



# Possessions

April 2019

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## Introduction

1. This module explains our policy on track access possessions<sup>1</sup>. We wish to ensure that access contracts include provision for cost recovery and payment of appropriate compensation; secure efficient use of network capacity; and thus facilitate better services for rail customers.

2. 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 determination<sup>2</sup>. This document reflects the regulatory framework implemented through the track access contract as part of PR18, which included the possessions regime (Schedule 4).

## Schedule 4 overview

3. The arrangements under which Network Rail is able to carry out restrictions of use on its network (e.g. for engineering possessions, through imposing temporary speed restrictions, etc.) are set out in Part D of the Network Code. Both the passenger and freight contracts contain compensation regimes for such restrictions in Schedule 4. For passenger operators these are known as possessions regimes, but in the model freight contract they are referred to as “variations to services”.

4. The intention of the possession regimes is to:

- (a) compensate train operators for the financial impact of planned disruption; and
- (b) incentivise the safe, early, efficient planning of engineering work by Network Rail.

However, these regimes work differently to reflect the differing circumstances of each market.

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<sup>1</sup> The term ‘possessions regime’ is commonly used to describe compensation arrangements for occasions when an operator’s access to the network is restricted (e.g. because of a speed restriction or engineering possession). Possessions are also known as restrictions of use.

<sup>2</sup> Our Final determination, ‘2018 periodic review final determination: Overview of approach and decisions’, ORR, October 2018, is available [here](#). Details about our changes to Schedule 4 can be found in our ‘Overview of charges and incentives’ supplementary document available here: <https://orr.gov.uk/rail/access-to-the-network/track-access/guidance>.

5. In this document, we discuss our policy on possessions regimes, laid out in Schedule 4, as follows:

- (a) Schedule 4 of the model passenger contract;
  - (i) key principles; and
  - (ii) bespoke possessions regimes; and
- (b) Schedule 4 of the model freight and freight customer contracts.

6. Detailed guidance on completing Schedule 4 of the model passenger contract, Schedule 4 of the model freight contract and Schedule 4 of the model freight customer operator contract is contained in other modules<sup>3</sup>.

## Schedule 4 of the model passenger contract

### Key principles

7. The possessions compensation regime for passenger operators has evolved over the course of several periodic and interim reviews. The key principles of the current regime are:

- (a) compensation should be available for all disruptive possessions<sup>4</sup>, thereby ensuring that Network Rail is incentivised to plan all work carried out on the network efficiently;
- (b) such compensation should be based on the degree of disruption experienced, no matter whether the possession is related to maintenance, renewals or enhancement work;
- (c) to minimise transaction costs, formulaic revenue loss and cost compensation is available for less disruptive possessions<sup>5</sup> to operators who pay an access charge supplement, with the ability for all operators to claim actual revenue and cost compensation where possessions are long or disruption is sustained;
- (d) formulaic revenue loss compensation is based on operator specific Schedule 8 payment rates. Network Rail receives a discount on the amount of revenue loss compensation it pays out the earlier it notifies operators about possessions;
- (e) different revenue compensation algorithms apply where a train-bus-train movement misses monitoring points, or for a high-speed diversion; and

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<sup>3</sup> <https://orr.gov.uk/rail/access-to-the-network/track-access/guidance>.

<sup>4</sup> Full Schedule 4 compensation is available only to operators who pay an access charge supplement.

<sup>5</sup> Known as Type 1 possessions, generally less than 60 hours duration.

(f) formulaic cost compensation encompassing compensation for rail replacement buses (with compensation differentiated by area of operation) and changes in train mileage (with compensation differentiated by type of rolling stock).

8. Franchised passenger train operators fund the possessions regime through access charge supplements. The sum of these access charge supplements is equal to the total compensation payments forecast at the periodic review that Network Rail will pay to operators for withholding access to the network as a result of maintenance and renewals.

9. Open access passenger operators, without the payment of an access charge supplement, only receive compensation for long or sustained disruption. However, if they wish, they can opt for a full Schedule 4 compensation regime in return for paying an access charge supplement.

10. Generally, we would expect franchised passenger track access contracts to incorporate the template Schedule 4 as it appears in the model passenger contract.

### **Bespoke possessions regimes**

11. Where applicants are seeking a bespoke regime, we will consider this against the justification and evidence for the proposal. We would expect any such regime to:

- (a) incentivise Network Rail to plan possessions early and to manage them efficiently;
- (b) incentivise the parties to limit the impact of possessions on the passenger timetable;
- (c) minimise the risk of perverse incentives and, in particular, not cause Network Rail to discriminate unduly between users of the network;
- (d) not pose any undue financial risks to or impact on funders, for example, if the train operator is subject to revenue support, or through the financial protection mechanism;
- (e) when considered alongside the Schedule 4 access charge supplement, be financially neutral in respect of possessions due to maintenance and renewal activity forecast during PR13; and
- (f) not require unnecessarily burdensome additional systems for processing data.

### **Schedule 4 of the model freight and model freight customer contracts**

12. These model contracts do not contain a Schedule 4 with the sort of restriction of use compensation regime used by passenger train operators. Instead, the freight operator Schedule 4 describes the process and requirements for variations to services. It also provides compensation in two ways:

- (a) for late notice (less than 12 weeks) service variations; and
- (b) for significant planned (more than 12 weeks' notice) disruption.

13. Schedule 4 in the model freight customer contract operates in the same way as described below, but may only be invoked when the access rights have not been drawn down into a freight operating company customer access contract. Where the access rights have been drawn down, then the Schedule 4 arrangements in the freight operating company customer access contract apply and are described below.

14. A freight operator will be eligible for a payment (a 'Service Variation Sum') where a planned service is varied for a reason attributable to Network Rail and where the variation meets one or more of a list of criteria. These criteria are set out in Schedule 4 and are intended to cover circumstances, such as the use of a longer diversionary route or a delayed departure time, which are likely to cause the beneficiary significant additional costs. Compensation for late notice cancellations is available through Schedule 8. The Service Variation Sum and Late Notice Cancellation Sum are the same for all freight operators.

15. Freight operators can also claim compensation for significant planned disruption, where one or more of a list of criteria set out in Schedule 4 is met. Compensation is available at two levels. A normal planned disruption sum is available where there has been a significant change to the journey distance or timing or there are more onerous length and weight restrictions. An Enhanced Planned Disruption Sum is available if the service is cancelled or there are more demanding gauge restrictions or additional or substitute locomotives are required. Normal and Enhanced Planned Disruption Sums are the same for all freight operators.

16. In addition to the liquidated damages sums described above, actual costs and losses can be claimed if the disruption meets a further set of criteria. These criteria include the use of additional or substitute locomotives, transport by road or the blocking of an origin or destination.

17. Freight operators are not required to pay an access charge supplement to be eligible for the compensation described above. We consider that the regime provides incentives to Network Rail to minimise disruption and provide early notification to operators and is a useful means of encouraging the parties to agree to vary a service which otherwise would be cancelled.

18. Should freight operators desire a restriction of use regime of the sort used by franchised passenger train operators (in return for an access charge supplement), a proposal can be put to us for our consideration. We will consider any proposal against the justification and evidence given for the proposal. We would expect any such regime to:

- (a) incentivise Network Rail to plan possessions early and to manage them efficiently;
- (b) allow a freight operator to receive compensation for any restriction of use for which it receives less than three months' notice;
- (c) allow Network Rail to recover the expected costs through an access charge supplement on the basis of assumptions approved by ORR;

(d) avoid giving rise to perverse incentives, in particular not cause Network Rail to discriminate unduly between users of the network; and

(e) not require unnecessarily burdensome additional systems for processing data.