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**BY EMAIL ONLY**

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**NOTICE OF APPROVAL OF CHANGES TO PART D OF THE CVL NETWORK CODE**

1. This notice is given pursuant to provisions contained in Condition C8.2(c) of the CVL Network Code.
2. Amey Keolis Infrastructure Limited (AKIL) submitted Proposal for Change 21/01 to the Office of Rail and Road (ORR) in accordance with Condition C8 of the CVL Network Code initially on 17 February 2021 and subsequently, in its final form, on 10 March 2021.
3. AKIL has submitted a written explanation of the reasons for introducing the changes and has provided details of the notification process, which was required by Condition C8.2(b).
4. In accordance with Condition C8.2(c), ORR now gives notice that it approves Proposal for Change 21/01. The modifications to the CVL Network Code shall come into effect 14 days from the date of this notice.
5. A marked up copy of Part D of the CVL Network Code, showing all the proposed changes, is attached to this notice.

**GERRY LEIGHTON**  
**Duly authorised by the Office of Rail and Road**



## Part D– Timetable Change

### Explanatory Note

- A. *Part D of the CVL Network Code sets out the procedures by which the Working Timetable, CVL Engineering Access Statement and Timetable Planning Rules may be changed. Although changes may be made to the Working Timetable at any time, significant changes in the passenger timetable may be made only twice a year, namely at the dates referred to as the Principal Change Date (in December) and the Subsidiary Change Date (in May).*
- B. *Prior to the date on which the CVL IM became infrastructure manager of the CVL, Network Rail's timetabling responsibilities related to the NR Network (which, prior to the date on which the CVL became infrastructure manager, included the CVL). The CVL IM and Network Rail have reached a contractual arrangement with the effect that, for services on the CVL and cross-border services which utilise both the CVL and the NR Network, Network Rail will in practice also fulfil the CVL IM's timetabling responsibilities.*
- C. *Significant timetable change may require discussion between Timetable Participants and Network Rail (on behalf of the CVL IM) over a period of several years. At least two years before each Principal Change Date, Network Rail (on behalf of the CVL IM), in collaboration with potential Timetable Participants will commence preparation of a timetable for that year which will incorporate anticipated changes into a single unified timetable plan.*
- D. *The development of a robust timetable demands dialogue between Network Rail (on behalf of the CVL IM) and Timetable Participants (i.e. Train Operators and others entitled to take part in the process), between the Timetable Participants themselves, and also between Timetable Participants and their customers or customers' representative bodies.*
- E. *Network Rail (on behalf of the CVL IM) has the role of managing the Working Timetable for the CVL. As the CVL is connected to the NR Network and it is expected that services will use both the CVL and the NR Network, the CVL IM expects to work closely with Network Rail in the preparation of the Working Timetable to ensure that contiguous services can be operated across all pieces of infrastructure. Network Rail (on behalf of the CVL IM) is responsible for accommodating within the timetable the contractual service specification of each Train Operator. Subject to the application of the Act and the Access Regulations, a Train Operator's Train Slots are protected insofar as they are based on Firm Rights which are not inconsistent with the applicable CVL Engineering Access Statement and/or applicable Timetable Planning Rules, provided that the Firm Rights have been asserted no later than the Priority Date.*

- F. Each year, at the start of the timetable development process, Network Rail shall (on behalf of the CVL IM) review the applicable Timetable Planning Rules and the CVL IM shall review the applicable CVL Engineering Access Statement to decide if any amendments should be made in respect of the period of the annual timetable commencing on the next Principal Change Date. In addition, each year, at the start of the process for development of the timetable changes applying from the Subsidiary Change Date, Network Rail shall (on behalf of the CVL IM) undertake a more limited review of the applicable Timetable Planning Rules and the CVL IM shall undertake a more limited review of the applicable CVL Engineering Access Statement. Timetable Planning Rules are consulted on each review, and there is a right to refer disputes to the CVL ADRR.
- G. Each year at or before the start of the timetable development process there will be dialogue between Network Rail (on behalf of the CVL IM) and Timetable Participants regarding the timetable published at D-26 in the process relating to the immediately preceding Timetable Change Date and any variations to those train services which the Timetable Participants aspire to run in that timetable year. Each Timetable Participant will notify Network Rail (with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of any changes in the contractual rights (as set out in the Timetable Participant's Access Agreement with the CVL IM) that the Timetable Participant will wish to exercise in support of these services, giving reasons for such changes, and will also notify the CVL IM (with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of any changes to the Train Slots which will be sought. The notification must be made on or before the Priority Date.
- H. Network Rail (on behalf of the CVL IM) shall consult with Timetable Participants to establish their aspirations for development of their services in the relevant timetable development periods. Timetable Participants shall, on or before the Priority Date, notify Network Rail (on behalf of the CVL IM, with a copy of such notification to be sent by the relevant Timetable Participant to the CVL IM) of the Firm Rights they wish to exercise, in respect of the Timetable Periods commencing on the next following Principal Change Date and the next following Subsidiary Change Date. Taking into account the notifications made by the Timetable Participants and the Decision Criteria, Network Rail (on behalf of the CVL IM) will prepare and issue the New Working Timetable on or before the last day of the Timetable Preparation Period.
- I. Following issue of the New Working Timetable, Network Rail (on behalf of the CVL IM) will continue to work with Timetable Participants to further refine the timetable plan to include any new aspirations of the Timetable Participants. It is not intended that significant service changes should be introduced at this stage but changes may be introduced to the extent that it is reasonably practicable to do so in the available time. Network Rail (on behalf of the CVL IM) will publish its proposed New Working Timetable and Timetable

*Participants will have a right of appeal against decisions made by Network Rail (on behalf of the CVL IM) reflected in that Timetable.*

- J. *In its capacity as manager of the Working Timetable, Network Rail (on behalf of the CVL IM) is required to make a number of decisions, including whether to accept Access Proposals for new or different timetable slots and how to reconcile competing or conflicting Access Proposals. Network Rail (on behalf of the CVL IM) must have due regard to the Act, the Access Regulations and to specified Decision Criteria when making decisions regarding proposed changes to the Working Timetable and to any applicable CVL Engineering Access Statement and applicable Timetable Planning Rules. These criteria are to be weighed and balanced by Network Rail (on behalf of the CVL IM) in the light of the particular circumstances surrounding each decision and in certain circumstances Network Rail (on behalf of the CVL IM) must also consider whether it is reasonably practicable for proposed amendments to the Working Timetable to be developed and implemented in the time available.*
- K. *Under part D of the Network Rail Network Code, Network Rail develops a Calendar of Events. This shows events, going forward for a period of at least four years, which are likely to require significant changes to the working timetable for the NR Network. The CVL IM may request that Network Rail includes any CVL IM Event in Network Rail's Calendar of Events to ensure the same approach is adopted to events which may affect the CVL and the NR Network.*
- L. *It is expected that the normal means of resolving timetable disputes between Network Rail (on behalf of the CVL IM) and each Timetable Participant will be by negotiation and agreement. However, to deal with those cases where agreement cannot be reached, provision is made for Timetable Participants to appeal against any relevant decision made by Network Rail (on behalf of the CVL IM) in accordance with the CVL ADRR.*
- M. *The Annexes to Part D set out the timeframes for the timetable development process and any variations to the Working Timetable requested following D-26.*
- N. *This Explanatory Note does not form part of the CVL Network Code.*

## **Condition D1 - INTRODUCTION**

### **1.1 Overview**

- 1.1.1 It is the responsibility of the CVL IM to establish a timetable for the CVL, referred to as the "**Working Timetable**". Where this Part D refers to any obligations, responsibilities or actions of, or to be carried out by, the CVL IM in respect of the timetabling process, the CVL IM and Network Rail have agreed that in practice certain of such obligations, responsibilities and actions will be fulfilled by Network Rail. Such obligations, responsibilities and actions shall be discharged where they are fulfilled by Network Rail on the CVL IM's behalf. Accordingly, any references in this Part D to such obligations, responsibilities or actions of, or to be carried out by, the CVL IM in respect of the timetabling process shall be interpreted as references to such obligations, responsibilities or actions being fulfilled by Network Rail on behalf of the CVL IM.
- 1.1.2 From the date on which the CVL IM becomes infrastructure manager of the CVL, the timetabling process set out in this Part D shall be part of a continuing process following on from the timetabling process previously carried out by Network Rail.
- 1.1.3 Subject to Condition D7 but notwithstanding any other Conditions contained in this Part D, where this Part D refers to a Timetable Participant submitting an Access Proposal (as defined in Condition D.2.4.1), notification or any other correspondence, objection or representation in respect of the timetabling process to the CVL IM, such correspondence shall instead be sent to Network Rail with a copy of such correspondence to be sent to the CVL IM.
- 1.1.4 The Working Timetable is re-issued in revised form twice a year. The process for producing the bi-annual revision of the Working Timetable is described in Condition D2.
- 1.1.5 In the period between bi-annual revisions of the Working Timetable, either the CVL IM or Timetable Participants may wish to vary the Working Timetable, whether by altering or removing a scheduled Train Slot or by inserting a new Train Slot. The CVL IM shall operate the processes described in Condition D3 to facilitate variations to a Working Timetable in appropriate circumstances.
- 1.1.6 In conducting the processes set out in this Part D, decisions must be made by the CVL IM in accordance with the principles set out in Condition D4.

1.1.7 Condition D5 describes the processes by which a Timetable Participant, dissatisfied with a decision of the CVL IM made in respect of this Part D, may in specified circumstances appeal against that decision.

1.1.8 The CVL IM requires access to the CVL in order to fulfil its obligations in relation to the CVL. The processes by which:

- (a) the Working Timetable is updated on a bi-annual basis (as described in Condition D2); and
- (b) variations to the Working Timetable outside that bi-annual process are facilitated (as described in Condition D3),

include arrangements to procure access to the CVL required by the CVL IM. Where such access is required over a period greater than that covered by one revision of the Working Timetable, the CVL IM may wish to conduct an extraordinary process of consultation with parties affected by those works. A process for such consultation is described in Condition D6.

1.1.9 It is the responsibility of the CVL IM and all Timetable Participants to collaborate with each other so that the implementation of the procedures in this Part D is carried out with optimal efficiency. The CVL IM and Timetable Participants shall each establish and maintain systems and resources which are necessary and sufficient to facilitate such collaboration and their compliance with the procedures set out in this Part D.

1.1.10 In addition to compliance with the processes described in this Part D, Timetable Participants may be separately required to consult with the Welsh Ministers, Transport for Wales, user representatives, other infrastructure managers and any other parties with the right to be so consulted, regarding proposals for the development of Services.

1.1.11 In this Part D, capitalised words have the meanings shown below:

**"Access Proposal"** shall have the meaning ascribed to it in Condition D2.4.1;

**Advanced Notice of Timetable Change** shall have the meaning shown in Condition D2.3.1;

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**"Access Rights"** shall have the meaning ascribed to it in Condition D8.4;

**"Ancillary Movement"** means a train movement which is not an express part of any Services but which is necessary or reasonably required for giving full effect to the train movements

	which are an express part of a Service and shall include any such train movement as is referred to in paragraph (c) of the definition of " <b>Services</b> " to the extent that it is not expressly provided for in an Access Agreement;
<b>"Calendar of Events"</b>	means a calendar, produced by Network Rail for the NR Network and the CVL, going forward for a period of at least four years showing events which are likely to require significant changes to the working timetable for the NR Network in a future bi-annual timetable revision process and in relation to which the CVL IM may seek to include CVL IM Events from time to time in accordance with Condition D7;
<b>"Considerations"</b>	shall have the meaning ascribed to it in Condition D4.6.1(b);
<b>"Contingent Right"</b>	means a right which is not a Firm Right and which is subject to the fulfilment of all competing Exercised Firm Rights and any additional contingency specified in Schedule 5 of the relevant Train Operator's Access Agreement;
<b>"CVL Engineering Access Statement"</b>	<p>means a document setting out, for any part of the CVL, each of the following matters:</p> <ul style="list-style-type: none"> <li>(a) the location, number, timing and duration of any Restrictions of Use; and</li> <li>(b) any alternative train routes or stopping patterns which may apply during any Restriction of Use referred to in paragraph (a) above,</li> </ul> <p>which for the period December 2019-December 2020 shall be the document titled Engineering Access Statement 2020 published by Network Rail (so far as such document applies to the Routes),</p>

	and from December 2020 may be such other document as may be published by the CVL IM or designated by the CVL IM to be the CVL Engineering Access Statement from time to time;
<b>"CVL IM Event"</b>	means an event, or grouping of events having an impact on the CVL, that the CVL IM has requested Network Rail to include in the Calendar of Events;
<b>"CVL IM Variation"</b>	shall have the meaning ascribed to it in Condition D3.1.2;
<b>"CVL Railway Operational Code"</b>	shall have the meaning ascribed to it in Part H of the CVL Network Code;
<b>"D-X"</b>	shall have the meaning ascribed to it in Condition D2.1.5;
<b>"Decision Criteria"</b>	shall have the meaning ascribed to it in Condition D4.6;
Development Timetable	a timetable which may be produced by an Event Steering Group in preparation for an Event;
<b>"Draft Calendar of Events"</b>	means a draft Calendar of Events;
<b>"Draft Rules"</b>	shall have the meaning ascribed to it in Condition D2.2.3;
<b>"Event"</b>	means: <ul style="list-style-type: none"> <li>(a) an "Event" as defined under the Network Rail Network Code that may impact timetables on the CVL Network; or</li> <li>(b) a proposal by an Access Party or Potential Access Party or an anticipated event which could reasonably be expected to lead to a proposal by an Access Party or Potential Access Party, which is likely to require significant changes to the Working Timetable in a future bi-annual timetable revision</li> </ul>

	<p>process carried out in accordance with Condition D2,</p> <p>and shown in the Calendar of Events;</p>
<b>"Event Steering Group"</b>	<p>means a group established under the Network Rail Network Code comprising of representatives from Network Rail, other infrastructure managers, funders and any timetable participants (as defined in the Network Rail Network Code):</p> <ul style="list-style-type: none"> <li>(a) are likely to be affected by the Event; and</li> <li>(b) who agree to be on the group,</li> </ul> <p>as may be supplemented by the CVL IM and Timetable Participants in respect of a CVL IM Event or an Event having an impact on the CVL;</p>
<b>"Exercised"</b>	<p>shall mean as a consequence of:</p> <ul style="list-style-type: none"> <li>(a) submitting an Access Proposal to the CVL IM by the Priority Date in accordance with Conditions D2.4 and D2.5; or</li> <li>(b) a Rolled Over Access Proposal;</li> </ul>
<b>"Firm Right"</b>	<p>means a right:</p> <ul style="list-style-type: none"> <li>(a) of a Timetable Participant under an Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; or</li> <li>(b) of the CVL IM under the Rules;</li> </ul> <p>and which in either such case is not expressed to be subject to any contingency outside the control of the right holder (save that in the case of (a), the right may be subject to the Rules);</p>

**"Flexing Right"**

means a right, exercisable by the CVL IM in allocating a Train Slot in the New Working Timetable or relevant Working Timetable, to vary a Train Slot:

- (a) sought in an Access Proposal; or
- (b) arising from a Rolled Over Access Proposal; or
- (c) sought in a Train Operator Variation Request,

in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant or, where the Train Slot which is being varied is a Strategic Train Slot, in any way without limitation;

**"Initial Consultation Period"**

shall have the meaning ascribed to it in Condition D2.3.3;

**"International Freight Capacity"**

means any capacity on the CVL:

- (a) required to be available to comply with the obligations relating to the carriage of rail freight through the Channel Tunnel in clause 3.2 of the Channel Tunnel usage contract dated 29 July 1987 between The Channel Tunnel Group Limited, France-Manche SA, The British Railways Board and La Société Nationale des Chemins de Fer Français; and referred to in clause 3 of the Back-to-Back Agreement relating to the Channel Tunnel usage contract dated 10 May 1994 between the British Railways Board, European Passenger Services Limited, the British Railways Board acting through its Railfreight Distribution Division, Railtrack Plc and the Secretary of State for Transport (as may be amended from time to time); or

- (b) reserved for allocation or that has been allocated by the International Freight Corridor One Stop Shop,  
in each case such capacity to be represented and included in the New Working Timetable and Working Timetable by way of International Freight Train Slots;
- "International Freight Capacity Notice"** means a notice issued in accordance with Condition D9 setting out International Freight Train Slots;
- "International Freight Corridor"** means any network corridor between infrastructure managers operating over part of the CVL designated as an international rail freight corridor for the purposes of Regulation 913/2010;
- "International Freight Corridor One Stop Shop"** means the One Stop Shop Service set up under Regulation 913/2010 to allocate capacity on the International Freight Corridor;
- "International Freight Train Slot"** means a Train Slot included in the New Working Timetable and Working Timetable to represent International Freight Capacity;
- "International Freight Variation"** shall have the meaning shown in Condition D3.1.5;
- "International Operator"** means each Timetable Participant which has rights to train movements through the Channel Tunnel;
- "International Path"** means any Train Slot on the CVL which is used for carrying goods or passengers through the Channel Tunnel and, in relation to a Train Slot used for carrying goods through the Channel Tunnel, it also means any connecting Train Slot used for the primary purpose of conveying the goods which have passed or are to pass through the Channel

	Tunnel (but excluding any International Freight Train Slot);
<b>"Long Term Plan"</b>	means a strategy established and maintained to promote the effective and efficient use and development of the capacity available on the CVL, consistent with the funding that is, or is likely to become, available during the period of the strategy, if any;
<b>"Network Rail Restriction of Use"</b>	means a restriction of use of all or any part of the NR Network which affects the CVL;
<b>"Network Services"</b>	shall have the meaning ascribed to it in section 82(2) of the Railways Act 1993;
<b>"New Working Timetable"</b>	shall have the meaning ascribed to it in Condition D2.1.6;
<b>"One Stop Shop Service"</b>	means the service offered by Network Rail under which an International Operator can apply to Network Rail to obtain an extension to an International Path over the network of one or more adjoining infrastructure managers belonging to RailNetEurope;
<b>"Possessions Strategy Notice"</b>	shall have the meaning ascribed to it in Condition D6.3.1;
<b>"Possessions Strategy Participants"</b>	shall have the meaning ascribed to it in Condition D6.1.1;
<b>"Possessions Strategy Proposal"</b>	shall have the meaning ascribed to it in Condition D6.1.2;
<b>"Principal Change Date"</b>	shall have the meaning ascribed to it in Condition D2.1.3;
<b>"Prior Working Timetable"</b>	shall have the meaning ascribed to it in Condition D2.1.6;
<b>"Priority Date"</b>	shall have the meaning ascribed to it in Condition D2.4.4;

**Quantum Access Right**

shall have the meaning shown in Part J of this code;

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**"RailNetEurope"**

means the association set up by a majority of European rail infrastructure managers and allocation bodies to enable fast and easy access to European rail, as well as to increase the quality and efficiency of international rail traffic;

**"Restriction of Use"**

means a CVL Restriction of Use or a Network Rail Restriction of Use (as the context may require);

**"Rolled Over Access Proposal"**

means an Access Proposal that was submitted in a previous revision of the Working Timetable resulting in Train Slots being included in the Prior Working Timetable which the relevant Timetable Participant does not seek to vary in the New Working Timetable in accordance with this Part D;

**"Rules"**

means the Timetable Planning Rules and the CVL Engineering Access Statement;

**"Short Term Plan"**

shall have the meaning ascribed to it in Condition D3.7.1;

**"Strategic Capacity Statement"**

means the statement published by the CVL IM setting out Strategic Capacity;

**"Strategic Capacity"**

means capacity for potential use by new services to be included in the New Working Timetable and Working Timetable by way of a Strategic Train Slot;

**"Strategic Train Slot"**

means a Train Slot included in the New Working Timetable and Working Timetable to represent Strategic Capacity;

**"Subsidiary Change Date"**

shall have the meaning ascribed to it in Condition D2.1.3;

<b>"Timetable Change Date"</b>	shall have the meaning ascribed to it in Condition D2.1.3;
<b>"Timetable Participant"</b>	<ul style="list-style-type: none"> <li>(a) an Access Beneficiary; or</li> <li>(b) Potential Access Party;</li> </ul>
<b>"Timetable Period"</b>	shall have the meaning ascribed to it in Condition D2.1.6;
<b>"Timetable Planning Rules"</b>	<p>means a document (as may be amended from time to time in accordance with its terms) regulating, for any part of the CVL and the NR Network, the standard timings and other matters necessary to enable trains to be included in the New Working Timetable or scheduled into the Working Timetable applicable to that part of the relevant network, being rules which specify (amongst other matters)</p> <ul style="list-style-type: none"> <li>(a) timings (including specified allowances) allowed for travel between specified points on the CVL or NR Network for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train;</li> <li>(b) timing margins or allowances for stopping at junctions and other specified points;</li> <li>(c) minimum timing margins or headways between successive trains travelling on the same section of track;</li> <li>(d) timing geography;</li> <li>(e) minimum and maximum time periods for stopping at stations and other specified points;</li> </ul>

- (f) restrictions as to the speed of railway vehicles on any section of track;
- (g) a procedure for generating new or amended values for inclusion in the Timetable Planning Rules; and
- (h) a procedure for accommodating changes to the Timetable Planning Rules between D-64 and D-44,

which for the period December 2019-December 2020 shall be the document issued by Network Rail titled Timetable Planning Rules 2020, and from December 2020 may be such other document as may be published by the CVL IM or designated by the CVL IM to be the Timetable Planning Rules from time to time;

**Timetable Preparation Period** shall have the meaning shown in Condition D2.6.1;

**Timetable Variation** shall have the meaning shown in Condition D3.1.3;

**Timetable Variation by Consent** shall have the meaning shown in Condition D3.6.1;

**Timetable Week** shall have the meaning shown in Condition D3.2.1;

**Timetabling Panel** shall have the meaning shown in the CVL ADRR;

**"Timing Load"** means, in relation to a Service, the timing reference code which details the maximum speed and particular combination of traction type and trailing weight, together with whether any vehicles may be conveyed to which local speed restrictions will apply;

**"Train Operator Variation"** shall have the meaning ascribed to it in Condition D3.1.1;

<b>"Train Operator Variation Request"</b>	shall have the meaning ascribed to it in Condition D3.3.1;
<b>"Train Slot"</b>	means a train movement or a series of train movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement;
<b>"TW-X"</b>	shall have the meaning ascribed to it in Condition D3.2.1;
<b>"Variation Request"</b>	a CVL IM Variation Request or a Train Operator Variation Request (as applicable); and
<b>"Works"</b>	means any inspection, maintenance, renewal, repair, replacement, improvement, enhancement or development of, or any other work in relation to, any part of the CVL.

## Condition D2 - BI-ANNUAL TIMETABLE REVISION PROCESS

### 2.1 *Preliminary*

- 2.1.1 The Working Timetable shall show every train movement on the CVL, including:
- (a) every Service;
  - (b) every Ancillary Movement;
  - (c) every Strategic Train Slot;
  - (d) every International Freight Train Slot; and
  - (e) the times of:
    - (i) departure from origin and arrival at destination;
    - (ii) arrival at and departure from every intermediate stopping point;
    - (iii) such passing points, in accordance with the Timetable Planning Rules, as the CVL IM (acting reasonably) considers appropriate; and
    - (iv) all relevant timing allowances.

The Working Timetable shall also include freight train planning publications and documents detailing platform arrangements.

- 2.1.2 the CVL IM shall re-issue the Working Timetable in revised form on two occasions in each year, after a consultation and revision process conducted by the CVL IM in accordance with this Condition D2.
- 2.1.3 The implementation dates for the two annual revisions of the Working Timetable will conform with Schedule 4 of the Access Regulations. To the extent permitted by the Access Regulations, following consultation with other infrastructure managers, the CVL IM may vary the change implementation dates from time to time, provided that all Timetable Participants have been informed of and not objected to the change. Each change implementation date is referred to as a "**Timetable Change Date**". The first and main change implementation date, occurring in the winter of a calendar year, is referred to as the "**Principal Change Date**". The second change implementation date, occurring in the summer after the Principal Change Date, is referred to as the "**Subsidiary Change Date**".
- 2.1.4 This Condition D2 describes the process by which the CVL IM will revise the Working Timetable on each of the Timetable Change Dates. Unless stated otherwise in this Part D, this process will be followed regardless of whether the change is to be implemented on a Principal Change Date or on a Subsidiary Change Date.
- 2.1.5 For the purposes of this Part D, a Timetable Change Date shall be designated by the letter "**D**". The sequence of events culminating in the adoption of a revised Working Timetable is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to date "**D**". Each week commences at 0200 on a Sunday and expires at 0159 on the following Sunday. So, for example, "**D minus 26**" (or "**D-26**") refers to the 26th week prior to date "**D**". Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 1700 on Friday of the preceding week. So, for example, a step which is required to occur no later than "**D-26**" must occur no later than:
  - (a) 1700 on Friday;
  - (b) in the week commencing on the Sunday which occurs 27 weeks prior to a Timetable Change Date.
- 2.1.6 To produce the timetable to take effect on a Timetable Change Date, the CVL IM shall use as the starting point the timetable published at D-26 in the process related to the immediately preceding Timetable Change Date subject to the following amendments only:

- (a) any variations as a result of the appeals process;
- (b) in relation to the International Freight Train Slots to be included in the timetable to take effect on a Principal Change Date, the CVL IM shall reflect the International Freight Train Slots published in the International Freight Capacity Notice published at D-60 in the process relating to that Principal Change Date along with any amendments made as a result of any appeal;
- (c) where agreed with the relevant Timetable Participant(s), CVL IM may reflect the content of a Development Timetable produced by an Event Steering Group; and
- (d) the CVL IM may delete any Train Slots (but not any International Freight Train Slots) in respect of which it believes, acting reasonably and after consultation with the relevant Timetable Participant (if appropriate), that the relevant Timetable Participant, or its successor, will not have the necessary access rights at the time of the intended operation of the Train Slots.

This starting point is referred to as the "**Prior Working Timetable**".

- 2.1.7 Not later than D-73 in relation to the Principal Change Date only, the CVL IM shall publish to all Timetable Participants a calendar showing the milestone dates which will apply (for the purposes of this Condition D2) to the process of planning the New Working Timetables to take effect as Working Timetables on the Principal Change Date and the Subsidiary Change Date.
- 2.2 ***Revision of Timetable Planning Rules and CVL Engineering Access Statement – D-64 to D-44***
  - 2.2.1 Both the Timetable Planning Rules and the CVL Engineering Access Statement (together referred to as the "**Rules**") are revised on a bi-annual basis, each revised version being operative for the same Timetable Period as the Working Timetable to which they pertain. The Rules must be revised and updated, in accordance with the procedures described in this Condition D2.2, as a first stage in the preparation of a New Working Timetable. The Rules shall permit the operation of International Freight Train Slots included in the applicable International Freight Capacity Notice.
  - 2.2.2 Between D-64 and D-60, the CVL IM shall consult with Timetable Participants in respect of any proposed changes to the Rules.

- 2.2.3 Following consultation in accordance with Condition D2.2.2, and not later than D-59, the CVL IM shall provide to all Timetable Participants a draft of the revised Rules (the "**Draft Rules**").
- 2.2.4 Following provision of the Draft Rules and by D-54:
- (a) Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have to the Draft Rules provided to them in accordance with D2.2.3.
- 2.2.5 Following D-54 and by D-44, the CVL IM shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.4 and any changes to International Freight Train Slots reflected in the applicable International Freight Capacity Notice and may amend the Draft Rules. Not later than D-44, the CVL IM shall issue the final revised Rules to all Timetable Participants.
- 2.2.6 In preparing revised Rules, the CVL IM shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.1 and to provide to Timetable Participants its reasons for making the revisions to the Rules.
- 2.2.7 Between D-44 and publication of the New Working Timetable at D-26, the CVL IM may further revise the Rules where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable. Before making any such further revisions to the Rules, the CVL IM must first consult with all Timetable Participants who may be affected by the proposed changes. The CVL IM will then inform all affected Timetable Participants of any such changes as soon as practicable after they are made. The amending power created by this Condition D2.2.7 is without prejudice to the amending power referred to in Condition D3.4.
- 2.2.8 Subject to Condition D2.2.9 below, any Timetable Participant dissatisfied with any decision of the CVL IM in respect of those Rules (including any decision to revise those Rules pursuant to Condition D2.2.7) is entitled to appeal against any part of it. Any such appeal shall be conducted in accordance with Condition D5 and must be made by a Timetable Participant:
- (a) in respect of any decision to revise the Rules pursuant to Condition D2.2.7, within five Working Days of receipt of the CVL IM decision;

- (b) otherwise within 15 Working Days of receipt of the CVL IM decision.
- 2.2.9 No appeal may be brought pursuant to Condition D2.2.8 in respect of any part of the Rules which conforms with any Possessions Strategy Notice which has:
- (a) not been appealed in the timeframe for appeal set out in Condition D6.4; or
  - (b) has been appealed but has been finally determined by a Timetabling Panel or ORR.

### 2.3 ***Timetable consultation – D-55 to D-40***

2.3.1 Any Each Timetable Participant wishing to introduce significant new Services or make significant changes to its Services or Specified Equipment shall notify provide to the CVL IM at the earliest opportunity but no later than and, where possible, before D-55 an Advance Notice of Timetable Change (ANTC) that either:

- (a) summarises at a high level, any new Services or changes to Services where known by that Timetable Participant for that Timetable Period; and
- (b) indicates which new Services or changes to Services that the Timetable Participant proposes to operate in that Timetable Period are within the remit of an ESG and whether those Services are consistent with the conclusions of that ESG (including a statement regarding the consistency of plans with any relevant Development Timetable produced by that ESG); or
- (c) states if no new Services or changes to Services are anticipated by that Timetable Participant for that Timetable Period.

- If the CVL IM considers that the introduction of any such new or changed Services or changes to Services indicated in an ANTC may necessitate substantial timetable changes, Specified Equipment may necessitate substantial timetable changes, it may commence the Initial Consultation Period, referred to in Condition D2.3.3 below, before D-55. In any event, the CVL IM shall consult with Timetable Participants who may be affected by the proposed new Services or changes to Services or Specified Equipment and shall provide them with all available relevant information in respect of those proposals.

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#### 2.3.12.3.2 The CVL IM shall:

- (a) use its reasonable endeavours to ensure that by no later than D-48, provisional paths connecting into and from the NR

Network have been established in cooperation with Network Rail (taking into account paths which may be available on the NR Network) and included on a provisional basis in the New Working Timetable; and

- (b) by no later than D-45, the CVL IM shall publish the Strategic Capacity Statement which is relevant to the preparation of the New Working Timetable. The Strategic Capacity Statement published no later than D-45 shall be deemed to be an Access Proposal, submitted to the CVL IM in accordance with Conditions D2.4 and D2.5, in relation to the Strategic Paths contained in it.

2.3.22.3.3 During the period from D-55 to D-40 (or such extended period referred to in Condition D2.3.1):

- (a) Timetable Participants shall indicate the changes (if any) that they propose should be made in preparing the New Working Timetable; and
- (b) the CVL IM shall consult with Timetable Participants in respect of the New Working Timetable.

The period of consultation required by this Condition is referred to as the "**Initial Consultation Period**".

2.3.32.3.4 During the Initial Consultation Period, the CVL IM shall:

- (a) use its reasonable endeavours to answer enquiries made by Timetable Participants in connection with matters that may affect or relate to the New Working Timetable; and
- (b) facilitate and co-ordinate dialogue with all Timetable Participants and (as may be appropriate) between Timetable Participants in order to identify opportunities to develop strategic initiatives and to promote network benefits such as connections, complementary services patterns and efficiency of operation.

2.3.42.3.5 Each Timetable Participant shall co-operate with the CVL IM in order to enable the CVL IM to co-ordinate the timetabling and operation of all services on the CVL so that all services may be scheduled to operate on the CVL and other connected networks in a co-ordinated and robust manner, such that there may be a continuous through service from the CVL to other connected networks and vice versa.

2.3.52.3.6 Not later than D-48, the CVL IM shall consult with International Operators and other infrastructure managers and shall provisionally include in the New Working Timetable the International Paths which any International Operator wishes to operate.

2.3.62.3.7 Not later than D-45 the CVL IM shall provide to the Timetable Participants a copy of the Prior Working Timetable. If any changes are made to the Prior Working Timetable as a result of the appeal process under Condition D2.7, then the CVL IM shall notify these changes to Timetable Participants as soon as reasonably practicable.

2.3.72.3.8 The consultation process set out in this Condition D2.3 shall not extend to International Freight Capacity.

2.4 ***Submission of Access Proposals by Timetable Participants – before and after the Priority Date at D-40***

2.4.1 A Timetable Participant shall set out its requirements in respect of the New Working Timetable in a written proposal, to be referred to as an "Access Proposal" where:

- (a) it wishes to exercise any Firm Rights and/or Contingent Rights and/or any expectation of rights to obtain Train Slots in respect of the relevant Timetable Period, where those rights were not exercised to obtain Train Slots in the Prior Working Timetable; and/or
- (b) it wishes to make changes to any Train Slot in the Prior Working Timetable;
- (c) it wishes to set out its requirements in response to a notification by the CVL IM under Condition D2.4.6; and/or
- (d) it wishes to use any International Freight Train Slot where the criteria in Condition D2.4.8 are met.

2.4.2 Where a Timetable Participant does not intend using a Train Slot, which is included in the Prior Working Timetable, in the relevant Timetable Period, it shall notify this fact to the CVL IM in writing by D-40 or as soon as practicable thereafter.

2.4.3 Access Proposals may be submitted to the CVL IM during the period up to D-28, or in the case of a further or revised Access Proposal submitted under Condition D2.4.1(c), during the period up to D-26. However, Timetable Participants shall submit their Access Proposals (and any revised Access Proposals) as early as reasonably practicable in order to facilitate optimal planning of the New Working

Timetable by the CVL IM and to ensure optimal consultation between the CVL IM and all Timetable Participants.

- 2.4.4 Access Proposals submitted by D-40 (the "**Priority Date**") are given priority in the compilation of the New Working Timetable in certain circumstances set out in Condition D4.2. Access Proposals submitted after the Priority Date but by D-28, and any further or revised Access Proposals submitted under Condition D2.4.1(c) by D-26 will be incorporated by the CVL IM into the New Working Timetable as far as reasonably practicable, taking into account the complexity of the Access Proposal including any reasonable foreseeable consequential impact on the New Working Timetable and the time available before the end of the Timetable Preparation Period, and in accordance with the principles set out in Condition D4.2.
- 2.4.5 Any subsequent or revised Access Proposal submitted by a Timetable Participant shall amend an Access Proposal submitted earlier where it sets out different requirements to the earlier submitted Access Proposal regarding the manner in which a right is to be exercised. In such case the date on which the subsequent or revised Access Proposal is submitted will be treated, for the purposes of Condition D4.2.24.2.2, as the date of notification of the relevant right.
- 2.4.6 Where a Timetable Participant has:
- (a) submitted an Access Proposal which cannot be accommodated in the New Working Timetable; or
  - (b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable; or
  - (c) submitted a proposal purporting to be an Access Proposal but which is defective or incomplete, (which may include, as an example, providing insufficient information required under Condition D2.5.1); or
  - (d) submitted an Access Proposal which is within itself inconsistent with the Timetable Planning Rules,
- the CVL IM must notify the Timetable Participant of this fact, as soon as possible after it has become aware of it, so that the Timetable Participant has the opportunity to submit a further Access Proposal under Condition D2.4.1(c).
- 2.4.7 An Access Proposal in relation to all or any part of an International Freight Train Slot listed in section A of the applicable International Freight Capacity Notice may not be made under this Part D.

2.4.8 An Access Proposal in relation to all or any part of an International Freight Train Slot listed in section B of the applicable International Freight Capacity Notice may not be made under this Part D unless that proposal is in connection with a train service, the purpose of which is the carriage of goods through the Channel Tunnel or the conveyance of goods which have passed or are to pass through the Channel Tunnel.

## 2.5 ***Content of an Access Proposal***

2.5.1 Each Access Proposal shall include as a minimum in respect of each Train Slot, save to the extent that the CVL IM expressly agrees in writing to the contrary:

- (a) the dates on which Train Slots are intended to be used;
- (b) the start and end points of the train movement;
- (c) the intermediate calling points;
- (d) the times of arrival and departure from and routing between, any point specified under Conditions D2.5.1(b) and D2.5.1(c) above;
- (e) the railway vehicles or Timing Load to be used;
- (f) any required train connections with other railway passenger services;
- (g) any proposed Ancillary Movements;
- (h) any required platform arrangements at the start, end and all intermediate calling points;
- (i) any relevant commercial and service codes;
- (j) the proposed maximum train speed and length and, in relation to a freight train, the proposed maximum train weight, and
- (k) the proposed previous and next working of the railway passenger vehicles of the proposed Train Slot provided that the vehicles have not left the network.

2.5.2 Where an Access Proposal has been submitted by a Timetable Participant, the CVL IM shall be entitled to require any further information in respect of that Access Proposal that it reasonably considers to be necessary or beneficial to the preparation of the New Working Timetable.

## 2.6 ***Timetable Preparation – D-40 to D-26***

- 2.6.1 During the Timetable Preparation Period (D-40 to D-26) (the "Timetable Preparation Period"), the CVL IM shall compile the proposed New Working Timetable.
- 2.6.2 Between D-40 and D-26:
- (a) all Timetable Participants shall have access to the evolving draft of the New Working Timetable either:
    - (i) by way of "read-only" remote computer access or such other electronic means reasonably requested by a Timetable Participant; or
    - (ii) to the extent that a Timetable Participant does not have the required systems to facilitate remote computer access, by read-only computer access upon attendance at such of Network Rail's offices specified by Network Rail; and
  - (b) the CVL IM shall consult further with Timetable Participants in respect of their Access Proposals and the evolving draft of the New Working Timetable, and shall continue to answer enquiries and facilitate and co-ordinate dialogue as stated in Condition D2.3.4.
- 2.6.3 In compiling the New Working Timetable, the CVL IM shall be required and entitled to act in accordance with the duties and powers set out in Condition D4.2.

## 2.7 **New Working Timetable Publication – D-26**

- 2.7.1 The New Working Timetable shall be published by the CVL IM at D-26, subject only to variations made in the course of the appeal process described in this Condition D2.7.
- 2.7.2 Any Timetable Participant affected by the New Working Timetable shall be entitled to appeal against any part of it (other than in respect of International Freight Train Slots consulted under Condition D9.2), provided that an appeal is lodged within 20 Working Days of its publication. All such appeals shall be conducted in accordance with Condition D5.
- 2.7.3 Where a Timetable Participant has enquiries or requires further information from the CVL IM regarding the published New Working Timetable, the CVL IM shall respond fully and promptly and where possible, taking into account the nature of the enquiry or information requested and the date this is received by the CVL IM, so as to

enable a Timetable Participant to comply with the timescales in Condition D2.7.2.

- 2.7.4 The CVL IM shall promptly make all revisions to the New Working Timetable required by all appeal decisions, and shall notify all Timetable Participants upon completion of those changes.

## 2.8 **Summary**

- 2.8.1 A timeline, showing a summary of the bi-annual timetable amendment process, is attached at Annex 1. Where there is any conflict between the timeline and the wording of Condition D1 to Condition D7, the wording of Condition D1 to Condition D7 shall prevail.

# **Condition D3 - VARIATIONS TO THE WORKING TIMETABLE**

## 3.1 **Overview**

- 3.1.1 From D-26 and during the relevant Timetable Period, Timetable Participants may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots.

Any such variation is referred to as a "**Train Operator Variation**". The process to be followed where a Timetable Participant seeks a Train Operator Variation is set out in Condition D3.3.

- 3.1.2 From D-26 and during the relevant Timetable Period, the CVL IM may wish to vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) adding an additional Train Slot on one or more occasions;
- (b) amending the detail of one or more Train Slots;
- (c) removing one or more Train Slots,

(but in each case not any Train Slot that is an International Train Slot) in order to facilitate a Restriction of Use. Any such variation is referred to as a "**CVL IM Variation**". The process to be followed where a CVL IM Variation is sought with more than 12 weeks' notice is set out in Condition D3.4. The process to be followed where a CVL

IM Variation is sought with less than 12 weeks' notice is set out in Condition D3.5.

3.1.3 Train Operator Variations and CVL IM Variations are collectively referred to as "**Timetable Variations**".

3.1.4 In considering or making any Timetable Variation, the CVL IM shall be required and entitled to act in accordance with the duties and powers set out in Conditions D4.3 and D4.4.

3.1.5 From D-26 and during the relevant Timetable Period, the CVL IM may vary either the New Working Timetable, if it is before the Timetable Change Date, or otherwise the Working Timetable on an ad hoc basis by:

- (a) amending the detail of one or more International Freight Train Slots; or
- (b) removing one or more International Freight Train Slots.

Any such variation is referred to as an "International Freight Variation". The CVL IM may only make an International Freight Variation in the circumstances set out in Condition D3.1.6.

3.1.6 The CVL IM may only make an International Freight Variation to:

- (a) reflect the allocation by the International Freight Corridor One Stop Shop of an International Freight Train Slot in section A of an International Freight Capacity Notice in accordance with Regulation 913/2010;
- (b) reflect the allocation by the CVL IM of an International Freight Train Slot in section B of an International Freight Capacity Notice in accordance with the provisions of this Part D;
- (c) reflect an International Freight Train Slot in section A of an International Freight Capacity Notice becoming available for allocation by the CVL IM in accordance with the provisions of this Part D;
- (d) reflect changes to an International Freight Train Slot required as a result of an agreement it has reached with the International Freight Corridor One Stop Shop;
- (e) in the case of an International Freight Train Slot in section A of an International Freight Capacity Notice, reflect or facilitate a Restriction of Use (but only where that Restriction of Use is needed in relation to a case of force majeure (including urgent

and unforeseeable safety critical work) within the meaning of Regulation 913/2010); or

- (f) in the case of an International Freight Train Slot in section B of an International Freight Capacity Notice, reflect or facilitate a Restriction of Use.

### 3.2 ***Timeline for the Planning of Timetable Variations***

3.2.1 CVL IM Variations are planned by the CVL IM on a week by week basis. Each week of a Working Timetable is referred to as a "**Timetable Week**". Each Timetable Week commences at 0001 on a Saturday and expires at 2400 on the following Friday. The sequence of events by which variations are finalised is designated by a series of milestone dates and steps, all of which refer to a week in the period prior to the commencement of Timetable Week "**TW**". So, for example, "**TW minus 12**" (or "**TW-12**") refers to the 12th week prior to the start of a given Timetable Week "**TW**". Where in this Part D any step or event is required or stated to occur by any week designated in this way, it must occur no later than 1700 on Friday of the preceding week. So, for example, a step which is required to occur no later than "**TW-12**" must occur no later than:

- (a) 1700 on Friday;
- (b) in the week commencing on the Sunday which occurs 13 weeks prior to the commencement of week **TW**.

3.2.2 Not later than D-26, the CVL IM shall provide to all Timetable Participants a calendar pertaining to each Timetable Week, showing the milestone dates which will apply (pursuant to this Condition D3) to the planning of all Timetable Variations in respect of that Timetable Week.

### 3.3 ***Train Operator Variations after D-26***

3.3.1 Where a Timetable Participant seeks a Train Operator Variation, it shall submit to the CVL IM a written request, referred to as a "**Train Operator Variation Request**".

3.3.2 A Train Operator Variation Request shall contain a full description of the variation sought and, where it relates to the addition or amendment of any Train Slot to be included in the Working Timetable, shall provide the same information in respect of the variation as would be contained in an Access Proposal (save that where a proposed Train Slot amendment does not involve revision of any information previously supplied to the CVL IM in an Access

Proposal for that Train Slot, the Train Operator Variation Request need not repeat that information).

- 3.3.3 From D-26 and during the relevant Timetable Period, a Timetable Participant is entitled to make a Train Operator Variation Request and the CVL IM shall have the power to accept, reject or modify it, subject to the timeframes set out in Conditions D3.3.6 and D3.3.7 below and acting in accordance with Condition D4.3.
- 3.3.4 Where a Train Operator Variation Request is received:
- (a) on any day which is not a Working Day; and/or
  - (b) after 1000 hours on a Working Day,
- it shall be deemed to have been received on the next Working Day thereafter.
- 3.3.5 For the purposes of calculating the CVL IM's response time to a Train Operator Variation Request set out in Condition D3.3.6, the day of the CVL IM's receipt of a Train Operator Variation Request is described as day one and each Working Day following this adds a day onto the description. For example, the Working Day after the day of receipt of the request is day two.
- 3.3.6 The CVL IM shall notify its acceptance, rejection or modification of a Train Operator Variation Request, by the following latest times:
- (a) as soon as reasonably practicable, where the request is to operate a Train Slot on day one or day two;
  - (b) by 1500 hours on day one, where the request is to operate a Train Slot on day three;
  - (c) by 1000 hours on day two, where the request is to operate a Train Slot on day four;
  - (d) by 1500 hours on day two, where the request is to operate a Train Slot on day 5;
  - (e) by 1500 hours on day three, where the request is to operate a Train Slot on day 6;
  - (f) by 1000 hours on day four, where the request is to operate a Train Slot on day 7;
  - (g) where Conditions D3.3.6(a), (b), (c), (d), (e) or (f) above do not apply, within five Working Days of receipt of the request unless otherwise agreed between the Timetable Participant

and the CVL IM, where the parties acting reasonably, consider the volume of changes requested and the timescales over which the variations are required to operate.

- 3.3.7 Not used.
- 3.3.8 Where the CVL IM fails to notify its response to a Train Operator Variation Request in accordance with Condition D3.3.6 and the request, if accepted, would not give rise to any conflict with:
  - (a) the New Working Timetable after it is published at D-26; or
  - (b) the relevant Working Timetable; or
  - (c) the Rules,it shall be deemed to have accepted the request.
- 3.3.9 Subject to Condition D3.3.10 below, where a Timetable Participant is dissatisfied with any final decision of the CVL IM in response to a Train Operator Variation Request, it may appeal against that decision in accordance with Condition D5, provided that it submits its appeal no later than five Working Days after it is notified of the relevant decision by the CVL IM.
- 3.3.10 Not used.

**3.3.11** (a) Where the CVL IM rejects ~~or modifies~~ any Train Operator Variation Request it must provide written reasons for its decision.

(b) Where the CVL IM modifies any Train Operator Variation Request it must provide written reasons for its decision upon request from the Train Operator.

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**3.3.14****3.3.12** A Train Operator Variation Request in relation to all or any part of an International Freight Train Slot listed in section A of the applicable International Freight Capacity Notice may not be made under this Part D.

**3.3.12****3.3.13** A Train Operator Variation Request in relation to all or any part of an International Freight Train Slot listed in section B of the applicable International Freight Capacity Notice may not be made under this Part D unless that request is in connection with a train service, the purpose of which is the carriage of goods through the Channel Tunnel or the conveyance of goods which have passed or are to pass through the Channel Tunnel.

#### 3.4 **CVL IM Variations with at least 12 Weeks' Notice**

- 3.4.1 The procedures described in this Condition D3.4 are designed to facilitate the planning of all Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.
- 3.4.2 The CVL IM shall be entitled to make a variation to the Working Timetable provided that:
- (a) the CVL IM Variation is made only for the purpose of taking CVL Restrictions of Use which are consistent with the Rules, as published following the process set out in Condition D2.2 or as amended in accordance with the procedure established pursuant to Condition D3.4.3; or
  - (b) the CVL IM Variation is made for the purpose of facilitating a Network Rail Restriction of Use which is consistent with the Rules (as defined in the Network Rail Network Code) applicable on the relevant part of the NR Network; and
  - (c) (in the case of both Conditions D3.4.2(a) and D3.4.2(b)) the CVL IM complies with the procedure set out in this Condition D3.4.
- 3.4.3 The CVL IM shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Condition D2.2.7, and is to be utilised in order to facilitate changes which the CVL IM considers necessary to take CVL Restrictions of Use or to facilitate Network Rail Restrictions of Use.
- 3.4.4 The procedure referred to in Condition D3.4.3:
- (a) must require that no amendment to the Rules may be made unless the CVL IM has consulted with all Timetable Participants likely to be affected by the amendment;
  - (b) must require that all decisions of the CVL IM be made by application of the Decision Criteria in accordance with Condition D4.6;
  - (c) may authorise changes to the procedure.
- 3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall be subject to the appeal procedures in Condition D5 as if they were made pursuant to a procedure set out in this Part D.
- 3.4.6 Notwithstanding anything stated elsewhere in this Part D, where any amendment is made to the procedure referred to in Condition D3.4.3

by use of that procedure, the amendment shall not take effect until the determination of any appeal against the same.

- 3.4.7 Where the CVL IM proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, the CVL IM shall provide to each Timetable Participant, by TW-30, its proposals for Restrictions of Use in respect of the corresponding Timetable Week. All such proposals may be amended or supplemented by the CVL IM at any time prior to TW-26 and such amendments or supplements should also be provided to Timetable Participants prior to TW-26.
- 3.4.8 After TW-30 but by TW-26, the CVL IM shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all the CVL IM Variations to be made.
- 3.4.9 To facilitate the planning of any CVL IM Variation, the CVL IM may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.
- 3.4.10 Where the CVL IM requires a revised Access Proposal:
- (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
  - (b) the CVL IM shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
  - (c) the CVL IM shall specify a reasonable period in which the revised Access Proposal must be provided, and in any event the revised Access Proposal shall be submitted no later than TW-18.
- 3.4.11 The CVL IM may modify, accept or reject a revised Access Proposal and where it modifies or rejects any revised Access Proposal, it must provide written reasons for its decision.
- 3.4.12 Where a revised Access Proposal has not been submitted by a Timetable Participant as required by the CVL IM, the CVL IM shall be entitled to make a CVL IM Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of the CVL IM's decision.
- 3.4.13 Not later than TW-14, the CVL IM shall notify all Timetable Participants of its decision in respect of the CVL IM Variations to be made pursuant to the procedure in this Condition D3.4.

- 3.4.14 Not later than TW-13, any Timetable Participant affected by the CVL IM's decision notified pursuant to Condition D3.4.13 shall inform the CVL IM whether it accepts or disputes that decision.
- 3.4.15 At TW-12, the CVL IM shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the CVL IM Variations to be made pursuant to this Condition D3.4.
- 3.4.16 Subject as provided in Condition D3.4.12, any Timetable Participant which is dissatisfied with any final decision of the CVL IM in respect of a CVL IM Variation may appeal against it in accordance with Condition D5.

### 3.5 ***CVL IM Variations with less than 12 Weeks' Notice***

- 3.5.1 It may be necessary for CVL Restrictions of Use to be arranged by the CVL IM or Network Rail Restrictions of Use to be arranged by Network Rail, with less than 12 weeks' notice or otherwise outside the process described in Condition D3.4. The following paragraphs of this Condition D3.5 are intended to facilitate any such Restrictions of Use.
- 3.5.2 Where the CVL IM proposes to make any variation to the Working Timetable in circumstances where it is not reasonably practicable to comply with the timing requirements of Condition D3.4, the CVL IM shall follow the procedures set out in Condition D3.4 save that:
  - (a) the timing requirements specified there; and
  - (b) Conditions D3.4.13, D3.4.14 and D3.4.15,

shall not apply. In carrying out those procedures, the CVL IM shall be permitted (for itself) and shall prescribe (for affected Timetable Participants) such time periods for each step as are reasonably practicable in the circumstances. The CVL IM shall notify all affected Timetable Participants of its final decision in respect of any such change as soon as reasonably practicable. Any variation to a Working Timetable made pursuant to this Condition D3.5.2 shall be a "**CVL IM Variation**" for the purposes of this Part D.

- 3.5.3 Any Timetable Participant which is dissatisfied with any final decision of the CVL IM in respect of a CVL IM Variation made pursuant to Condition D3.5.2 may appeal in accordance with Condition D5.

### 3.6 ***Timetable Variations by consent***

- 3.6.1 Notwithstanding anything stated in this Condition D3, where the CVL IM and all affected Timetable Participants have so consented in writing, a Timetable Variation may be made without the need for

compliance with such of the requirements of this Condition D3 as are specified in the consent. Such a variation is referred to as a "**Timetable Variation by Consent**".

### 3.7 ***Publication of Timetable Variations***

- 3.7.1 Where, pursuant to the processes described in this Condition D3, any Timetable Variation or Timetable Variation by Consent has been finalised, it shall be recorded by the CVL IM in one or more schedules (each referred to as a "**Short Term Plan**"). Each Short Term Plan shall be made available to affected Timetable Participants (by the same means as are described in Condition D2.6.2(a)) as soon as reasonably practicable after the relevant variation has been approved by the CVL IM, and the affected part(s) of the New Working Timetable or Working Timetable shall be annotated to refer to the relevant Short Term Plan(s).

### 3.8 ***Operation of Part H***

- 3.8.1 In addition to any variation to the New Working Timetable or Working Timetable arising pursuant to the procedures set out in this Condition D3, variations may also arise from time to time by reason of the operation of the CVL Railway Operational Code, and this Condition D3 is subject to the operation of that Code.

### 3.9 ***Summary***

- 3.9.1 A timeline, showing a summary of the process for variations to the Working Timetable, is attached at Annex 2. Where there is any conflict between the timeline and the wording of Condition D1 to Condition D7, the wording of Condition D1 to Condition D7 shall prevail.

## **Condition D4 - DECISIONS BY THE CVL IM**

### 4.1 ***Decisions concerning the Rules***

- 4.1.1 In conducting the processes set out in Condition D2.2 by which the Rules are revised on a bi-annual basis (including the amendment process described in Condition D2.2.7), the CVL IM shall make all decisions by application of the Decision Criteria in the manner set out in Condition D4.6.

### 4.2 ***Decisions arising in the preparation of a New Working Timetable***

- 4.2.1 In compiling a New Working Timetable in accordance with Condition D2.6, the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6 and conduct itself as set out in this Condition D4.2.

4.2.2 The CVL IM shall endeavour wherever possible to comply with all Access Proposals submitted to it in accordance with Conditions D2.4 and D2.5 and accommodate all Rolled Over Access Proposals, subject to the following principles:

- (a) a New Working Timetable shall conform with the Rules and the applicable International Freight Capacity Notice applicable to the corresponding Timetable Period;
- (b) each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant;
- (c) in compiling a New Working Timetable, the CVL IM is entitled to exercise its Flexing Right;
- (d) where the principles in Conditions D4.2.2(a), D4.2.2(b) and D4.2.2(c) above have been applied but the CVL IM is unable to include all requested Train Slots in the New Working Timetable, the Train Slots shall be allocated in the following order of priority:
  - (i) first to:
    - (A) the Firm Rights of any Timetable Participant that will subsist during the whole of the Timetable Period and which have been Exercised; and
    - (B) any rights the CVL IM has for Network Services included in the Rules;
  - (ii) second to Firm Rights of any Timetable Participant, that were in force at the Priority Date but will expire prior to or during the Timetable Period and which have been Exercised, provided that the CVL IM considers (acting reasonably) that new Firm Rights, substantially the same as the expiring rights, will be in force during the Timetable Period;
  - (iii) third to Contingent Rights or any expectation of rights of any Timetable Participant which have been Exercised, provided the CVL IM considers (acting reasonably) they will be Firm Rights or Contingent Rights in force during the Timetable Period;
  - (iv) fourth to any:
    - (A) rights (including any Firm Rights or Contingent Rights), or expectation of any rights (including any Firm Rights or Contingent Rights) of any Timetable

Participant notified in an Access Proposal submitted after the Priority Date but before D-26 in accordance with Conditions D2.4 and D2.5. Where more than one set of rights or expectation of rights are so notified, capacity is to be allocated in the order in which Access Proposals containing details of the rights (or expectations thereof) are received by the CVL IM; and

(B) Strategic Capacity contained in the Strategic Capacity Statement.

4.2.3 For the purposes of Condition D4.2.2(d)(iv) an Access Proposal shall be deemed to have been received by the CVL IM:

- (a) if sent by hand or recorded delivery, at the time of delivery;
- (b) if sent by prepaid first class post from and to any place in the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by email or other electronic means (subject to confirmation of receipt of delivery):
  - (i) on the day of transmission if sent before 1700 on a Working Day; or
  - (ii) in any other case, at 0900 hours on the first Working Day following the day of transmission.

#### 4.3 ***Decisions concerning Train Operator Variations***

4.3.1 In responding to a Train Operator Variation Request, the CVL IM shall conduct itself as follows:

- (a) it is entitled to exercise its Flexing Right;
- (b) when exercising its power set out in Condition D3.3.3 the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6 except that it shall not accept a Train Operator Variation Request if to do so would give rise to any conflict with any Train Slot already scheduled in:
  - (i) the New Working Timetable after it is published at D-26 or the relevant Working Timetable, unless it is a Strategic Train Slot or an International Freight Train Slot for which the criteria for use in Condition D2.4.8 are met and which has not already been allocated to a Timetable Participant; or

(ii) the Rules;

- (c) where the Decision Criteria have been applied as set out in sub-paragraph D4.3.1(b) immediately above but two or more such requests would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were received or deemed to have been received by the CVL IM and any conflict resolved accordingly.

4.3.2 Where a Train Operator Variation Request:

- (a) pertains to a Train Slot to be used for the carriage of passengers in connection with any sporting or other public event; and
- (b) would, if accepted, conflict with any Train Slot already scheduled in the New Working Timetable or Working Timetable, unless it is a Strategic Train Slot; and
- (c) would in the absence of such conflict be accepted (or accepted on varied terms) by the CVL IM,

the CVL IM shall consult with the Timetable Participant entitled to the Train Slot and shall seek its consent to effect a variation of the scheduled Train Slot to the extent necessary to accommodate the relevant request (or that request as may be varied). Any Timetable Participant so consulted shall not unreasonably withhold or delay its consent to the proposed variation where the relevant request proposes the use of a Train Slot for the carriage of passengers in materially greater numbers than are usually carried on the relevant part of the CVL on the days and times in question.

4.3.3 Where any Timetable Participant consulted by the CVL IM in accordance with Condition D4.3.2:

- (a) consents to the proposed variation of its Train Slot; or
- (b) unreasonably withholds or delays its consent in breach of Condition D4.3.2,

the CVL IM shall be entitled to make a variation in respect of that Train Slot (including the removal of that Train Slot) to the extent necessary to facilitate the relevant request. Where, consequent upon such variation, the CVL IM is required by the terms of an Access Agreement to pay any compensation to the affected Timetable Participant, the Timetable Participant which made the relevant Train Operator Variation Request shall reimburse the amount of that payment to the CVL IM.

4.3.4 Notwithstanding anything stated elsewhere in this Part D, the CVL IM shall be entitled to reject any Train Operator Variation Request if it:

- (a) pertains to a Timetable Variation which has in substance been made previously pursuant to Condition D3 and has been rejected; or
- (b) is substantially the same as any part of an Access Proposal made and rejected during the course of the bi-annual timetable revision process described in Condition D2,

unless there has been a material change in circumstances which would affect the CVL IM's application of the Decision Criteria in Condition D4.6 when deciding whether or not to accept the Train Operator Variation Request.

#### 4.4 ***Decisions concerning CVL IM Variations***

4.4.1 In making any decision in the course of implementing the procedures set out in Conditions D3.4 or D3.5, the CVL IM:

- (a) is entitled to exercise its Flexing Right when responding to an Access Proposal submitted under Condition D3.4.10;
- (b) may not effect any CVL IM Variation to the extent that the variation is inconsistent with the Rules;
- (c) shall, subject to the over-riding principles set out in subparagraphs D4.4.1(a) and D4.4.1(b) above, apply the Decision Criteria in accordance with Condition D4.6.

#### 4.5 ***Decisions concerning Possessions Strategy Notices***

4.5.1 In making any decision concerning the content of a Possessions Strategy Notice, the CVL IM shall apply the Decision Criteria in accordance with Condition D4.6.

#### 4.6 ***The Decision Criteria***

4.6.1 Where the CVL IM is required to decide any matter in this Part D its objective shall be to share capacity on the CVL for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").

4.6.2 In achieving the Objective, the CVL IM shall apply any or all of the considerations in paragraphs (a)-(l) below ("the Considerations") in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the CVL;
  - (b) that the spread of services reflects demand;
  - (c) maintaining and improving train service performance;
  - (d) that journey times are as short as reasonably possible;
  - (e) maintaining and improving an integrated system of transport for passengers and goods;
  - (f) the commercial interests of the CVL IM (apart from the terms of any maintenance contract entered into or proposed by the CVL IM) or any Timetable Participant of which the CVL IM is aware;
  - (g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;
  - (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
  - (i) mitigating the effect on the environment;
  - (j) enabling operators of trains to utilise their assets efficiently; and
  - (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Capacity to which the Strategic Train Slot relates; and
  - (l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.
- 4.6.3 When applying the Considerations, the CVL IM must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and the CVL IM. Where, in light of the particular circumstances, the CVL IM considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

4.6.4 The Objective and the Considerations together form the Decision Criteria.

#### 4.7 ***Finality of decisions***

4.7.1 Save where expressly otherwise stated in this Part D, where the CVL IM has announced a final decision in respect of any process regulated by this Part D, that decision shall be:

- (a) binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D;
- (b) binding on the CVL IM save to the extent that:
  - (i) the CVL IM is expressly permitted by any provision of this Part D to deviate from or amend that decision; or
  - (ii) a decision is changed by an appeal authorised by this Part D.

### **Condition D5 - APPEALS**

#### 5.1 ***Appeal in accordance with the CVL ADRR***

5.1.1 Where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the CVL ADRR.

5.1.2 Where a deadline for bringing an appeal is expressly stated in this Part D, an appeal in respect of such a decision must be made by the stated deadline. Otherwise, an appeal brought pursuant to this Part D must be made:

- (a) within five Working Days of receipt of the decision to which objection is made; or
- (b) where the period referred to in D5.1.2(a) includes Christmas Day, within 10 Working Days of that decision.

5.1.3 Where an appeal is made against a New Working Timetable as envisaged by Condition D2.7.2 the appeal shall be determined by the Timetabling Panel within 10 Working Days of final submission to it of all relevant information.

#### 5.2 ***Appeal to ORR***

5.2.1 Where either the CVL IM or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to ORR for determination under the CVL ADRR, provided that any such referral must be made:

- (a) within five Working Days of receipt of the Timetabling Panel's written reasoned determination to which objection is made; or
- (b) where the period referred to in D5.2.1(a) above includes Christmas Day, within 10 Working Days of receipt of such receipt.

### 5.3 ***Powers of dispute resolution bodies***

5.3.1 In determining any appeal pursuant to this Part D, any Timetabling Panel or ORR (as the case may be) may exercise one or more of the following powers:

- (a) it may give general directions to the CVL IM specifying the result to be achieved but not the means by which it shall be achieved;
- (b) it may direct that a challenged decision of the CVL IM shall stand;
- (c) it may substitute an alternative decision in place of a challenged decision of the CVL IM,

provided that the power described in D5.3.1(c) above shall only be exercised in exceptional circumstances.

5.3.2 Where general directions have been given in accordance with Condition D5.3.1, the relevant appeal body may, on the application of the CVL IM brought in accordance with Condition D5.3.3, make such further orders as it shall consider appropriate in order to provide the parties with guidance as to the interpretation and application of such general directions.

5.3.3 Any application made by the CVL IM pursuant to Condition D5.3.2 must be made within:

- (a) five Working Days of the relevant decision; or
- (b) where the said period of five Working Days would include Christmas Day, 10 Working Days.

### 5.4 ***Status of Decisions***

5.4.1 Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of the CVL IM shall remain binding until such time as the Timetabling Panel determines otherwise.

5.4.2 Save where expressly stated otherwise in this Part D, where an appeal to ORR pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as ORR determines or orders otherwise.

**5.5 *Binding effect of appeal rulings***

- 5.5.1 Where an appeal is brought pursuant to this Part D, the parties to the appeal shall be bound by:
- (a) the ruling of the Timetabling Panel, unless or until ordered or determined otherwise by ORR;
  - (b) the ruling of ORR.

**5.6 *Implementing an appeal ruling***

The CVL IM shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or ORR pursuant to this Condition D5. All such steps shall be taken promptly.

**5.7 *Liability of the CVL IM***

Where a decision of the CVL IM is overturned on appeal, the CVL IM shall only be liable to any Timetable Participant in damages in respect of that decision where it was made in bad faith or was unreasonable.

**Condition D6 - POSSESSIONS STRATEGY NOTICES**

**6.1 *Possessions Strategy Proposal***

- 6.1.1 Where the CVL IM proposes implementing any Works which require a programme of CVL Restrictions of Use extending over:
- (a) a period of more than one calendar year; or
  - (b) a period which contains two or more Timetable Change Dates;

it may at its discretion elect to implement the procedure set out in this Condition D6. Where it so elects, the procedure must be implemented by the CVL IM issuing a Possession Strategy Proposal not later than D-90 and shall be concluded by the CVL IM issuing a Possession Strategy Notice not later than D-64. References in this Condition D6 to "D-X" refer to X number of weeks before the Timetable Change Date on which the Working Timetable containing the first proposed CVL Restriction of Use will come into effect. The parties entitled to participate in that procedure shall be all Timetable Participants who may be affected by the proposed CVL Restrictions

of Use (who shall be referred to as "**Possessions Strategy Participants**").

- 6.1.2 Where the CVL IM elects to implement the procedure set out in this Condition D6, it shall do so by serving written notice on all Possessions Strategy Participants, a "**Possessions Strategy Proposal**", not later than D-90, which shall:

- (a) provide sufficient particulars of:
  - (i) the proposed Works; and
  - (ii) the proposed strategy for CVL Restrictions of Use pertaining to the Works;as will enable each recipient to understand the likely effect of the proposed Works on its Services;
- (b) provide an explanation of the CVL IM's reasons for the proposed CVL Restrictions of Use strategy.

#### 6.2 **Consultation**

Following service of a Possessions Strategy Proposal, the CVL IM shall consult with all parties on whom it has been served. Each recipient shall be afforded a reasonable period (to be specified by the CVL IM, having regard to the likely effect of the Possessions Strategy Proposal on each recipient's Services) in which to make submissions and counter-proposals to the CVL IM in respect of the proposed strategy for CVL Restrictions of Use pertaining to the Works.

#### 6.3 **Finalisation of Possessions Strategy – Possessions Strategy Notice**

- 6.3.1 Following the consultation process described in Condition D6.2, the CVL IM shall make its final decision concerning the strategy for CVL Restrictions of Use that will be adopted in order to effect the Works, and will notify its decision to all Possessions Strategy Participants not later than D-64, by means of a formal notice detailing the strategy (to be referred to as a "**Possessions Strategy Notice**").
- 6.3.2 Where, in finalising a Possessions Strategy Notice, the CVL IM has rejected counter-proposals put to it by a Possessions Strategy Participant, it shall give to that party written reasons for that rejection when it serves its Possession Strategy Notice.

#### 6.4 **Appeal**

Where any Possessions Strategy Participant is dissatisfied with any aspect of any Possessions Strategy Notice, it may appeal in accordance with Condition

D5. Any such appeal must be made within 20 Working Days of the Possessions Strategy Notice being served on it.

#### 6.5 ***Relationship with the Rules***

- 6.5.1 The fact that the process under this Condition D6 has been followed and a Possession Strategy Notice issued does not in any way affect the applicability of the process set out in Condition D2.2 which, in those circumstances, still must be followed. However, where any part of the Rules conform with a Possession Strategy Notice then a decision of the CVL IM regarding that part of the Rules cannot be appealed in the circumstances set out in Condition D2.2.9.
- 6.5.2 In the event of any inconsistency between any Possessions Strategy Notice and the Rules, once they have been finalised in accordance with the process set out in Condition D2.2, the Rules shall prevail.

#### 6.6 ***Relationship with Part G***

This Condition D6 is without prejudice to Part G of the CVL Network Code.

#### 6.7 ***Amendment of Possessions Strategy Notice***

- 6.7.1 The CVL IM shall include within the Timetable Planning Rules a procedure to enable amendment or withdrawal of a Possessions Strategy Notice. That procedure shall provide that:
  - (a) no such change shall be made unless the CVL IM has consulted, to the extent reasonably practicable, with any Possessions Strategy Participant likely to be affected by that change;
  - (b) that all decisions of the CVL IM made pursuant to that procedure shall be made by application of the Decision Criteria in accordance with Condition D4.6.
- 6.7.2 All amendments to a Possessions Strategy Notice made pursuant to the procedure referred to in Condition D6.7.1 shall be subject to the appeal procedures in Condition D5.

### **Condition D7 - MANAGING CHANGE**

#### 7.1 ***Calendar of Events***

- 7.1.1 The CVL IM shall provide Network Rail with relevant details of any **CVL IM Events** that the CVL IM wishes to be included in Network Rail's Draft Calendar of Events. The CVL IM shall use its reasonable endeavours to procure that Network Rail incorporates such CVL IM

Events into the Draft Calendar of Events published by Network Rail pursuant to the Network Rail Network Code.

- 7.1.2 Timetable Participants and funders may make representations to the CVL IM in respect of any changes they propose to CVL IM Events within the Draft Calendar of Events no later than 3 weeks after the date on which Network Rail issued the Draft Calendar of Events.
- 7.1.3 No later than 2 weeks after the deadline specified in Condition D7.1.2, the CVL IM shall consider the representations made to it by Timetable Participants, other infrastructure managers and funders pursuant to Condition D7.1.2 and shall pass on such representations to Network Rail (copying in relevant Timetable Participants and funders) (which may result in Network Rail amending the Draft Calendar of Events).
- 7.1.4 Where Network Rail has not accepted any changes proposed under Condition D7.1.3, the CVL IM shall use its reasonable endeavours to procure that Network Rail explains to the relevant Timetable Participant or funder why this is the case.

## 7.2 ***Event Steering Group***

- 7.2.1 The CVL IM shall use its reasonable endeavours to procure that each CVL IM Event is included on the agenda of an appropriate Event Steering Group held by Network Rail under the Network Rail Network Code.
- 7.2.2 Where an Event Steering Group is considering any matter relating to or having an impact on a CVL IM Event or any Event having an impact on the CVL, the CVL IM shall use its reasonable endeavours to procure that it is represented on that Event Steering Group.
- 7.2.3 The CVL IM shall use its reasonable endeavours to procure that the objectives of an Event Steering Group in respect of CVL IM Events shall be to:
  - (a) agree a project plan to achieve a smooth transition for the necessary timetable changes, arising from the CVL IM Event, through Condition D2 by way of timely industry input into the process (the "**Project**");
  - (b) oversee and facilitate delivery of the Project;
  - (c) carry out appropriate consultation with Transport Focus, Rail Freight Group and Freight Transport Association, during the course of the Project.

## 7.3 ***Not used***

#### **7.4 Legal Requirements**

- 7.4.1 Where compliance by the CVL IM with this Part D would be inconsistent with any Legal Requirement (including the Act or the Access Regulations) the CVL IM shall:
- (a) comply with such Legal Requirement and shall be relieved from its failure to comply with this Part D but only to the extent that it could not act in a manner compliant with this Part D in complying with such Legal Requirement; and
  - (b) as soon as reasonably practicable develop and submit a CVL Proposal for Change in accordance with Part C of the CVL Network Code, which would modify this Part D so that it is compliant with all Legal Requirements.

### **Condition D8 - MISCELLANEOUS**

#### **8.1 Directions issued by ORR**

Notwithstanding anything else stated in this Part D, the CVL IM shall be bound and entitled to make or give effect to such amendments or changes to a Working Timetable as may be directed from time to time by ORR in the exercise of its statutory powers, except in relation to any amendment or change which would be impossible to make without infringing the Firm Rights of another.

#### **8.2 Confidentiality**

The CVL IM shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant.

#### **8.3 Not used.**

#### **8.4 Removal of Train Slots, other than Strategic Train Slots and International Freight Train Slots, from Working Timetable where no Access Rights exist**

- 8.4.1 Any movements of trains operated by any person must be made pursuant to permission to use the track for the purpose of or in connection with the operation of those trains under an Access Agreement ("**Access Rights**"). If, by 2200 hours on the day before a Timetable Change Date and after consultation with the person proposing to move the trains, the CVL IM reasonably considers that the person proposing to move the trains will not have the necessary Access Rights by the intended date of operation of the Train Slots, then it may remove the Train Slot(s) for the movement of those trains from the Working Timetable due to commence the following day.

- 8.4.2 Condition D8.4.1 shall not apply to Strategic Train Slots nor to International Freight Train Slots.
- 8.5 ***Removal of Train Slots obtained by a freight Train Operator that are not being used underpinned by access rights in the Rights Table in Schedule 5 of the freight Train Operator's Access Agreement***
- 8.5.1 Where:
- (a) a ~~freight~~ Train Operator has obtained Train Slots in the Working Timetable; and
  - (b) the Train Slots are not underpinned by ~~a QuantuQuantum, a Access Rights in the Rights Table in Schedule 5 of the freight Train Operator's Access Agreement~~; and
  - (c) the CVL IM acting reasonably, considers that the Train Slots are not being used;
- then the CVL IM shall notify the ~~freight~~ Train Operator of its intention to remove the Train Slots from the Working Timetable.
- 8.5.2 Upon receipt of a notice under Condition D8.5.1, the ~~freight~~ Train Operator shall respond to the CVL IM in writing within 10 Working Days stating that it either accepts or disagrees with the CVL IM's decision.
- 8.5.3 If the ~~freight~~ Train Operator disagrees with the CVL IM's decision under Condition D8.5.1, then in addition to its response under Condition D8.5.2, it shall also at the same time refer the matter for determination in accordance with the CVL ADRR.
- 8.5.4 If the ~~freight~~ Train Operator fails to respond to the CVL IM in writing within 10 Working Days of receiving a notice under Condition D8.5.1, it will be deemed to have accept the CVL IM's decision.
- 8.5.5 Where a Timetable Participant reasonably believes that sub Conditions D8.5.1(a) and (b) apply, then it may report this to the CVL IM who shall consider whether to remove the Train Slots from the Working Timetable in accordance with Condition D8.5.1.
- 8.5.6 Within 10 Working Days of making its decision following the process set out in Condition D8.5.5, the CVL IM shall advise the Timetable Participant who made the relevant report of the outcome.
- 8.5.7 Conditions D8.5.1 and D8.5.5 shall not apply to International Freight Train Slots.

## 8.6 **Consultation**

Where in this Part D, any party is under an obligation to consult with another, the party obliged to initiate the consultation shall provide the consultee with:

- 8.6.1 sufficient information for the consultee to be able to comment on the subject matter of the consultation; and
- 8.6.2 a reasonable time in which to respond to the information provided.

#### **Condition D9 – INTERNATIONAL FREIGHT CAPACITY NOTICE**

##### **9.1 Overview**

- 9.1.1 Not later than D-70 in relation to the Principal Change Date, the CVL IM shall publish an initial International Freight Capacity Notice ("Initial International Freight Capacity Notice") setting out the International Freight Train Slots to be in the timetable for two Timetable Periods from the next Principal Change Date.
- 9.1.2 During the period from D-70 to D-65, the CVL IM shall consult with Timetable Participants in respect of the International Freight Train Slots included in the Initial International Freight Capacity Notice and Timetable Participants may make representations to the CVL IM in respect of any changes they propose or objections they may have in relation to those International Freight Train Slots.
- 9.1.3 The CVL IM shall consider representations made to it by Timetable Participants pursuant to D9.2. The CVL IM may revise the International Freight Train Slots included in the Initial International Freight Capacity Notice and not later than D-60 shall provide to all Timetable Participants an updated International Freight Capacity Notice.
- 9.1.4 Any Timetable Participant dissatisfied with the International Freight Train Slots included in the updated International Freight Capacity Notice provided under Condition D9.3 is entitled to appeal, provided that an appeal is lodged within five Working Days of receipt of that updated International Freight Train Capacity Notice. Any such appeal shall be conducted in accordance with Condition D5.

## Annex 1 - Timeline for the timetable development process

Milestone	What happens
D-73	The CVL IM issues the timetable process dates for both the Principal Change Date and the Subsidiary Change Date 73 weeks before the Principal Change Date
D-70	The CVL IM issues draft International Freight Capacity Notice (in relation to Principal Change Date only)
D-70 to D-65	The CVL IM consults Timetable Participants on its proposed International Freight Train Slots
<b>Revision of the Timetable Planning Rules and CVL Engineering Access Statement (collectively known as the Rules)</b>	
D-90	If the CVL IM wants to rely on a Possessions Strategy Notice it must issue a Possessions Strategy Proposal to all Possessions Strategy Participants for consultation
D-64	The CVL IM issues its decision in a Possessions Strategy Notice which Possessions Strategy Participants may appeal within 20 Working Days of receipt
D-64 to D-60	The CVL IM consults Timetable Participants on its proposed changes to the Rules and its anticipated Restrictions of Use
D-60	The CVL IM considers representations made by Timetable Participants and provides a final version of the International Freight Capacity Notice. Timetable Participants may appeal the determinations in the final International Freight Capacity Notice within 5 Working Days of receipt
D-59	The CVL IM issues the draft Rules for consultation
D-59 to D-54	Timetable Participants may make representations or objections to the draft Rules
D-54 to D-44	The CVL IM considers all representations or objections and prepares revised Rules
D-44	The CVL IM issues revised Rules which Timetable Participants may appeal within 15 Working Days of receipt
D-44 to D-26	After consultation with any affected Timetable Participants the CVL IM may make minor revisions to the Rules in order to optimise the New Working Timetable. Timetable Participants may appeal these revisions within five Working Days of receipt
<b>Timetable consultation, preparation and publication</b>	
D-66	The CVL IM provides Network Rail with relevant details of CVL IM Events that the CVL IM wishes to be included in Network Rail's Draft Calendar of Events
Up to D-64	Timetable Participants and funders inform the CVL IM of any events they think should be included in Network Rail's Draft Calendar of Events

D-64	Network Rail issues Draft Calendar of Events
D-64-59	Timetable Participants and funders make any representations or objections to the Draft Calendar of Events
D-55	Timetable Participants planning significant new services or significant amendments to their services must notify the CVL IM as soon as possible and before D-55 if possible.
D-54	Network Rail issues Calendar of Events
D-55 to D-40	Initial Consultation Period. Timetable Participants discuss their proposals with the CVL IM which carries out a consultation and facilitation process with other Timetable Participants
By D-48	The CVL IM uses its reasonable endeavours to ensure that provisional paths connecting into and from the NR Network have been established in cooperation with Network Rail (taking into account paths which may be available on the NR Network) and included on a provisional basis in the New Working Timetable.
D-48	The CVL IM consults International Operators and includes provisional paths in the New Working Timetable
D-45	<p>The CVL IM issues the Prior Working Timetable which will be the starting point for the New Working Timetable</p> <p>No later than D-45, the CVL IM shall publish the Strategic Capacity Statement which is relevant to the preparation of the New Working Timetable</p>
D-40	Priority Date
D-40 to D-26	<p>Timetable Preparation Period</p> <p>Throughout this period a draft of the emerging New Working Timetable is available online.</p> <p>Timetable Participants may submit Access Proposals at any time and the CVL IM will, as far as reasonably practical, incorporate these in the New Working Timetable</p>
D-26	The CVL IM publishes the New Working Timetable (subject to the result of any appeals which must be made with 20 Working Days of its publication)

## Annex 2 - Timeline for Timetable Variations under Condition D3

### Train Operator Variations

Milestone	What happens
n/a	A Timetable Participant can request variations to its Train Slots at any time between D-26 and the end of the relevant Timetable Period
n/a	If the request is to vary a Train Slot which is due to operate within seven days, the CVL IM must respond within the timescales set out in Condition D3.3.6 which increase incrementally with the number of days' notice given by the Timetable Participant. If the request is to vary a Train Slot with more than seven days' notice, the CVL IM must respond to the request within five Working Days
n/a	If the CVL IM fails to notify its response within the specified time and the requested variation, if accepted, would not conflict with the Rules or any Train Slots already scheduled in the timetable, the CVL IM will be deemed to have accepted the request
n/a	If the CVL IM rejects or modifies a Train Operator Variation Request it must give its reasons
n/a	A Timetable Participant may appeal the CVL IM's decision as soon as reasonably practicable but not later than five Working Days after being notified of the decision

### CVL IM Variations with at least 12 weeks' notice

Milestone	What happens
TW-30	The CVL IM provides to Timetable Participants its proposals for Restrictions of Use in respect of the Corresponding Week
TW-30 to TW-26	The CVL IM consults with each Timetable Participant likely to be affected and seeks to agree all the CVL IM Variations. During this time the CVL IM may amend or supplement its proposals as long as they are provided to Timetable Participants by TW-26
TW-22	The CVL IM may require a Timetable Participant to submit a revised Access Proposal in respect of any Train Slot within a reasonable timeframe and by no later than TW-18
TW-18	The latest date by which a Timetable Participant can be required to submit a revised Access Proposal. If a Timetable Participant does not submit one in the required timeframe, the CVL IM may vary the Train Slot and the Timetable Participant may not appeal
TW-14	The CVL IM notifies Timetable Participants of its decision
TW-13	Timetable Participant to notify the CVL IM whether it accepts or disputes the decision
TW-12	The CVL IM records the Timetable Variation in the Short Term Plan

**CVL IM Variations with less than 12 weeks' notice**

Milestone	What happens
n/a	In such cases the CVL IM must follow the procedure in Condition D3.4 but with timescales for each step as are reasonable in the circumstances
n/a	Timetable Participant may appeal in accordance with Condition D5

**Timetable Variations by Consent**

Milestone	What happens
n/a	With the written consent of the CVL IM and all affected Timetable Participants a timetable variation may be made without having to comply with Condition D3