

Part C - Modifications to the CCOS Network Code

Explanatory Note

- A. *Part C provides for a process by which the CCOS Network Code, other operational arrangements (such as the CCOS Emergency Access Code, the CCOS Performance Data Accuracy Code and the CCOS Railway Systems Code) and certain other arrangements such as the CCOS ADRR may be changed. The process set out in Part C is, in certain circumstances, also used in relation to changes to aspects of Access Agreements into which this CCOS Network Code is incorporated.*
- B. *A CCOS Proposal for Change may be initiated by the ORR, an Access Beneficiary or RfL(I) and is subject to a consultation process.*
- C. *As RfL(I) uses the Delay Attribution Principles and Rules for the CCOS, the process set out in this Part C of the CCOS Network Code will not apply in relation to modifications to the Delay Attribution Principles and Rules. Instead, RfL(I) will ensure that where a proposed change to the Delay Attribution Principles and Rules is proposed by Network Rail or a user of the NR Network which may impact on users of the CCOS, RfL(I) will use reasonable endeavours to procure that representations of Access Beneficiaries and RfL(I) are fed into the change process set out in part C of the Network Rail Network Code. However, where an Access Beneficiary who also uses the NR Network proposes a change to the Delay Attribution Principles and Rules under the Network Rail Network Code, that Access Beneficiary shall be responsible for feeding the representations of RfL(I) and other Access Beneficiaries into the process set out in part C of the Network Rail Network Code.*
- D. *Where modifications to this CCOS Network Code are reasonably required as a result of modifications made to the Network Rail Network Code, RfL(I) shall be entitled to make such modifications which are reasonably necessary without complying with the requirements of this Part C.*
- D.E. *The CCOS ADRR may be changed in accordance with the same procedures.*
- E.F. *This Explanatory Note does not form part of the CCOS Network Code.*

DEFINITIONS

In this Part C, except where the context otherwise requires:

- "CCOS Proposal for Change"** means any proposal to change any of the Relevant CCOS Arrangements, together with any modification of that proposal as referred to in Condition C1.3;
- "Consultation Period"** means the period for consultation described in Condition C1.2(b);
- "Relevant CCOS Arrangements"** means the CCOS Network Code (including this Part C and the CCOS ADRR); the CCOS Emergency Access Code; the CCOS Performance Data Accuracy Code; the CCOS Railway Systems Code or any other arrangement which contemplates being varied in accordance with this Part C of the CCOS Network Code; and
- "Sponsor"** means the person who proposes a CCOS Proposal for Change.

CONDITION C1 - RECEIPT AND NOTIFICATION OF CCOS PROPOSALS FOR CHANGE SPONSORED BY RfL(I) OR AN ACCESS BENEFICIARY

1.1 *Entitlement to make CCOS Proposal for Change*

RfL(I) and each Access Beneficiary shall be entitled to make a CCOS Proposal for Change for consideration. Any such CCOS Proposal for Change shall be sent by the sponsor to all other persons entitled to make a Proposal for Change and the ORR and shall:

- (a) be in writing;
- (b) specify the wording of the proposed change;
- (c) specify the date or series of dates on which it is proposed that the change come into effect, if other than the period of 14 days after any approval notified by the ORR pursuant to Condition C2; and
- (d) be supported by an explanation in reasonable detail of the reasons for the proposed change.

In relation to the CCOS Network Code, a CCOS Proposal for Change may be made in respect of:

- (a) an established part of this CCOS Network Code; and/or
- (b) a part for which amendments have been approved or directed by the ORR under Condition C2 or Condition C3 but which have not taken

effect and, in relation to a change being made under Condition C3, no appeal has been received within the timeframe for appeals under Condition C3. In such a case the CCOS Proposal for Change should take account of any such approved or directed amendment. If such a CCOS Proposal for Change would affect any such approved or directed amendment, it can only take effect in relation to that part after the amendment on which it is based takes effect.

1.2 ***Notice of CCOS Proposal for Change***

RfL(I) shall, within 7 days following circulation or receipt of a CCOS Proposal for Change or, if RfL(I) is not the sponsor of that CCOS Proposal for Change, within 7 days following receipt of any clarification that RfL(I) may reasonably request from the sponsor of that CCOS Proposal for Change:

- (a) give notice to each Access Beneficiary and to the ORR of its provisional timescale for consulting on and considering that CCOS Proposal for Change; and
- (b) invite the submission to RfL(I) of written representations in respect of that CCOS Proposal for Change within such period as is reasonable in all the circumstances, being a period of not less than 30 days from the date of notification under Condition C1.2(a) above.

1.3 ***Modification of CCOS Proposal for Change***

1.3.1 A modification to any CCOS Proposal for Change may be proposed by RfL(I), the ORR or an Access Beneficiary at any time during the Consultation Period and shall be copied to all other persons entitled to make such a modification to a CCOS Proposal for Change.

1.3.2 RfL(I) and the sponsor of the CCOS Proposal for Change (where the sponsor is not RfL(I)) shall consider any modifications which are proposed to a CCOS Proposal for Change and:

- (a) where the proposed modification is a material modification, then RfL(I) shall treat the proposal as a new CCOS Proposal for Change; and
- (b) where the proposed modification is not a material notification, then RfL(I) shall consider the CCOS Proposal for Change, as modified, but shall not treat the proposal as a new CCOS Proposal for Change,

provided that where RfL(I) and the sponsor of the CCOS Proposal for Change (where the sponsor is not RfL(I)) cannot agree promptly whether or not a proposed modification is material then, for the purposes of this Condition C1.3, the modification will be treated as though it is a material modification.

1.4 **Clarification**

The sponsor of a CCOS Proposal for Change shall promptly comply with all reasonable written requests of RfL(I), the ORR or an Access Beneficiary for further clarification of the CCOS Proposal for Change.

1.5 **Meeting to discuss a CCOS Proposal for Change**

1.5.1 Within 7 days following the end of the Consultation Period, RfL(I) shall ~~give notice~~write to each Access Beneficiary and the ORR either:

(a) (where RfL(I) receives one or more written representation(s) in respect of such CCOS Proposal for Change, any of which RfL(I) considers to be material) calling a meeting to discuss the CCOS Proposal for Change, in which case Condition C1.5.2 and shall apply; or

(b) (where RfL(I) either:

(i) does not receive any written representations it has received in respect of such CCOS Proposal for Change; or

(ii) receives one or more written representation(s) in respect of such CCOS Proposal for Change, none of which RfL(I) considers to be material),

stating that RfL(I) believes no meeting to discuss the CCOS Proposal for Change is required and seeking agreement from each Access Beneficiary and the ORR that such a meeting is not required, in which case Condition C1.5.3 CCOS Proposal for Change. shall apply.

~~1.5.1~~1.5.2 RfL(I) shall inform each Access Beneficiary and the ORR of the date, venue and time of such meeting (having first made reasonable efforts to consult with each Access Beneficiary and the ORR as to such date, venue and time), such meeting to be held no later than 21 days following the end of the Consultation Period.

1.5.3 If, within 7 days of RfL(I) writing to each Access Beneficiary and the ORR pursuant to Condition C1.5.1(b):

(a) each Access Beneficiary and the ORR agrees in writing that no meeting is required in respect of such CCOS Proposal for Change, RfL(I) shall not be required to hold such a meeting; or

(b) any Access Beneficiary or the ORR requests in writing that a meeting is held to discuss such CCOS Proposal for Change, RfL(I) shall call such a meeting. In such circumstances, Condition C1.5.2 shall apply, save that the 21 days referred to in that Condition shall instead commence from the date on which RfL(I) writes to each Access Beneficiary and the ORR pursuant to Condition C1.5.1,

and if an Access Beneficiary or the ORR (as the case may be) does not respond in writing to RfL(I) within the time period specified in Condition C1.5.3, agreement in writing that no meeting is required shall be deemed to have been given.

1.6 ***Further consultation***

If a request is made at any meeting convened pursuant to Condition C1.5 to carry out further consultation in respect of any CCOS Proposal for Change, RfL(I) shall consider whether further consultation is required in order to provide each Access Beneficiary with sufficient time to make all relevant representations, and if RfL(I) determines that further consultation is required, it shall carry out that further consultation as soon as reasonably practicable.

CONDITION C2 - CONSIDERATION OF CCOS PROPOSAL FOR CHANGE SPONSORED BY RFL(I) OR AN ACCESS BENEFICIARY

2.1 ***Submission of CCOS Proposal for Change to ORR***

Following the conclusion of the Consultation Period and, where applicable, following the conclusion of any meeting called by RfL(I) pursuant to Condition C1.5 and any further consultation conducted pursuant to Condition C1.6, RfL(I) shall submit the CCOS Proposal for Change to the ORR, together with a written memorandum:

- (a) explaining the reason for the CCOS Proposal for Change;
- (b) containing details of the results of the consultation process including, where relevant, any further consultation process (in each case including copies of any representations made during such consultation process);
- (c) confirming whether or not RfL(I) supports the CCOS Proposal for Change (including its reasons);
- (d) confirming whether or not each Access Beneficiary supports the CCOS Proposal for Change (including their reasons (to the extent that they are known to RfL(I), having made reasonable enquiry)); and
- (e) stating the date or series of dates upon which it is considered that the CCOS Proposal for Change should take effect should the ORR approve the CCOS Proposal for Change pursuant to Condition C2.3, such date being no earlier than 14 days after the date on which the ORR gives notice of any such approval.

2.2 ***Request for further information from the sponsor of a CCOS Proposal for Change***

The sponsor of the CCOS Proposal for Change, including where such sponsor is RfL(I), shall use its reasonable endeavours to provide any further

information required in relation to the consideration of a CCOS Proposal for Change by the ORR.

2.3 ***Notification of approval or rejection of a CCOS Proposal for Change***

2.3.1 The ORR may notify RfL(I) as soon as reasonably practicable of its approval or rejection of a CCOS Proposal for Change sponsored by an RfL(I) or an Access Beneficiary submitted to it pursuant to Condition C2.1 and, where relevant, any further information submitted to it pursuant to Condition C2.2, provided that the ORR may make any minor clarificatory modifications before approving any such CCOS Proposal for Change.

2.3.2 No CCOS Proposal for Change sponsored by RfL(I) or an Access Beneficiary shall have effect unless the ORR gives notice to RfL(I) in writing that it approves the proposal pursuant to Condition C2.3.1 and only if the following conditions have been satisfied (and the ORR has given its reasons in the notice as to why it considers such conditions have been satisfied):

- (a) the CCOS Proposal for Change in question promotes or achieves the objectives specified in section 4 of the Act; and
- (b) the interests of any relevant person or persons would not be unfairly prejudiced if the CCOS Proposal for Change were made, unless such unfair prejudice is outweighed by or is likely to be outweighed by any prejudice which will or is likely to be sustained by any other relevant person or persons if the CCOS Proposal for Change is not made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance,

provided that, in all cases, the CCOS Proposal for Change in question shall not unduly harm the financial position of RfL(I).

2.4 ***Notification to parties***

Where the ORR gives notice to RfL(I) pursuant to C2.3.2, RfL(I) shall ensure that all Access Beneficiaries shall be notified of the change and its effective date.

2.5 ***Effective date of change***

Any notice given under C2.4 shall specify the effective date(s) of the proposed change which, unless otherwise determined, shall be 14 days from the date of notification made pursuant to Condition C2.4.

CONDITION C3 - MODIFICATION BY THE ORR

3.1 The CCOS Operational Arrangements shall have effect with the modifications specified in any notice given by the ORR for the purposes of this Condition C3, provided that the ORR shall be satisfied as to the need for the modification as provided in Condition C3.2, the procedural requirements of Condition C3.3

shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C3.4.

3.2 A notice given by the ORR under Condition C3.1 shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:

- (a) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
- (b) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance,

provided that, in all cases, the modification in question shall not unduly harm the financial position of RfL(I).

3.3 The procedural requirements which require to have been followed for the purposes of Condition C3.1 are:

- (a) the ORR shall have sent a copy of its proposal to RfL(I) and each Access Beneficiary which shall:
 - (i) be in writing;
 - (ii) specify the wording of the modification proposed;
 - (iii) specify the date or series of dates on which it is proposed that the modification come into effect; and
 - (iv) be supported by an explanation in reasonable detail of the reason for the proposed modification, which must include the reasons why it considers the conditions in C3.2 would be satisfied;
- (b) the ORR shall have invited the submission of written representations on the documentation provided pursuant to Condition 3.3(a) above from RfL(I) and each Access Beneficiary within such period as is reasonable in all circumstances;
- (c) the ORR shall have taken such representations into account (other than those which are frivolous or trivial) in making its decision on the modification to be made; and

- (d) the ORR shall have notified RfL(I) and each Access Beneficiary of its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions, which may be provided at the same time as the notice under Condition C3.1.

3.4 **Effect**

A notice under Condition C3.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice.

CONDITION C4 - NON-EFFECTIVE CCOS PROPOSALS FOR CHANGE

A notice under Part C of this CCOS Network Code shall not have effect in relation to any CCOS Proposal for Change which relates to Condition C2.3.2 or proposed modification which relates to Condition C3.

CONDITION C5 - PROVISION OF REVISED TEXTS

RfL(I) shall, as soon as reasonably practicable following issue of a notice under Condition C3.1 or following approval of a CCOS Proposal for Change by the ORR pursuant to Condition C2.3, supply to all Access Beneficiaries and the ORR a revised version of the amended documentation incorporating the change and shall Publish on a Website a revised copy of such documentation.

CONDITION C6 - MODIFICATION OF THE DELAY ATTRIBUTION PRINCIPLES AND RULES BY NETWORK RAIL, THE BOARD OR AN ACCESS BENEFICIARY

- 6.1 RfL(I) and each Access Beneficiary acknowledge that:
 - 6.1.1 this CCOS Network Code and each Access Agreement in relation to the CCOS incorporates and uses the Delay Attribution Principles and Rules;
 - 6.1.2 the Delay Attribution Principles and Rules is published by and is subject to the modification process set out in part B of the Network Rail Network Code;
 - 6.1.3 under part B of the Network Rail Network Code, the Delay Attribution Board (as defined in Part B of this CCOS Network Code) has the right to make non-material modifications to the Delay Attribution Principles and Rules from time to time in accordance with the procedure set out in that part; and
 - 6.1.4 if a modification is made to the Delay Attribution Principles and Rules, such modification will as a result also be made to the arrangements set out in this CCOS Network Code and each Access Agreement in relation to the CCOS.
- 6.2 If Network Rail or any other person (other than RfL(I) or an Access Beneficiary) proposes a modification to the Delay Attribution Principles and Rules and such modification will or is reasonable likely to have an impact on RfL(I) or any Access Beneficiary:
 - 6.2.1 RfL(I) shall use reasonable endeavours to procure that:

- (a) RfL(I) is informed of any proposed modification to the Delay Attribution Principles and Rules;
 - (b) RfL(I) is entitled to make representations to the Board Secretary (as defined in the Network Rail Network Code) on behalf of RfL(I) in connection with any such proposed modification; and
 - (c) the Board Secretary (as defined in the Network Rail Network Code) takes into account any representations made by RfL(I) in connection with any such proposed modification;
- 6.2.2 RfL(I) shall, within 7 days of being notified of such proposed modification, notify each Access Beneficiary of the proposed modification;
- 6.2.3 RfL(I) shall consult with each Access Beneficiary in relation to the proposed modification;
- 6.2.4 within 14 days of the notification pursuant to Condition C6.2.2, each Access Beneficiary shall provide representations (if any) it may have in relation to the proposed modification;
- 6.2.5 RfL(I) shall make equivalent representations to those provided pursuant to Condition C6.2.4 to the Delay Attribution Board on behalf of the Access Beneficiaries (together with any representations which it may have); and
- 6.2.6 RfL(I) and each Access Beneficiary shall be bound by the modifications made to the Delay Attribution Principles and Rules as a result of the process set out in part B of the Network Rail Network Code (which RfL(I) shall notify each Access Beneficiary the outcome of).
- 6.3 If: (1) an Access Beneficiary who is also an access beneficiary under the Network Rail Network Code; (2) proposes a modification to the Delay Attribution Principles and Rules under the Network Rail Network Code; and (3) such modification will or is reasonable likely to have an impact on RfL(I) or any other Access Beneficiary:
- 6.3.1 the Access Beneficiary proposing the modification to the Delay Attribution Principles and Rules shall promptly notify RfL(I) and all other Access Beneficiaries:
- (a) that it is proposing a modification to the Delay Attribution Principles and Rules, together with the wording of the proposed modification; and
 - (b) upon the commencement of the consultation period (as defined in condition B2.5 of the Network Rail Network Code);
- 6.3.2 the Access Beneficiary proposing the modification to the Delay Attribution Principles and Rules shall consult with RfL(I) and each other Access Beneficiary in relation to such proposed modification promptly following the notification pursuant to Condition C6.3.1(b);

- 6.3.3 within 14 days of the notification pursuant to Condition C6.3.1(b), RfL(I) and each other Access Beneficiary shall provide to the Access Beneficiary proposing the modification to the Delay Attribution Principles and Rules representations (if any) they may have in relation to the proposed modification;
- 6.3.4 the Access Beneficiary proposing the modification to the Delay Attribution Principles and Rules shall make equivalent representations to those provided pursuant to Condition C6.3.3 on behalf of RfL(I) and the other Access Beneficiaries in accordance with the process set out in part B of the Network Rail Network Code, and
- 6.3.5 RfL(I) and each Access Beneficiary shall be bound by the modifications made to the Delay Attribution Principles and Rules as a result of the process set out in part B of the Network Rail Network Code (which the Access Beneficiary proposing the modification to the Delay Attribution Principles and Rules shall notify RfL(I) and each other Access Beneficiary the outcome of).

CONDITION C7 - MODIFICATIONS IN THE FIRST TWO YEARS OF OPERATIONS

- 7.1 Subject to the remaining provisions of this Condition C7, on or before the date which falls one year after the Full Opening Date, RfL(I) shall be entitled to make such modifications to this CCOS Network Code as may be reasonably necessary and expedient without complying with the requirements of Condition C1 to Condition C6.
- 7.2 The entitlement set out in Condition C7.1 shall only apply if:
 - 7.2.1 any of the following has occurred (or RfL(I) believes that any of the following is reasonably likely to occur):
 - (a) any of the provisions of this CCOS Network Code, when operated in practice in accordance with their terms, do not operate as intended by RfL(I);
 - (b) RfL(I) experiences substantial difficulties in implementing the provisions of this CCOS Network Code in accordance with their terms; or
 - (c) there are any material issues relating to the interface between the operation of this CCOS Network Code and the operation of equivalent provisions set out in the Network Rail Network Code;
 - 7.2.2 the issue identified under Condition C7.2.1 was not reasonably foreseeable at the time of entering into the first Access Agreement in respect of the CCOS;
 - 7.2.3 RfL(I) has notified each Access Beneficiary of its proposal to modify this CCOS Network Code in accordance with the process set out in this Condition C7; and
 - 7.2.4 the ORR has approved the proposed modification.

- 7.3 In exercising its entitlement pursuant to Condition C7.1, RfL(I) shall only be permitted to make such modifications to this CCOS Network Code which are reasonably necessary and expedient to remedy the issue identified under Condition C7.2.1.
- 7.4 Any such modification made by RfL(I) pursuant to this Condition C7 shall come into effect 14 days after the date on which the ORR gives notice of its approval in accordance with Condition C7.2 to RfL(I), or such earlier date as the ORR may specify in such notice.
- 7.5
- (a) Subject to the remainder of this Condition C7.5, this Condition C7 shall cease to have effect on the date which falls a year and a day immediately following the Full Opening Date.
 - (b) Any proposed modifications which are in progress as at the date referred to in Condition C7.5(a) shall be permitted to conclude in accordance with this Condition C7.
 - (c) Any modifications which have been made to the CCOS Network Code in accordance with this Condition C7 prior to the date referred to in Condition C7.5(a) (or which fall within the scope of Condition C7.5(b)) shall continue in full force and effect notwithstanding this Condition C7 ceasing to have effect.

CONDITION C8 - MODIFICATIONS DUE TO AN AMENDMENT TO THE NETWORK RAIL NETWORK CODE

- 8.1 Subject to the remaining provisions of this Condition C8, RfL(I) shall be entitled to make modifications to this CCOS Network Code without complying with the requirements of Condition C1 to Condition C7.
- 8.2 The entitlement set out in Condition C8.1 shall only apply if:
- (a) such modification to this CCOS Network Code is reasonably necessary as a result of modification(s) that have been made to the Network Rail Network Code;
 - (b) RfL(I) has notified each Access Beneficiary and the ORR of its proposal to modify this CCOS Network Code and has provided a copy of the proposed modification(s) to such persons; and
 - (c) the ORR has approved the proposed modification(s) to this CCOS Network Code.
- 8.3 Any modification(s) made by RfL(I) to this CCOS Network Code pursuant to this Condition C8 shall come into effect 14 days after the date on which the

ORR gives notice of its approval to such modification(s) in accordance with Condition C8.2(c), or such earlier date as the ORR may specify in such notice.