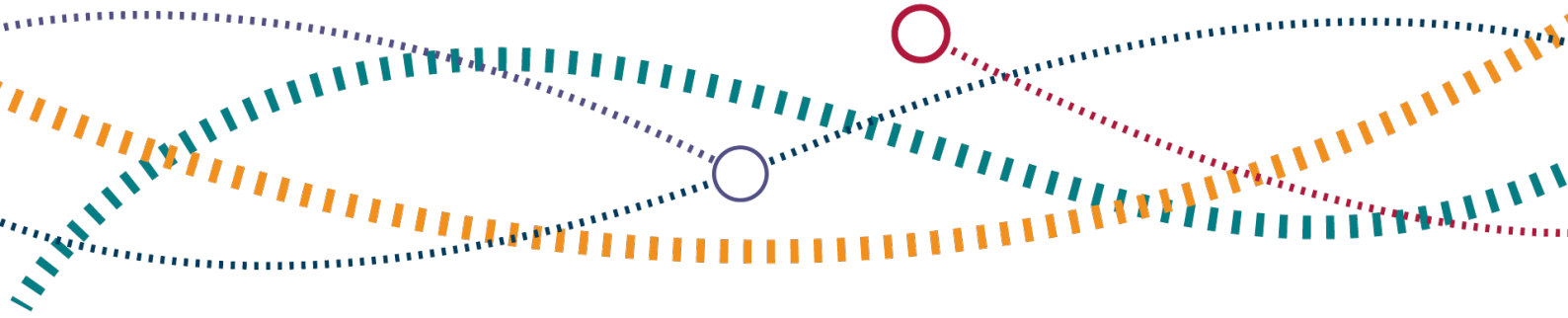
Developing ORR's process for GBR appeals

Discussion document

3 December 2025



Contents

1. Background

Purpose of this document

1.1 We have produced this document to:

(a) share our understanding of the proposal to establish ORR as an appeals body for Great British Railways' (GBR) decisions on capacity allocation, access and charging;

(b) provide industry with information about how ORR intends to approach developing a GBR appeals process; and

(c) provide an opportunity for industry to provide comments on our emerging thinking, which we will use to inform our draft appeals policy.

1.2 We acknowledge that we have started work on our appeals role ahead of the Railways Bill ('the Bill') being finalised, and it is possible that provisions in the Bill, which will enable the establishment of GBR, will be amended as it passes through Parliament. We are aware that some stakeholders have raised issues and concerns about the scope and strength of the ORR appeals role. We are aware of the potential for the appeals role to change as part of the parliamentary process, but we have nonetheless decided to start work now to maximise the time for industry engagement. We will continue our policy development as the Bill is passing through Parliament and will launch a formal consultation on our proposed appeals policy after the Bill receives Royal Assent. All references to Bill clauses in this document refer to the Bill as introduced on 5 November 2025 and our current understanding of the Bill.

Context

1.3 The UK Government laid the Railways Bill in Parliament on 5 November 2025. This follows the Department for Transport's (DfT) consultation, "A railway fit for Britain's future", and the UK Government's response to the consultation.

1.4 The UK Government has said it intends to create GBR as an integrated directing mind, charged with managing the GBR network in the public interest. Under the new framework, the UK Government has said that ORR will act as a "robust and independent appeals body" for access decisions made by GBR on the GBR managed network.

1.5 As drafted, the Bill does not include requirements on the process for appeals, although the Secretary of State may by regulations "make provision governing the practice and procedure to be followed in the case of appeals". The Secretary of State has not yet set out whether or under what circumstances they intend to use these proposed powers, and we are not currently aware of plans for the Secretary of State to issue such regulations in the short term. We therefore expect to set out the process for appeals in our own policy, as provided for under clause 68(8) of the Bill. We have produced this document and will continue to progress our policy work on the assumption that there will not be any secondary legislation before we need to operate our appeals role.

The proposed changes

GBR will make decisions on access and charging

1.6 GBR will be an "integrated directing mind that is responsible and accountable for making the best use of the rail network". GBR will make decisions on capacity allocation, timetabling and charges in line with its functions and statutory duties.

1.7 As well as creating a new legislative framework for GBR, the Bill will disapply sections 17 to 22C of the Railways Act 1993 to GBR. These sections provide for ORR's current role in approving and directing access, setting model contracts and determining access charges.

1.8 As a result, ORR will no longer approve or direct access contracts in advance for GBR, as we currently do for Network Rail. Instead GBR will determine access to its own network. GBR must do this in accordance with an access and use policy (AUP) that clause 59 of the Bill will require it to develop, consult upon and publish. The AUP will set out the processes that GBR will follow when making access decisions and the criteria it intends to use to make those decisions. This should include information about when operators will be invited to apply for access, how long they will have to apply, what the application process will look like and other matters. ORR will be a statutory consultee for the AUP.

1.9 We expect that GBR will also develop new model contracts and a new GBR network code to replace the current Network Rail network code. The UK Government's consultation response suggests that GBR will have ultimate decision-making responsibility around the content of the code (subject to appeal to ORR), replacing the current system where changes can only be made with broad industry consensus. We expect that this right of appeal would fall under the broad right established at clause 67 of the Bill.

1.10 Similarly, ORR will not determine the access charges or contractual incentive framework for third party operators using GBR's network as we have done for Network Rail. GBR will be required by clauses 64 and 65 of the Bill to produce a charging scheme and a performance scheme.

1.11 A new ORR appeals function will provide a route for anyone who is aggrieved to challenge GBR's decisions in relation to access to and use of its infrastructure (clauses 67 and 68).

1.12 The UK Government commissioned Network Rail to develop a discussion document on the content of the AUP. This discussion document includes proposals for processes for capacity allocation, charging and performance schemes.

A new statutory framework will be created for GBR appeals

1.13 It is proposed that ORR will act as an appeals body for decisions made by GBR in relation to access to and use of its infrastructure. This is set out in clauses 67 and 68 of the Bill. The full provisions are included below at paragraph 2.2.

1.14 It is currently proposed in the Bill that the ORR appeals process will be available to "a person aggrieved" by specific decisions, and specifically in the case of timetabling (clauses 61 and 62), to persons who applied for a train movement to be added to the working timetable. Appeals can be raised relating to any provisions in GBR's AUP, infrastructure capacity plan and charging and performance schemes. Appeals can also be raised relating to specific decisions about use of GBR infrastructure, the working timetable or relating to decisions made under the charging and performance schemes. The full list of decisions that can be appealed is shown below at paragraph 2.2.

1.15 In determining an appeal, the Bill states that ORR is to "apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session". We consider that this means a "person aggrieved" will need to demonstrate "sufficient interest" in a GBR decision to bring an appeal, and that we will need to consider whether this test has been met as part of the appeal.

1.16 There are two potential outcomes from an appeal:

(a) ORR may allow the appeal in whole or in part; or

(b) ORR may dismiss the appeal.

1.17 If ORR allows the appeal in whole or in part and the appeal relates to:

(a) A provision contained in the AUP, infrastructure capacity plan, charging scheme or performance scheme, then ORR may remit the provision back to GBR for reconsideration.

(b) A decision made about the working timetable or preparing the working timetable, or a decision made by GBR as to access to or the use of GBR infrastructure for the operation of trains or a decision made under a charging scheme or a performance scheme, then ORR may quash all or part of the decision appealed against. If ORR quashes all or part of the decision appealed against:

(i) it may remit all or part of the decision to GBR for reconsideration; or

(ii) it may substitute its own decision in place of GBR's decision but only in cases where the quashing is on the grounds that there has been an error of law and, without the error, there would have been only one decision which GBR could have reached.

1.18 If ORR remits a decision back to GBR for reconsideration in whole or in part, it may give directions as to that reconsideration.

Legislation will define the scope of the GBR appeals process

1.19 The Bill also amends The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (AMRs) to remove GBR from the definition of infrastructure manager. The removal of GBR from the definition of infrastructure manager within the AMRs removes GBR's infrastructure manager functions from the current appeals process established under Regulation 32.

1.20 GBR will continue to be a service facility provider under the AMRs. Service facilities are defined in Schedule 2 of the AMRs, and this includes facilities such as stations, depots, freight marshalling yards and storage sidings. GBR's service facility functions will remain regulated by the AMRs and within scope of Regulation 32 appeals rather than the new GBR appeals process.

1.21 Subject to any amendments to the AMRs (clause 72), the legislative regime for other UK infrastructure and facility managers will continue as now. ORR's arrangements for these infrastructure managers, including the current Regulation 32 appeals process and the Railways Act 1993 (where it continues to apply) will remain unchanged. However, because ORR's statutory duties will be revised (as

proposed by clause 18 of the Bill), there may be changes to how ORR needs to consider these decisions.

Purpose of appeals

1.22 An appeals process is a mechanism that allows individuals or organisations to challenge decisions that they believe are incorrect or unjust.

1.23 The UK Government's consultation response said: "The ORR's appeals function will provide a clear, credible, and accessible route for any directly affected railway undertaking or operator to challenge decisions that they believe are unfair or inconsistent with GBR's duties and AUP."

1.24 This is particularly important to third parties given GBR's position as a passenger train operator, as well as its role in making decisions on access to the network and the associated conditions, such as charges and incentives. This means that there will be times when GBR is making a decision about a third party that is in competition (e.g. for revenue or for space on the track) with its own passenger services.

1.25 Appeals processes are well established across other regulated sectors. We have considered the approach taken by other regulators and have sought to draw on established good practices.

1.26 ORR is already an experienced appeals body on access and charging matters. We have a process for Regulation 32 appeals under the AMRs for decisions taken by infrastructure managers on matters governed by the AMRs. The Regulation 32 process requires ORR to deal with appeals using our powers under the Railways Act 1993 (sections 17 and 22A) where these apply. Taken together, the matters covered by Regulation 32 and the Railways Act 1993 are similar to those covered by the new appeals process. We also hear appeals arising from Network Rail's network code (Part D on timetabling, Part J on access and Part M on procedural matters). We have also heard appeals arising from matters related to other network codes under Regulation 32. We will reflect on these established processes as we develop a new policy for hearing appeals on GBR's decisions.

1.27 We have been mindful that our GBR appeals policy will need to respond directly to the specific legislation set down in the Act, including any subsequent regulations that may be made by the Secretary of State. We have summarised our understanding of the current Bill drafting and its potential implications for the appeals policy in the chapter on legislative proposals. We have assumed that any

secondary legislation on our appeals role will not be made before our appeals role comes into effect.

ORR's proposed design principles for the GBR appeals process

1.28 In developing our role as the appeals body for access decisions made by GBR on its network, we have considered what design principles should underpin our approach to appeals, and how to ensure our approach to regulation is effective.

1.29 We have considered existing good practice in this area which includes following guidance set out in the National Audit Office's Principles of effective regulation, the Better Regulation Framework and the Regulators' Code. We have also considered the approach taken by the Access Disputes Committee to rail contractual disputes.

1.30 We have outlined our proposed design principles below, including a description of each principle in the context of its application to our appeals role. We are interested in feedback on our proposed design principles and whether there are any others we should be considering as we continue to develop our appeals process.

- **Evidence-based and independent:** we will base our decisions regarding any appeals on our independent assessment of the facts of the case and on the basis set out in legislation.
- **Proportionality:** we will design the appeals process to minimise burdens and costs for GBR and applicants.
- **Pace and efficiency:** we will resolve appeals in a timely manner while ensuring fairness and accuracy. We will monitor and report on our own performance as an appeals body to ensure we deliver operational efficiency and good value for money.
- **Transparency:** we plan to publish the full content of appeals, GBR's response to them, and our conduct of the process, except where there are clear reasons to redact confidential details. We consider it important to publish the reasoning for our decisions to provide clarity for applicants.
- **Consistency and predictability:** we will develop, consult upon, publish (and where necessary review) our policy on our appeals process and decision criteria. We will adhere to this policy to ensure consistency and predictability.

Questions on design principles

Do you have any comments on the proposed design principles?

Are there other design principles that we should consider when developing our appeals policy?

2. Developing our appeals policy

2.1 Appeals processes are well established within other regulated sectors, and the Bill provides some additional specificity to this framework. We have provided details in this section of the different aspects of the appeals process and sought to clarify which aspects of the policy are already established by the Bill or good practice, and those areas we intend to develop further.

Scope of the appeals process

2.2 The matters that the Bill says may be appealed to the ORR relate to GBR infrastructure and include:

(a) the provisions contained in a document issued under clause 59 (access and use policy), or in a revision or replacement of it;

(b) the provisions contained in a document issued under clause 60 (infrastructure capacity plan), or in a revision or replacement of it;

(c) the provisions contained in a scheme made under clause 64 (charging scheme), or in a revision or replacement of it;

(d) the provisions contained in a scheme made under clause 65 (performance scheme), or in a revision or replacement of it;

(e) a decision not to add an applied-for train movement to the working timetable (clause 61), or any conditions subject to which the movement is added to the working timetable;

(f) a decision made on the application for the inclusion of a train movement in the working timetable (clause 62);

(g) decisions made by GBR as to access to or the use of GBR infrastructure for the operation of trains (clause 67);

(h) decisions made by GBR under a scheme made under clause 64 (charging scheme); and

(i) decisions made by GBR under a scheme made under clause 65 (performance scheme).

Option to combine appeals

2.3 We have previously found it helpful to co-ordinate decisions when there have been multiple applications for limited capacity (for example on the West Coast Mainline and the East Coast Mainline). We are aware that the Access Disputes Committee also sometimes combine disputes. We therefore think it could be useful to include an option to combine our consideration if we receive multiple appeals of the same GBR decision.

2.4 ORR would need to consider the appropriateness of combining appeals as this has the potential to add complexity to our considerations. If additional time is required to process an appeal due to complexities, this would need to be communicated by ORR as soon as this has been established. Conversely, combining appeals may make it easier for GBR, applicants and interested parties to respond by creating a single process.

Questions on combining appeals

Do you think it is helpful for ORR to retain an option to combine appeals when we receive multiple appeals on the same subject?

Are there particular circumstances or types of appeal where you think combining appeals would be particularly useful, or conversely where it would be unhelpful?

Basis of an appeal

2.5 GBR must exercise its functions in accordance with its duties and, as a public body, in line with the principles of public decision making. The Bill describes GBR's general duties at clause 18 and explains at clause 18(4) that these duties are subject to GBR's capacity duty which is described at clause 63.

2.6 As drafted, the Bill references a requirement for the applicant to be "aggrieved" and that "ORR must apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session." This means that ORR would only find against GBR if it had acted in a way which breached the principles of public decision making. This includes how GBR has applied its duties. We would therefore expect applicants to appeal on the basis that GBR had breached these principles.

2.7 The principles applied by the High Court and public law evolve over time rather than being defined by statute. The UK Government's understanding of these is explained in *The judge over your shoulder* for England and Wales. We consider the following principles to be particularly relevant in understanding the potential basis for an appeal:

(a) Illegality: these are cases where GBR did not have the legal power to make the decision;

(b) procedural unfairness: these are cases where the process followed by GBR was improper. Examples could include a decision being subject to undue bias, failure to consider appropriate evidence, GBR not following the established process (we expect this to be established in the AUP) or a failure to adequately consult;

(c) irrationality: this is sometimes referred to as the "Wednesbury unreasonableness" test, concerning a decision so unreasonable that no reasonable authority could have reached it; and

(d) legitimate expectation: this is where a public body acts in a way, or says that it will act in a way, that means that people are entitled to rely on them acting that way. For example, if GBR were to not consult where it had previously consulted or had a policy to consult, this could be a breach of legitimate expectation.

2.8 The grounds for review in Scotland are explained in the Scottish Parliament briefing on judicial review. They are similar to the grounds in England and Wales, and include:

(a) illegality;

(b) procedural impropriety or unfairness;

(c) irrationality or unreasonableness;

(d) unjustified departure from legitimate expectations; and

(e) legislative competence under the Scotland Act 1998 (we do not think this will be relevant for decisions made by GBR).

Who can appeal

2.9 As drafted, the bill says that "a person aggrieved" by specified decisions may appeal to the ORR. The Bill also says that "ORR must apply the same principles as would be applied by the High Court on an application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session." We think that the reference to judicial review principles further defines "person aggrieved" because, where a person applies to the Court of Session or High Court for judicial review, they must have "sufficient interest" in the decision to bring a judicial review.

2.10 We will need to determine whether a person has "sufficient interest" as part of our appeals process. We plan to develop a policy on the definition of "a person aggrieved" to support this. This will take account of the precedents of judicial review processes in England and Wales and in Scotland. We think it is likely that the people or organisations that would have "sufficient interest" could be very similar to the definition of "applicant" in the AMRs, which in summary refers to those with a public or commercial interest in securing capacity:

- *"applicant" means a railway undertaking or an international grouping of railway undertakings or other persons or legal entities, such as competent authorities and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity; and shippers, freight forwarders and combined transport operators, with a public-service or commercial interest in procuring infrastructure capacity.*

- *"competent authority" means any public authority or group of public authorities which has a power or duty to secure the provision of public passenger transport services in a particular geographical area or any other body authorised to exercise such a power or duty (from The Public Service Obligations in Transport Regulations 2023).*

- *"railway undertaking" means any public or private undertaking licensed according to the Railway (Licensing of Railway Undertakings) Regulations 2005, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only.*

2.11 We think it likely that other infrastructure managers would also have "sufficient interest" to be able to appeal as they are directly affected by services crossing between GBR infrastructure and their own.

2.12 The Bill has a narrower definition of those who can make appeals on the preparation or amendment of the working timetable. In this case it is only those who have made the application for a train movement to be included in the working timetable who may appeal under clause 61 or clause 62.

2.13 We do not currently expect that individual passengers would be able to make appeals. The UK Government intends to create a new passenger watchdog to champion passengers' interests, and this may be a more appropriate avenue through which passengers can raise their concerns.

Questions on who can appeal

Do you agree with our initial consideration that persons with a commercial or public interest in securing capacity and other infrastructure managers are likely to have "sufficient interest" to appeal?

Do you agree that our policy should reflect the expectation that passengers and passenger groups will use the processes established by the passenger watchdog and not the appeals process?

How long should parties be given to submit an appeal against a GBR decision?

2.14 In the interests of supporting clarity within industry decision making (for both GBR and third parties), we intend to establish deadlines by which parties should make appeals. We think that establishing deadlines would also help GBR's decision making, as this will make it apparent when a decision was "established," because either the appeal window had passed, or because any appeal received would have been concluded and any ORR directions delivered.

2.15 We have identified factors which we think should inform the length of an appeal window:

(a) time required for an applicant to identity a basis for appeal against a GBR decision;

(b) time required to produce an appeal application and associated evidence; and

(c) the impact that timeliness of an appeal and any determination may have on subsequent decisions or industry processes.

2.16 There is no appeals window in the current Regulation 32 appeals process. We have therefore considered current practice elsewhere:

(a) applications for judicial reviews must be made within three months of a decision being taken;

(b) an appeal to the court under section 57 or 57F of the Railways Act 1993 must be made within 42 days; and

(c) under the network code, Part D and Part M appeals must be made within five working days of a decision unless otherwise specified.

2.17 It may be appropriate to create different appeals windows for different types of GBR decisions. We have suggested allowing additional time for potential applicants to consider longer, more complex documents.

2.18 In Table 1 below we have outlined some suggested timescales for appeal windows for different types of appeals for GBR decisions. Where there is an applicable industry disputes process, we expect applicants to attempt to resolve their disputes through this process initially. The windows below would therefore begin after a final decision has been made by GBR, including the conclusion of any industry disputes process that may be in place.

Table 1. Suggested appeal windows

Type of appeal	Suggested window
Failure of GBR to reach a decision within the timeframes established within its policies	No deadline – appeal can be lodged at any point after the deadline has been missed
Provisions of the AUP (clause 59(6))	40 working days
Provisions of the infrastructure capacity plan (clause 60(6))	30 working days
Decision not to add an applied-for train movement to the working timetable or any conditions subject to which the movement is added to the working timetable (clause 61(5)) (subject to the industry disputes process)	5 working days

Type of appeal	Suggested window
Decision on application for inclusion in the working timetable (clause 62(7)) (subject to the industry disputes process)	20 working days
Provisions contained within the charging scheme (clause 64(8))	30 working days
Provisions contained with the performance scheme (clause 65(7))	30 working days
Decisions on access to or the use of GBR infrastructure for the operation of trains (clause 67(1)(a))	20 working days
Decisions made under the charging scheme (clause 67(1)(b))	20 working days
Decisions made under the performance scheme (clause 67(1)(b))	20 working days
Publication of information	No deadline – appeal can be lodged at any point
Appeal of outcome of disputes process	5 working days
Any other type of decisions	20 working days

2.19 We have understood clause 61 on the working timetable to be equivalent to the short-term plan and train operator variation request processes today. Likewise, we have understood clause 62 on the preparation of the working timetable to be equivalent to the long-term planning process. As discussed below, we would normally expect matters related to timetabling to be considered through the contractual dispute resolution process currently governed by the Access Disputes Committee. We would not expect to hear an appeal until other avenues have been exhausted.

2.20 We have not suggested a deadline for appeals relating to a failure of GBR to reach a decision after a timeline set out in the AUP has expired, or failure of GBR to publish information. The reason for this is that, in cases where decision making has been delayed, enforcing a window would make it necessary for potential applicants to appeal prior to the deadline, even if they believed a decision was imminent, as happens today with timetable appeals. Likewise, where an appeal would relate to the publication of information, potential applicants may believe the information is about to be published or may not have realised information was not available. We think this flexibility will be useful for industry and prevent unnecessary appeals being lodged.

2.21 In the unlikely event that an appeal is made on a decision not listed in our policy that we nonetheless consider to be in scope of the appeals process, we suggest assuming a standard appeal window of 20 working days. We will be very unlikely to consider appeals made outside of the proposed windows.

Questions on appeals windows

Do you have any comments on these suggested windows for appeals?

We have proposed that the appeal window starts after the industry disputes (or internal GBR) process has been concluded, and GBR has made its final decision. This reflects the process today in which the disputes process is accommodated within timetable production. Do you agree with this approach?

We have not suggested an appeal window in cases where GBR has not reached a decision or not published information. Do you think it would be more effective to include an appeal window?

Process and timescales

2.22 As discussed above, there is a well-established logical sequence to appeals processes within the regulated sectors which includes:

(a) pre-appeal discussion between the applicant and the appeals body;

(b) the applicant submits their appeal;

(c) the appeals body decides whether to accept the appeal (including consideration of applicant eligibility to appeal, timeliness and scope);

(d) the original decision maker has an opportunity to reply to the appeal;

(e) the applicant has an opportunity to respond to the original decision maker's reply;

(f) the appeals body decides on the merits of the appeal, and whether to allow the appeal in whole or in part, or dismiss it;

(g) if required, the appeals body decides what remedy to direct; and

(h) the appeals body publishes the outcome, including the reasons for its decision, to ensure transparency.

2.23 ORR considers that it is important for us to set clear guidance on the process, our expectations of the applicant and GBR, and indicative timescales.

2.24 An appeal being made does not automatically pause all activity associated with that decision. GBR will need to decide whether it is appropriate to wait for the outcome of an appeal before continuing to enact its decision. Once ORR has made its decision on the appeal, GBR will need to act on ORR's decision.

2.25 In line with our design principles, a streamlined approach is intended to be efficient and provide certainty as soon as practicable for GBR and the applicant. We think it is preferable for appeals to be submitted and resolved as quickly as is practicable to support applicants, minimise nugatory work by GBR and minimise disruption to subsequent industry activity. Our initial discussions with stakeholders suggested that there was support for delivering a fast-paced appeals process.

2.26 We are therefore proposing to tighten the process and timescales in comparison to those currently used in our Regulation 32 appeals process.

2.27 As part of our final appeals policy, we propose to:

(a) Provide guidance on the grounds for an appeal and set clear requirements on information required to support an appeal.

(b) Publish a standard process for appeals, including deadlines for the provision of information by the applicant, GBR and interested parties. We anticipate that there will be cases where the standard process is not appropriate (potentially due to the complexity of the case), and in these cases we will amend the process and timescales and explain our reason for doing so.

(c) Include an initial ORR confirmation on whether the appeal submitted to us is within scope of the appeals process. This is currently implied within our Regulation 32 appeals process, but we think it would be helpful to provide further clarity on this decision.

(d) Require that GBR's response to an appeal and the applicant's response to GBR are sent to the counter party and any interested parties at the same time as ORR, to avoid administrative delays.

Establishing a standard process and timeframes for responses

2.28 ORR plans to include an overview of a standard process for appeals within our policy to set clear expectations for the stages of an appeal. We have proposed

indicative timescales for the process in Table 2 below to inform discussion with industry.

2.29 We anticipate that ORR's consideration of an appeal may vary significantly depending on the type of appeal, the technical complexity of the appeal and whether external advice is required. There may be cases where the outline process or timescales need to be adjusted according to the nature of the appeal. We think it would be appropriate for ORR to consider on receipt of an appeal if we will need to adjust our timelines or our standard process. We anticipate that this flexibility is likely to be particularly relevant for more complex or involved cases, such as charging appeals.

Table 2. Outline of proposed standard process

Stage	Indicative working days	Responsible party
Applicant lodges an appeal Applicant sends appeal to GBR at the same time as ORR, containing all relevant information. We would welcome informal discussions in advance of a formal submission of an appeal.		Applicant
ORR considers whether the appeal is in scope of the appeals process If the appeal is in scope, ORR will allocate a case officer, set out what information ORR requires, set deadlines for the appeal and ask GBR to respond. If ORR thinks that the appeal is not within scope of the appeals process, ORR will inform the applicant and GBR. ORR will publish our decision on whether to hear the appeal.	5 (once all relevant information has been received)	ORR
GBR responds to the appeal We are minded to allow 10 working days for GBR to respond, and to require that GBR sends its response to ORR and the applicant at the same time.	10	GBR
Applicant responds to GBR representation We are minded to allow 5 working days for the applicant to respond to GBR's representation, and	5	Applicant

Stage	Indicative working days	Responsible party
to require the applicant to send its response to ORR and GBR at the same time.		
ORR considers merits of the case and, if required, what the remedy should be	25 (although we would aim to reach a conclusion more quickly if possible)	ORR
ORR shares conclusion on merits of the case and the remedy with all parties This is an opportunity for the applicant and GBR to make factual corrections within 2 working days. ORR will not consider new issues raised at this stage. There may be some cases in which this stage is not appropriate due to market sensitivities. We will need to develop our thinking on this in our policy.	2	ORR
ORR publishes decision A decision notice is sent to all parties and published online along with the appeal documentation.		ORR

2.30 Alternatively, ORR could consider a two-stage decision-making process in which ORR firstly considers the merits of the case and shares this determination with the parties; and secondly considers what directions are appropriate. We anticipate that this two-stage process would take longer and so are not minded to adopt this approach.

2.31 If ORR includes a role for interested parties in our policy, we will need to consider how they are involved in the outline process we have described. We discuss this further below.

2.32 Applicants may choose to withdraw their appeals at any time but may not subsequently re-submit an appeal on the same matter.

Questions on process and timescales

Does the time allowed for representations (ten working days for GBR and five working days for the applicant) in the proposed standard process strike an appropriate balance between robust and informed decision making and maintaining a fast-paced process?

Do you have any comments on the proposal to allow ORR an indicative five working days to determine whether to hear the appeal and a further 25 working days to determine it?

Are there any improvements that could be made to the standard process proposed?

Do you have any comments on ORR's proposal to use a condensed process in which we consider the merits of the case and any proposed directions at the same time, rather than a two-staged process?

Inclusion of a stage in which ORR determines if the appeal is in scope of the appeals process

2.33 Within our proposed standard appeals process, we have included consideration of whether the appeal is in scope, including whether the applicant is eligible to appeal (i.e. they have "sufficient interest" in the decision being appealed), and whether the appeal has been made within the required timescales.

2.34 Our current Regulation 32 appeals policy does not explicitly include a decision point on whether an appeal is in scope of the appeals process, but we think it would be more transparent to include it as a formal part of the new process. Including this decision point could also help establish expectations around the necessity of submitting all relevant information and marshalling the critical arguments upfront in the appeal submission.

2.35 We could consider including the potential to dismiss an appeal if it has no prospect of success or the appeal is vexatious.

Questions on including a stage in which ORR decides whether to hear an appeal

How should ORR approach resolving doubts about an applicant's eligibility to appeal? For example, should ORR consult GBR or ask the applicant for further evidence?

Should ORR consider the potential to dismiss appeals at an early stage if they are found to be without merit or vexatious?

Developing requirements for submitting an appeal

2.36 We intend to require all relevant information to be submitted by an applicant as part of their application to appeal. This will enable us to determine whether to hear the appeal in the first instance.

2.37 Our initial thinking is that we would develop a template to support applications, and this would include:

(a) applicant details, including contact details;

(b) evidence of the eligibility of the applicant to appeal;

(c) the details of the decision being appealed;

(d) the basis for the appeal;

(e) what the impact of the GBR decision has been or is anticipated to be;

(f) what attempts have been made to resolve the issue prior to the appeal;

(g) the resolution sought and rationale;

(h) relevant evidence – this should include a brief description of its relevance to the appeal, cross referenced as appropriate to the grounds for appeal; and

(i) details of any suggested interested parties.

2.38 To maintain an efficient process, we will encourage applicants to include only information directly relevant to the decision being appealed and to be mindful of the appropriate level of detail required for ORR to make an informed decision.

2.39 We are aware that some regulators encourage the submission of agreed statements of facts. We are not minded to require this as we think additional time to prepare this would need to be added into the process.

ORR decision making

2.40 In determining the appeal, ORR would consider the basis of GBR's decision making and whether it has followed the correct process rather than considering what ORR would have done had we been charged with making the original decision. This would mean considering GBR's statutory duties, any directions and guidance it was subject to, and considering GBR's capacity duty (as set out in clause 63 of the Bill), which appears to require it to retain sufficient capacity on its infrastructure for the operation of its own passenger services and necessary infrastructure works.

2.41 As explained above, the Bill requires ORR to "apply the same principles which would be applied by the High Court on application for judicial review, or in Scotland, on an application to the supervisory jurisdiction of the Court of Session".

2.42 We consider that the appeals process requires ORR to make several decisions:

(a) Determining whether the appeal is within scope of the appeals process. This will include:

(i) whether the decision being appealed is within scope of the appeals process established in law; and

(ii) whether the applicant is eligible to appeal, i.e. whether they have sufficient interest in the decision made.

(b) **Deciding on the timescales and processes to be followed**. We intend to establish a standard appeals timeline, but we anticipate that there will be cases where it will be necessary either to determine appeals more quickly or take additional time to consider the evidence.

(c) **Deciding whether to allow the appeal in whole or in part, or to dismiss it**. This is ORR's consideration of whether GBR has followed good public law principles (i.e. acted legally, rationally, followed agreed processes and honoured legitimate expectations) in its decision making. For those decisions taken in accordance with GBR's agreed AUP, this decision is likely to be largely informed by consideration of whether GBR correctly complied with its policy. We expect that will be largely a finding of fact as to whether the appeal is upheld in whole or in part.

(d) If the appeal is allowed, ORR will need to decide on the remedy.

(i) In cases of appeals related to provisions of the AUP under clause 59(6), infrastructure capacity plan under clause 60(6), charging scheme under clause 64(8) or performance scheme under clause 65(7), ORR must decide whether to:

(1) remit all or part of the provision back to GBR for reconsideration; or

(2) remit all or part of the provision back to GBR for reconsideration and give directions as to that reconsideration.

(ii) In cases of appeals made under clause 61(5) on the working timetable, clause 62(7) on preparation of the working timetable, or under clause 67 on decisions made by GBR as to access to or the use of GBR infrastructure or decisions made under the charging and performance schemes, ORR may quash all or part of the decision appealed against. ORR then must decide whether to:

(1) remit all or part of the quashed decision back to GBR for reconsideration;

(2) remit all or part of the quashed decision back to the GBR for reconsideration and give directions as to that reconsideration; or

(3) substitute its own decision for the decision in question, but only if the quashing is on the grounds that there has been an error of law and, without the error, there would have been only one decision which GBR could have reached.

2.43 The UK Government have said that "ORR will select appropriate remedies on a case-by-case basis, determined in a way that proportionately considers the specific appeal in question." The remedy that ORR selects will depend on the particular grounds of the appeal and what it is appropriate to do in the circumstances, and we will reflect these legal requirements on remedies in our appeals policy.

Question on ORR decision making

Are there particular factors you think ORR should consider when deciding on remedies following an appeal alongside the legal requirements established in the Bill?

Relationship between appeals and contractual disputes

2.44 The Bill says that, as part of its AUP, GBR must "set out a procedure for resolving disputes relating to the working timetable." We consider this is equivalent to the requirement in the AMRs today for the infrastructure manager to have a dispute resolution system. Today, this mechanism is referenced in industry access contracts which refer to the Access Dispute Resolution Rules, and the Access Disputes Committee administers disputes on behalf of all infrastructure managers.

2.45 The Access Disputes Committee deal with contractual matters as set out in the Network Rail network code (and the network codes of other infrastructure managers) and in accordance with the Access Dispute Resolution Rules. Contractual disputes are only escalated to ORR in specific circumstances which are set out in Parts D, J and M of the Network Rail network code, as explained in our guidance on network code appeals. This arrangement allows industry to resolve disputes promptly and effectively without recourse to the regulator in most instances while allowing ORR to act as final arbitrator on these matters if necessary.

2.46 For example, the Access Disputes Committee receive around 200 timetable dispute references each year. Most of those disputes are resolved before a hearing takes place: in 2023, 15% of references were escalated to a hearing, and in 2024, this was 19%. Typically, ORR receives only one or two Part M or Regulation 32 appeals each year.

2.47 We consider that the current approach, with the Access Disputes Committee resolving the vast majority of disputes, to be beneficial as it allows industry experts to engage in resolving largely technical matters on behalf of industry, whilst preserving the option of escalation to ORR for the rare occasions that it is required. Conversely, if the Access Disputes Committee did not exist, ORR would need to hear all disputes on contractual matters such as timetabling, and the only subsequent escalation would be to judicially review ORR's decision. The window to lodge an appeal with ORR (as set out in Table 1 above) would begin once any industry disputes process had concluded.

2.48 We anticipate that, like today, industry parties will work together to resolve disagreements. As such, ORR would continue to expect not to hear an appeal until other available avenues which are available to the applicant for the resolution of disputes had been exhausted.

Questions about the relationship between contractual disputes and appeals

We have assumed that a contractual disputes process, like that operated today by the Access Disputes Committee, will continue to exist and that operators will use this process to deal with disputes arising from the new GBR network code. Do you think that it remains appropriate to have an independently administered contractual disputes process for the provisions of the GBR network code?

Do you have any comments about how we, together with GBR and industry, should approach the interplay between contractual disputes and other types of appeal?

Relationship between appeals and any internal GBR escalation process

2.49 Network Rail has also suggested in its discussion document that the AUP could include a mechanism for industry to challenge GBR decisions prior to escalating to a formal appeal to ORR. Network Rail has set out that a pre-appeal resolution process could be particularly useful in cases where stakeholders believe a GBR decision does not reflect the relevant infrastructure capacity plan, strategic priorities or fair access principles. We have interpreted the references to infrastructure capacity plans, strategic priorities and fair access principles to suggest that this process would relate to matters outside of the contractual disputes process. It will be important that any such pre-appeal escalation process is fast, focused and time bound. The window to lodge an appeal with ORR (as set out in Table 1 above) would begin once any GBR escalation process had concluded.

2.50 We will continue to engage with Network Rail as it develops the AUP and engages with stakeholders as it will be important that there is shared understanding across the industry of the new processes and how the appeals policy is to be applied.

2.51 As explained above in reference to the contractual disputes process, we expect industry parties to work together to resolve disagreements, and we would not expect to hear any appeal until other available avenues have been exhausted. This will require any pre-appeal GBR internal escalation processes to be fast, focused and time bound.

Question about the relationship between appeals and any internal GBR escalation processes

Do you have any comments about how ORR should approach any pre-appeals processes that GBR may develop?

Interested parties

2.52 The Bill does not make specific provision for interested parties to play a role in the appeals process. Our experience with disputed applications and appeals suggests

that including interested parties within the appeals process could help to ensure that the issues associated with GBR's decision are fully understood.

2.53 We would therefore like to explore including interested parties within the appeals process and allowing interested parties the opportunity to make formal representations. We think that GBR and the applicant should have the opportunity to respond to the representations submitted by interested parties.

2.54 In considering the potential to include interested parties, we are conscious that the involvement of additional parties has the potential to prolong the appeals process. We intend to explore the potential role of interested parties further as part of our policy development.

Definition of interested parties

2.55 Given that the Bill is silent on interested parties, ORR would need to define who would constitute an interested party as part of our appeals policy. In considering a definition of interested parties we would want to ensure that the appeals process can suitably take account of the views of those impacted by a decision or appeal. We are mindful that too wide a definition of interested parties, for example to include all rail users, could make the appeals process very difficult to manage.

2.56 The Railways Act 1993 defines interested persons as "any person whose consent is required by the facility owner, as a result of an obligation or duty owed by the facility owner which arose after the coming into force of section 17 of this Act, before the facility owner may enter into the required access contract."

2.57 Regulation 32 of the AMRs does not include a definition of interested persons, but ORR adopted a policy of identifying "relevant parties" to an appeal on a case-by-case basis. To this end, we ask respondents to provide a list of any relevant parties when an appeal is lodged.

2.58 Part 54 (Judicial Review and Statutory Review) of the Ministry of Justice Rules & Practice Directions defines an interested party as "any person (other than the claimant and defendant) who is directly affected by the claim".

2.59 We are minded to define interested parties as organisations which experience a demonstrable harm or benefit as a result of the GBR decision being appealed**.** We consider it likely that these organisations will generally be eligible to appeal GBR decisions (e.g. train operators, infrastructure managers, facility owners, devolved authorities).

Identification of interested parties

2.60 If interested parties are to be included within the appeal process, there are several options for their identification:

(a) interested parties identified by the applicant;

(b) interested parties identified by GBR;

(c) interested parties who identify themselves; and

(d) interested parties identified by ORR.

2.61 We consider that the applicant and GBR are likely to be well placed to identify interested parties and that, in most cases, the applicant and GBR are likely to identify those will be impacted by the decision being appealed. However, we think it would be reasonable to allow interested parties the opportunity to identify themselves (this assumes the appeal is published prior to its determination). Although we consider it unlikely that ORR would identify an additional interested party, we are minded to retain this option.

2.62 For organisations identified as potential interested parties by the applicant, GBR or the organisation themselves, we think that ORR should reserve the right to decide whether to accept them as interested parties for the appeal. Our is to ensure that the appeal remains focused and that the administrative burden of responding to representations from interested parties remains proportionate.

Contributions from interested parties

2.63 If interested parties are allowed to make representations as part of the appeals process, we will need to decide how and at what stage of the process to seek these representations.

2.64 One procedural option would be to invite interested parties to submit their contributions once ORR has decided whether the appeal is in scope. To invite submissions before this decision risks creating wasted work for stakeholders, and prior to ORR's judgement that an appeal is in scope, the details of the appeal may not be in the public domain.

2.65 At this point, interested parties could be invited to develop and submit their contributions in parallel with GBR's response to the appeal. In the standard process outlined in Table 2 above, this would give interested parties ten working days to submit their contributions. This could then allow GBR and the applicant to

respond if they wished to the interested parties' representation during the five working days proposed for the applicant to respond to GBR's response.

2.66 This approach would preclude the ability of interested parties to react to GBR's and the applicant's subsequent submissions but avoids unduly prolonging the appeals process. ORR would then be able to consider the representations from GBR, the applicant, and interested parties, to inform its consideration of the merits of the case and any directions that may be required. We are minded to require that all parties to the appeal (GBR, applicant and any interested parties) send submissions to all other parties at the same time as they are submitted to ORR to avoid administrative delays.

2.67 Alternatively, interested parties could be invited to submit representations once both GBR and the applicant have made their own further representations. This would give interested parties more information (and time) with which to develop their own submissions. However, this risks extending the appeals process timeline, creating further uncertainty for GBR and the applicants. We are therefore not minded to take this approach.

Questions on interested parties

Do you agree with our proposals to allow interested parties to make representations as part of the appeals process?

Do you have any comments on ORR's draft definition of interested parties?

Do you agree that applicants, GBR and ORR and interested parties themselves should be able to identify interested parties who are able to make representations?

Do you agree that ORR should reserve the right to decide whether to accept interested parties' contributions as part of an appeal?

At what stage of the process should interested parties make their contributions, and how much time should they be given?

Information provision

2.68 ORR expects applicants and GBR to be transparent, responsive and cooperative with the appeals process and to provide the information that we request to enable us to promptly determine appeals within the proposed timescales.

2.69 As drafted, the Bill does not make specific provision for information to be provided to ORR by GBR or others as part of the appeals process. Licence holders are already required by section 80 of the Railways Act 1993 to furnish ORR with information ORR considers necessary. If required, ORR could rely on this power to require the submission of information as part of the appeals process.

Transparency and disclosure

2.70 Although not specifically required by the Bill, we think transparency is an important principle within an appeals process and the UK Government has recently highlighted the proposed "duty of candour" in the Public Office (Accountability) Bill. We therefore propose to publish:

(a) appeal applications and the associated evidence;

(b) ORR's decision on whether the appeal is within scope of the appeals process;

(c) other submissions made as part of the appeal; and

(d) ORR's decisions and rationale on the merits of the case and any direction.

2.71 We intend to ask that applicants, GBR and any interested parties provide an accessible redacted version of any document submitted that contains personal or commercially sensitive information, and to justify why information is confidential.

2.72 This would ensure consistency with our approach to other infrastructure managers, reflects established regulatory practice, and it is our belief that making information about appeals publicly available helps the industry to understand the basis of our decision making more fully.

2.73 We proposed to publish our decision and the associated documents at the end of the appeals process. We will need to consider further what to do in cases where appeals are withdrawn.

Question on transparency and disclosure

Do you have any comments on ORR's proposed approach to delivering transparency?

Relationship between appeals and competition law

2.74 The Bill provides ORR with a duty to "exercise the functions in the manner which it considers best calculated to promote competition in the provision of railway services for the benefit of users of railway services" at clause 20. This duty does not apply to our GBR appeals function.

2.75 Under the proposed Bill, ORR will retain its powers to enforce competition law, which it holds concurrently with the CMA. As today, there will be scenarios where disputes around access to the network, or GBR's decisions around its charging or performance schemes, could potentially trigger competition law concerns.

2.76 ORR's current Competition Act 1998 guidance sets out when we are likely to use these tools under the current legal framework. The overriding principle is that we will seek to use the most effective and efficient solution where an issue arises. In order to make this assessment, we will have regard to our prioritisation criteria with particular consideration of:

(a) the resource and timing implications;

(b) the potential outcomes which may be achieved; and

(c) any other advantages or disadvantages between using particular tools, for example potential deterrent effects and establishing case precedent.

Implications of Scottish law or English and Welsh law

2.77 Judicial review in Scotland and in England and Wales are similar but not the same. ORR will need to undertake further policy work to establish whether there are specific nuances within the underlying principles that may require us to take a different approach depending on which judicial review principles are being followed.

2.78 As the principles for judicial review evolve over time, it is possible that the approaches taken in Scotland and in England and Wales could diverge in the future.

2.79 If ORR determines that the differences between the two sets of principles require different considerations, we will also need to establish policy to determine which principles it is most appropriate to use. For example, if an appeal concerns a train service which crosses between Scotland and England or concerned a policy

adopted across Great Britain, we would need to determine whether to apply Scottish or English and Welsh judicial review principles.

3. Responding to this discussion document and next steps

Our approach to engaging with industry

3.1 We have already engaged with industry representatives through Network Rail's Access & Use Sounding Board to test some of our emerging thinking. We will continue to engage with industry, Network Rail and governments as we develop our process. We are conscious of the potential to overburden industry with consultations at a time of much wider change.

3.2 Given the legislative requirements and established appeals process, we intend to focus our engagement on areas where we are intending to evolve our current approach to appeals and where there are policy choices.

3.3 In additional to responding to questions we have posed on our policy choices, we welcome industry's views on how we can most effectively engage while minimising the consultation burden. We are currently minded to:

(a) Engage directly with Network Rail on development of its AUP, including in our role as statutory consultee, to ensure that our appeals processes respond to the processes it develops.

(b) Engage through Network Rail's Access & Use Sounding Board and AUP stakeholder groups (freight, open access, other infrastructure managers and devolved governments) as we iterate our policy thinking.

(c) Invite industry comments on the policy issues we describe in this discussion document. This is not a formal consultation, but we are conscious that industry is likely to be considering other reform matters at the same time. We have therefore allowed until 6 February 2026 for industry to respond.

(d) Offer respondents a choice of attending a roundtable discussion or providing written responses. It is our intention to arrange roundtable sessions at which we will take unattributed notes of the comments made. We will use these comments as part of the consultation process and publish them on our website.

(e) Follow up with a formal consultation on our proposed appeals policy once the Bill has received Royal Assent.

How to respond

3.4 We welcome responses to this discussion document until 6 February 2026. This is to allow us time to consider responses when further developing our GBR appeals policy.

3.5 Responses should be submitted to ORR's consultation webpage. Respondents will be able to respond to each of the questions as well as being able to provide additional or overarching comments. Respondents do not need to respond to all questions. Respondents can also email a response to Track.Access@orr.gov.uk

3.6 ORR intends to publish the responses to the discussion document. Please let us know if you would prefer your response to be anonymous.

3.7 We will also host an industry roundtable to allow further discussion of these policy choices and are available for bilateral discussions with anyone who would like to comment on this discussion document. We will take account of the comments made at these events in our policy development. We will publish a summary of the discussions but will not attribute comments to individuals or organisations.

Next steps

3.8 We will continue our policy development informed by the responses to this discussion document and the stakeholder events. It is possible that Bill provisions on appeals are amended as part of the parliamentary process and so we will not conclude our policy development until after Royal Assent. We will publish our formal consultation on our proposed appeals policy after Royal Assent. It is our intention to finalise our appeals policy before GBR standup, but our timelines will be informed by the passage of the Bill and when GBR is scheduled to be stood up.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk/contact-us