

## Network Code – Part D

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## 1 Introduction

### 1.1 Overview

- 1.1.1 It is the responsibility of Network Rail to establish a timetable for the Network, referred to as the "Working Timetable".
- 1.1.2 Those entitled to participate in the processes set out in this Part D are defined as "Timetable Participants".
- 1.1.3 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.
- 1.1.4 In the period between bi-annual revisions of the Working Timetable, either Network Rail 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. Network Rail shall operate the processes described in Condition D3 to facilitate variations to a Working Timetable in appropriate circumstances.
- 1.1.5 In conducting the processes set out in this Part, decisions must be made by Network Rail in accordance with the principles set out in Condition D4.
- 1.1.6 Condition D5 describes the processes by which a Timetable Participant, dissatisfied with a decision of Network Rail made in respect of this Part D, may in specified circumstances appeal against that decision.
- 1.1.7 Network Rail requires access to the Network in order to fulfil its

obligations in relation to the Network. 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 Network required by Network Rail. Where such access is required over a period greater than that covered by one revision of the Working Timetable, Network Rail 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.

1.1.8 It is the responsibility of Network Rail 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. Network Rail 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.

1.1.9 In addition to compliance with the processes described in this Part D, Timetable Participants may be separately required to consult with the Secretary of State, the Scottish Ministers, the Welsh Assembly Government, Transport for London, Passenger Transport Executives, User Representatives, other infrastructure managers and any other parties with the right to be so consulted, regarding proposals for the development of Services.

1.1.10 In this Part D:

- (a) the singular shall include the plural and vice-versa;
- (b) the headings are for convenience only and shall not affect interpretation.

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

**Access Proposal** shall have the meaning shown in Condition D2.4.1;

<b>Ancillary Movement</b>	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 “Services” to the extent that it is not expressly provided for in an Access Agreement;
<b>Calendar of Events</b>	is a calendar going forward for a period of at least 4 years showing events which are likely to require significant changes to the Working Timetable in a future bi-annual timetable revision process carried out in accordance with Condition D2;
<b>D-X</b>	shall have the meaning shown in Condition D2.1.5;
<b>Decision Criteria</b>	shall have the meaning shown in Condition D4.6;
<b>Draft Calendar of Events</b>	a draft Calendar of Events;
<b>Draft Rules</b>	shall have the meaning shown in Condition D2.2.3;
<b>Engineering Access Statement</b>	a document, formerly called Rules of the Route, setting out, for any part of the Network, each of the following matters: <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>
<b>Event</b>	an event, or grouping of events, shown in the Calendar of Events;

**Event Steering Group**

shall comprise ~~of~~ representatives from Network Rail, relevant funders and any Timetable Participants that:

- (a) are likely to be affected by the Event; and
- (b) who agree to be on the group.

**Exercised**

shall mean as a consequence of:

- (a) submitting an Access Proposal to Network Rail by the Priority Date in accordance with Conditions D2.4 and D2.5; or
- (b) a Rolled Over Access Proposal;

**Firm Right**

a right:

- (a) of a Timetable Participant under an Access Agreement in respect of the quantum, timing or any other characteristic of a train movement; or
- (b) of Network Rail under the Rules;

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);

**Flexing Right**

a right, exercisable by Network Rail in allocating a Train Slot in the New 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;

<b>Initial Consultation Period</b>	shall have the meaning shown in Condition D2.3.3;
<b><u>International Freight Capacity</u></b>	<p><u>any capacity on the Network:</u></p> <p><u>(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 Societe Nationale des Chemins de Fer Francais; or</u></p> <p><u>(b) reserved for allocation or that has been allocated by the International Freight Corridor One Stop Shop</u></p> <p><u>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;</u></p>
<b><u>International Freight Capacity Notice</u></b>	<u>a notice issued in accordance with Condition D9 setting out International Freight Train Slots;</u>
<b><u>International Freight Corridor</u></b>	<u>the network corridor between infrastructure managers operating over part of the Network designated as an international rail freight corridor for the purposes of Regulation 913/2010;</u>
<b><u>International Freight Corridor One Stop Shop</u></b>	<u>the one stop shop set up under Regulation 913/2010 to allocate capacity on the International Freight Corridor;</u>
<b><u>International Freight Train Slot</u></b>	<u>a Train Slot included in the New Working Timetable and Working Timetable to represent International Freight Capacity;</u>
<b>International Operator</b>	each Timetable Participant which has rights to train movements through the Channel Tunnel;

<b>International Path</b>	any Train Slot on the Network 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 <u>(but excluding any International Freight Train Slot)</u> ;
<b>Management of Strategic Capacity on the Network (Network Rail's Code of Practice)</b>	the document which sets out the principles and procedures that Network Rail will follow to manage strategic capacity across the Network, issued by Network Rail in August 2010, as may be amended from time to time;
<b>Network Rail Variation</b>	shall have the meaning shown in Condition D3.1.2;
<b>Network Rail Variation Request</b>	a request made by Network Rail for a Network Rail Variation;
<b>Network Services</b>	shall have the meaning given to it in section 82(2) of the Railways Act 1993;
<b>New Working Timetable</b>	shall have the meaning shown in Condition D2.1.6;
<b>One Stop Shop Service</b>	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 Rail Net Europe;
<b>Possessions Strategy Notice</b>	shall have the meaning set out in Condition D6.3.1;
<b>Possessions Strategy Participants</b>	shall have the meaning set out in Condition D6.1.1;
<b>Possessions Strategy Proposal</b>	shall have the meaning set out in Condition D.6.1.2;
<b>Principal Change Date</b>	shall have the meaning set out in Condition D2.1.3;

<b>Prior Working Timetable</b>	shall have the meaning set out in Condition D2.1.6;
<b>Priority Date</b>	shall have the meaning set out in Condition D2.4.4;
<b>Rail Net Europe</b>	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;
<b>Railway Operational Code</b>	shall have the meaning shown in Part H of this code;
<b>Regulations</b>	the Railways Infrastructure (Access and Management) Regulations 2005 (SI no 3049 of 2005), as may be amended from time to time;
<b><u>Regulation 913/2010</u></b>	<u><a href="#">Regulation (EU) No.913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight;</a></u>
<b>Rolled Over Access Proposal</b>	where an Access Proposal 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;
<b>Route Utilisation Strategy</b>	a strategy established and maintained to promote the effective and efficient use and development of the capacity available on the Network, consistent with the funding that is, or is likely to become, available during the period of the strategy;
<b>Rules</b>	the Timetable Planning Rules and the Engineering Access Statement;
<b>Short Term Plan</b>	shall have the meaning shown in Condition D3.7.1;
<b>Strategic Capacity Statement</b>	the statement published in accordance with the Management of Strategic Capacity on the Network (Network Rail's Code of Practice) setting out Strategic Paths;

<b>Strategic Path</b>	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;
<b>Strategic Train Slot</b>	a Train Slot included in the New Working Timetable and Working Timetable to represent a Strategic Path;
<b>Subsidiary Change Date</b>	shall have the meaning shown in Condition D2.1.3;
<b>Timetable Change Date</b>	shall have the meaning shown in Condition D2.1.3;
<b>Timetable Participant</b>	(a) an Access Beneficiary; or (b) a Potential Access Party;
<b>Timetable Period</b>	shall have the meaning shown in Condition D2.1.6;

<b>Timetable Planning Rules</b>	<p>a document, formerly called Rules of the Plan, regulating, for any part of the 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 Network, being rules which specify (amongst other matters) any required:</p> <ul style="list-style-type: none"> <li>(a) timings (including specified allowances) allowed for travel between specified points on the 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) minimum and maximum time periods for stopping at stations and other specified points; and</li> <li>(e) restrictions as to the speed of railway vehicles on any section of track;</li> </ul>
<b>Timetable Preparation Period</b>	shall have the meaning shown in Condition D2.6.1;
<b>Timetable Variation</b>	shall have the meaning shown in Condition D3.1.3;
<b>Timetable Variation by Consent</b>	shall have the meaning shown in Condition D3.6.1;
<b>Timetable Week</b>	shall have the meaning shown in Condition D3.2.1;
<b>Timetabling Panel</b>	shall have the meaning shown in the ADRR;

<b>Timing Load</b>	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;
<b>Train Operator Variation</b>	shall have the meaning shown in Condition D3.1.1;
<b>Train Operator Variation Request</b>	shall have the meaning shown in Condition D3.3.1;
<b>Train Slot</b>	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 shown in Condition D3.2.1;
<b>Working Hours</b>	any hour during the period 09:00 to 17:00 on a Working Day; and
<b>Works</b>	any inspection, maintenance, renewal, repair, replacement, improvement, enhancement or development of, or any other work in relation to, any part of the Network.

## 2 Bi-Annual Timetable Revision Process

### 2.1 Preliminary

2.1.1 The Working Timetable shall show every train movement on the Network, including:

- (a) every Service;
- (b) every Ancillary Movement;
- (c) every Strategic Train Slot;
- (d) every International Freight Train Slot;
- (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 Network Rail (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 Network Rail shall re-issue the Working Timetable in revised form on two occasions in each year, after a consultation and revision process conducted by Network Rail 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 Regulations. To the extent permitted by the Regulations, following consultation with other infrastructure managers, Network Rail 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 Network Rail will revise the Working Timetable on each of the Timetable Change Dates. Unless stated otherwise, 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 02:00 on a Sunday and expires at 01:59 on the following Sunday. So, for example, “D minus 26” (or “D-26”) refers to the 26<sup>th</sup> 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 5pm 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) 5pm 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, Network Rail will use as the starting point the timetable published at D-26 in the process related to the immediately preceding Timetable Change Date (except that in relation to the International Freight Train Slots to be included in the timetable to take effect on a Principal Change Date, Network Rail shall reflect the International Freight Train Slots published in the International Freight Capacity Notice published at D-60 in the process relating to the preceding Principal Change Date along with any amendments made as a result of any appeal) but 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 (“the Prior Working Timetable”). If any subsequent variations are made to the Prior Working Timetable as a result of the appeal process, then they shall also be incorporated into it. The Prior Working Timetable is then subject to a process of amendment under Condition D2 and during this period shall be referred to as the “New Working Timetable”. The timetable which the New Working Timetable becomes on a Timetable Change Date is the Working Timetable. The period between Timetable Change Dates is referred to as the “Timetable Period”.

2.1.7 Not later than D-~~7367~~ in relation to the Principal Change Date only, Network Rail 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 Engineering Access Statement – D-64 to D-44**

2.2.1 Both the Timetable Planning Rules and the 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.

### 2.2.1A The Rules shall take account of International Freight Train Slots included in the applicable International Freight Capacity Notice.

2.2.2 Between D-64 and D-60, Network Rail 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, Network Rail shall provide to all Timetable Participants a draft of the revised Rules (the “Draft Rules”), provided that:

- (a) where “D” is a Principal Change Date, the Draft Rules to be provided and finalised shall be both those for the Timetable Period commencing on that Principal Change Date and those for the Timetable Period commencing on the immediately succeeding Subsidiary Change Date;
- (b) where “D” is a Subsidiary Change Date, the Draft Rules to be provided and finalised shall pertain only to

the Timetable Period commencing on that Timetable Change Date and shall contain only revisions:

- (i) which are not material; or
- (ii) the need for which was not reasonably foreseeable at the time when the prior revision of the Rules was made.

2.2.4 Following distribution of the Draft Rules and by D-54:

- (a) Network Rail shall consult with Timetable Participants in respect of the Draft Rules provided to them in accordance with D2.2.3 and in respect of any representations made pursuant to paragraph (b) below;
- (b) Timetable Participants may make representations to Network Rail 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, Network Rail 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, Network Rail shall issue the final revised Rules to all Timetable Participants.

2.2.6 In preparing revised Rules, Network Rail 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, Network Rail 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, Network Rail must first consult with all Timetable Participants who may be affected by the proposed changes. Network Rail 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 Network Rail 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 Network Rail's decision;
- (b) otherwise within fifteen Working Days of receipt of Network Rail's 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 D6.4.1; or
- (b) has been appealed but has been finally determined by a Timetabling Panel or the Office of Rail Regulation.

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

2.3.1 Any Timetable Participant wishing to introduce significant new Services or make significant changes to its Services shall notify

Network Rail at the earliest opportunity and, where possible, before D-55. If Network Rail considers that the introduction of such new or changed Services 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, Network Rail shall consult with Timetable Participants who may be affected by the proposed new or changed Services and shall provide them with all available relevant information in respect of those proposals.

2.3.2 Not later than D-55, Network Rail 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-55 shall be deemed to be an Access Proposal, submitted to Network Rail in accordance with Conditions D2.4 and D2.5, in relation to the Strategic Paths contained in it.

2.3.3 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;
- (b) Network Rail 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".

2.3.4 During the Initial Consultation Period, Network Rail 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;
- (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.

2.3.5 Not later than D-48, Network Rail 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.

2.3.6 Not later than D-45 Network Rail 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 Network Rail shall notify these changes to Timetable Participants as soon as reasonably practicable.

2.3.7 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; ~~and/or~~

(c) it wishes to set out its requirements in response to a notification by Network Rail under Condition D2.4.6; and/or

~~(c)~~(d) it wishes to use any International Freight Train Slot where the criteria in Condition D2.4.9 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 Network Rail in writing by D-40 or as soon as practicable thereafter.

2.4.3 Access Proposals may be submitted to Network Rail 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 prior to D-26 in order to facilitate optimal planning of the New Working Timetable by Network Rail

and to ensure optimal consultation between Network Rail 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-26 will be

incorporated by Network Rail 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 D4.2.2, 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,

2.4.7 Network Rail 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).

2.4.8 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.

2.4.9 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 for the purposes of carrying goods through the Channel Tunnel or for conveying 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 Network Rail 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 any point specified under paragraphs (b) and (c) above;
- (e) the railway vehicles or Timing Load to be used;
- (f) any required train connections with other railway passenger services;
- (g) the proposed route;
- (h) any proposed Ancillary Movements;
- (i) any required platform arrangements at the start, end and all intermediate calling points;
- (j) any relevant commercial and service codes; and
- (k) the proposed maximum train speed and length and, in relation to a freight train, the proposed maximum train weight.

2.5.2 Where an Access Proposal has been submitted by a Timetable Participant, Network Rail 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) (“Timetable Preparation Period”), Network Rail 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;
- (b) Network Rail 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, Network Rail 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 Network Rail 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 twenty 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 Network Rail regarding the published New Working Timetable, Network Rail 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 Network Rail, so as to enable a Timetable Participant to comply with the timescales in Condition D2.7.2.

2.7.4 Network Rail 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 Conditions D1-7, the wording of Conditions D1-7 shall prevail.

## 3 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, Network Rail 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 Freight Train Slot) in order to facilitate a Restriction of Use. Any such variation is referred to as a “Network Rail Variation”. The process to be followed where a Network Rail Variation is sought with more than 12 weeks notice is set out in Condition D3.4. The process to be followed where a Network Rail Variation is sought with less than 12 weeks notice is set out in Condition D3.5.

3.1.3 Train Operator Variations, ~~and~~ Network Rail Variations are collectively referred to as “Timetable Variations”.

3.1.4 In considering or making any Timetable Variation, Network Rail 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, Network Rail 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”. Network Rail may only make an International Freight Variation in the circumstances set out in Condition D3.5A.

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

3.2.1 Network Rail Timetable Variations are planned by Network Rail on a week by week basis. Each week of a Working Timetable is referred to as a “Timetable Week”. Each Timetable Week commences at 00:01 on a Saturday and expires at 24:00 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 12<sup>th</sup> 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 5pm 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) 5pm 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, Network Rail 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 Network Rail 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 Network Rail 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 Network Rail 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 10:00 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 Network Rail's response time to a Train Operator Variation Request set out in Condition D3.3.6, the day of Network Rail's receipt of a Train Operator Variation Request is described as day 1 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 2.

3.3.6 Except in relation to a Train Operator Variation Request which includes a One Stop Shop Service which is dealt with in

Condition D3.3.7, Network Rail 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 1 or day 2.
- (b) by 15:00 hours on day 1, where the request is to operate a Train Slot on day 3;
- (c) by 10:00 hours on day 2, where the request is to operate a Train Slot on day 4;
- (d) by 15:00 hours on day 2, where the request is to operate a Train Slot on day 5;
- (e) by 15:00 hours on day 3, where the request is to operate a Train Slot on day 6;
- (f) by 10:00 hours on day 4, where the request is to operate a Train Slot on day 7;
- (g) where (a), (b), (c), (d), (e) or (f) do not apply, within five Working Days of receipt of the request.

3.3.7 In relation to a Train Operator Variation Request which includes a One Stop Shop Service, Network Rail shall notify its acceptance, rejection or modification of the Train Operator Variation Request as soon as reasonably practicable.

3.3.8 Where Network Rail 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 Network Rail 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 as soon as reasonably practicable and, in any event, no later than five Working Days after it is notified of the relevant decision by Network Rail.
- 3.3.10 Any appeal regarding a Train Operator Variation Request which includes a One Stop Shop Service can only be made in relation to the part of the request concerning the Network.
- 3.3.11 Where Network Rail rejects or modifies any Train Operator Variation Request it must provide written reasons for its decision.

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.

3.3.13 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 for the purposes of carrying goods through the Channel Tunnel or for conveying goods which have passed or are to pass through the Channel Tunnel.

#### 3.4 Network Rail 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 Network Rail Restrictions of Use at least 12 weeks prior to the start of each Timetable Week.
- 3.4.2 Network Rail shall be entitled to make a variation to the Working Timetable provided that:
- (a) the Network Rail Variation is made only for the purpose of taking 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; and
  - (b) Network Rail complies with the procedure set out in this Condition D3.4.

3.4.3 Network Rail 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 Network Rail considers necessary to take 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 Network Rail has consulted with all Timetable Participants likely to be affected by the amendment;
- (b) must require that all decisions of Network Rail 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 Network Rail proposes to make any variation to the Working Timetable consequent upon an amendment to the Rules made in accordance with this Condition D3.4, Network Rail 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 Network Rail 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, Network Rail 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 Network Rail Variations to be made .
- 3.4.9 To facilitate the planning of any Network Rail Variation, Network Rail may require that any Timetable Participant shall submit a revised Access Proposal in respect of any Train Slot.
- 3.4.10 Where Network Rail requires a revised Access Proposal:
- (a) the requirement must be notified to the affected Timetable Participant no later than TW-22;
  - (b) Network Rail shall specify the aspects of the Access Proposal which need to be revised and its reasons for this;
  - (c) Network Rail 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 Network Rail 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 Network Rail, Network Rail shall be entitled to make a Network Rail Variation of any Train Slot in respect of which the revised Access Proposal was required and no appeal may be made in respect of Network Rail's decision.
- 3.4.13 Not later than TW-14, Network Rail shall notify all Timetable Participants of its decision in respect of Network Rail 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 Network Rail's decision notified pursuant to Condition D3.4.13 shall inform Network Rail whether it accepts or disputes that decision.
- 3.4.15 At TW-12, Network Rail shall record and provide to all Timetable Participants, in accordance with Condition D3.7.1, the Network Rail 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 Network Rail in respect of a Network Rail Variation may appeal against it in accordance with Condition D5.

### **3.5 Network Rail Variations with less than 12 Weeks Notice**

- 3.5.1 It may be necessary for 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 such Restrictions of Use.
- 3.5.2 Where Network Rail 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, Network Rail 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, Network Rail 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. Network Rail 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 “Network Rail Variation” for the purposes of this Part D.

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

3.5.4 Except in the case of force majeure (including urgent and unforeseeable safety critical work) neither this Condition D3.5 nor Condition D3.4 before it shall be used to arrange Restrictions of Use that impact or could impact International Freight Train Slots in section A of an International Freight Capacity Notice.

### **3.5A International Freight Variations**

Network Rail may only make an International Freight Variation to reflect:

- (a) 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) the allocation by Network Rail 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) an International Freight Train Slot in section A of an International Freight Capacity Notice becoming available for allocation by Network Rail in accordance with the provisions of this Part D; or
- (d) a Restriction of Use in the case of force majeure (including urgent and unforeseeable safety critical work) of the type set out in Condition D3.5.4 above.

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

3.6.1 Notwithstanding anything stated in this Condition D3, where Network Rail 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 Network Rail 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 Network Rail, 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 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 Conditions D1-7, the wording of Conditions D1-7 shall prevail.

## 4 Decisions by Network Rail

### 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), Network Rail 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, Network Rail 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 Network Rail 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, Network Rail is entitled to exercise its Flexing Right;
- (d) where the principles in paragraphs (a), (b) and (c) above have been applied but Network Rail 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 Network Rail 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 Network Rail 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 Network Rail considers (acting reasonably) they will be Firm or Contingent Rights in force during the Timetable Period;
- (iv) fourth to any:
  - (A) rights or expectation of any rights of any Timetable Participant notified in an Access Proposal submitted after the Priority Date but before D-26 in accordance with 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 submitted to Network Rail; and
  - (B) Strategic Paths contained in the Strategic Capacity Statement.

#### 4.3 Decisions concerning Train Operator Variations

4.3.1 In responding to a Train Operator Variation Request, Network Rail 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 Network Rail 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 D2.4.9 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 (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 submitted 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 Network Rail;

Network Rail 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 Network on the days and times in question.

#### 4.3.3 Where any Timetable Participant consulted by Network Rail 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;

Network Rail 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, Network Rail 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 Network Rail.

4.3.4 Notwithstanding anything stated elsewhere in this Part D, Network Rail 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 Network Rail'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 Network Rail Variations**

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

- (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 Network Rail Variation to the extent that the variation is inconsistent with the Rules;
- (c) shall, subject to the over-riding principles set out in sub-paragraphs (a) and (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, Network Rail shall apply the Decision Criteria in accordance with Condition D4.6.

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

4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network 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, Network Rail shall apply any or all of the considerations in paragraphs (a)-(k) below (“the Considerations”) in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the Network;
- (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 Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
- (g) seeking consistency with any relevant Route Utilisation Strategy;
- (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 Path 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, Network Rail 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

Network Rail. Where, in light of the particular circumstances, Network Rail 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 Network Rail 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 Network Rail save to the extent that:
  - (i) Network Rail 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.

### 5 Appeals

#### 5.1 Appeal in accordance with the 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 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 (a) includes Christmas Day, within ten 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 ten Working Days of final submission to it of all relevant information.

## 5.2 Appeal to Office of Rail Regulation

5.2.1 Where either Network Rail or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to the Office of Rail Regulation for determination under Part M, 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 (a) above includes Christmas Day, within ten 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 the Office of Rail Regulation (as the case may be) may exercise one or more of the following powers:

- (a) it may give general directions to Network Rail 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 Network Rail shall stand;
- (c) it may substitute an alternative decision in place of a challenged decision of Network Rail;

provided that the power described in (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 Network Rail 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 Network Rail 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, ten 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 Network Rail 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 the Office of Rail Regulation pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as the Office of Rail Regulation 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 the Office of Rail Regulation;
- (b) the ruling of the Office of Rail Regulation.

## 5.6 **Implementing an appeal ruling**

5.6.1 Network Rail shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or the Office of Rail Regulation pursuant to this Condition D5. All such steps shall be taken promptly.

## 5.7 **Liability of Network Rail**

5.7.1 Where a decision of Network Rail is overturned on appeal, Network Rail 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.

## 6 **Possessions Strategy Notices**

### 6.1 **Possessions Strategy Proposal**

6.1.1 Where Network Rail proposes implementing any Works which require a programme of 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 Network issuing a Possession Strategy Proposal not later than D-90 and shall be concluded by Network Rail 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 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 Restrictions of Use (who shall be referred to as “Possessions Strategy Participants”).

6.1.2 Where Network Rail 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 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 Network Rail's reasons for the proposed Restrictions of Use strategy.

## 6.2 Consultation

6.2.1 Following service of a Possessions Strategy Proposal, Network Rail shall consult with all parties on whom it has been served. Each recipient shall be afforded a reasonable period (to be specified by Network Rail, 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 Network Rail in respect of the proposed strategy for 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, Network Rail shall make its final decision concerning the strategy for 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, Network Rail 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

6.4.1 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 twenty 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 anyway 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 Network Rail regarding that part of the Rules can not 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**

6.6.1 This Condition D6 is without prejudice to Part G.

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

6.7.1 Network Rail 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 Network Rail has consulted, to the extent reasonably practicable, with any Possessions Strategy Participant likely to be affected by that change;
- (b) that all decisions of Network Rail 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.

## **7 Calendar of Events and Event Steering Group**

### **7.1 Calendar of Events**

7.1.1 Not later than D-64, Timetable Participants and funders shall inform Network Rail of any events they think should be included in the Draft Calendar of Events.

7.1.2 Network Rail shall provide to all Timetable Participants and funders a Draft Calendar of Events no later than D-64. Where Network Rail has not included in the Draft Calendar of Events any events proposed by a Timetable Participant or funder in accordance with Condition D7.1.1, it shall explain to the relevant

Timetable Participant or funder why this is the case.

7.1.3 Timetable Participants and funders may make representations to Network Rail in respect of any changes they propose or objections they have to the Draft Calendar of Events no later than D-59.

7.1.4 Following D-59 and by D-54, Network Rail shall consider the representations and objections made to it by Timetable Participants and funders pursuant to Condition D7.1.3 and may amend the Draft Calendar of Events. Not later than D-54, Network Rail shall publish the final Calendar of Events.

## **7.2 Event Steering Group**

7.2.1 In relation to each Event, Network Rail shall set up and chair an Event Steering Group. The Event Steering Group shall be set up in sufficient time prior to the relevant Event so that it can achieve its objectives set out in Condition D7.2.2.

7.2.2 The objectives of an Event Steering Group shall be to:

- (a) agree a project plan to achieve a smooth transition for the necessary timetable changes, arising from the 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 Passenger Focus, London TravelWatch, Rail Freight Group and Freight Transport Association during the course of the Project.

7.2.3 Members of the Event Steering Group shall participate in and contribute to the Event Steering Group so that it achieves its objectives.

## **8 Miscellaneous**

### **8.1 Directions issued by the Office of Rail Regulation**

8.1.1 Notwithstanding anything else stated in this Part D, Network Rail 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 the Office of Rail Regulation 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

8.2.1 Network Rail shall not be required to keep confidential the identity of, or any information provided to it by, any Timetable Participant.

## 8.3 Accreditation of Train Planners

8.3.1 Following consultation with Timetable Participants, Network Rail may from time to time establish and revise procedures for:

- (a) requiring planners employed or engaged by Timetable Participants to assist in the processes prescribed by this Part D on behalf of Network Rail (“Planners”) to be accredited;
- (b) accrediting Planners;
- (c) regulating the work undertaken by accredited Planners.

8.3.2 Network Rail shall send to Timetable Participants a copy of the procedures referred to in Condition D8.3.1, and any revisions to them, as soon as reasonably practicable after their finalisation.

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

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 22:00 hours on the day before a Timetable Change Date and after consultation with the person proposing to move the trains, Network Rail 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) (but not where that Train Slot is an International Freight Train Slot) for the movement of those trains from the Working Timetable due to commence the following day.

8.4.2 Condition 8.4.1 above 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 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 by making a Train Operator Variation Request; and
- (b) the Train Slots are not underpinned by access rights in the Rights Table in Schedule 5 of the freight Train Operator's Access Agreement; and
- (c) Network Rail, after consulting the relevant freight Train Operator and acting reasonably, considers that the Train Slots are not being used;

then Network Rail shall remove the Train Slots (but not where that Train Slot is an International Freight Train Slot) from the Working Timetable.

8.5.2 Where a Timetable Participant reasonably believes that sub Conditions 8.5.1 (a) and (b) apply, then it may report this to Network Rail who shall consult with the relevant freight Train Operator and consider whether to remove the Train Slots from the Working Timetable in accordance with Condition D8.5.1.

## 8.6 Consultation

8.6.1 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:

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

## 9. International Freight Capacity Notice

9.1 Not later than D-70 in relation to the Principal Change Date, Network Rail 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.

- 9.2 During the period from D-70 to D-65, Network Rail 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 Network Rail in respect of any changes they propose or objections they may have in relation to those International Freight Train Slots.
- 9.3 Network Rail shall consider representations made to it by Timetable Participants pursuant to D9.2. Network Rail 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.
- 9.4 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- <del>73</del> 67	Network Rail issues the timetable process dates for both the Principal Change Date and the Subsidiary Change Date 67 weeks before the Principal Change Date
D-70	<u>Network Rail issues draft International Freight Capacity Notice (in relation to Principal Change Date only)</u>
D-70 to D-65	<u>Network Rail consults Timetable Participants on its proposed International Freight Train Slots</u>
<b>Revision of the Timetable Planning Rules and Engineering Access Statement (collectively known as the Rules)</b>	
D-90	If Network Rail wants to rely on a Possessions Strategy Notice it must issue a Possessions Strategy Proposal to all Possessions Strategy Participants for consultation
D-64	Network Rail 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	Network Rail consults Timetable Participants on its proposed changes to the Rules and its anticipated Restrictions of Use
D-60	<u>Network Rail 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</u>
D-59	Network Rail 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	Network Rail considers all representations or objections and prepares revised Rules
D-44	Network Rail 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 Network Rail may make minor revisions to the Rules in order to optimise the New Working Timetable. Timetable Participants may appeal these revisions within 5 Working Days of receipt
<b>Timetable consultation, preparation and publication</b>	
Up to D-64	Timetable Participants and funders inform Network Rail of any events they think should be included in the 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 Network Rail as soon as possible and before D-55 if possible  No later than D-55, Network Rail shall publish the Strategic Capacity Statement which is relevant to the preparation of the New Working Timetable.
D-54	Network Rail issues Calendar of Events
D-55 to D-40	Initial Consultation Period. Timetable Participants discuss their proposals with Network Rail which carries out a consultation and facilitation process with other

	Timetable Participants
D-48	Network Rail consults International Operators and includes provisional paths in the New Working Timetable
D-45	Network Rail issues the Prior Working Timetable which will be the starting point for the New Working Timetable
D-40	Priority Date
D-40 to D-26	Timetable Preparation Period Throughout this period a draft of the emerging New Working Timetable is available online. Timetable Participants may submit Access Proposals at any time and Network Rail will, as far as reasonably practical, incorporate these in the New Working Timetable
D-26	New Working Timetable is published (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 7 days, Network Rail must respond within the timescales set out in 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 7 days notice, Network Rail must respond to the request within 5 Working Days
n/a	If Network Rail 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, Network Rail will be deemed to have accepted the request
n/a	If Network Rail rejects or modifies a Train Operator Variation Request it must give its reasons
n/a	A Timetable Participant may appeal Network Rail's decision as soon as reasonably practicable but not later than 5 Working Days after being notified of the decision
n/a	In relation to a variation request which includes a One Stop Shop Service, Network Rail must respond to the request as soon as reasonably practicable

#### Network Rail Variations with at least 12 weeks notice

Milestone	What happens
TW-30	Network Rail provides to Timetable Participants its proposals for Restrictions of Use in respect of the Corresponding Week.
TW-30 to TW-26	Network Rail consults with each Timetable Participant likely to be affected and seeks to agree all Network Rail Variations. During this time Network Rail may amend or supplement its proposals as long as they are provided to Timetable Participants by TW-26.
TW-22	Network Rail 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, Network Rail may vary the Train Slot and the Timetable Participant may not appeal.
TW-14	Network Rail notifies Timetable Participants of its decision.
TW-13	Timetable Participant to notify Network Rail whether it accepts or disputes the decision.
TW-12	Network Rail records the Timetable Variation in the Short Term Plan.

#### Network Rail Variations with less than 12 weeks notice

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

#### Timetable Variations by Consent

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

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~~29 June 2012~~