK, ARL has experienced the highest cost variance for an individual station, Willesden Junction. ARL is also within the top 3 in the UK relating to increased cost per station - £ 130,144.13. (See Appendix B).

### **Willesden**

Willesden Junction has moved to Category A from B and had a cost increase from £81,198.79 to £1,454,031.95 this is a 1691% increase in cost from one control period to another. The move to category A suggests that Willesden Junction is in the same category as York and Newcastle. London Overground will always have high footfall stations, being situated in the capital of the UK and being the method chosen by many to connect the outer boroughs of London together. However, it is not home to large infrastructure that requires significant maintenance or investment as seen in larger stations such as York & Newcastle. We have received confirmation that there are some renewal works to be completed on the lifts at Willesden as this station has the worst performing lifts in the portfolio.

### **Overall variance across the station portfolio – See Appendix A**

ARL has 49 stations, 34 have not moved in station category, yet costs have increased by a weighted average of 92%. As moving from line of route to region was to be a net zero affect, this seems to be a significant increase in expenditure attributed to increased and inflationary cost.

15 of the 49 stations have moved either one or two categories from CP6 to CP7 this is largely driven by the 50% reduction in footfall per station category. Resulting in a weighted average of 220% or ~£3million increase in cost base year on year.

It is noted that the level of footfall has changed within the station categories causing a levelling up of stations to maintain standardisation of each category per region (see appendix C). Can the ORR please define how this was assessed in terms of overall cost impact to TOC's.

It is noted that Network Rail is proposing approximately £10 million worth of renewals across the station portfolio of which we are now in consultation and reviewing the plans. This investment equates to 30% of the cost paid (minus indexation) across the control period, which aligns with the reduced renewals and increased maintenance regime proposed for CP7. With items deferred from CP6 that are unlikely to be put into CP7, there is a risk that investment in CP7 will also be deferred from the programme creating a backlog of projects and accumulation of risk. With the significant increase in LTC charges this is a concern for any operator.

Section 7 Traction Electricity Rules

Relating to EC4T volume wash up and removal of the loss incentive mechanism. What will be put in place to incentivise Network Rail to reduce transmission losses prior to the changeover to a fully metered train system.

Yours Faithfully,

[redacted]

[redacted]  
Industry Contracts Manager  
Arriva Rail London Limited  
[redacted]

 arriva rail london

## Appendix A

Station	Region	CP7 Station Category	23/24 CP6	CP7 Year 1	Difference CP6 Vs CP7	% Increase	Station	Region	CP7 Station Category	23/24 CP6	CP7 Year 1	Difference CP6 Vs CP7	% Increase
Acton Central	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Imperial Wharf	Southern	B	£ 116,745	£ 368,789	£ 252,044	216%
Anerley	Southern	D	£ 102,369	£ 156,483	£ 54,113	53%	Kensal Rise	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%
Brockley	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%	Kensington Olympia	Southern	C	£ 163,179	£ 247,105	£ 83,926	51%
Brondesbury	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Kentish Town West	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%
Brondesbury Park	Eastern	D	£ 187,433	£ 131,092	£ -56,341	-30%	Kilburn High Road	NW & Central	D	£ 137,711	£ 156,440	£ 18,729	14%
Bushey	NW & Central	D	£ 137,711	£ 156,440	£ 18,729	14%	Leyton Midland Road	Eastern	D	£ 68,003	£ 131,092	£ 63,089	93%
Caledonian Road & Barnsbury	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Leytonstone High Road	Eastern	D	£ 91,357	£ 131,092	£ 39,735	43%
Camden Road	Eastern	B	£ 81,199	£ 331,181	£ 249,982	308%	New Cross Gate	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%
Canonbury	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Norwood Junction	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%
Carpenters Park	NW & Central	D	£ 137,711	£ 156,440	£ 18,729	14%	Penge West	Southern	E	£ 57,251	£ 86,738	£ 29,487	52%
Clapham High Street	Southern	C	£ 166,408	£ 247,105	£ 80,697	48%	Shepherds Bush	Southern	A	£ 163,179	£ 576,288	£ 413,110	253%
Crouch Hill	Eastern	D	£ 68,003	£ 131,092	£ 63,089	93%	South Acton	Eastern	E	£ 68,003	£ 75,807	£ 7,804	11%
Crystal Palace	Southern	C	£ 166,408	£ 247,105	£ 80,697	48%	South Hampstead	NW & Central	E	£ 66,905	£ 77,979	£ 11,073	17%
Dalston Kingsland	Eastern	B	£ 81,199	£ 331,181	£ 249,982	308%	South Tottenham	Eastern	D	£ 68,003	£ 131,092	£ 63,089	93%
Finchley Road & Frognal	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Sydenham	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%
Forest Hill	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%	Upper Holloway	Eastern	D	£ 68,003	£ 131,092	£ 63,089	93%
Gospel Oak	Eastern	C	£ 101,798	£ 220,106	£ 118,309	116%	Walthamstow Queens Road	Eastern	D	£ 91,357	£ 131,092	£ 39,735	43%
Hackney Central	Eastern	B	£ 81,199	£ 331,181	£ 249,982	308%	Wandsworth Road	Southern	E	£ 57,251	£ 86,738	£ 29,487	52%
Hackney Wick	Eastern	B	£ 101,798	£ 331,181	£ 229,383	225%	Wanstead Park	Eastern	D	£ 91,357	£ 131,092	£ 39,735	43%
Hampstead Heath	Eastern	B	£ 101,798	£ 331,181	£ 229,383	225%	Watford High Street	NW & Central	D	£ 137,711	£ 156,440	£ 18,729	14%
Harringay Green Lanes	Eastern	D	£ 68,003	£ 131,092	£ 63,089	93%	West Croydon	Southern	B	£ 250,316	£ 368,789	£ 118,474	47%
Hatch End	NW & Central	E	£ 66,905	£ 77,979	£ 11,073	17%	West Hampstead	Eastern	B	£ 81,199	£ 331,181	£ 249,982	308%
Headstone Lane	NW & Central	E	£ 66,905	£ 77,979	£ 11,073	17%	Willesden Junction (High Level / Low Level)	Eastern	A	£ 81,199	£ 1,454,032	£ 1,372,833	1691%
Homerton	Eastern	B	£ 81,199	£ 331,181	£ 249,982	308%	Woodgrange Park	Eastern	D	£ 91,357	£ 131,092	£ 39,735	43%
Honor Oak Park	Southern	C	£ 166,408	£ 247,105	£ 80,697	48%	Totals			£ 5,878,702.11	£ 12,255,764.30	£ 6,377,062.19	108%

Stations highlighted yellow have moved up 1 Station Category  
 Stations highlighted orange have moved up 2 Station Categories  
 Stations highlighted green has moved down 1 Station Category

## Appendix B

TOC	Station	Sum of Variance	Average Variance	Max Variance
Abellio East Midlands Limited	102	£ 1,041,901.64	£ 10,214.72	£ 939,162.81
<b>Arriva Rail London Limited</b>	<b>49</b>	<b>£ 6,377,062.19</b>	<b>£ 130,144.13</b>	<b>£ 1,372,833.16</b>
First Greater Western Limited	196	£ 12,765,154.09	£ 65,128.34	£ 721,657.68
First MTR South Western Trains Limited	179	£ 10,348,122.71	£ 57,810.74	£ 372,738.20
First Transpennine Express Limited	19	-£ 394,067.95	-£ 20,740.42	£ 82,141.06
First Trenitalia West Coast Rail Limited	16	£ 841,258.09	£ 52,578.63	£ 318,470.40
Govia Thameslink Railway Limited	240	£ 6,098,310.03	£ 25,409.63	£ 1,215,791.84
London North Eastern Railway Limited	2	£ 1,230,319.20	£ 615,159.60	£ 619,341.95
London Underground Limited	14	£ 1,968,540.76	£ 140,610.05	£ 365,833.27
Merseyrail Electrics 2002 Limited	66	£ 1,468,552.10	£ 22,250.79	£ 247,433.28
MTR Corporation (Crossrail) Limited	12	£ 1,353,535.59	£ 112,794.63	£ 603,695.74
Network Rail	19	-£ 1,547,156.27	-£ 81,429.28	-£ 1,256,340.95
Northern Trains Limited	467	£ 3,169,156.00	£ 6,786.20	£ 326,415.06
ScotRail Trains Limited	360	£ 76,326.69	£ 212.02	£ 352,446.22
SE Trains Limited	164	£ 9,331,354.52	£ 56,898.50	£ 232,381.63
The Chiltern Railway Company Limited	35	£ 685,908.43	£ 19,597.38	£ 735,005.66
Transport for Wales Rail Limited	193	£ 2,656,778.44	£ 13,765.69	£ 315,820.16
West Midlands Trains Limited	147	£ 51,291.74	£ 348.92	£ 231,824.28

Skewed result due to 2/2 stations increasing to category A

Lesser max increase than ARL seen for Blackfriars station which has significant infrastructure and more platforms than Willesden Junction

### Appendix C

#### PR18 / CP6

Station Category	Daily entries range at station
A	13000 +
B	5000 - 12999
C	2500 - 4999
D	1200 - 2499
E	300 - 1199
F	0 - 299

#### PR23 / CP7

Station Category	Daily entries range at station
A	6302 +
B	3058 - 6301
C	1528 - 3057
D	765 - 1527
E	189 - 764
F	0 - 188

**From:** [redacted]  
**To:** [PR23 Programme](#)  
**Subject:** [EXTERNAL] Implementing PR23: consultation on drafting changes to access contracts  
**Date:** 31 August 2023 16:23:31  
**Attachments:** [image001.png](#)

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**CAUTION:** This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon,

Thank you for the opportunity to comment through the consultation on drafting changes to access contracts as part of PR23 implementation.

DB Cargo (UK) Ltd. is supportive of the proposed drafting changes to track and station access contracts as set out in the ORR's consultation document and sees no reason to comment further.

Kind regards

[redacted]  
**Regulatory Specialist**  
**Legal & Regulatory Affairs**

DB Cargo (UK) Limited  
Lakeside Business Park  
Carolina Way  
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DN4 5PN

(t): [redacted]  
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Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Network Access Manager  
Organisation: First Greater Western Limited  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
Model Passenger Contract	New paragraph 13.2 of Part 3 of Schedule 4 (was paragraph 12.2), viz: <del>12.2</del> 13.2 Disputes Within 104 days of receipt of a statement from Network Rail under paragraph 13.1, the Train Operator shall notify Network Rail of any aspects of the statement which it disputes, giving reasons for any dispute. Save to the extent that disputes are so notified, the Train Operator shall be deemed to have agreed the contents of the statement.	Thank you very much for the proposal. FGWL believes this works better with 15 (fifteen) days rather than the 14 proposed.	<p>FGWL proposes the following, "...Disputes Within <del>10-14</del>15 days of receipt of a statement from Network Rail under paragraph 13.1, ..."</p> <p>The rationale for this is as follows: If the statement ("offer") is received Ch Eve at 16.59 (so can't be worked on that day) and Ch Day is a Saturday, then Ch D to NYD (also a Saturday) takes 8 days, add BHM on 3rd Jan adds another two (Sun and Mon) means work starts on 4th Jan. 14 days is up on 7th January, gives 4 days to work on after the annual leave period as practised, viz 4th, 5th, 6th and 7th. In a normal Bank Holiday week, five days are available, i.e. the Tuesday after the Bank Holiday until the following Monday if the offer is received on the Friday before the Bank Holiday. 15 is therefore sufficient and provides the days consistent with Bank Holiday practice. The paragraph could be caveated such that the extension from ten to fifteen applies only if Christmas Day (or</p>

			three Bank Holidays) applies in the fifteen day period.

Are there any other comments you would like to make?

## **Annex A: Publishing your response**

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Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

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### ***Format of responses***

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### ***Consent***

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Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Head of Regulation and Open Access Contracts  
Organisation: First Rail Holdings  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
[for reference purposes]	[for reference purposes- be clear whether you are commenting from the consultation document or marked-up contract]	[please include a specific reference to the drafting]	[if you have a specific solution/change in drafting in mind, please include it here]
PSO TAC	Schedule 4 opt in and opt out provisions	The purpose of the drafting is acknowledged but the proposed triggers and mechanics are likely to prove defective and/or impractical to apply in practice.	The provisions seem to confuse award and commencement, and the real-life scenarios of direct awards and timescales on competed awards and mobilisations.
		Triggers	The triggers need to distinguish the commencement date of operations under the new franchise agreement from when the agreement is awarded or entered into. Typically, the award will be market sensitive and notified only when the franchise agreement is entered into – so it is not possible to give notice prior to award. Notice may be given after award but before commencement, but the date of commencement will not be certain until a week or so (frequently less) before it happens.

		3 months' prior notice	<p>The requirements for 3 months' prior notice may be constraining where there is a franchise award – confirmation of award and mobilisation deadlines may be tighter than this. The period should be reduced to say one month and be able to be shortened with both parties' consent.</p> <p>Noting the intent for this opt out to apply generally where GBR is both the awarding authority and owner of Network Rail (or perhaps when another awarding authority has with Network Rail's prior knowledge specified the opt out as part of the terms of award), the need for an extended notice period may in any event be subject to further evaluation.</p>
		Additional Trigger	<p>Consideration should be given to including where there is a scheming or other transfer of franchise agreement obligations from DfT to GBR, i.e., otherwise than on an operator side change.</p>
		Direct Award	<p>Consideration should be given to including an explicit direct award circumstance, without there being a completion.</p>

		Franchise Agreement Re-Tendering	<p>The drafting reference to re-tendering a Franchise Agreement appears to be strained – it is the services the subject of the Franchise Agreement which are tendered, allowing also for the potential for some restructuring or amendment of the services and changes to the terms.</p> <p>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.</p>
	Schedule 7 Part 3A	Grant Dilution Payment Period Reduction	<p>Is this practical, noting this would need to be processed via DfT processes to ensure the payment was funded? Also, the English and Welsh Grant Dilution provisions do not work if GBR becomes the franchising authority as the TOC will no longer have a funding route to the DfT and therefore the TOC could potentially face this liability. It would be preferable if this became a GBR matter and the provision is disapplied when they take over as the franchising authority.</p>

Are there any other comments you would like to make?

There are two items that potentially require revisions to the DfT NRC Charging Review definition, or confirmation of equivalence and it would be preferable to get DfT agreement as to treatment before these are implemented. These are Schedule 4 paragraph 15 and Schedule 7 paragraph 17.1A.

If the opt in and opt out provisions in Schedule 4 are altered because of the comments above, the opt in and opt out notices (Appendices 4A and 4B) may require revision.

If you feel a drafting discussion between our representatives would be beneficial, we would be happy to participate.

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Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Head of Strategic Access Planning  
Organisation: GB Railfreight Limited  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
Freight Operator Access Contract	Consultation document - Paragraph 2.7	Schedule 8 recalibration provision	<p>GB Railfreight (GBRf) does not agree with the proposal for mid-Control Period re-calibration of Schedule 8. The Schedule 8 regime encourages good practice from operators and infrastructure suppliers alike. The importance of this should not be underestimated and the current regime not be diluted by constant recalibration.</p> <p>The current methodologies (and levels of compensation) are fully integrated into contracts that GBRf hold with many of its customers and suppliers. Consistent, stable and predictable access to the network (including the cost of that access) is key to freight operators being able to grow new markets in rail freight distribution, allowing the government to meet green agenda targets.</p> <p>There could be an argument around “catastrophic” events (such as COVID19) but there would need to be clear targets that would</p>

			trigger a discussion on mid-period recalibration to take place.
Freight Operator Access Contract	Consultation document - Paragraph 3.10	Variable usage charge (VUC) default period	<p>The process of applying for, and agreeing, VUC rates for new types of locomotive and wagons (often carrying different commodities) can sometimes takes many months.</p> <p>Currently, this is not an issue as the new agreed rates are applied back to the whole Control Period, ensuring that FOCs are not overcharged in the Control Period.</p> <p>If this methodology is to change, where the new rates are only applied back for 1 year, then we need to ensure that the applicable date is from the date of the 1st application, not the date of the agreed or published new prices. These two dates can differ by many months and freight operating companies would be financially penalised the longer that Network Rail &amp; ORR take to agree the new rates.</p>

			Please consider re-wording your proposal.
Freight Operator Access Contract	Consultation document - Paragraph 4.6	Schedule 4 opt-out mechanism	<p>As GBRf (and other freight operators) do not pay an Access Charge Supplement, there would be no incentive for us to opt of the Schedule 4 mechanism. However, GB Railfreight has concerns that the dilution of overall Schedule 4 payments would lead to Network Rail not being incentivised to minimize disruption to freight customers.</p> <p>The relatively low levels of compensation for freight cancellations and variations could result in the needs of the freight customers being largely ignored.</p> <p>With Schedule 4 compensation being such a small amount of overall project costs, and possibly reducing further with opt-outs, how is the ORR going to ensure that FOCs can offer freight end-customers a predictable and reliable service?</p>

			<p>The recent very high numbers of late notice possessions has had a significant impact on our ability to deliver reliability and consistency to our customers.</p> <p>Unless these practices change, we could see a situation where current customers move away from freight on rail and it being extremely difficult to achieve the predicted new freight growth targets throughout CP7.</p>
Freight Operator Access Contract	Consultation document - Paragraph 4.14	Variable usage charge (VUC) default period	<p>GB Railfreight understands the reasoning behind limiting refunds back to 1 year however, as previously mentioned, this should not be determined from the date of introduction. It should be a maximum of 1 year back from the date of the FOC's initial application.</p> <p>There can be a scenario where Operator A brings a new wagon type onto the network and does not apply for rates. 18 months later,</p>

			<p>Operator B starts to use the same new wagon and applies for accurate VUC rates with its chosen commodity. This application could take many months to process and Operator B could end up paying default rates through no fault of its own without the ability to claim the overcharge back. Please consider re-wording your proposal.</p>
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Are there any other comments you would like to make?

## **Annex A: Publishing your response**

We plan to publish all responses to this consultation on our website.

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[redacted]

Track Access Contract Manager  
Govia Thameslink Railway  
[redacted]

The following changes all relate to the consultation document on the proposed drafting changes to Passenger Access Contracts.

### **Bespoke Provisions in Contracts**

Following the ORR's letter in January 2023 in relation to bespoke provisions in Access Contracts and following the joint response submission between GTR and Network Rail, we are now working on our joint response on how the identified bespoke provisions will be included in the contract going forward.

### **Changes to Inflation Indexation Formula**

GTR support the proposal to remove the Initial Indexation Factor (IIF) from the formula used to index Schedule 4, 7 and 8. Doing this will simplify the formula and as there is no functional requirement to retain the IIF then we are happy for it to be removed.

### **Discontinued provisions**

GTR support the removal of references to REBS and Capacity Charge as these are now obsolete and will have no relevance in CP7.

### **Schedule 7**

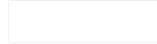
GTR has no objection to the removal of the Partial Fleet Metering (PFM) charging approach for CP7. As outlined in the ORR document, this is a charging approach that has not been used since its introduction in PR13

GTR does not support limiting the period during which train operators can be refunded for the use of VUC default rates to a maximum of 12 months and believe it should remain as it currently is.

### **Changes to PSO access contracts**

#### **Schedule 4**

GTR supports the introduction of the Schedule 4 opt out mechanism for PSO's for CP7. GTR looks forward to receiving its indicative ACS in late August 2023 and would appreciate some level of assurance that the finalised ACS would not deviate greatly from the indicative charges which will be used to make the decision on whether to opt out of Schedule 4 or remain in the regime. GTR supports the proposed amendments to the access contracts



## Schedule 8

GTR support the inclusion of a reopener provision to allow the ACS to be recalculated in the event that this is required as a result of a change to Schedule 8 payment rates during CP7. With the current levels of uncertainty surrounding the introduction of Great British Railways (GBR), there is the possibility that legislative change could allow for the removal of Schedule 8 payments between PSO's and GBR (Schedule 8 could be replaced by a completely new Performance Monitoring mechanism) and because of this, a mid-control period recalibration could be required. GTR understands that the Schedule 8 "switch-off" mechanism will only be available to those public service operators currently contracted by the Department for Transport, as these are the PSO's expected to be contracted by GBR if it is formed, and as a result, this mechanism will not form part of the PSO modelled access contracts. GTR also supports the inclusion of the ability for Schedule 8 payments to be switched back on should this become a requirement in the event of a future change in our commercial contract model.

## Removal of FTAC wash-up mechanism

GTR support the removal from the Track Access Contract any reference to the FTAC Wash Up mechanism and for the relevant amendments to be made to the FTAC calculation formula.

Yours sincerely,  
[redacted]

[redacted]

**Tracks Access Contract Manager**  
**Govia Thameslink Railway**



## Implementing PR23: consultation on drafting changes to access contracts pro forma

This pro forma is available to those that wish to respond to [our consultation on drafting changes to access contracts](#). Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

When responding, please indicate in the first column which **access contract category** (all, freight, freight customer, charter, passenger open access, passenger public service operator or station) your comments relate to.

**Please make it clear on the table if your comment or suggestion relates to the consultation document or from a draft marked-up access contract.**

We plan to publish all responses to this consultation on our website. Further information on how we will treat information provided to us as part of this consultation is available in **Annex A** below.

Please send your response to [PR23@ORR.gov.uk](mailto:PR23@ORR.gov.uk) or by post: Regulatory Policy Team, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ by **31 August 2023**.

Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Rail Regulation Manager  
Organisation: Heathrow Airport Limited  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
[for reference purposes]	[for reference purposes- be clear whether you are commenting from the consultation document or marked-up contract]	[please include a specific reference to the drafting]	[if you have a specific solution/change in drafting in mind, please include it here]
Nil comments	Nil comments	Nil comments	Nil comments

Are there any other comments you would like to make?

Heathrow Airport Limited (HAL) notes 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.

HAL needs to understand if this is progressed, e.g. if an operator on the Great Western Mainline like GWR were to opt out of Schedule 8 to \ from NR (or GBR in future) what impact could there be on behaviours? Could this impact performance on the Heathrow spur? We would also like to understand the impact on operators that do not opt out of Schedule 8.

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Ext/Direct:  
Our Ref:  
Your Ref:

Regulatory Policy Team  
Office of rail and road  
25 Cabot Square  
London  
E14 4QZ

London Underground Limited  
National Rail Agreements  
Procurement & Commercial  
Transport for London  
5 Endeavour Square  
London  
E20 1JN

Sent by email

Date 25 August 2023

Dear Sir/Madam,

## **Response to Implementing PR23: consulting on drafting changes to access contracts**

### Section 6 – Changes to station access contracts

Relating to station long term charge recalibration, LUL is concerned with the degree of change within the draft price list & model used relating to its station portfolio.

Table 1 shows that LUL LTC costs increase by £1,990,201.89 (a 74% increase from CP6 2023-2024) due to the recalibration model used.

When assessing the overall cost variances across the UK, LUL has experienced a high increase to a number of stations, with particular concern to Highbury & Islington Station (high level). LUL is also within the top 2 within the UK relating to increased cost per station - £ 140,610.05. See Appendix A.

### **Highbury & Islington (High Level)**

Highbury & Islington (High Level) has moved to Category A from B and has a cost increase from £91,357.23 to £435,783.35. This is a 377% increase in cost from one control period to another. The move to category A suggests that Highbury & Islington (High Level) is in the same category as York and Newcastle. London Underground will always have high footfall stations, being situated in the capital of the UK and being the method chosen by many to travel throughout London, interfacing with a number of other TfL Concession operators and Network Rail Managed stations.

London Underground Limited  
trading as London Underground  
whose registered office is  
5 Endeavour Square, London E 20  
1JN

Registered in England and Wales  
Company number 1900907

London Underground Limited is  
a company controlled by a local  
authority within the meaning of  
Part V Local Government and  
Housing Act 1989. The controlling  
authority is Transport for London.



However, Highbury & Islington (High Level) station is not a station where there is a large area of infrastructure that requires maintenance and/or investment within the leased area. It should not be compared to such stations as Newcastle or York. The Eastern Strategic Business plan for CP7 shows very little investment for stations. LUL is concerned that many of the leased stations have suffered from lack of investment in CP6, resulting in many stations, between Queens Park (London) and Harrow & Wealdstone (excluding Willesden Junction), to have life expired assets with high health & safety risks, for example, canopies. It is felt that London Underground will now suffer the same in CP7 despite a £7.3million investment over the course of the control period. It is noted that the level of footfall has changed within the station categories causing a levelling up of stations to maintain standardisation of each category. Can the ORR please define how this was assessed in terms of overall cost impact to TOC's and its overall philosophy to introduce small gradual changes across CP7.

### **Overall variance across the LUL station portfolio**

LUL has 14 stations, 13 have not moved in station category, yet costs have increased by a weighted average of 106%. How has Network Rail been regulated to ensure cost efficiencies are made, as a 106% increase overall in stations that are deemed the same as CP6 is unreasonable?

**Table 1:** Variances across 14 LUL Stations

Station Name	Region	CP7 Station Category	23-24 CP6	CP7 Year 1	CP6 Vs CP7 Difference	% Change
Blackhorse Road	Eastern	C	£68,003.19	220,106.38	£152,103.19	224%
Gunnersbury	Eastern	C	£101,797.67	220,106.38	£118,308.71	116%
Harlesden	North West & Central	C	£137,711.09	371,603.85	£233,892.76	170%
Harrow & Wealdstone	North West & Central	B	£653,690.43	738,407.08	£84,716.65	13%
Highbury & Islington (North London Line)(High Level)	Eastern	A	£91,357.23	435,783.35	£344,426.12	377%
Kensal Green	North West & Central	D	£66,905.14	156,439.80	£89,534.66	134%
Kenton	North West & Central	D	£137,711.09	156,439.80	£18,728.71	14%
Kew Gardens	Eastern	D	£187,433.25	131,092.27	-£56,340.98	-30%
North Wembley	North West & Central	D	£137,711.09	156,439.80	£18,728.71	14%
Queens Park (London)	North West & Central	B	£398,464.65	738,407.08	£339,942.43	85%
South Kenton	North West & Central	E	£66,905.14	77,978.55	£11,073.41	17%
Stonebridge Park	North West & Central	D	£66,905.14	156,439.80	£89,534.66	134%
Wembley Central	North West & Central	B	£398,464.65	738,407.08	£339,942.43	85%
West Brompton	Southern	B	£163,178.87	368,789.28	£205,610.41	126%
<b>Total</b>			<b>£2,676,238.63</b>	<b>4,666,440.52</b>	<b>£1,990,201.89</b>	<b>74%</b>

In addition, 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 drives the question why it is paying significantly more than other operators across the UK?

Table 2, below, details some of the longstanding issues / life expired assets that are at increased safety risk from structural failures. Will these be prioritised going into CP7?

Having reviewed a draft copy of the proposed CP7 works, it is disappointing to note that there is very limited works that will address the issues detailed below. There appears to be no plans for South Kenton, North Wembley and Stonebridge Park. Noting the vast increase in charges for Highbury & Islington and West Brompton there are no obvious plans for any expenditure at these two stations in CP7.

**Table 2:** Longstanding issues at LUL Stations

REF.	STATION NAME	LONGSTANDING ISSUE/S
1	North Wembley	Hole in CER room caused by fallen tree - water ingress issue
2	Wembley Central	Water ingress - falling debris
3	South Kenton	Water ingress Platform tiling Canopy work Pigeon proofing
4	Kenton	Ceiling leak Tactiles
5	Queens Park	Canopy works Pigeon netting under the raft New gutters Unistrut works Structural/Wall cracks
6	Stonebridge Park	Water leak from the embankment
7	Kensal Green	Structural issues Roof repair
8	Harrow & Wealdstone	Toilets out of order

Therefore, LUL asks for further explanation / justification with regards to the reasoning for the large increases highlighted above.

Yours faithfully

[redacted]

[redacted]

Senior Commercial Supplier Manager

National Rail Agreements Team

Procurement & Commercial

Transport for London

**Appendix A - Overall cost variances across the UK**

TRAIN OPERATING COMPANY	STATIONS	SUM OF VARIANCE	AVERAGE VARIANCE	MAX VARIANCE
Abellio East Midlands Limited	102	£1,041,901.64	£10,214.72	£39,162.81
Arriva Rail London Limited	49	£ 6,377,062.19	£130,144.13	£1,372,833.16
First Greater Western Limited	196	£12,765,154.09	£65,128.34	£721,657.68
First MTR South Western Trains	179	£10,348,122.71	£57,810.74	£372,738.20
First Transpennine Express Limited	19	<b>-£394,067.95</b>	<b>-£20,740.42</b>	£82,141.06
First Trenitalia West Coast Rail Limited	16	£841,258.09	£52,578.63	£318,470.40
Govia Thameslink Railway Limited	240	£6,098,310.03	£25,409.63	£1,215,791.84
London North Eastern Railway Limited	2	£1,230,319.20	£615,159.60	£619,341.95
<b>London Underground Limited</b>	<b>14</b>	<b>£1,968,540.76</b>	<b>£140,610.05</b>	<b>£365,833.27</b>
Merseyrail Electrics 2002 Limited	66	£1,468,552.10	£22,250.79	£247,433.28
MTR Corporation (Crossrail) Limited	12	1,353,535.59	£112,794.63	£603,695.74
Network Rail	19	<b>-£1,547,156.27</b>	<b>-£81,429.28</b>	<b>-£1,256,340.95</b>
Northern Trains Limited	467	£3,169,156.00	£6,786.20	£326,415.06
ScotRail Trains Limited	360	£76,326.69	£212.02	£352,446.22
SE Trains Limited	164	£9,331,354.52	£56,898.50	£232,381.63
The Chiltern Railway Company Limited	35	£685,908.43	£ 19,597.38	£735,005.66
Transport for Wales Rail Limited	193	£2,656,778.44	£13,765.69	£315,820.16
West Midlands Trains Limited	147	£51,291.74	£348.92	£231,824.28

## Appendix B – Station Categories

### PR18 / CP6

Station Category	Daily entries range at station
A	13000 +
B	5000 - 12999
C	2500 - 4999
D	1200 - 2499
E	300 - 1199
F	0 - 299

### PR23 / CP7

Station Category	Daily entries range at station
A	6302 +
B	3058 - 6301
C	1528 - 3057
D	765 - 1527
E	189 - 764
F	0 - 188



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Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Head of Industry Coordination  
Organisation: MTR Elizabeth line  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
Revisions to the Traction Electricity Rules			MTR Elizabeth line have no comments
Revisions to the template Track Access Contract			MTR Elizabeth line have no comments

Are there any other comments you would like to make?

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# **Network Rail's response to consultation on drafting changes to access contracts**

31 August 2023

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## Introduction

### 1. Purpose

The purpose of this document is to provide Network Rail's response to the proposed drafting changes to track and station access contracts set out in ORR's July 2023 consultation. These are necessary to give effect to 2023 periodic review (PR23) decisions, noting the particular focus on charges and incentives. We do not consider any part of this document to be confidential, and that it can be published in full.

The scope of this response is focused on providing comment on the proposed amendments to track access contracts (passenger, freight and charter), station access contracts and Traction Electricity Rules to give effect to the relevant draft policy decisions set out in ORR's PR23 draft determination. We are responding separately to the PR23 draft determination, which will include our responses to any related policy matters to this consultation. In the main part, we don't seek to repeat our response to ORR's PR23 draft determination. The views expressed in this consultation response should therefore be considered alongside the other draft determination responses we are also providing to ORR on 31 August 2023.

### 2. Summary of consultation response key messages

- There has been a collaborative approach with ORR leading up to this consultation, and PR23 more generally. Reflecting this, we support a significant proportion of the contractual drafting changes proposed in ORR's consultation. Our comments are generally minor and relate to detailed drafting points. These are set out in section 4 of this response.
- Reflecting a key message in our draft determination response around the need for flexibility given the high level of uncertainty and anticipated change in CP7, where practicable we have included proposed contractual drafting changes that support the overall principle of flexibility.
- We note current discussions in respect of an alternative, more appropriate approach to setting the CP7 regulatory baselines for train performance (the '2+3' approach) which is discussed in detail in our draft determination response. We will work with ORR to identify any consequential impacts / considerations for track access contracts resulting from this approach.

### 3. Structure of our response

We have structured our response to follow the approach set out in the pro forma provided as part of the July 2023 consultation. Where proposals have been made in the consultation document and not discussed in our response, it is to be assumed that Network Rail have no objections at this time.

Our response maintains a focus on recommended changes, with our commentary including:

- A comment or suggestion relating to the consultation document or from a draft marked-up access contract.

- The relevant access contract category (all, freight, freight customer, charter, passenger open access, passenger public service operator or station).

#### 4. Detailed response points

The table below responds to areas where we have drafting comments or suggestions for ORR’s consideration as it finalises its updates to track and station access contracts to give effect to its PR23 decisions.

Access contract	Section heading	Sub heading or paragraph	Description from ORR’s consultation	Network Rail proposed drafting or comment
<p>Main consultation document</p> <p>Open Access Operators Contracts</p> <p>PSO Access Contracts</p> <p>Freight Access Contracts</p>	<p>Changes to all track access contracts (passenger, freight and charter)</p>	<p>Schedule 7</p> <p>Traction Electricity Modelled Consumption Rates List</p>	<p>Proposals to remove the facility to obtain a new bespoke modelled EC4T consumption rate from the start of CP7 do not provide for 'in progress' applications to be completed in the first year of CP7.</p>	<p><b><u>Model passenger access contract changes (i.e. open access operators and PSO access contracts)</u></b></p> <p>To allow for 'in progress' applications for new bespoke consumption rates to be completed during the first year of CP7 ORR should not remove the facility to obtain a new bespoke modelled EC4T consumption rate from the start of CP7 and not make the amendments contained in paragraph 3.12 of its consultation document with the exception of the date in the definition of "Traction Electricity Modelled Consumption Rates List" updated to 2023.</p> <p>In paragraph 9.1 Paragraph 9.4 of Part 2 of Schedule 7 remove point a) <i>“the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a rate in respect of a new train category”</i></p> <p>A new paragraph in Part 2 of Schedule 7 should be included to restrict any supplement to the Traction Electricity Modelled Consumption Rates List to one which is in progress before the end of CP6 to read <i>“No supplement to the Traction Electricity Modelled Consumption Rates List shall have effect unless it was proposed by either the Train Operator or Network Rail on or before 31 March 2024.”</i></p> <p><b><u>Model freight access contract changes</u></b></p> <p>To allow for 'in progress' applications for new bespoke consumption rates to be completed during the first year of CP7 ORR should not remove the facility to obtain a new bespoke modelled EC4T</p>

				<p>consumption rate from the start of CP7 and not make the amendments contained in paragraph 4.15 of its consultation document.</p> <p>In paragraph 2.2.4 of Schedule 7 remove point “a) the Traction Electricity Modelled Consumption Rates List be supplemented as necessary to include a new train category and corresponding rate; or”</p> <p>A new paragraph should be included to read “No supplement to the Traction Electricity Modelled Consumption Rates List shall have effect unless it was proposed by either the Train Operator or Network Rail on or before 31 March 2024.”</p>
<p>Main consultation document</p> <p>Passenger Access Contracts</p> <p>Charter Access Contracts</p> <p>Freight Access Contracts</p>	<p>Changes to all track access contracts (passenger, freight and charter)</p>	<p>Paragraphs 2.7 to 2.9</p>	<p>Provisions for recalibration within control period need to reflect flexibility in amendments to Appendix 1 and when they are warranted.</p>	<p>Paragraph 17.1A in Passenger Access Contracts, Paragraph 11 in Charter Access Contracts, Paragraph 13 (point a) in Freight Access Contracts should all be amended to include:</p> <p>“ORR may amend Appendix 1 where it considers that there is sufficient evidence to warrant an amendment”.</p>
<p>Main consultation document</p>	<p>Schedule 9 indexation formula</p>	<p>Paragraph 2.13 to 2.17</p>	<p>ORR are proposing updating the indexation formula for Schedule 9 which will have the impact of bringing caps back in line with inflation for 2023/24.</p>	<p>Network Rail would like early sight of the proposed changes to the indexation formula as it develops.</p>
<p>Main consultation document</p>	<p>Changes to passenger access contracts</p>	<p>Paragraphs 3.3 to 3.7</p>	<p>Network Rail note amendments have not yet been proposed by the ORR as it is assumed ORR intend to use Schedule 10 to implement amendments.</p>	<p>If Schedule 10 will be used but the Network Code changes to accommodate BTPF proposals, then Network Rail request assessment regarding such amendments is carried out at the time.</p>
<p>Main consultation document</p>	<p>Changes to passenger access contracts</p>	<p>Paragraph 3.17</p>	<p>The latest position agreed with ORR on timings for Network Rail to supply indicative ACSs is not</p>	<p>For clarity, the reference in paragraph 3.17 of ACSs being supplied in “August” should read “September 2023” as per the agreed timeline with ORR.</p>

			reflected in Paragraph 3.17.	
Main consultation document	Changes to passenger access contracts	Paragraph 3.41	Typographical error in two of the formulae in paragraph 9.1 of Schedule 8 (definition of NRWAML).	Change “MNLr” to read “MLNR”.
Main consultation document  Draft determination policy position on Schedules 4 and 8 incentives	Changes to charter access contracts	Paragraph 5.6 and 5.7	Wording not clear on the proposal that zero exposure is the only option for operators.	The words "and Exposure Level" to be deleted in the headings of Paragraph 9 and Paragraph 9.1 of Schedule 8.  A definition of Planned Service Incident Cap Access Charge Supplement Rate to be added and refer to the table in paragraph 9.2 of Schedule 8.
Main consultation document	Changes to station access contracts	Paragraph 6.5 and 6.6	Wording doesn't represent the agreed approach to uplifting from the contractual price base to year 1 prices.	ORR to remove <i>“multiplied by the Initial Indexation Factor and in relation to the next following year, St-1 shall have the same value” as this is no longer accurate or applicable.</i>
Main consultation document	Traction Electricity Rules	Paragraph 7.4	Content associated with deletion of paragraph 14 of the Traction Electricity Rules and associated definitions is still included.	The definition of "Initial Opt-in Notice" to be deleted (as it is only used in paragraph 14 which has been deleted).
Main consultation document	Annex A	Drafting change E	Change of wording required to create greater clarity in appendix.	ORR to amend the paragraph reference at the start of Paragraph 10.2 to read <i>“Notwithstanding Paragraph 10.1...”</i> instead of <i>“Notwithstanding 10.1...”</i> .

## 5. Next steps

We will continue to work with ORR to support the development of the final contractual drafting and to inform its review notices later this year, following the publication of its draft determination.



## Implementing PR23: consultation on drafting changes to access contracts pro forma

This pro forma is available to those that wish to respond to [our consultation on drafting changes to access contracts](#). Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

When responding, please indicate in the first column which **access contract category** (all, freight, freight customer, charter, passenger open access, passenger public service operator or station) your comments relate to.

**Please make it clear on the table if your comment or suggestion relates to the consultation document or from a draft marked-up access contract.**

We plan to publish all responses to this consultation on our website. Further information on how we will treat information provided to us as part of this consultation is available in **Annex A** below.

Please send your response to [PR23@ORR.gov.uk](mailto:PR23@ORR.gov.uk) or by post: Regulatory Policy Team, Office of Rail and Road, 25 Cabot Square, London, E14 4QZ by **31 August 2023**.

Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Track Access Manager  
Organisation: Northern Trains Limited  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
Franchised Passenger	Consultation document 3.30 – Network Grant and related provisions page 19	NTL is concerned with the decision to reducing the maximum length of time between dilution event being triggered and an additional FTAC payment from operators from 3 months to 1 months. NTL issue is that 1 month notice is insufficient time for NTL to plan out cashflow and believes this is why it was 3 months originally. Also, NTL would need to get it signed off through governance with the Client (DfT).	

Are there any other comments you would like to make?

Now that BTPF (Pfc 120) is not happening, will any references to its implementation be removed?

## **Annex A: Publishing your response**

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

### ***Format of responses***

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

### ***Consent***

In responding to this consultation, you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our [privacy notice](#).



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Thank you for taking the time to respond.

### About you

Full name: [redacted]  
Job title: Track Access Manager  
Organisation: SE Trains Ltd  
Email\*: [redacted]  
Telephone\*: [redacted]

*\*This information will not be published on our website.*

Access contract	Specific paragraph reference	Description of issue	Proposed drafting or comment
[for reference purposes]	[for reference purposes- be clear whether you are commenting from the consultation document or marked-up contract]	[please include a specific reference to the drafting]	[if you have a specific solution/change in drafting in mind, please include it here]
Passenger Track Access Contract	Schedule 4, A1.1	<p>The paragraph allows for 3 events under which a Opt-Out Notice may be served:</p> <p><i>(a) the award of a franchise agreement following re-tendering of the Franchise Agreement;</i></p> <p><i>(b) a change in identity of an operator of a franchise agreement that is not as a result of A1.1(a) and which results in a significant change in the Services; or</i></p> <p><i>(c) the Train Operator entering into a franchise agreement with a new franchising authority in accordance with the Act.</i></p>	<p>Our understanding from 2.10 of “Policy position – Schedules 4 and 8 incentives regimes “ was that an opt-out can also be requested by all operators prior to the start of Control Period7 .</p> <p>We are of the view the drafting of the notice events as shown does not allow for Opt-Out for existing operators prior to CP7.</p> <p>Is it the intention that Operators could opt out prior to each future Control Period, or just CP7?</p>


Are there any other comments you would like to make?

## **Annex A: Publishing your response**

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