



OFFICE *of the*  
RAIL REGULATOR

**REFORM OF THE NETWORK CODE**  
**AN INITIAL CONSULTATION DOCUMENT**



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## *Regulator's foreword*

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1. This document is about the reform of the central commercial code for the railway industry – the network code. The network code is a key element of the economic and legal architecture of the industry. It concerns matters of timetabling and network operation, changes to the network and rolling stock, the provision of information and much else.
2. Network codes are common to all major utility sectors: gas, water and electricity. They govern the smooth working of those industries and are continually updated and improved to take account of the changing environment. That is what is now needed in the rail industry which lags behind the other sectors.
3. For ten years, the network code has remained largely as it is now (with the exception of the timetabling regime in Part D). When it was established in April 1994, the industry had no experience of its new structure and operation. I believe that the code can now be improved and adapted better to fit the current operational, economic and other realities of the industry in the time since.
4. The reforms to the contractual and regulatory matrix for the railway industry which I have been pursuing in the last four and half years have been about putting right the shortcomings of the original privatisation settlement. They have been about empowering infrastructure users and the infrastructure provider in their relationship with one another, bringing them closer together, and thereby creating a true co-operative joint venture of mutual interest, recognising the intensity of their interdependence and the need for a fair and sufficient specification of what is expected of each and effective remedies for when things go wrong.
5. Having reformed the financial framework for Network Rail, its network licence and so its accountability to the public interest, and having established the new model access contract between Network Rail and its train operator customers, it is now time to complete the reform programme by amending the network code, making it fit for the important job it has to do. The objective is, as ever, to improve efficiency and performance, and give the industry the framework it needs for the competent delivery of quality railway services to passengers and freight customers at a fair and affordable price. The network code is an essential part of that process.

6. This will be a significant job and I expect to complete the highest priority aspects - and to make significant progress on the remaining parts - of it before the end of my term of office in July 2004.

**TOM WINSOR**  
**RAIL REGULATOR**  
**March 2004**

# 1. Introduction

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## Background

- 1.1 The network code (formally the Railtrack Track Access Conditions<sup>1</sup>) was established when Railtrack took over operation of the rail network on 1 April 1994. Each access beneficiary (a train operator or other party holding access rights to use Network Rail's network) has a bilateral track access contract with Network Rail giving it permission to use the network and defining such things as the rights to run services and the liability and remedies regimes if the obligations are not honoured. There are certain matters, generally concerning industry processes, which either need to be common to all train operators or where there are significant benefits in having commonality. These are covered by the network code. The code is incorporated in all the bilateral track access contracts to which Network Rail is a party (except for certain arrangements which were in effect before 1 April 1994 involving London Underground Limited and Heathrow Express Limited). In effect, therefore, the network code forms a set of conditions for access to the network, setting out Network Rail's contractual obligations for managing the network, and the associated protection for, and obligations of, train operators.
- 1.2 The elements of the network code concern:
- (a) procedural matters (Part A on definitions, Part C on changes to the code, and the Access Dispute Resolution Rules (ADDR), which are an annex to the code);
  - (b) timetabling and operation of the network; this includes Part B (delay attribution), Part D (timetabling), Part E (environmental responsibilities) and Part H (management of disruption); and
  - (c) changes to the network and trains used on it; these are covered in Part F (vehicle change) and Part G (network change).
- 1.3 The network code must be seen in the context of the "star model" of industry relationships. Individual train operators have contracts with Network Rail to use the

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<sup>1</sup> The Railtrack Track Access Conditions can be found on the ORR and Network Rail websites: [http://www.rail-reg.gov.uk/upload/pdf/tac\\_allparts\\_jan03.pdf](http://www.rail-reg.gov.uk/upload/pdf/tac_allparts_jan03.pdf) or [http://www.networkrail.co.uk/documents/RT\\_Track\\_access\\_conditions.pdf](http://www.networkrail.co.uk/documents/RT_Track_access_conditions.pdf).

network, and these contracts incorporate the code. But the code does not create any direct contractual relationship **between** train operators; all the relationships (obligations, remedies, liabilities) flow through Network Rail. The code is a contractual code, and safety responsibilities (e.g. through safety cases and Railway Group Standards) take priority over code obligations. The only parties with contractually enforceable rights under the code are the parties to track access agreements.

- 1.4 Since the code came into effect in 1994 it has only been subject to one comprehensive review. This was a review by the Regulator in the light of the initial operation of the code, and was completed in January 1995, with changes coming into effect on 1 April 1995.
- 1.5 Since then several changes have been made to the code by means of the change procedure in Part C. These have largely focused on the timetabling process in Part D (which was the subject of major change in 1999).

#### **Need for, and objectives of, a review**

- 1.6 The Regulator considers that it is now appropriate for him to launch a comprehensive review of the code and its operation. This is because:
- (a) the code has been in place for almost ten years, during which time there has been continuing change in the industry, and the industry has gained experience of its operation;
  - (b) there are certain areas (set out in Chapters 2 to 5 below) where the Regulator considers that experience has shown that current arrangements are not working efficiently and change is now appropriate;
  - (c) in particular, key elements in the current arrangements do not facilitate or incentivise the industry working together to generate a solution for the benefit of the whole industry; and
  - (d) the Regulator has now published model clauses for the bilateral passenger track access contracts<sup>2</sup>, and draft model clauses for freight track access

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<sup>2</sup> *Model clauses for passenger track access contracts – final policy conclusions*, Office of the Rail Regulator, London, December 2002 and *Model clauses: the template passenger track access contract: Regulator’s final conclusions*, Office of the Rail Regulator, London, June 2003, available at <http://www.rail-reg.gov.uk/upload/pdf/158.pdf> and <http://www.rail-reg.gov.uk/upload/pdf/171.pdf> respectively.



contracts<sup>3</sup> which are designed to encourage a partnership between the relevant parties. It is therefore now timely to consider the other key element of the contractual relationship – the network code.

1.7 In carrying out the review of the code and proposing or making changes to it, the Regulator will discharge his duties under section 4 of the Railways Act 1993, as amended, taking into account the relevant European Directives<sup>4</sup>, with the objective that the code should further the achievement of those duties. He believes, in particular, that changes to the code should facilitate:

- (a) improved industry performance;
- (b) improved efficiency and cost control, viewed from a “whole-industry” perspective;
- (c) the ability to accommodate growth in network usage in the most efficient way;
- (d) a greater element of co-operative working between the different elements of the industry;
- (e) an appropriate balance between stability for industry parties to plan their businesses, and flexibility for the industry to respond to developments; and
- (f) simplification of responsibilities and processes, and better understanding of rights and responsibilities through improved clarity in procedures and drafting.

1.8 The Regulator recognises that many parts of the code have worked effectively, and that there are many, sometimes complex, inter-relationships within the code and with other industry arrangements, such as the terms of bilateral track access agreements, franchise agreement provisions (including the new template franchise agreement) and the vehicle and route acceptance process. This means the review will need to be a careful and thorough one, and the Regulator will have regard to his duty to enable providers of railway services to plan their businesses with a reasonable degree of assurance.

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<sup>3</sup> *Model freight track access contract: draft conclusions*, Office of the Rail Regulator, London, December 2003 and *Draft freight model track access contract*, Office of the Rail Regulator, London, December 2003, available at <http://www.rail-reg.gov.uk/upload/pdf/181.pdf> and at <http://www.rail-reg.gov.uk/upload/pdf/182.pdf> respectively.

<sup>4</sup> In particular, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification.

- 1.9 The Regulator also recognises that in some areas apparent failures in the effectiveness of the network code may have been the result of failures to use or apply it properly, or to take its implications fully into account. Therefore an important part of the review will involve addressing how observance of the code can be improved, and that amendments will work in practice.
- 1.10 On 19 January 2004, the Secretary of State for Transport announced a review of the rail industry. This review is still in progress. The Regulator notes however that the Secretary of State has said that the railway industry will remain a public-private partnership with independent economic regulation, and believes that the issues covered by this document will need to be addressed whatever the outcome of the review.
- 1.11 Finally, the Regulator will be mindful of the need to ensure that what is proposed is simple to understand and operate, and, in accordance with good regulatory practice, will want to assess the costs and benefits of any change against relevant alternatives.
- 1.12 Consultees are asked to comment on the need for, and objectives of, a review of the code set out in paragraphs 1.6 to 1.11 above.**

### **Structure of document and arrangements for consultation**

- 1.13 The Regulator has recently proposed the introduction of a new Part L of the network code, introducing local output commitments between Network Rail and train operators, and expects that this will take effect shortly. He has also consulted, in July 2003, on the introduction of a new Part J concerning variation and adjustment of access rights and on a further draft incorporating some freight-specific provisions in December 2003<sup>5</sup>. He expects to publish his final conclusions on it, and to initiate the process for incorporating it into the network code shortly. He has previously consulted on a new Part K about the exchange of information.
- 1.14 The Regulator has held some discussions with industry parties such as Network Rail, the Association of Train Operating Companies, English, Welsh and Scottish Railway Limited and the Strategic Rail Authority (SRA) to inform production of this consultation document.

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<sup>5</sup> *Changes to access rights and moderation of competition: draft conclusions*, Office of the Rail Regulator, London, July 2003 and *Model freight track access contract: draft conclusions*, Office of the Rail Regulator, London, December 2003, available at [www.rail-reg.gov.uk/filestore/bluedocs/177.pdf](http://www.rail-reg.gov.uk/filestore/bluedocs/177.pdf) and at [www.rail-reg.gov.uk/filestore/bluedocs/181.pdf](http://www.rail-reg.gov.uk/filestore/bluedocs/181.pdf) respectively.

- 1.15 The structure of this consultation document is as follows:
- (a) Chapter 2 concerns the role of the network code and its structure, including the code change processes and dispute resolution rules. It also asks whether the scope of the code should be extended;
  - (b) Chapter 3 concerns timetabling and operation of the network, covering timetabling (Part D), management of disruption and delay attribution (Parts H and B) and environmental responsibilities (Part E);
  - (c) Chapter 4 concerns network and vehicle change (Parts G and F);
  - (d) Chapter 5 concerns information flows and the proposed new Part K (information); and
  - (e) Chapter 6 concerns the process and timescale for the review.
- 1.16 Consultation responses should be sent by no later than 19 April 2004 to:
- David Robertson  
Manager, Track Access Policy  
Office of the Rail Regulator  
1 Waterhouse Square  
138 – 142 Holborn  
London EC1N 2TQ
- 1.17 It would be helpful if responses could also be emailed to [david.robertson@orr.gsi.gov.uk](mailto:david.robertson@orr.gsi.gov.uk).
- 1.18 Respondents should indicate clearly if they wish all or part of their responses to remain confidential to the Office of the Rail Regulator (ORR). Otherwise it is expected that they will be placed in the ORR library and on the ORR website and may be quoted from by the Regulator. Where a response is made in confidence, it should be accompanied by a statement summarising the submission but excluding the respondent's confidential information. This statement may then be published, placed in the ORR library and on the ORR website and quoted from by the Regulator. The Regulator may also publish the names of respondents in future documents or on the ORR website unless a consultee indicates that he wishes his name to be withheld.
- 1.19 Copies of this document can be seen on ORR's website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)) and in the ORR library.



## ***2. Role and structure of the network code***

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### **Introduction**

2.1 Chapter 1 outlined the current role and structure of the network code – a contractual code incorporated by reference in bilateral track access agreements, but with rights, obligations, remedies and liabilities flowing through Network Rail under the “star model”. This chapter concerns:

- (a) possible extension in the scope of the code;
- (b) possible transfer of certain bilateral rights and obligations into the code;
- (c) possible rights of direct enforcement of code provisions by access beneficiaries against each other;
- (d) whether rights under the code should be conferred on third parties (*e.g.* funders, suppliers);
- (e) whether the code should be linked to a licence obligation;
- (f) the code change procedure;
- (g) the Access Dispute Resolution Rules;
- (h) possible introduction of an explicit purpose to the code; and
- (i) conformity with EU requirements.

### **Extension of code scope**

2.2 As noted above (paragraph 1.1), the network code covers those matters, generally concerning industry processes, which either need to be common to all train operators, or where there are significant benefits in having commonality.

2.3 The Regulator has already (as set out in paragraph 1.13 above) proposed some extension of the scope of the code to cover local output commitments, exchange of information and variation and adjustment of access rights. Apart from these, and the points set out in paragraphs 2.5 to 2.8 below, the Regulator is not currently of the view that there should be significant extension in the scope of the code.

**2.4 Views of consultees are sought on whether any further extensions of the code are appropriate having regard to the objectives of the review.**

**Possible transfer of certain bilateral rights and obligations**

- 2.5 With the introduction of passenger and (shortly) freight model contracts, there will be greater standardisation between the provisions of operators' track access contracts. In future, all operators are likely to have identical provisions dealing with, for example, the required standard of performance, liability, dispute resolution and suspension and termination. In other cases, all passenger operators or all freight operators will have broadly the same provisions in their contracts (*e.g.* most of Schedules 4, 7 and 8 will be identical for all passenger operators, other than London Underground, Heathrow Express and Eurostar and, with different common provisions, for all freight operators).
- 2.6 There may be advantages in moving such standard provisions from bilateral contracts to the network code:
- (a) faster and uniform introduction of changes – the model contract terms are likely to develop over time and making changes via the network code would ensure that they applied to all operators from the same date, rather than being introduced over several years;
  - (b) simplifying the track access application process – putting “common” provisions in the network code would reduce or remove the scope for parties to propose bespoke drafting for them (which the Regulator would then have to consider and consult on) and focus attention on the remaining operator-specific provisions;
  - (c) ease of understanding; and
  - (d) creating greater long term certainty because the code provisions outlive any bilateral agreement.
- 2.7 The Regulator is aware, however, that because of the existence of the change processes for the network code, train operators and Network Rail may consider that inclusion of provisions in bilateral contracts gives them greater certainty to plan their businesses.

**2.8 Views of consultees are sought as to whether the current balance between the bilateral provisions contained in individual track access agreements, and the network code, could be improved.**

**Direct enforcement of rights and obligations by access beneficiaries**

2.9 At the time the code was established, the view was taken that all rights and obligations, and remedies and liabilities, should flow through Railtrack (now Network Rail). This is the so-called “star model”. The aim was to keep the structure simple and reduce the risk of multiple litigation (for instance, about individual incidents).

2.10 The Regulator considers that this principle is generally still sound, but that it may be sensible to give rights to direct remedy/liability in respect of certain breaches of the network code where, for example, one party to the code relies heavily on the information provided by another party other than Network Rail. This is most likely to be the case under network and vehicle change.

**2.11 Views of consultees are sought on this proposed approach and the circumstances in which direct enforcement by one access beneficiary against another may be appropriate.**

2.12 A more radical approach would be to move to a new structure where the network code became a multilateral access agreement, and the bilateral agreement was just an accession agreement. This is, in essence, the approach being adopted for stations with the development of the stations code.<sup>6</sup> The Regulator considers that, on balance, the potential complexity of the transition would outweigh the benefits.

**2.13 The Regulator welcomes views of consultees on this point.**

**Third party rights**

2.14 Currently the only parties to the network code are Network Rail and access beneficiaries under track access agreements. The code requires certain organisations (the SRA, Passenger Transport Executives (PTEs), Health and Safety Executive

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<sup>6</sup> Further information about the operation of access to stations and the station code is available on the ORR website at <http://www.rail-reg.gov.uk/server/show/nav.00100b002002> and <http://www.rail-reg.gov.uk/server/show/nav.00100b002002004> respectively.

(HSE)) to be consulted on certain matters (*e.g.* network changes proposed by Network Rail), but confers no contractual rights to this since they are not parties to the bilateral contracts.

2.15 The Regulator believes that there may be benefits in certain classes of funder (*e.g.* SRA, PTEs, Transport for London, the Scottish Executive) and certain classes of supplier (*e.g.* rolling stock owners and manufacturers) having contractual rights under specified elements of the code, particularly in respect of network and vehicle change. This is because of the need of funders for a direct relationship with Network Rail on matters with a long-term impact on the network, and the specific needs of suppliers for a direct relationship (*e.g.* in the case of vehicle design and acceptance).

**2.16 Views of consultees are sought on:**

- (a) **the principle that certain defined classes of third party should have rights under the network code or whether other mechanisms (*e.g.* under the network licence) are more appropriate;**
- (b) **what elements of the code this should involve;**
- (c) **the benefits and disbenefits of conferring the rights;**
- (d) **the mechanism for conferring the rights; and**
- (e) **the appropriate liability/remedy regime.**

**Licence obligation**

2.17 The Railways Act 1993 contained a distinction between its provisions concerning access to railway facilities and the provisions concerning licensing of operators. The Transport Act 2000 amended section 9 of the Railways Act 1993 to state (section 9(3A)) that a licence could include conditions relating to any matter which is dealt with by an access agreement. Therefore it would, in principle, be possible for establishment of the network code by Network Rail, and for accession to it (by licensed operators), to be a licence obligation. It would need to be effected by modification to licences either by agreement, or failing that by reference to the Competition Commission. It could:



- (a) enable direct enforcement of some or all aspects of the code by the Regulator. The Regulator considers that this would only apply to very specific issues, with enforcement by the parties to the contract remaining the primary mechanism;
- (b) create a right of appeal to the Competition Commission against changes proposed by the Regulator; and
- (c) facilitate third party accession.

2.18 However, the Regulator also notes that:

- (a) it might not be possible to incorporate the requirements in train operator licences because of the requirements of Directive 2001/13/EC which limit the coverage of national conditions; and
- (b) it would not cover industry parties which do not need a licence or are exempt.

At this stage the Regulator believes that these issues are adequately addressed by his other powers and the existing change powers. Therefore he is not minded to propose this change, and the associated licence modifications.

**2.19 Views of consultees are sought on the potential benefits and disbenefits of incorporating a requirement to establish, be a party to, and under certain circumstances, comply with, the network code in licences.**

### **Code change procedure**

2.20 Part C of the code contains provisions whereby the code can be changed:

- (a) by a democratic process involving industry representatives in a Class Representative Committee, subject to approval by the Regulator (and with a right of appeal to the Regulator against a veto by Network Rail or franchised passenger operators); or
- (b) by the Regulator if certain conditions are satisfied.

2.21 The Regulator suggests the following issues might be considered for change:

- (a) ensuring conformity with best practice change procedures in other industry-wide codes;

- (b) giving the Class Representative Committee the right to modify proposals against defined parameters without further consultation; and
- (c) a “fast-track” approach for minor changes.

**2.22 The Regulator seeks the views of consultees as to whether the current code change procedure is effective, and on possible improvements.**

**Access Dispute Resolution Rules**

- 2.23 The Access Dispute Resolution Rules (ADDR) are an annex to the network code, containing provision for an Access Disputes Resolution Committee (ADRC) (sometimes referred to as the Industry Committee) and resolution of disputes by that committee or its subcommittees, arbitration, mediation, expert determination or referral to the Regulator.
- 2.24 The Regulator believes that the current arrangements do not adequately recognise the complex contractual issues that are likely to come to dispute. He has had cause to express concern about the ADRC’s approach and competence to deal with disputes in his appeal judgment on Eurostar track access rights.
- 2.25 The passenger model contract therefore provides for arbitration to be the default option for dispute resolution, other than where the bilateral contract or network code explicitly provides for another means of dispute resolution. However, the model contract also enables the parties to choose to use the ADRC or to go to the High Court if they both prefer, or for the Regulator to determine the forum to be used if the parties cannot agree.
- 2.26 The Regulator also proposes to modify the ADDR so as to enable the establishment of a panel of arbitrators, appointed by the Regulator, to hear disputes that are referred to arbitration. However, he considers that a wider reform of dispute resolution would also be desirable so as:
- (a) to ensure that there is an efficient process with appropriate legal knowledge and experience to deal with complex contractual disputes;

- (b) to ensure that appeals that are on matters of regulatory or commercial policy or railway operations/engineering are dealt with by a forum with appropriate knowledge and experience, and appropriate legal support;
  - (c) to recognise that some disputes may well involve both access contracts and other industry contracts; and
  - (d) to ensure conformity with the Arbitration Act 1996.
- 2.27 The Regulator will want to discuss with SRA and the Railway Industry Disputes Resolution Committee (RIDR Committee, which deals with industry disputes other than those concerning access) whether the review should cover all aspects of dispute resolution in the industry, or just those concerning access. He proposes to carry out a separate consultation on dispute resolution arrangements, and this issue is not covered further in this document.

### **Purpose of code**

- 2.28 Certain parts of the network code contain criteria for the exercise of discretions by Network Rail (for instance, in the context of timetabling and management of disruption). In other cases, no explicit criteria for the exercise of discretions are set out, but there is appeal to the Regulator (who would have regard to his duties under section 4 of the Railways Act 1993).
- 2.29 Views of consultees are sought as to whether the network code should have a purpose to govern the exercise of discretions by Network Rail under its provisions. This could reflect the Regulator's section 4 duties, and possibly also relevant elements of European Union directives.**

### **Conformity with European Union requirements**

- 2.30 EU directives, and their implementation into United Kingdom law, are having an increasingly important effect on the way in which the network is managed by Network Rail, and the relationships between Network Rail and its customers. Reform of the network code must be consistent with this.
- 2.31 The Regulator seeks views of consultees on any areas of the network code which need to be changed to reflect the current and emerging EU framework.



### 3. *Network timetabling and operation*

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#### Timetabling

3.1 Key elements of the timetabling process are set out in Part D of the network code and comprise:

- (a) establishment by Network Rail of the Rules of the Plan (key timetabling parameters) and Rules of the Route (possessions and temporary speed restrictions) following consultation with operators;
- (b) a major projects notice procedure whereby Network Rail can propose, and, subject to consultation and appeal, establish a requirement for possessions over a period longer than the annual Rules of the Route cycle;
- (c) a consultative process whereby train operators bid for timetable slots and Network Rail prepares a proposed timetable in the light of available capacity, giving priority to firm rights of train operators. This leads to the production of the annual timetable and a six-monthly update;
- (d) processes for short term timetable change; and
- (e) Network Rail making decisions subject to decision criteria set out in Condition D6 (and based on the Regulator's duties under section 4 of the Act); Network Rail decisions are subject to appeal through the ADRR and ultimately to the Regulator.

3.2 The timetabling process has been the subject of considerable evolution since 1994, with the most recent change only being made in July 2003 and coming into full effect for the December 2004 timetable. The Regulator believes there is still room for improvement in the way the existing processes are used (*e.g.* in quality and timeliness of production of documents) but that specific changes to the processes should be considered:

- (a) basic information needed to inform the process. Network Rail's network licence requires it to hold information about the capability and capacity of the network, and the Regulator considers this should be reflected in the information fed into the timetabling process. He considers that the network code could usefully contain a requirement to make available information on:

- (i) the maximum theoretical capacity of each part of the network, and the practical capacity, having regard to performance and engineering requirements;
- (ii) the capability of the network against a range of relevant parameters;
- (iii) the extent to which access rights have been sold against that capacity and capability; and
- (iv) information about train capability and performance (requiring train operators to provide information to Network Rail).

As noted below (paragraph 5.2) these obligations would parallel Network Rail's network licence obligations and are consistent with the general approach in the proposed Part K and the requirements of Directive 2001/14/EC. This is also highly relevant to improving documentation of network capability suggested under part G, and it is for consideration whether this should be done under part D or part G;

- (b) the process and criteria for establishing the Rules of the Plan, and their relationship with the documentation of network capability;
- (c) the major projects notice procedure and the Rules of the Route. This may need to be developed to enable greater longer term certainty in possession planning for maintenance, renewal and enhancement, thus facilitating improved efficiency and clarifying its relationship with the Part G network change procedure. It is recognised however that fully worked up possession plans may not be available over a long period. It may also be necessary to change the procedure if the efficient engineering access strategy currently under discussion between Network Rail and the industry is to be implemented, and possible change is closely linked to the interim review of Schedule 4 envisaged in the recent access changes review;
- (d) whether funders, such as the SRA or PTEs, should have specific rights of consultation or appeal, in certain circumstances, in the process, in addition to their rights under their contracts with train operators;
- (e) whether the requirement on Network Rail to provide information as to why it has decided not to include bids in the working timetable should be strengthened;

- (f) the short term planning process, and in particular any ways in which the possessions planning process can be made more efficient and effective including whether recent experience of poor and late possession planning reflects more deep-seated problems;
- (g) ensuring an appropriate balance between the interests of those seeking to operate new services and those wishing to extend their rights to run existing services, and ensuring that smooth transfer between franchisees is facilitated;
- (h) addressing the obligation in Article 21(6) of Directive 2001/14/EC for decisions on timetable disputes to be reached within ten working days. The Regulator understands this requirement would affect the ADRR element of the process; and
- (i) the decision criteria governing the exercise by Network Rail of certain discretions under part D. This could include:
  - (i) extending their application to cover all decisions by Network Rail under Part D; and
  - (ii) amending them better to reflect the public interest requirements for the timetabling process, as defined for instance by the Regulator's duties under section 4 of the Act.

3.3 These changes would be within the context of continuing with a basically annual cycle of timetable change, with firm rights of operators contracted in access agreements which typically last over several timetables. The Regulator seeks views about an alternative approach which would involve:

- (a) establishing a base timetable running over a number of years, with the annual timetable process considering changes against it. This reflects the fact that generally timetable changes against the previous year are on the margin; it would need to allow for the occasional need for a complete recast. It might create more stability in the process and thus more of a focus on year by year performance improvement;
- (b) some degree of flexibility for Network Rail, subject to tightly-defined criteria and payment of compensation, and with rights of appeal for affected operators, to amend rights (including firm rights) reflected in the baseline timetable in

the interests of network performance or more efficient use of network capacity.

**3.4 The Regulator seeks views on whether and if so how the current timetable process should be improved and, in particular, on:**

- (a) **the specific areas set out in paragraph 3.2 above; and**
- (b) **whether more radical changes, such as those set out in paragraph 3.3 above, should be considered.**

**Operation of the network**

3.5 Key elements of Part H of the network code are:

- (a) the notification and management of disruptive events on the network, where Network Rail is required to determine the most appropriate action to restore timetabled operation;
- (b) arrangements for contingency planning for major disruption;
- (c) arrangements to introduce an emergency timetable in the case of extended disruption;
- (d) contractual arrangements concerning assistance to failed trains, and the availability of equipment to deal with adverse weather and obstructions;
- (e) arrangements for restoration of normal working; and
- (f) procedures to establish policies for regulation of trains on the network.

3.6 In view of the need to improve the performance of the railway, and address the recent increase in delay per incident, the Regulator believes that a review of the contractual arrangements for managing disruption is essential, that it should be a high priority in his review of the network code, and that “quick wins” should be sought.

3.7 This needs to be a partnership between Network Rail and train operators, but the Regulator suggests that:

- (a) there needs to be a single “directing body” managing system performance “on the day”;
- (b) this directing body should be Network Rail;



- (c) Network Rail should have the contractual levers enabling it to discharge this responsibility, subject to public interest rules and appropriate consultation, and appropriate safeguards for affected parties; and
- (d) the arrangements should be as simple as possible, so as to help competent, well informed people deliver better performance “on the day”.

3.8 The Regulator believes that these principles are likely to lead to a need for a review of:

- (a) whether there should be a simple objective or set of criteria governing all procedures for dealing with operational disruption, rather than the current specific objectives for different parts of it;
- (b) the information flows between Network Rail and train operators, and between train operators and Network Rail, which are needed to facilitate efficient network operation, Network Rail’s role in ensuring availability of performance information, and the extent to which business process and systems need to be integrated;
- (c) the extent to which current arrangements for dealing with train failures facilitate efficient recovery (for instance, whether Network Rail should be able to step in earlier in the process, and arrangements for provision of standby locomotives);
- (d) the arrangements for contingency planning, and whether there are adequate obligations on both Network Rail and train operators to secure the establishment and resourcing of contingency plans (including train crew with adequate route knowledge). The Regulator recognises the problems associated with over-prescriptive contingency plans, and the need for an appropriate balance between flexibility and prescription;
- (e) the role of control offices, and how to achieve greater integration of control systems and processes and, where appropriate, control offices, and the principles/rules of engagement that need to be applied;
- (f) the arrangements for train regulation, including both the processes for establishing regulation policies (such as the linkage with the timetabling process), transparency and the way the processes are applied;

- (g) the extent to which there should be arrangements to secure greater compatibility between different types of rolling stock so as to facilitate provision of assistance to failed trains. The Regulator recognises the need for a balance between this requirement, and the commercial needs of operators, and the need to facilitate efficiency and innovation in the provision of rolling stock;
- (h) the position in respect of persistent disruptive events (for instance, particularly unreliable rolling stock or particularly unreliable sections of infrastructure); and
- (i) whether any elements of the process are too cumbersome, and unduly prevent a quick response to emerging issues.

**3.9 The Regulator seeks views of consultees on whether:**

- (a) **a review of Part H of the network code should be a high priority; and**
- (b) **the key principles set out in paragraph 3.7 above, and the priorities set out in paragraph 3.8.**

**Delay attribution**

- 3.10 Part B of the network code requires Network Rail to put in place performance monitoring systems which enable the establishment of records of the cause of, and responsibility for, delays and cancellations suffered by trains. Provision is made for dealing with disputes both about individual delays and the system of attribution. Part B incorporates two key documents which uphold the integrity of the data which has to be recorded. These documents are the Performance Data Accuracy Code, which establishes the standards of recording for performance data, and the Delay Attribution Guide, which enables delays to be matched to responsibilities laid down in track access contracts and to pre-defined causes.
- 3.11 Part B has recently been amended through the Class Representative Committee process to establish a delay attribution board which manages and oversees the effectiveness and accuracy of the delay attribution process. In addition, the processes for settling disagreements as to the cause of delays has been streamlined to allow greater concentration by the industry on improving performance through better managing the root causes.

- 3.12 The Regulator considers that there may be a case for some tidying up of the current arrangements such as:
- (a) possible review of the Performance Data Accuracy Code arrangements to ensure that the accuracy to which information is collected is consistent with the value of that accuracy;
  - (b) moving the procedure for dealing with financial implications of changing the points at which performance is monitored from Part G (network change) to Part B, to bring the whole process together; and
  - (c) the adequacy of the arrangements for record-keeping, audit and testing.
- 3.13 The primary purpose of delay attribution is accurately to identify the causes of delay for improvement purposes and the delay attribution process generates a great deal of important data for performance management. The principles of the performance incentive regimes, reiterated after extensive consultation as part of the recent access charges review, require attribution of delays by responsibility. But delay attribution is an expensive process, involving several hundred people across the industry (albeit many of whom would be needed anyway to provide management information) and by its nature has an adversarial element. So the Regulator considers that changes more radical than mere tidying up should be considered.
- 3.14 The Regulator believes that the industry should consider the advantages and disadvantages of moving to an independent delay attribution process. Such a process could be supplied by an external third party, and could be more efficient than the “man to man marking” by Network Rail and train operators encouraged by current arrangements. It could also reduce the extent of disputed allocation, allowing a greater focus on identifying the underlying cause of major delays and of systemic problems where the root cause is unclear, and on improving recovery arrangements. The Regulator believes it would need some sort of appeal process, but this should be on tightly defined grounds.
- 3.15 The Regulator recognises that it would need to be demonstrated that this was more efficient than the current arrangements and that an independent process did not lock in problems in the current arrangements.
- 3.16 The Regulator seeks views from the industry about the current Part B arrangements, including whether an independent delay attribution procedure**

**should be introduced and, if so, how, and the priority which should be given to this and the means for developing it.**

### **Environmental responsibilities**

3.17 Part E of the network code sets out rights and obligations in respect of environmental damage on the network. If reasonably necessary to prevent or remedy train operator-caused environmental damage, Network Rail can assess the position and prescribe who should take action.

**3.18 The Regulator seeks views of consultees as to whether these arrangements are working effectively and whether any changes should be made to facilitate dealing with emerging environmental problems in a more efficient and effective way.**

## ***4. Network and vehicle change***

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### **Current arrangements**

- 4.1 The current network and vehicle change processes are contained in Parts G and F of the network code respectively.
- 4.2 Part G (network change) provides a procedure by which changes can be made to Network Rail's network. Key elements of Part G are:
- (a) a network change is defined as including any change to any part of the network, the format of any operational documentation, or any change or series of changes which has lasted for more than six months and in each case which is likely materially to affect the operation of the network or of trains operated on the network by an operator. In addition, a material change to the performance monitoring points and, after a certain period of time, to any previously agreed network change is subject to the network change procedure;
  - (b) proposals for network change may be initiated either by Network Rail or by a train operator. Network Rail has a duty to consult with all affected train operators on any proposed network change and must give any train operator proposing a network change an initial response within 28 days. Although there is no charge for such a preliminary response, Network Rail is entitled to reimbursement of 75% of all costs of any further investigation of a network change proposal put forward by a train operator after the 28 day period. Any such costs are restricted to the minimum reasonably necessary for Network Rail to carry out an assessment. A similar provision applies in relation to costs incurred by a train operator assessing a network change proposed by Network Rail;
  - (c) Network Rail may implement a proposed network change except in certain circumstances including where any such change would result in a material deterioration in the performance of any train on the network which cannot be adequately compensated. Network Rail may also implement a network change for safety reasons, without following the network change procedure, for up to three months, but upon the expiration of three months Network Rail is obliged to implement the network change procedure;

- (d) the proposer of the network change may have to pay compensation in respect of any costs, losses or expenses incurred by (if a train operator is the proposer) Network Rail or any other train operator, or (if Network Rail is the proposer) by train operators, as a result of a network change. The benefit of the change to Network Rail or a train operator and their ability to recoup their costs or losses from third parties is taken into account in determining the amount of that compensation; and
- (e) it is expected that the normal means of resolving differences between Network Rail and each train operator, regarding proposed network changes, will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for train operators to appeal against the relevant Network Rail decision. An appeal is, in the first instance, made to the Network and Vehicle Change sub-Committee of the Access Dispute Resolution Committee. If either Network Rail or the train operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.

4.3 Part F (vehicle change) provides a procedure by which changes may be made to railway vehicles, the use of which is permitted in the relevant access contract, from the specifications in the access contract. Key elements of this are:

- (a) vehicle change includes any alteration to the physical characteristics of the vehicles, any increase in the length of any trains beyond that specified in the relevant access contract and any introduction of different vehicles on to the relevant routes which, in any case, is likely material to affect the maintenance or operation of the network or the operation of trains on the network;
- (b) a train operator wishing to make a vehicle change must submit a proposal to Network Rail who must consult with affected parties and must give the train operator an initial response within 28 days. Although there is no charge for such a preliminary response, Network Rail is entitled to reimbursement of 75% of all costs of any further investigation of the proposal after the 28 day period. Any such costs are restricted to the minimum reasonably necessary for Network Rail to carry out the investigation;

- (c) a train operator is entitled to implement a proposed vehicle change except in certain specified circumstances, including where any such change would result in a material deterioration in the performance of the network or any train on the network which cannot be adequately compensated or would result in Network Rail breaking any other access contract;
- (d) a train operator may have to pay compensation to Network Rail in respect of any costs, losses or expenses incurred by Network Rail, any other train operator or any other operator of railway assets as a result of a vehicle change. The benefit of the change to Network Rail, a train operator or any other operator of railway assets and their ability to recoup such costs will be taken into account in determining the amount of such compensation; and
- (e) it is expected that the normal means of resolving differences between Network Rail and each train operator, regarding proposed vehicle changes, will be by negotiation and agreement, possibly involving some element of financial compensation. However, in order to deal with those cases where agreement cannot be reached, provision is made for train operators to appeal against the relevant Network Rail decision. An appeal is, in the first instance, made to the Network and Vehicle Change sub-Committee of the Access Disputes Resolution Committee. If either Network Rail or the train operator is dissatisfied with the decision of that Committee, it may appeal to the Regulator. Both appeals are heard on the merits of the matter in dispute and the relevant appeal body may make such orders as it thinks fit in relation to the proportions of the costs of the appeal to be borne by either or both of the parties.

4.4 These arrangements have not been subject to significant change since the inception of the network code and the Regulator is aware of a number of concerns about their operation. These include:

- (a) the definition of vehicle and network change may be unduly complex and not achieve the policy objective of covering changes which have or may have a material effect on other parties both now or in the future. This includes the question of whether and how the position of parties who have interests beyond the end of their current access contracts, or in respect of parts of the network where they currently do not operate or have access rights, should be addressed. It also includes the treatment of closures of freight-only lines, which are not

covered by the statutory closure procedure. These are particular concerns of freight operators;

- (b) the narrowness of the definition of a competent authority (for instance, whether it should explicitly cover changes to Railway Group Standards and implementation of inquiry recommendations);
- (c) concern that vehicle change covers changes in vehicle characteristics, but not in vehicle operation, and whether this is inconsistent with the definition of network change;
- (d) a concern that a one size fits all approach is not sensible. For instance, current network change arrangements may be unduly complex for fairly small changes (or encourage blocking tactics or the addition by third parties of undue complexity to simple schemes), or insufficient to deal with larger schemes (where for instance an “outline approval” stage may be appropriate);
- (e) the lack of provision for documentation of the baseline capability of the network and of information about Network Rail’s plans;
- (f) the lack of specification of the requirements on Network Rail in terms of its role in enabling enhancements to the network or introduction of new or modified trains (at the planning, specification and implementation stages) and economic and contractual principles on the basis of which it is involved in facilitating and, where appropriate, securing delivery of enhancement schemes;
- (g) concern that the current arrangements do not facilitate or incentivise the most efficient outcome from a whole-industry perspective (including making changes to vehicles and the network to achieve this);
- (h) the lack of contractual rights under the process for sponsors of enhancement schemes other than train operators; and
- (i) the suggestion that the compensation arrangements (both for the initial evaluation and for implementation) encourage perverse behaviour, and whether the criteria for compensation for change are insufficiently specified and should be more closely related to the compensation for restrictions of use set out in Schedule 4 of passenger track access contracts.

#### **4.5 The Regulator seeks views of consultees on this suggested list of concerns.**



## Objectives

- 4.6 In view of these concerns the Regulator considers that Parts F and G need to be the subject of a comprehensive review and possible reconfiguration. Key objectives of this should be:
- (a) to ensure an adequate information base about the current capability of the network and of plans relevant to changing it;
  - (b) to ensure that the arrangements facilitate and incentivise an efficient outcome from a whole-industry perspective and in particular, the optimum economic solution for key interfaces;
  - (c) to facilitate improvement to the network by defining Network Rail's role in the development/specification, delivery, financing and acceptance of infrastructure enhancements;
  - (d) to facilitate improvement to rolling stock by defining Network Rail's role in the development/specification and acceptance of new and changed rolling stock on the network;
  - (e) to provide a "railway planning permission" process which gives a reasonable degree of assurance for users of the network as to the capability of the network and the characteristics of vehicles on it, including compensation for changes to them, and the ability in certain circumstances to prevent those changes happening. This may be different depending on the scale and nature of the proposal;
  - (f) to improve the clarity and efficiency of the arrangements; and
  - (g) to provide affected parties with effective rights of appeal.

The Regulator recognises that there are interfaces between Parts F and G and other industry arrangements and procedures, and these may have a bearing on risk and cost allocation.

## A possible new approach

- 4.7 The Regulator suggests that key elements of a revised approach should be:
- (a) possible introduction of an explicit purpose or explicit decision criteria into the network and vehicle change processes, based on achieving the best whole-

industry outcome, but with appropriate compensation arrangements and safeguards for individual parties;

- (b) requirement for improved documentation of the capability of the network (linked to the requirement set out in paragraph 3.2 above, and to the requirements of Condition 24 of Network Rail's network licence) and the characteristics of trains operated on it. This should provide a much clearer baseline against which changes are to be measured, and should include relevant plans for the network;
- (c) facilitation of the optimisation of key interfaces by enabling Network Rail to propose vehicle changes and requiring changes in the **operation** of trains affecting the operation of the network to be covered by the vehicle change requirements. Thus, Network Rail could require changes to trains if that would reduce infrastructure maintenance and renewal costs more than it increased train costs (operation, maintenance and build), but be required to compensate operators accordingly. Train operators already have the right to propose changes to the **network**, for instance if that would reduce their train operation and maintenance costs. In order to advise the industry on the optimal specification of key interfaces, system interface committees are being established by the Rail Safety and Standards Board, with chairmen nominated by the SRA;
- (d) review of the current definitions of network and vehicle change to improve clarity and to ensure that they adequately cover the changes they need to cover. This would include possible extension of the definition of a competent authority to include the Rail Safety and Standards Board. It could also include extension of certain rights under the process to sections of route where operators currently do not have access rights or operate trains and in respect of changes which do not apply within the period of current agreements, and to closures of freight only lines;
- (e) recognition that the process needs to be different as between smaller and larger schemes with a "fast track" process for smaller schemes and an "outline permission" process for larger schemes. It could also include specific provision for temporary network changes, and perhaps different treatment for enhancement schemes as opposed to other changes;

- (f) fuller definition of the obligations of Network Rail and train operators in facilitating the planning and specification of changes to infrastructure and rolling stock, including:
  - (i) provision of information/advice. This needs to include issues such as reimbursement for work done, and ownership of intellectual property rights; and
  - (ii) consultation with affected parties (including two-stage consultation for major projects) and compensation/appeal arrangements;
- (g) fuller definition of Network Rail's role in facilitating the delivery of network enhancements (including where appropriate processing and managing their delivery, and associated financial arrangements and risk allocation). This could include standard contractual forms based on best practice. It should of course be consistent with the economic framework for enhancement to be published shortly by the Regulator;
- (h) clear definition of Network Rail's obligations and those of access beneficiaries and possible provision of model contracts<sup>7</sup> in respect of the acceptance of new rolling stock and new infrastructure which has been delivered by third parties. This would involve facilitating the acceptance (*e.g.* by provision of acceptance criteria, information and running the process efficiently), but would not affect Network Rail's responsibility under its safety case or other relevant safety obligations to ensure safe operation;
- (i) provision of greater certainty about levels of compensation and the timeliness of its payment, including for disruption during the construction period, which could be based on the formulaic approach in Schedule 4 of the bilateral passenger track access contracts; and
- (j) conferment of rights to consultation on a range of relevant third parties, and access to the whole procedure for sponsors of enhancement schemes other than train operators (*e.g.* funders such as the SRA, PTEs, and local authorities).

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<sup>7</sup> Further information on the Regulator's proposals for the acceptance of new rolling stock is available at <http://www.rail-reg.gov.uk/server/show/nav.00100a006>.

- 4.8 The Regulator seeks views on whether the objectives set out in paragraph 4.6, and the proposed approach in paragraph 4.7, are appropriate, including the extent to which they should be addressed through the network code or other industry mechanisms.**

## 5. *Information*

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- 5.1 Effective, timely and accurate information is essential to the working of the key industry relationships, and for industry parties to plan their activities efficiently. In December 2002, the Regulator consulted on the need for further arrangements to ensure that relevant information is made available. This chapter builds on that consultation and the response to it.
- 5.2 Information is currently made available in a variety of ways. There are obligations in the network code, in access agreements and in licences. The Regulator considers that Network Rail is at the heart of information provision – its customers and others are dependent on it for key information - but he also recognises that the exchange of relevant information by all parties is essential.
- 5.3 For it to be able to provide the information its customers reasonably require, Network Rail must have accurate knowledge of its assets in a form which can be used by the business as a whole. Network Rail is required, under Condition 24 of its network licence, to establish and maintain an asset register. The purpose of the asset register, as set out in the licence condition is “to ensure that [the company] holds, and has appropriate access to and records of, knowledge of the relevant assets, including knowledge of their condition, capability and capacity, in the manner and to the extent and standard which best achieves:
- (a) the maintenance of the network;
  - (b) the renewal and replacement of the network;
  - (c) the improvement, enhancement and development of the network; and
  - (d) the operation (including timetabling) of the network.”
- 5.4 The asset register requirement is focussed on Network Rail’s needs as operator and manager of the network. However, efficient network management also involves having regard to the needs of train operators and other stakeholders. The asset register is therefore a major source of information from which Network Rail can and should provide information to others. Network Rail’s business plan (produced under Condition 7 of the company’s network licence) is a further key source of information.

Network Rail also has an obligation in European law<sup>8</sup> to publish a network statement describing the nature of the infrastructure and the conditions of access to it. The initial version of the network statement is on Network Rail's website and contains the network code, the Rules of the Route and the Rules of the Plan, along with other information. The Regulator considers that there is great merit in the network statement serving as an on-line source of the general information needed by those with an interest in the allocation of capacity.

5.5 The Regulator considers that information flows between Network Rail and other stakeholders can be categorised under two main headings:

- (a) specific technical information needed for specification and operation of interfaces between trains and the network; and
- (b) more general information needed for reasons of contract monitoring, business assurance and business planning.

5.6 The first of these categories is covered in:

- (a) Chapter 3 above in respect of timetabling and operation of the network; and
- (b) Chapter 4 above in respect of changes to trains and the network, and the management of key interfaces.

Typically these are two-way information flows necessary to the efficient operation and development of the network and of trains used on it.

5.7 In respect of train performance, the second of the categories in paragraph 5.5 above is covered in the proposed Part L of the network code, where Network Rail is required to produce a three year performance plan in support of the local output commitment given to each train operator. However, the Regulator considers that further information flows are likely to be needed:

- (a) for the purpose of monitoring other aspects of Network Rail's delivery against the access contract and to give train operators assurance that Network Rail is doing, and planning to do, what is necessary to deliver on its obligations;
- (b) to facilitate planning by train operators, Network Rail, industry suppliers, funders and others, and the achievement of an efficient industry outcome (for

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<sup>8</sup> Article 3 and Annex 1 of Directive 2001/14/EC.

instance in terms of enhancements facilitated by renewal requirements, and optimal possession planning); and

- (c) in the case of information from train operators, to facilitate planning by Network Rail.

5.8 As set out in Chapter 20 of his final conclusions on the 2003 access charges review<sup>9</sup>, the Regulator will be developing much clearer measures of Network Rail delivery against its obligations and the review settlement. These measures will be both at the national level and at a disaggregated level and will be summarised in a “balanced scorecard” which the Regulator will publish on a regular basis.

5.9 This does not, however, address the need for information of the type set out in paragraph 5.5(b) above at the level of individual Network Rail customers. The Regulator considers that this could be addressed by a mechanism similar to the one he has proposed for local output commitments. Essentially a schedule of information requirements would be established to form the basis of regular information flows. This might, for instance, involve:

- (a) further information to underpin establishment and monitoring of local output commitments;
- (b) a 3 to 5 year stewardship plan for the train operator’s area of operation and an annual report on network stewardship and delivery in that area;
- (c) regular (possibly monthly) information flows in less detail on key aspects of network stewardship and delivery; and
- (d) general information about the characteristics of particular parts of the network. For freight operators, such information requirements could apply to the publication on the Network Rail website of information about the so called freight operating constraints, notably the sectional appendices.

5.10 The Regulator also considers it important that the industry as a whole is aware of the information which might reasonably be made available and which is being made available bilaterally. He therefore proposes to include an obligation for Network Rail to produce and publish on its website (logically in the network statement) a menu of

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<sup>9</sup> The *access charges review: final conclusions*, Office of the Rail Regulator, London, December 2003 is available at <http://www.rail-reg.gov.uk/upload/pdf/184.pdf>.

information from which bilateral information requirements can be drawn. In keeping with other parts of the code, he proposes that there should be an appeal process against refusal to supply information or the supply of inadequate information, in the first instance to an industry committee and subsequently to the Regulator. He also proposes to produce, and consult on, criteria for determining such appeals.

- 5.11 Network Rail stated in its response to the Regulator's December 2002 consultation document that it has a similar need for information from train operators. The Regulator suggests it would be appropriate for there to be a similar obligation on train operators.
- 5.12 The Regulator recognises that a wider group of stakeholders (particularly local authorities, Passenger Transport Executives and other funders of rail improvements) rely on similar information from Network Rail. In principle this could be provided through the business planning process, but the Regulator considers that there may be benefits in establishing a mechanism under the network code to enable third parties to have direct access to relevant information.
- 5.13 The Regulator would expect that the mechanisms set above would be covered in a new Part K of the network code to complement obligations elsewhere in the code, in the network licence and the supply of information in the network statement.
- 5.14 The Regulator considers that the relevant parties, including, where appropriate, third parties, should be able to enforce the obligation to supply information. The appeal process described in paragraph 5.10 above should ensure that information is supplied. The Regulator seeks views from consultees as to whether similar provisions on liability as exist elsewhere in the contractual regime should apply to information and whether these should be set out in Part K. In particular, what should be the scope and nature of any warranties given by Network Rail or train operators? None of the proposals above suspend or remove the obligations contained in licences and elsewhere in relation to information or the Regulator's power to enforce these obligations.
- 5.15 The Regulator seeks views of consultees on:**
- (a) **whether the mechanisms set out in Chapter 3 and 4 above are appropriate to deal with specific technical information flows affecting timetabling and operation of the network, and network and vehicle change and interface issues;**



- (b) **the scope of the more general information requirements which train operators have of Network Rail for reasons of contract monitoring, business assurance and business planning;**
- (c) **the scope of Network Rail's requirements of train operators;**
- (d) **the requirements of the wider stakeholder community for information of this nature;**
- (e) **the appropriate mechanism to meet these requirements and whether the mechanism should be covered by a new Part K of the network code;**
- (f) **the way in which information should be made available and the potential use of the network statement on Network Rail's website; and**
- (g) **the principles which should be adopted in respect of liability for information supplied and remedies if it is not available or not delivered.**



## 6. *Next steps*

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- 6.1 This document sets out a programme of review and potential change which will take time, resources and industry involvement to achieve.
- 6.2 The Regulator has already begun informal discussions with representatives of key industry stakeholders and expects to continue this during the course of this consultation on the issues raised in this document.
- 6.3 Following receipt of responses, the Regulator expects to establish a programme for reviewing and, if necessary, changing specific elements of the code. As set out in Chapters 2 to 5 above, he considers the priorities for change should be:
- (a) Part H (operational disruption) and related changes to Part D (timetabling); subject to industry views this would also cover Part B (delay attribution);
  - (b) improved information provision; and
  - (c) Parts F and G, (network and vehicle change), including third party rights in the process.
- These are of course subject to the outcome of this consultation, and to industry views on the more radical restructuring options set out in Chapter 2.
- 6.4 The Regulator has taken steps to establish an industry development group to assist in taking this forward and will set up specific working groups or hold seminars on key issues.
- 6.5 The Regulator expects, in the light of the response to this consultation, to establish a programme for change to the code, involving a further consultation in May 2004 on specific changes to address the highest priority issues.
- 6.6 The Regulator has stated that ORR will engage constructively with the review of the rail industry announced by the Secretary of State on 19 January 2004. He expects to feed any issues relevant to that review arising from this consultation into the review process in an appropriate way.
- 6.7 Views of consultees are sought on the proposed approach to taking forward the review of the network code and the priorities to be adopted.**