



Performance regime

April 2019

Introduction

1. This module explains our policy on the compensation regime for performance. That is the operational performance of Network Rail's network and the train operator's rolling stock, in terms of the punctuality and reliability of rail services.
2. Access contracts should contain incentives that will promote efficient and effective performance; include provision for cost recovery and payment of appropriate compensation; and thus facilitate better services for rail customers.
3. In the 2018 periodic review (PR18) we set the regulatory framework for control period 6 (CP6), which runs from 1 April 2019 to 31 March 2024. Our conclusions are set out in our final determination¹. This document reflects the regulatory framework implemented through the track access contract as part of PR18, which included the performance regime in Schedule 8.

Schedule 8 performance regime – overview

4. The Schedule 8 performance regime compensates train operators for unplanned service disruption caused by Network Rail and other train operators. There are separate model performance regimes in the franchised passenger/open access, freight and charter model contracts, reflecting the differing nature of the services operated.
5. In this module we discuss our policy on performance regimes as follows:
 - (a) principles;
 - (b) the performance regime in the model passenger contract (for regular scheduled passenger services);
 - (i) recalibration
 - (ii) benchmarks;

¹ '2018 periodic review final determination: Overview of approach and decisions', ORR, October 2018, available [here](#).

- (iii) Network Rail payment rates;
 - (iv) Train operator payment rates and the star model;
 - (v) other features of the Schedule 8 performance regime;
 - (vi) changes to existing performance regimes in CP6;
 - (vii) increases to journey times and/ or introduction of timetable differentials;
 - (viii) caps on bonus payments;
 - (ix) new or additional services; and
 - (x) bespoke performance regimes;
- (c) the performance regime in the model freight contract;
- (i) recalibration
 - (ii) benchmarks;
 - (iii) compensation and bonus payment rates;
 - (iv) cancellation arrangements;
 - (v) late notice cancellation sum;
 - (vi) disruption sum;
 - (vii) incident cap access charge supplement rates;
 - (viii) annual caps; and
 - (ix) bespoke regimes.
- (d) the performance regime in the model freight contract.

6. Detailed guidance on completing Schedule 8 of each of the model passenger contract and model freight contract is set out in separate modules.

Principles

7. The performance regime in Schedule 8 of track access contracts has three broad functions:

- (a) reduce train operators' exposure to losses that arise from delay and cancellations that they cannot control, by compensating them for losses incurred as a result of delay. This reduces their level of risk from operating and investing in the industry. For franchises passenger operators, this ultimately reduces the cost to taxpayers by reducing the risk premiums that franchised train operators include in their franchise bids;

(b) provide Network Rail with financial incentives to improve performance on the railway; and

(c) provide train operators with financial incentives to limit the delay they cause.

8. The key principles of the performance regime in each track access contract are to:

(a) provide adequate and continuous incentives for both parties to improve performance, both in terms of punctuality and reliability;

(b) make reasonable provision for compensation for the expected revenue loss to passenger operators and a mix of revenue loss and costs for freight operators;

(c) give an appropriate balance of risk and reward for each party;

(d) avoid perverse incentives that could affect the way Network Rail regulates the operation of the network and, in particular, to ensure that the performance regime does not encourage Network Rail to discriminate unduly between users of the network; and

(e) avoid undue constraints on the network or acting as a barrier to new entrants.

9. The purpose of the recalibration of Schedule 8 as part of PR18 was to ensure that performance regimes in each passenger and freight track access contract satisfy the above principles. These are outlined in the relevant sections below.

Schedule 8 of the model passenger contract

Recalibration

10. The key features of the model Schedule 8 regime for passenger train operators are described further below. The majority of the parameters in this regime were recalibrated as part of PR18. This recalibration exercise was led by the Rail Delivery Group (RDG), with our role being to approve the recalibrated parameters. In particular, based on the audited material provided by RDG, we approved the parameters subject to being satisfied that they were consistent with the previously confirmed policy intent of the parameter.

Benchmarks

11. The Schedule 8 performance regime in the model passenger contract is a benchmarked regime. There are separate benchmarks for Network Rail and train operators, which are set at the service group level (collection of train services) and described in terms of average lateness per 28 day period.

12. If, over a 28 day period, Network Rail or a train operator performs overall at its benchmark, it will make no payments through the regime. However, if Network Rail or a train operator's actual performance is worse than its benchmark, then they make payments to the other party under the regime. Conversely, Network

Rail and train operators receive bonus payments from the other party when their actual performance is better than their benchmark.

13. The purpose of benchmarks is to minimise expected money flows within the Schedule 8 regime. The benchmarks should be set such that, at expected levels of performance, overall Schedule 8 payments would be zero.

14. As explained above, the Network Rail and train operator benchmarks for each service group were last recalibrated during PR18. The passenger operator and Network Rail benchmarks were based on historical average performance. However, the Network Rail benchmarks were also adjusted to take into account Network Rail's CRM-P performance trajectories set for each train operator by ORR in the PR18 final determination².

Network Rail payment rates

15. In the passenger operator Schedule 8 regime, there are separate Network Rail payment rates for each service group.

16. The Network Rail payment rate for compensation to (and bonus payments from) train operators is based on the assessed marginal revenue effect (MRE) of poor performance to that service group. The MRE is the modelled change in revenue for that service group resulting from a one-minute change of Performance Minutes (a measure of lateness and cancellations) across the recalibration period. The Network Rail payment rate calculation converts the MRE for that Service Group into the modelled change in revenue for a one minute change in Performance Minutes for a single day.

17. In PR18, the MREs were calculated differently depending on whether the relevant service was a London & South East (LSE³) or non-LSE service.

18. The MRE for LSE service flows were calculated by multiplying the revenue for the flow, based on ticket sales data, by the semi-elasticity for the flow. A semi-elasticity is a parameter reflecting how revenue is expected to vary with changes in Performance Minutes.

19. For all non-LSE flows, the MREs were calculated by:

- (a) estimating the amount of fare revenue at stake in each service group, using ticket sales data;
- (b) estimating the generalised journey time for each flow;
- (c) combining this with estimates from the Passenger Demand Forecasting Handbook (PDFH) on:

² Annex – Route scorecard train performance summaries (Annex to PR18 final determination supplementary document – scorecards and requirements), ORR, October 2018, available [here](#).

³ That is, a service **from** (or to) the South East or London which runs **to** (or from) the South East or London.

(i) how passenger demand responds to percentage changes in generalised journey time (Generalised Journey Time (GJT) elasticities); and

(ii) how much passengers value lateness compared with scheduled generalised journey time (delay multipliers).

20. The MRE for a service group is the sum of the MREs for all the flows within that service group.

21. The Network Rail payment rate for a service group is calculated as follows:

(a) first, the MRE for the service group is multiplied by a price base factor (to convert the MREs in outturn prices from the historical period used to the values for the start of CP6); then

(b) the product from this is divided by the sum of all the busyness factors across the historical period used. (Busyness factors are a measure of the planned number of schedule stops in the timetable for a rail period compared to the average number scheduled in the bi-annual timetable.)

22. Different types of passenger (such as commuters and leisure travellers) generally have different responses to poor performance (in terms of how it affects their future travel intentions). This was reflected in the PR18 recalibration of Schedule 8 payment rates, through the semi-elasticities or GJT elasticities and delay multipliers used in the payment rate calculations for the different service groups.

Train operator payment rates and the star model

23. On a multi-user rail network, any one train operator's operational performance can affect others' performance. This effect can be far wider than simply those train operators whose services run along the same routes. For example, it is quite possible that a significant incident, such as a train failure on the East Coast Main Line at Peterborough, could affect other operators on that line, those operators running services that cross that line at some point and other lines often far away.

24. The train operator payment rates are the amount a train operator will pay for delays that it causes. The train operator payment rates are also set at the service group level.

25. Any Schedule 8 payment liability as a result of the impact of one train operator's performance on another is channelled through what is called the 'star model' with Network Rail at its centre.

26. The train operator payment rate is calculated so that, if all train operators perform at expected levels, Network Rail would – overall – make no net gain and no net loss from the payments it makes to/receives from train operators for delays caused by other train operators.

Other features of the Schedule 8 performance regime

27. The Schedule 8 performance regime also sets out:

- (a) the requirement for Network Rail and train operators to record information relating to the reasons for delays and incidents and for Network Rail to establish and agree the records necessary to operate all train performance schemes (i.e. not just that in the Schedule 8 performance regime);
- (b) the procedures and compensation payable as a result of cancellations of services;
- (c) monitoring points and monitoring point weightings (MPWs). These are to ensure that payments reflect the passenger usage along the route of the service. Typically there are around four to five monitoring points for each service code (although for short-distance services or very long-distance ones fewer or more would be appropriate). In any event, all stations where trains regularly terminate should be monitoring points. An MPW reflects the proportion of passengers alighting or interchanging at the monitoring point or one of the stations preceding it, subsequent to the previous monitoring point; and
- (d) for franchised operators, sustained poor performance (SPP) provisions. These provide for additional compensation to be payable to a train operator when lateness and cancellations attributable to Network Rail reach a specified threshold, beyond which it is considered the liquidated sums nature of Schedule 8 could start to undercompensate the operator significantly. Further information on SPP is available in a letter that we have published on our website⁴.

Changes to existing performance regimes in CP6

28. The model passenger contract contains a provision to allow Network Rail or the train operator to propose changes to the parameters in Appendix 1 of Schedule 8 during a control period (set out in paragraph 17 of Schedule 8). Under paragraph 17:

- either party can propose a change to the other (e.g. a recalibration);
- if the parties agree, they need to seek our approval; and
- if they do not agree, then either party can refer the matter to us. We would then decide whether to determine the matter ourselves or whether to refer it for resolution under the Access Disputes Resolution Rules.

29. In response to our PR18 draft determination, several stakeholders requested that we give guidance on our approach to requests for within-control period recalibrations of Schedule 8. In our final determination, we set out three broad types of recalibration, based on scope and the reasons why Network Rail or a train operator may seek a within-control period recalibration of Schedule 8.

'Type 1' recalibrations – 'Basic' recalibration

30. This is a recalibration in response to a material change in circumstances (for instance, franchise remapping). It applies only to those operators that are directly affected.

⁴ See http://orr.gov.uk/data/assets/pdf_file/0004/16429/sustained-poor-performance-2014-11-14.pdf.

'Type 2' recalibrations – Large-scale 'basic' recalibration

31. This is a recalibration as a result of a change in circumstances that affects all operators or that affects the 'star' model. It involves recalibrating Schedule 8 for all passenger operators.

32. We are aware of several recalibrations of this sort that may be needed during CP6. Below we set out what we are minded to decide for these recalibrations during CP6 in the event of a dispute between train operators and Network Rail as to whether or not they should go ahead.

33. First, significant changes to the principles or practice of delay attribution during CP6 (whatever their cause) would lead to a significant reclassification of delay. Any such reclassification could warrant a recalibration to ensure that benchmarks align with the level of expected performance on the basis of the revised approach to delay attribution. In the event of a significant change to the principles or practice of delay attribution during CP6, we would be minded to approve applications (agreed or disputed) for recalibration of affected Schedule 8 parameters that are proportionate and consistent with the principles of Schedule 8.

34. Second, significant changes in traffic on the network (for instance, as a result of the addition of Crossrail or Thameslink services) could cause a material imbalance in the 'star' model, the financial impacts of which Network Rail would be exposed to. In the event of such a change in circumstances, we would be minded to approve applications (agreed or disputed) for the recalibration of affected Schedule 8 parameters that are proportionate and consistent with the principles of Schedule 8.

35. It should be noted that this is not an exhaustive list, there may be other circumstances that warrant a Type 1 or Type 2 recalibration of Schedule 8 in CP6. We will consider each request on its merits.

'Type 3' recalibrations – 'Forecast uncertainty' recalibration

36. This type of recalibration would be to 'correct' the benchmarks during the control period to make them better reflect expected performance.

37. For us to be able to approve any such recalibration for benchmarks, applications need to demonstrate that off-benchmark performance is clearly a consequence of uncertainty in forecasting and not, for instance, a result of good or bad performance, or a result of an acknowledged and nonetheless accepted weakness of the recalibration methodology.

38. However, even if we establish that forecast uncertainty does explain the difference between benchmark and outturn performance, we may nonetheless decide not to approve a recalibration, having considered the application in the context of our wider statutory duties. In particular, in deciding whether or not to approve a recalibration, we will take into account the effect it would have on any relevant franchise settlement (in line with our statutory duty to have regard to the Secretary of State's funds).

39. It is important to note that we would not be minded to approve any such applications that sought to address forecast uncertainty with retrospective effect.

Basis for within control period recalibrations

40. Our presumption will be that the PR18 Schedule 8 recalibration evidence base should serve as the basis for all within-control period recalibrations in CP6, in the absence of compelling reasons to do things differently. This evidence base includes both the evidence used to set the payment rates and the benchmarks.

Increases to scheduled journey times and/or introduction of timetable differentials

41. As stated earlier in this module, the improvement trajectory for Network Rail benchmarks in a performance regime is based on targets established through our periodic review. These benchmark trajectories should not change during a control period other than in exceptional circumstances, or in those circumstances detailed above for a “Type 3 recalibration”.

42. However, the incentives provided by the regime can be undermined by non-routine changes to scheduled journey times. This could result in the train operator having to make extra payments to Network Rail under Schedule 8 that it would not have had to pay if those changes had not been introduced. For example, a material increase in a scheduled journey time would make it easier for Network Rail to meet its performance target and thus increase the bonus payments the train operator has to pay to Network Rail. The opposite could apply where scheduled journey times are shortened and Network Rail may have to make extra payments to the train operator. In such circumstances, the recalibration of benchmarks might be appropriate.

43. In particular, the achievement of improvement trajectories can also be influenced by the use of significant timetable differentials. A timetable differential is where, for a number of possible reasons, there is a difference between the times shown in the working timetable and the times shown in the public timetable. These could make it easier for both TOCs and Network Rail to achieve targets for lateness and could distort PPM. Timetable differentials can be appropriate in certain circumstances, for example, where half minutes in the working timetable are rounded up to whole minutes in the public timetable. However, where significant differentials are introduced, the parties should consider whether to recalibrate their benchmarks in Schedule 8 to ensure that they remain as challenging, and the changes are financially neutral.

44. When requesting any such amendment to Appendix 1 of Schedule 8, the parties will need to demonstrate that their net financial position has been or would be altered by the change in scheduled journey times or the introduction of timetable differentials. In the case of an increase in scheduled journey times, the parties will also need to demonstrate that the previous journey times were not achievable.

45. Amendments to Schedule 8 for these sort of changes are also catered for by the provisions in paragraph 17 of Schedule 8.

46. Apart from at periodic reviews, changes to the benchmarks should not be sought where an investment made by one of the parties has led to improvements in expected performance. This is because the investing party should be able to benefit from its investment, in line with the incentive principles of the performance regime.

Caps on bonus payments

47. The performance regime includes both penalty payments for performance worse than benchmark and bonus payments for performance better than benchmark. Normally, where Network Rail's performance is better than benchmark, the train operator's revenue, at least in the long term, can be expected to increase. However, there are some circumstances where the revenue response may be significantly dampened or removed, for example where significant overcrowding occurs. In such cases we will consider approving caps on performance regime bonus payments. We set out the type of evidence that may justify such a cap in a guidance letter issued in August 2006⁵.

New or additional services

48. For new or additional services, a similar approach should be used to the one we used during PR18. However, in some situations modelled (rather than historical) data will need to be used.

49. In the absence of historical data that would allow use of normal calibration techniques our views are as follows:

(a) payment rates – GJT elasticities and late time multipliers from the PDFH can be applied in the usual way for non-LSE flows. Semi elasticities can be applied in the usual way for LSE flows. The estimated fare revenue at stake can be based on revenue forecasts;

(b) benchmarks – the TOC benchmark should be based on the average historical performance of the operator over the most comparable part of the network, whereas for Network Rail it should be based on performance on the line or its nearest equivalent. In both cases, if information about performance with similar rolling stock is available, this should be used. For major changes, full timetable modelling and simulation may have been undertaken and could be used to inform benchmark setting. We would expect Network Rail and the operator to discuss the most appropriate approach with ORR before submitting a regime; and

(c) monitoring points and weightings may be based on demand forecasts.

50. All scheduled passenger services should be incentivised throughout their journey (that is, with monitoring points at destination stations and relevant intermediate points as specified above). The only

⁵ Performance regime review: Caps on Schedule 8 bonus payments, ORR, 22 August 2006, available at <http://webarchive.nationalarchives.gov.uk/20131001175041/http://www.rail-reg.gov.uk/server/show/nav.177>

circumstances where it might be acceptable not to have trains monitored throughout their journey are where:

- (a) complete monitoring cannot be achieved for technological reasons; and/or
- (b) the number of trains terminating is very small and the number of passengers and revenue is not materially significant – for example, less than one percent of:
 - (i) the total revenue of the service group; and/or
 - (ii) passenger numbers within a service group.

51. New services may be included in existing service groups or new service groups. Changes to existing monitoring point weightings are likely to be needed if the number of passengers alighting between or at the particular monitoring point(s) is expected to change as a proportion of the total passengers alighting for the service group as a result of the additional services. We will expect to receive supporting information for material changes.

52. When additional services are added to an existing approved contract, this may involve new routes where there are no existing monitoring points, or it may require a change to monitoring point weightings. If new terminating points are introduced, additional monitoring points will generally be needed to maintain the principle that all services are incentivised.

53. Where franchises have been remapped and services are reallocated across two or more train operators, we would expect to see the performance regimes of the affected operators recalibrated to ensure that the revised services continue to be properly incentivised.

54. For completely new operators we may be prepared to approve a contract containing provisions for the operator subsequently to develop and agree a full performance regime with Network Rail, or have one established in an arbitral process. In such cases, we will expect this development to be completed as quickly as possible, to reflect our principle that all parties should be incentivised to improve performance. We will also expect the provisions to establish a very clear process for the development and incorporation of the established regime. A model clause is available for this purpose from our website⁶. As an alternative, a regime with estimated parameters may be approved, but with provisions for retrospective adjustment in the light of actual experience. We expect fully functioning regimes to be in place once a full year's experience has been gained.

⁶ <https://orr.gov.uk/rail/access-to-the-network/track-access/forms-model-contracts-and-general-approvals>

Bespoke performance regimes

55. It is possible that in some instances applicants may seek a bespoke performance regime. Where this is the case, we will consider this against the justification and evidence for the proposal. We would expect any such regime to satisfy the principles set out above and also to:

- (a) not pose any undue financial impact on or risks to funders, for example if the train operator is subject to revenue support;
- (b) be financially neutral at the levels of performance expected at PR18 or, if appropriate, as a result of a subsequent change to the benchmarks, for example due to a timetable change or a Type 3 recalibration; and
- (c) not require additional and unnecessarily burdensome delay attribution or other data capture systems.

Schedule 8 of the model freight contract

56. The performance regime in the model freight contract is similar in some respects to that in the model passenger contract in that it is a benchmarked regime. However, unlike the passenger regime it is a third party regime in that the freight operators are measured on their actual impact on other operators, rather than a modelled impact on other operators, based on delay they cause to their own services.

57. Schedule 8 of the model freight contract (which is also included in the model freight operating company customer access contract) is designed to incentivise both parties to minimise disruptive events for which they are responsible and both parties are under an obligation to avoid and mitigate the effects of any delays or cancellations. It is the mechanism by which the freight operator receives compensation from Network Rail for the impact of poor performance on its services and where a freight operator must pay Network Rail when its performance detrimentally affects other operators' trains on the network. Under the 'star' model mentioned above, these payments are then passed on by Network Rail to the other affected operator. The performance regime also provides for compensation to be paid for the cancellation of an operator's train or a long period of disruption to an operator's services.

Benchmarks

58. The Network Rail and train operator benchmarks are defined in minutes of delay per 100 miles (rather than average minutes of lateness, which are used in Schedule 8 for passenger operators). Payments are made when Network Rail's or a freight operator's performance diverges from its benchmark, with compensation paid for worse than benchmark performance and bonuses received for better than benchmark performance.

59. The Network Rail Benchmark is based on Network Rail's regulatory performance trajectory, as determined in ORR's PR18 final determination. The Freight Operator Benchmark is based on average past performance over the 5-year recalibration period.

60. The Network Rail and train operator benchmarks are the same for all freight operators. Since the benchmarks are normalised for the distance operated, they are suitable for all sizes of operator. The benchmarks were set for CP6 through PR18.

Compensation and bonus payment rates

61. The Network Rail payment rate represents the amount of compensation paid to freight operators or bonuses paid to Network Rail when Network Rail performs better or worse than its benchmark. It is intended to reflect the average financial impact on a freight operator of each minute of delay to a freight train attributable to Network Rail or another train operator.

62. The train operator payment rate represents the amount of compensation paid to Network Rail or bonuses paid to a freight operator when the freight operator performs better or worse than its benchmark. It is based on the average estimated financial impact of a freight operator causing a minute of delay to another train operator.

63. The Network Rail and train operator payment rates are the same for all freight operators, and were recalibrated for CP6 through PR18.

Cancellation arrangements

64. Cancellation payments compensate freight operators for some of the financial impact of each freight train cancellation attributable to Network Rail. The number of hours a service can be delayed before a service becomes a cancellation is 12. If cancellations exceed a threshold representing the historic normal number of cancellations, a higher cancellation payment applies. The payment rate for a cancellation is referred to in the track access contract as the 'Cancellation Sum'. There are two Cancellation Sums in the track access contract. The higher Cancellation Sum is paid for cancellations above the Cancellation Threshold (which is defined in the track access contract) and the lower Cancellation Sum is paid for cancellations below the Cancellation Threshold.

Late Notice Cancellation Sum

65. The Late Notice Cancellation Sum is paid to a freight operator by Network Rail when the operator experiences a cancellation under Schedule 4, which is notified less than 12 weeks before the service is due to commence but is not due to a disruptive event, and the operator and Network Rail are unable to agree an alternative slot.

Service Variation Sum

66. The Service Variation Sum is paid by Network Rail to the train operator for each planned service that is diverted or otherwise amended in specified circumstances as a result of a Network Rail caused incident.

Disruption Sum

67. The Disruption Sum is a sum paid by the train operator to Network Rail when a restriction of use is cancelled or the commencement delayed due to a reason attributable to the train operator.

Incident Cap Access Charge Supplement Rate

68. Operators may wish to limit (either fully or by a predefined percentage) their liability through the performance regime with an incident cap, which reduces their exposure to a single incident. Such a cap would need to be funded through an access charge supplement (ACS) so that Network Rail recovers the likely cost associated with the cap. The menu of incident caps and associated ACSs (paragraph 11.2 of Schedule 8) allows freight operators to choose their favoured incident cap level each year and pay Network Rail the associated ACS.

Annual caps

69. Freight operators and Network Rail have reciprocal annual caps on the net liability they face under the Schedule 8 performance regime. These provide an important protection to freight operators by providing certainty about the maximum liabilities they could face.

70. The appropriate size of an annual cap depends on the scale of operations. Smaller freight operators with a market share of less than 5% of total freight train miles in a given year have a default reciprocal annual cap of £695k (2017-18 prices). Larger freight operators are required to negotiate their own annual caps with Network Rail, and where agreement cannot be reached, we determine the level of cap.

71. As in CP5, both parties will be required to review the cap at the end of the year if annual contract mileage has varied by 2.5% or more since the cap was last updated. More information on annual caps is contained in the module *Model freight operator contracts*⁷.

Bespoke regimes

72. We consider that bespoke arrangements to the freight performance regime would be the exception to the rule given the development of the standardised and simplified model performance regime for freight that was established for CP4 and subsequently updated for CP5 and CP6.

⁷ <https://orr.gov.uk/rail/access-to-the-network/track-access/guidance>

Schedule 8 of the model charter contract

73. The performance regime in the model charter contract is largely the same as the regime in the model freight contract, in that:

- it is a benchmarked regime;
- charter operators are measured on their actual impact to other operators;
- it is designed to incentivise both parties to minimise disruptive events for which they are responsible;
- both parties are under an obligation to avoid and mitigate the effects of any delays or cancellations;
- a charter operator receives compensation from Network Rail for the impact of poor performance on its services and a charter operator must pay Network Rail when its performance detrimentally affects other operators;
- payments from charter operators are passed on by Network Rail to the other affected operator under the 'star' model; and
- the regime provides for compensation to be paid for the cancellation of an operator's train or a long period of disruption to an operator's services.

Benchmarks

74. Payments are made when Network Rail's or a charter operator's performance diverges from its benchmark, with compensation paid for worse than benchmark performance and bonuses received for better than benchmark performance.

75. As there is no regulatory performance target for Network Rail in respect of charter services the Network Rail Benchmark in the model charter contract is based on average past performance over the 5-year recalibration period. The Charter Operator Benchmark is also based on average past performance over the 5-year recalibration period.

76. The Network Rail and train operator benchmarks are the same for all charter operators. Since the benchmarks are normalised for the distance operated, they are suitable for all sizes of operator. The benchmarks were set for CP6 through PR18.

Compensation and bonus payment rates

77. Network Rail payment rate represents the amount of compensation paid to charter operators or bonuses paid to Network Rail when Network Rail performs better or worse than its benchmark. It is

intended to reflect the average financial impact on a charter operator of each minute of delay to a charter train attributable to Network Rail or another train operator.

78. The train operator payment rate represents the amount of compensation paid to Network Rail or bonuses paid to a charter operator when the charter operator performs better or worse than its benchmark. It is based on the average estimated financial impact of a charter operator causing a minute of delay to another train operator.

79. The Network Rail and train operator payment rates are the same for all charter operators, and were recalibrated for CP6 through PR18.

Cancellation arrangements

80. Cancellation payments compensate charter operators for some of the financial impact of each charter train cancellation attributable to Network Rail. The number of hours a service can be delayed before a service becomes a cancellation is 12.

81. In the charter performance regime there is only one cancellation payment rate for charter operators, compared to two cancellation payment rates in the freight performance regime. The payment rate for a cancellation is referred to in the track access contract as the 'Cancellation Sum'. It was recalibrated for CP6 through PR18.

Joint cancellation sum

82. In the performance regime in the model charter contract, charter operators receive a payment for the financial impact of each charter train cancellation where Network Rail and an operator are equally responsible for the delay.

83. In the model charter contract this payment rate is referred to as the 'Joint Cancellation Sum'. It was recalibrated for CP6 through PR18.

Incident Cap Access Charge Supplement Rate

84. As in the model freight contract, charter operators have the option to limit (either fully or by a predefined percentage) their liability through the performance regime with an incident cap, which reduces their exposure to a single incident. The likely cost to Network Rail of providing an incident cap is funded through an access charge supplement (ACS). The menu of incident caps and associated ACSs (paragraph 9.2 of Schedule 8) allows charter operators to choose their favoured incident cap level each year and pay Network Rail the associated ACS.

Annual caps

85. Charter operators and Network Rail have reciprocal annual caps on the net liability they face under the Schedule 8 performance regime. These provide an important protection to charter operators by providing certainty about the maximum liabilities they could face.

86. The only difference between the annual caps in the model charter and freight contracts is that in the model charter contract all charter operators have the same reciprocal annual cap, which is the same as the default reciprocal annual cap for smaller freight operators (£695k (2017-18 prices)).

Bespoke regimes

87. Our approach for bespoke arrangements to the charter performance regime is the same as it is for the freight performance regime, that is, it would be the exception to the rule given the development of the standardised and simplified model performance regime for charter.