

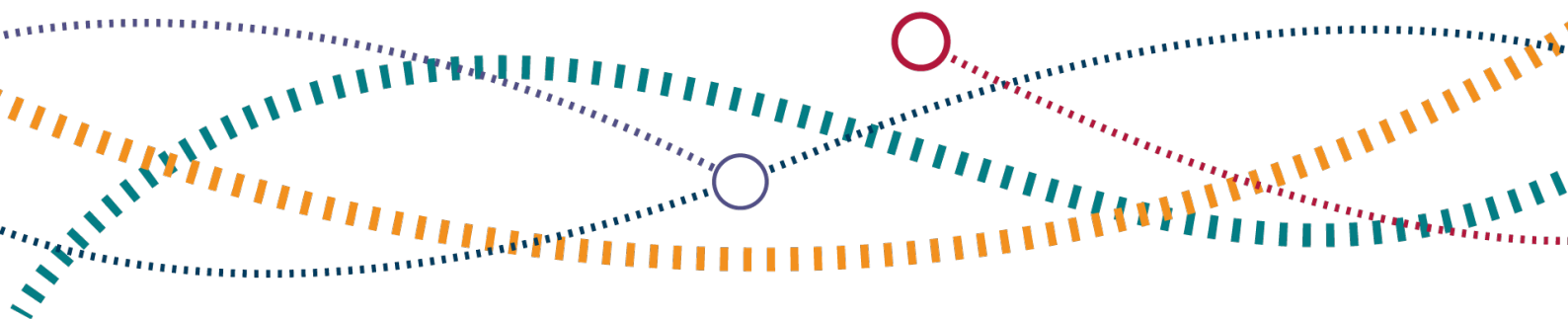


PR23 – Review of the Schedule 4 possessions regime

Technical Consultation

Initial Proposals

30 September 2021



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Executive Summary

In this consultation we present initial proposals for incremental reform of Network Rail's Schedule 4 possessions regime. Schedule 4 of track access contracts provides financial compensation to train operators for the impact of planned disruption linked to engineering possessions. It also incentivises Network Rail to minimise disruption and to provide timely advance notice to users of the network about the possessions it plans to take. This consultation follows publication of our [initial proposals for reform of the Schedule 8 train performance regime](#) in June this year.

There have recently been dramatic changes in the rail industry's commercial dynamics and the role of Schedule 4. Among other things, governments have replaced franchises with concession-style agreements and have brought services under greater direct public sector control or are in the process of doing so. These changes will have had the effect for private operators of removing some of the revenue and cost risk associated with planned disruption. This means that, for these operators, the financial protection function offered by the regime may no longer be needed.

The UK Government published the [Williams-Shapps Plan for Rail](#) on 20 May 2021. This makes it clear that concession-style agreements will remain the dominant form of rail contract in use by the UK Government, to be let in future by a new body that will also run the railway infrastructure: Great British Railways. It also sets out a vision for the railway in which contracted operators have strong incentives to improve train performance and where industry works collaboratively to improve the passenger experience.

The Williams-Shapps Plan does not change the powers and responsibilities held by the Scottish and Welsh Governments and other devolved rail authorities – but notes that there will continue to be a need for co-ordination across all parts of the network to ensure that the system can operate effectively as a whole.

We will support DfT as it develops its rail transformation programme, including the development of the new generation of access contracts and for the development of the system of performance incentives, compensation and management of possessions that will apply in the new industry structure. There will continue to be strong benefits from a coherent system which reflects the needs of those operators which sit outside of the remit of Great British Railways, as well as the interests of Transport Scotland, Transport for Wales, other devolved rail authorities and other infrastructure managers. This will be complex, and the nature and timing of changes to Schedule 4 need to be aligned with any changes to legislation and other changes to industry frameworks that could arise as Great British Railways is established, as well as with the plans of the devolved authorities. As a

result, more substantial changes to Schedule 4 are best achieved through a co-ordinated programme which considers all these aspects.

We are of the view that, even after full implementation of the Williams-Shapps Plan, there remains a role for a mechanism such as Schedule 4 to provide revenue and cost protection to fully commercial services such as freight and open access operators, and potentially to other operators that are given greater commercial freedoms around revenue sharing (an option left open in the Williams-Shapps Plan). However, Schedule 4 should also reflect current and future industry changes, notably with respect to passenger operators' contractual arrangements and their varying need for a compensation mechanism against planned disruption such as Schedule 4.

Therefore, we are proposing to make only one significant change to Schedule 4 by allowing all train operators to opt out of Schedule 4, either completely or partially, therefore giving them the flexibility to choose if they need protection through the Schedule 4 regime. In addition to this, we are exploring the opportunities to make more limited, incremental improvements to Schedule 4 which could address some existing issues with the regime and ensure that Schedule 4 is fit for purpose for any interim period before full implementation of the Williams-Shapps Plan.

This consultation therefore seeks views on the best approach for Schedule 4 in the 2023 Periodic Review of Network Rail (PR23), taking into account the changes in industry to date and the future changes that will happen over coming years. We are seeking views on whether we should make any changes to the regime as part of this review or leave any changes to be made through the UK Government's rail transformation programme. To support this decision, we have identified a number of changes that we could make to ensure Schedule 4 remains fit for purpose both for an interim period:

- To introduce an opt-out mechanism to Schedule 4, whereby train operators could completely or partially opt out of Schedule 4.
- To increase incentives on Network Rail to notify possessions early once the "informed traveller" notification threshold (T-22) has been passed, either by introducing an additional notification threshold or by monitoring possessions notification on a more granular basis.
- To develop a method and/or process for settling compensation claims for lengthy possessions and periods of sustained planned disruption.
- To monitor late possession changes and cancellations on a more granular basis and report on them.

- To develop a tool for estimating Schedule 4 formulaic compensation.
- To review the methodology for calculating the ACS for open access operators.
- To review, and if necessary, update freight compensation rates.

All proposals and consultation questions are summarised in Annex 2.

Under any option, we will continue to work closely with DfT and the industry to understand in more detail the system of performance incentives that Great British Railways will establish, how transition from current arrangements will be achieved and how this will impact on services that will sit outside this body. We will also need to understand how Great British Railways will interact with Transport Scotland, Transport for Wales, other devolved rail authorities and other infrastructure managers. We will remain flexible in PR23 to respond as transition and implementation plans become clearer.

Please send responses to this consultation to performance.incentives@orr.gov.uk by 13 December 2021. We have made available a [consultation response template](#) which also contains information on publication of responses.

Our next steps are to consider the responses to this consultation, as well as developments in the rail transformation programme. In the months ahead, we will continue to engage with stakeholders and governments to develop proposals for Schedule 4 in PR23 – we will do this in a proportionate and targeted way, recognising the impact that the rail transformation programme will have on industry resources. In early 2022, we intend to set out which proposals we plan to take forward and to seek further stakeholder views on the details of how these are implemented. This will be supported by impact assessments for all proposed changes, which will be informed by responses to this first consultation.

1. Overview of Schedule 4

What is the Schedule 4 possessions regime?

- 1.1 The possessions regime is contractualised in Schedule 4 of track access contracts (this consultation uses the terms “possessions regime” and “Schedule 4” interchangeably).
- 1.2 The regime has two key functions. First, it is intended to compensate train operators for the financial impact of planned service disruption caused by Network Rail when it takes possession of the network, predominantly for engineering work, but also due to other disruptive events such as severe weather¹. This compensation reduces the risk to train operators in entering the market, investing, and operating in the industry².
- 1.3 Second, the regime is intended to incentivise Network Rail to reduce the amount of service disruption due to possessions and to provide timely advance notice to users of its network. Schedule 4 is therefore part of a broader framework that affects train performance, which includes regulatory, commercial, and contractual mechanisms, as well as reputational incentives.

How does Schedule 4 currently operate?

- 1.4 Schedule 4 of track access contracts specifies the circumstances under which Network Rail is required to pay compensation to rail operators for the revenue loss and/or additional cost caused by service disruption due to possessions, and how the amount due as compensation is to be arrived at. There are separate arrangements for passenger and freight operators. There is no Schedule 4 regime for charter operators. This is because engineering possession plans are typically agreed before the majority of charter services are planned.
- 1.5 The type and amount of compensation that an operator is eligible for depends on whether it pays an access charge supplement (ACS) in advance. All franchised

¹ Whether such events fall under Schedule 4 or Schedule 8 is based on the timing of notification. If notification occurs before 10pm the day before the possession, it falls under Schedule 4, whereas if notification occurs after 10pm then it falls under Schedule 8.

² This has historically allowed operators to reduce the risk premia in train franchise bids, ultimately saving money for taxpayers – although this may now be a less significant purpose of Schedule 4.

operators are currently required to pay an ACS. Open access operators and freight operators have the choice of whether to do so – none currently do.

- 1.6 The regime is explained in an [accompanying factsheet](#).

Passenger regime

- 1.7 Passenger operators who do not pay an ACS join a baseline Schedule 4 regime and receive baseline compensation. Operators who pay an ACS have access to a full Schedule 4 regime and more comprehensive compensation.

Compensation for operators who do not to pay an ACS: “baseline passenger Schedule 4 regime”

- 1.8 Passenger operators who do not to pay an ACS can receive cost and revenue loss compensation for possessions greater than 120 hours (known as type 3 possessions) and for periods of sustained planned disruption (which are identified when the level of disruption faced surpasses specific cost and revenue thresholds³). Such compensation claims should be based on actual cost and revenue loss incurred due to possessions, which operators must evidence. In practice, agreement on the appropriate level compensation is subject to negotiation between operators and Network Rail.

Compensation for operators who pay an ACS: “full passenger Schedule 4 regime”

- 1.9 Passenger operators who pay an ACS are eligible for compensation for possessions of any length. They also have access to formulaic compensation (i.e. compensation is determined by pre-set revenue loss and cost formulas), although, in cases of severe disruption, operators can decide to claim actual cost and revenue loss compensation if this is believed by either Network Rail or the operator to be more than £10,000 different from the formulaic compensation provided.
- 1.10 The type and amount of compensation operators are eligible for depends on the duration of the possession and the amount of disruption faced:
- (a) Possessions shorter than 60 (continuous) hours (known as **type 1** possessions): operators are eligible for formulaic cost and revenue loss compensation.

³ These cost and revenue thresholds are described in more detail in the accompanying factsheet on the Schedule 4 possessions regime.

- (b) Possessions between 60 and 120 (continuous) hours (known as **type 2** possessions): operators are eligible for formulaic cost and revenue loss compensation (as in type 1 possessions) and can claim compensation for actual costs incurred if this is believed by either Network Rail or the operator to be more than £10,000 different from the formulaic compensation provided.
- (c) Possessions greater than 120 (continuous) hours (known as **type 3** possessions) and periods of **sustained planned disruption**: operators are eligible for formulaic cost and revenue loss compensation (as in type 1 possessions) and can claim compensation for the revenue losses and costs actually incurred if this is believed by either Network Rail or the operator to be more than £10,000 different from the formulaic compensation provided.

Notification factors

- 1.11 Network Rail can obtain a discount on the amount of revenue loss compensation due, which is greater the earlier it notifies operators about forthcoming possessions. This is because the sooner operators know about a possession, the sooner they can inform passengers, therefore causing less inconvenience to passengers as the result of late service changes. Passengers with prior knowledge about forthcoming disruption are assumed to be less deterred from future rail travel and therefore the level of long-term revenue loss is deemed to be lower.

Freight regime

- 1.12 Unlike the baseline passenger regime, the baseline freight regime uses a formulaic approach and only provides compensation for the additional operating costs caused by possessions. Payment rates are uniform across operators and vary with the level of disruption and the amount of notice given by Network Rail. In cases of severe disruption or of late notice, freight operators can also claim actual cost compensation and negotiate payment with Network Rail. The [accompanying factsheet](#) sets out in more detail the different levels of compensation freight operators are eligible for.
- 1.13 Freight operators could also choose to pay an ACS in return for enhanced compensation. However, it is not clear what enhanced compensation would cover or how it would be calculated, and no operator has yet chosen to adopt this option.

Funding arrangements and the incentive effect of Schedule 4

- 1.14 Forecast Schedule 4 compensation paid to operators on concession-style contracts is funded by income from the ACS paid by that same group of operators. Baseline Schedule 4 compensation for freight and open access operators is met out of Network Rail's overall funding.
- 1.15 The annual ACS amount to be paid to Network Rail by each operator is determined prior to the start of the control period. This is based on the average expected amount of Schedule 4 payments Network Rail will make, based in turn on the forecast volume of maintenance and renewals in that control period. If the out-turn volume of maintenance and renewals matches the forecasts, and possessions are undertaken as efficiently as initially assumed, then Schedule 4 payments made by Network Rail should match its overall income from ACS payments. In practice, this is never the case as volumes of work and the nature and amount of notification for individual possessions will vary relative to forecasted assumptions. Because Network Rail has discretion over how it delivers possessions and when it notifies operators, Schedule 4 acts as an incentive on Network Rail to minimise disruption faced by operators. By managing its possessions more efficiently and taking fewer or shorter possessions, Network Rail can increase the difference between the Schedule 4 payments it makes and the ACS income it receives from operators and therefore make a surplus on the ACS.

How effective is Schedule 4?

- 1.16 We consider Schedule 4 to be effective if it meets its two key functions of providing operators with appropriate financial protection against planned disruption and creating appropriate incentives on Network Rail to reduce service disruption due to possessions.
- 1.17 We have engaged with stakeholders as part of PR18 and more recently as part of the SYSTRA review of train performance incentives and in industry workshops on Schedule 4. This has produced a mix of views on how Schedule 4 fulfils its two key functions:
- (a) In relation to compensation, most passenger operators consider that Schedule 4 broadly works as intended, although they have identified some incremental changes that could improve its effectiveness. In particular, we have been told that negotiations on compensation payments for lengthy possessions and sustained planned disruption often gets bogged down in

disputes between operators and Network Rail. This means that resolving these compensation claims can be costly and time consuming for the industry, and also detrimental to industry relationships. We make proposals below to address these concerns. In addition, Network Rail has told us that Schedule 4 payment rates are not appropriately evidence based as they are based on Schedule 8 payment rates which are calculated for unplanned disruption⁴. Regarding the freight regime, freight operators have said that freight Schedule 4 compensation rates do not always accurately reflect the costs they incur as the result of possessions. We are proposing to review freight compensation rates as part of PR23, in light of any new evidence provided by freight operators.

- (b) In relation to incentives, there is limited evidence, and its conclusions are mixed. Overall, we have some indication that Schedule 4 can influence decision-making at a strategic and working level in Network Rail. However, it remains unclear how strong or uniform this effect is across the organisation. We are considering a number of changes to Schedule 4 to sharpen the incentives on Network Rail, on which we are seeking views.

1.18 In addition, some stakeholders have raised concerns about the complexity of Schedule 4, both in terms of the methodology for calculating compensation and the difficulty in establishing ex-ante estimates of Schedule 4 payments for individual possessions. There is a trade-off between complexity and accuracy, and we consider that the current methodology strikes the right balance. However, we are considering ways in which the impact of alternative possession strategies on Schedule 4 payments could be made easier to estimate.

1.19 Finally, the impact of the COVID-19 pandemic on demand has highlighted the need for greater flexibility in response to material unforeseen events. With hindsight, Schedule 4 payment rates have likely been too high during the pandemic given the much lower than anticipated number of passengers on the network, and hence lower revenue loss than implied in Schedule 4 formulaic payment rates.

⁴ The PDFH is currently leading a study into the impacts of planned and unplanned disruption, which may provide additional evidence for the Schedule 4 payment rates. We will review the findings of this study as part of our PR23 recalibration.

Recalibration challenges in PR23

Schedule 4 is recalibrated at each periodic review in a process that updates key parameters to reflect new evidence, ahead of applying those parameters for the new control period. Principal amongst these is the update of Schedule 8 payment rates used in the Schedule 4 revenue loss formula. In PR18, the recalibration for both Schedule 4 and Schedule 8 was led by the Rail Delivery Group (RDG).

In PR23, there will be an unusually complex set of challenges for the recalibration of the regime, including:

- The nature of demand has changed, perhaps for a long time, as a result of the COVID-19 pandemic. Passenger numbers have been highly subdued in 2020-21 and 2021-22, and demand patterns may be enduringly different, especially in commuter markets. It is also possible that there may have been changes in how rail demand responds to disruption. This changing picture for demand will influence the calibration of Schedule 8 payment rates for CP7 and in turn calculation of the Schedule 4 revenue loss compensation payments.
- Other proposed changes such as a potential move to more flexible or frequent timetabling could impact on the current system of notification factors and thresholds used to determine the level of discount on revenue loss compensation payments Network Rail obtains for early notification of possessions.

In addition, there is an ongoing PDFH-led study into the impacts of planned and unplanned disruption, which may provide additional evidence for the PR23 recalibration, potentially changing the level of payment rates.

While this current consultation is focused on the overall framework for Schedule 4, ORR and the industry will need to turn attention to these recalibration issues in the months ahead, and we welcome early stakeholder views on how to respond to the challenges.

2. ORR's proposed approach and priorities

- 2.1 This chapter sets out ORR's proposed approach in PR23, in light of changes to the industry's commercial structures, rail reform and our appraisal of the current Schedule 4 regime.

Adapting to industry change

- 2.2 We are starting PR23 at a time of significant change and uncertainty. Most significantly, governments have replaced franchises with concession-style agreements and have brought services under greater direct public sector control (or are in the process of doing so). These changes have had the effect of removing cost and/or revenue risk for some private passenger operators. This means that these operators may no longer need financial protection against the impact of possessions.
- 2.3 The [Williams-Shapps Plan](#) will bring further change. It confirms (page 54) that arrangements which build on concession-style contracts will be the dominant model for rail contracts let by the UK Government and in future, by Great British Railways. However, even once the vision in the Williams-Shapps Plan is fully implemented, Great British Railways will not encompass the whole of the rail industry. There will remain operators fully exposed to commercial incentives such as freight and open access operators, which will remain exposed to revenue and cost risk. In addition, the Williams-Shapps Plan leaves open the option that in future operators could be given greater commercial freedoms around revenue. A mechanism like Schedule 4 could play a role in reducing the commercial risk to these operators from investing and operating in the railway.
- 2.4 The Williams-Shapps Plan also does not seek to change the powers and responsibilities held by the Scottish and Welsh Governments and other devolved rail authorities. The long-term revenue receipts and costs to these parties, and the experience of passengers in those parts of the network, will be impacted by service disruption due to possessions. So, a mechanism like Schedule 4 can still have a role in providing some protection for them against these risks and in addition, retain the financial incentive on Network Rail to minimise disruption through efficient possessions planning.

Approach to PR23

- 2.5 Given the changes to date, and the future changes that will happen over coming years, we have considered the best approach to reviewing Schedule 4 as part of PR23.
- 2.6 Our starting position is that the two key functions of Schedule 4 will continue to be needed and should therefore remain in place, at least for freight and open access operators. However, Schedule 4 should also reflect current and future industry changes, notably with respect to passenger operators' contractual arrangements and their varying need for a Schedule 4 type of protection. We consider that operators should have the flexibility to decide the level of Schedule 4 protection they need.
- 2.7 We consider this position to be consistent with the legislative framework, as the [2016 Regulations](#) do not set specific requirements on the content of a possessions regime. This provides us with a degree of flexibility in the design and application of Schedule 4. This is distinct from our current position on Schedule 8. In our [May 2021 consultation document](#), we set out our initial view that Schedule 8 should remain in place for all operators at least up until the point when new legislation is introduced. This is because we consider the 2016 Regulations to have more prescriptive requirements as to the form and content of the type of performance regime set out in Schedule 8, which limit our ability to remove or radically change the regime for some passenger operators but retain it for others.
- 2.8 In light of recent changes to the commercial environment, the wider rail reform agenda and our interpretation of the legislation, we propose to give all operators the possibility to opt out of Schedule 4. We review options to implement a complete or partial opt-out mechanism in more detail below. Beyond this, we propose to retain the overall structure of Schedule 4 and only make incremental and proportionate changes to the current regime.
- 2.9 We have reviewed options for incremental changes to Schedule 4 which could bring benefits to rail users and taxpayers. In doing so, we have considered the assessment of Schedule 4 we set out in the previous chapter, previous work in PR18, the SYSTRA report, our recent possessions efficiency review, discussions with the industry including Network Rail, DfT, Transport Scotland, operators and freight customers, and the vision for the future rail industry articulated in the Williams-Shapps Plan.

2.10 Overall, we have identified four proposals that we consider we should progress as a priority. These are:

Proposal cross-cutting across the passenger and freight regimes:

- To introduce an opt-out mechanism to Schedule 4, whereby train operators could completely or partially opt out of Schedule 4.

Proposals specific to the passenger regime:

- To increase incentives on Network Rail to notify possessions early once the “informed traveller” notification threshold (T-22) has been passed, either by introducing an additional notification threshold or by monitoring possessions notification on a more granular basis.
- To develop a method and/or process for settling compensation claims for lengthy possessions and periods of sustained planned disruption.

Proposal specific to the freight regime:

- To review, and if necessary, update freight compensation rates.

2.11 We are also considering three additional changes to the passenger regime on which we are inviting more views and information from stakeholders, before concluding on whether these should be progressed. These are:

- To monitor late possession changes and cancellations on a more granular basis and report on them.
- To develop a tool for estimating Schedule 4 formulaic compensation.
- To review the methodology for calculating the ACS for open access operators.

2.12 All these proposals are discussed further in the subsequent chapters. In developing these proposals, we have considered the broad set of objectives set out in Annex 1. It is worth noting that, if most passenger operators choose to opt out of Schedule 4, the assessment of some of these proposals could be affected. We will review our assessment of the proposals in light of our decision on the introduction of an opt-out mechanism and the expected degree of take-up.

2.13 We will continue to work closely with DfT, Transport Scotland, Transport for Wales, other devolved rail authorities and industry to understand in more detail how the existing system of possession compensation will change, and how

industry will transition from current arrangements. We will remain flexible to respond as these plans become clearer – this may change the approach we need to take in PR23 as we progress through this period.

Consultation questions

Question 1: Do you have any views on the objectives and benefits of a mechanism such as Schedule 4, for the range of different industry parties, both in the current contracting model and once the rail transformation programme has been fully developed and implemented?

Question 2: Do you have any views on whether we should make no fundamental changes to Schedule 4 in PR23, or, as proposed, pursue a small number of incremental reforms to ensure it remains fit for purpose as a baseline regime?

Question 3: Do you agree with the areas we have identified as priorities for PR23? Are there any other significant issues that we should seek to address?

3. Proposal: Cross-cutting change across sector regimes

3.1 We have identified one priority for PR23 which would apply to both the passenger and freight regimes.

A. Introduce an opt-out mechanism

3.2 We propose to introduce an opt-out mechanism to Schedule 4, whereby any operator could choose to completely or partially opt out of Schedule 4 compensation.

Current approach

3.3 As set out in chapter 1, currently all franchised operators must join the full Schedule 4 regime and pay an ACS. Open access operators can claim cost and revenue loss compensation for type 3 possessions and periods of sustained disruption without paying an ACS, and freight operators receive cost compensation based on pre-set payment rates. Open access operators can choose to pay the ACS and receive full Schedule 4 compensation. Likewise, freight operators can receive higher compensation by paying an ACS. However, no open access or freight operator has chosen to do so.

Issue with current approach

3.4 Recent changes to franchise rail passenger contracts have resulted in operators having a growing variety of needs and requirements regarding possession compensation arrangements. While operators on concession-style contracts no longer require protection against the financial impact of possessions, other operators (freight and open access operators) continue to be fully exposed to commercial incentives and will need compensation for the impact of possessions on their businesses. We expect variations in operators' contracts to continue as the Williams-Shapps Plan is implemented.

3.5 Schedule 4 does not currently reflect these differing contractual arrangements for operators. Only operators on concession-style contracts are included in the full Schedule 4 regime while, under current contracts, they may no longer require revenue and cost risk protection against the impact of possessions.

3.6 We are therefore proposing to allow operators to opt out of Schedule 4 in CP7, to reflect differing contractual arrangements for operators and to accommodate further developments.

Options

3.7 We have identified two options for implementing an opt-out mechanism:

- (a) **Option A1 – Complete opt-out.** Once triggered, Schedule 4 would be dis-applied completely. In this case, the operators concerned would no longer receive any Schedule 4 compensation for any type of possessions.
- (b) **Option A2 – Partial opt-out.** Once triggered, some types of compensation would no longer apply but others would continue. We have identified two variants of a partial opt-out, which are not mutually exclusive:
 - (i) Opt-out of formulaic payments for shorter possessions: Under this option, operators who currently pay an ACS and join in a full Schedule 4 regime would be given the possibility to opt out and only remain in the baseline Schedule 4 regime in CP7. In this case, they would continue to receive Schedule 4 compensation for type 3 possessions and sustained planned disruption but would lose compensation for shorter possessions and access to formulaic compensation.
 - (ii) Opt-out of revenue loss compensation only: Passenger train operators are currently compensated for both the revenue losses and additional costs caused by possessions⁵. During CP7, train operators may be under various contractual arrangements, potentially including the case where they bear cost risk but no revenue risk. In such cases, there could be merit in offering operators the ability to opt out of revenue loss compensation but continue to receive cost compensation.

3.8 There are two key questions surrounding the implementation of the opt-out mechanism, which are relevant under any of the options presented above. The first question is when operators should be able to opt out. This could be allowed at specific points (e.g. the start of a control period and/or at a change of contract) or at any time during the control period. The second question regards the duration of any opt-out (e.g. annually, for the whole control period, or for the length of an

⁵ Freight operators only receive cost compensation, as described in chapter 1.

operator's concession contract) and whether operators should be given the possibility to opt in again.

- 3.9 Requiring operators to select at the start of a control period and for the opt-out to apply for the duration of the control period or of an operator's contract provides certainty on funding. It also reduces the ability of operators to take advantage of the opt-out by using their knowledge of upcoming engineering works and planned disruption to drive their decision to use or not use Schedule 4. Whereas, allowing operators greater freedom when to choose to opt out and for how long offers operators the flexibility to adjust to their own commercial circumstances. We will welcome stakeholders' views and will carefully consider these issues.
- 3.10 Our initial view is that, on balance, we support the introduction of an opt-out mechanism. It would help to accommodate changing commercial dynamics in the industry and could lead to a regime that is simpler to operate. At the same time, we acknowledge some drawbacks. Calibration could become more complicated, especially if operators are allowed to opt in and out within a control period. It would also remove financial incentives on Network Rail to plan possessions effectively or to notify possessions to operators in a timely way. A further downside is that it could result in a loss of information on the impact of possessions on rail services. Such information can be useful, for example, in trading off efficiency in delivery of possessions against disruption to rail users.
- 3.11 Overall, we prefer option A2 over option A1. Option A2 is the more flexible and resilient proposal as it could accommodate a wider range of contractual arrangements for operators.

Consultation questions

Question 4: Do you support proposal A? If an opt-out mechanism were to be implemented, would you support a complete (option A1) or partial opt-out (option A2)? Do you have any views on when operators should be allowed to opt out and what duration any opt-out should have, as set out in paragraph 3.8?

4. Proposals: Passenger regime

- 4.1 We have identified further areas of potential improvement to the passenger Schedule 4 regime which could strengthen incentives on Network Rail to minimise disruption caused by possessions and promote industry cooperation. We are inviting views and information from stakeholders before concluding on whether these areas for improvement should be progressed.

B. Increase incentives on Network Rail to notify possessions early once the “informed traveller” notification threshold (T-22) has been passed

- 4.2 We propose increasing the incentives on Network Rail to notify possessions early, once the “informed traveller” notification threshold (T-22) has been passed, as a priority for PR23.

Current approach

- 4.3 Network Rail receives a discount on the amount of compensation it pays to passenger operators, depending on how early it notifies operators about possessions. The discount reflects the fact that the sooner operators know about a possession, the sooner they can inform passengers, thereby causing less inconvenience to passengers as a result of late service changes.
- 4.4 There currently exist three notification thresholds, for which Network Rail obtains a different level of discount:
- (a) D-26 (read as ‘D minus twenty-six’) is known as “the early threshold” and is set at 26 weeks before a new working timetable comes into effect (in May and December each year)⁶.
 - (b) T-22 (read as ‘T minus twenty-two’) is known as “the informed traveller” threshold and is set at 22 weeks before a possession is planned to take place. The threshold is set at 22 weeks so that it can inform the production of the “informed traveller” timetable that is published 12 weeks before a service is due to operate. The publication of the “informed traveller” timetable is the first point at which passengers are able to book train journeys. As such, it

⁶ About 80% of possessions are notified in advance of the early threshold.

represents the first opportunity for most passengers to become aware of changes to services due to planned disruption.

- (c) Late threshold. This relates to what is known as “the applicable timetable”, which is when operators are notified of a possession by 10pm on the day before the possession is due to take place. Any disruption to services that are not included in the applicable timetable are treated as unplanned disruption, under the Schedule 8 performance regime.

Issue with the current approach

- 4.5 In the current regime, there is no explicit incentive on Network Rail to give notification to operators as early as possible once the “informed traveller threshold” has been passed.

Options

- 4.6 We have identified two options to strengthen the incentives on Network Rail to notify possessions as early as possible once the “informed traveller” threshold has been passed:
 - (a) **Option B1 – Add a notification threshold.** A notification threshold could be added between the “informed traveller” threshold at T-22 and the late threshold⁷. The main benefit is that it would maintain incentives on Network Rail to notify possessions before the late notification threshold. This would require us to determine where to set the new intermediate threshold and to determine the appropriate level of discount to apply.
 - (b) **Option B2 – Monitor and report on possessions notification on a more granular basis.** ORR could require Network Rail to record the exact date on which each possession was notified, and not just the threshold which was met. This would allow for more effective monitoring by ORR and the industry of how much in advance of the relevant threshold Network Rail is notifying operators of possessions and could therefore provide Network Rail with a reputational incentive to notify possessions as early as possible, even once a notification threshold had been passed. An additional benefit in the longer term would be that more granular data could be used to better calibrate

⁷ The industry investigated in detail the possibility of adding a notification threshold, at T-14, in PR18. We decided not to take the proposal forward due to a lack of consensus around the appropriate threshold to add and concerns around the impact on the timetabling process.

existing notification thresholds or to identify any new notification thresholds that may be appropriate.

- 4.7 Overall, we prefer option B2 over B1. It would sharpen the incentives on Network Rail to notify possessions early, by leveraging reputational incentives on top of the financial incentives associated with the existing notification factors. It is also likely to be more straightforward to implement. We welcome views from stakeholders on the advantages, disadvantages, and feasibility of either option.

Consultation questions

Question 5: Do you support proposal B, implemented through option B2? Do you have any views on the options set out?

C. Develop a method and/or process for settling compensation claims for type 2 and type 3 possessions and periods of sustained planned disruption

- 4.8 We propose to develop a more specific method and/or process for settling compensation claims for type 2 and type 3 possessions and periods of sustained planned disruption (SPD), as a priority for PR23.

Current approach

- 4.9 For type 2 possessions, operators paying an ACS can claim actual cost compensation, if this is believed by either Network Rail or the operator to be more than £10,000 different from the formulaic compensation provided (if applicable).
- 4.10 For type 3 possessions and SPD, all operators can claim actual cost and revenue loss compensation, if this is believed by either Network Rail or the operator to be more than £10,000 different from the formulaic compensation provided (if applicable).
- 4.11 Track access contracts state that negotiations between Network Rail and operators for compensation above formulaic compensation (if applicable) “shall continue in good faith until they are concluded” (paragraphs 6.1.a, 7.1.a, 8.1.a of model contracts). If Network Rail and operators fail to reach agreement within 28 days of issuing a claim notice, either of them may refer the matter for resolution in accordance with the Access Dispute Resolution Rules (ADRR). No further

information is provided in track access contracts as to the method or process that should be followed to agree on appropriate levels of compensation.

Issues with current approach

- 4.12 Network Rail and operators have told us that negotiating actual cost and/or revenue loss compensation for type 2 and type 3 possessions and SPD is costly and time-consuming due to the absence of established methods for demonstrating the impact of possessions on operators' businesses. As a result, these compensation claims can use significant industry resources, be harmful to relationships between Network Rail and operators, and yet often fail to reach a satisfactory resolution for either party.
- 4.13 Operators suggested that the problem lies in the absence of detail in track access contracts about how compensation should be calculated. In addition, track access contracts also fail to provide much detail to help guide the negotiation process, such as provisions for a mediation process when there is disagreement over compensation amounts.

Options

- 4.14 We have identified two options for developing a method and/or process for settling compensation claims for type 2 and type 3 possessions and SPDs, which are not mutually exclusive:
- (a) **Option C1 – Develop a method for calculating cost and revenue loss compensation.** There is a spectrum of options to do this, for example (1) to list which cost and revenue loss categories should be included in the negotiation; (2) to set out a high-level methodology for calculating payments; and/or (3) to set out specific formulas and parameters. In whichever case, the key benefit would be a reduction in the time and resources needed to negotiate compensation for type 2 and type 3 possessions and SPD claims, whilst providing more certainty to affected operators on the compensation they could be in line to receive. On the other hand, a more prescriptive method for determining compensation may lead to less accurate estimates relative to actual losses.
 - (b) **Option C2 – Specify in track access contracts a process for negotiating compensation claims for type 2 and type 3 possessions and SPD.** This could involve requiring the use of an arbiter when parties cannot agree compensation by a specified deadline, and/or setting out legally binding timelines for conducting and resolving negotiations. The main benefit of this

approach would be that it would reduce the scope for prolonged disputes. A potential downside is that further administrative costs could be incurred (e.g. if an arbiter is required to resolve the dispute) and the process to reach an agreement between parties may still require significant time and resources.

Consultation questions

Question 6: Do you support proposal C? Do you have any views on options C1 and C2? Do you have a preference for one of the options?

D. Monitor late possession changes and cancellations by Network Rail on a more granular basis

4.15 We are considering strengthening our monitoring and reporting of late possession changes and cancellations, as part of our wider CP7 monitoring and reporting approach.

Current approach

4.16 Network Rail obtains a discount on the revenue loss compensation it pays to operators the sooner it gives notice of a possession. After notifying a possession, Network Rail may still change its plans (e.g. change start time or duration) or cancel the possession, normally up until seven weeks before the delivery of the possession⁸. In such cases, the discount Network Rail obtains is determined by the point at which the final plans for the possession are notified.

4.17 Since PR13, operators have been able to recover the direct costs they had committed to, or incurred, prior to the cancellation of a previously notified type 1 possession, provided those costs are greater than £5,000.

Issues with current approach

4.18 Operators have told us that the current Schedule 4 regime incentivises Network Rail to notify too many possessions early in order to receive the maximum discount. They consider that, as a result, possessions are booked too far in advance, before accurate plans are in place, with the consequence that Network Rail may often need to later change or cancel possessions, sometimes at short notice.

⁸ Changes to possessions after this point are only permitted if business or safety critical.

- 4.19 We do not have sufficient evidence to assess the proportion of late possession changes and cancellations or the impact on operators and passengers. The reasons for Network Rail's changes to, or cancellations of, previously notified possessions are also unclear. However, any such changes or cancellations carry a cost to Network Rail, operators, and passengers, and should therefore be kept to a minimum.

Proposal

- 4.20 We have identified possible changes to Schedule 4 which could mitigate this issue, for example to remove the discount Network Rail receives in cases where it changes a possession it had previously notified or to introduce a modest penalty for late possession cancellation. However, our initial view is that such changes would be disproportionate given uncertainty about the scale and cause of the issue.
- 4.21 Therefore, rather than making changes to Schedule 4, we propose to monitor possession changes and cancellations on a more granular basis. This will provide us with greater evidence to assess the scale of the issue, identify if any immediate actions are required, and inform our policy in future periodic reviews.
- 4.22 This proposal would be developed jointly with ORR's PR23 workstream covering CP7 outcomes and monitoring and reporting framework and considered in the context of wider developments and priorities in this area.

Consultation questions

Question 7: Do you have any views on the scale and impact of this issue? Do you have any views on our wider approach to monitoring possessions and how this can have the greatest impact on driving better possession planning in Network Rail?

E. Develop a tool to estimate Schedule 4 formulaic compensation

- 4.23 We propose to work with Network Rail to design a user-friendly tool to estimate Schedule 4 formulaic compensation.

Current approach

- 4.24 Revenue loss and cost compensation for operators who pay an ACS is calculated using pre-set formulas, which are defined in track access contracts (paragraphs 3 and 4 of model contracts)⁹:
- (a) The formula for calculating revenue loss compensation is based on the amount of disruption caused – calculated in terms of cancellation minutes and extended journey time – and Schedule 8 payment rates. Notification factors also apply.
 - (b) The formula for calculating cost compensation mainly covers bus replacement costs. It is based on the concept of estimated bus miles (EBM) which broadly reflects the number of bus miles that are operated for any given possession. Any additional costs or savings (e.g. in track access charges or fuel costs) experienced by an operator due to a possession is netted off the total bus cost payment.
- 4.25 The actual compensation payments are calculated by Network Rail for each possession and for each operator affected.

Issue with current approach

- 4.26 We have been told that infrastructure project planners, who are not necessarily experts in Schedule 4, can struggle to estimate Schedule 4 compensation costs. This is particularly pertinent in cases where operators are sponsors of infrastructure projects as they may find it difficult to compare how different possession configurations (with differing effects on service disruption for their own services) are likely to impact on Schedule 4 costs. This hampers an operator's views on the optimal possession strategy.

Proposal

- 4.27 We propose to work with Network Rail to develop a user-friendly tool that calculates the level of formulaic compensation expected for a given possession, based on the high-level characteristics of the possession.
- 4.28 The key benefit of this tool would be to increase the ability of infrastructure project planners within Network Rail itself and of other project sponsors to estimate Schedule 4 compensation costs and compare how different possession

⁹ For type 2 and type 3 possessions and SPDs, operators can also claim actual revenue loss and/or cost compensation if above what is covered by formulaic compensation.

configurations would impact operators and passengers. We expect this to support more efficient planning of possessions.

Consultation questions

Question 8: Would you find a user-friendly tool to estimate Schedule 4 formulaic compensation helpful? What are your views on the feasibility of developing an estimator tool? Should proposal E be a priority for PR23?

F. Review the methodology for calculating the ACS for open access operators

4.29 We are seeking views on whether we should review the methodology for calculating the ACS for open access operators.

Current approach

4.30 Operators can elect to pay an ACS in return for receiving full Schedule 4 compensation. The ACS is set to recover the total Schedule 4 payments Network Rail is expected to pay out to operators based on the amount of maintenance and renewals planned for the control period, including both formulaic compensation and that resulting from claims for actual losses.

4.31 No open access operator has ever chosen to pay an ACS. As a result, they are only eligible for compensation for type 3 possessions and SPD (“baseline Schedule 4 passenger regime”); and compensation amounts are subject to negotiation rather than determined by formulas.

Issue with current approach

4.32 The fact that no open access operator has ever chosen to pay an ACS could indicate that the ACS is not appropriately calibrated and therefore acts as a barrier to these operators receiving appropriate levels of compensation.

4.33 One potential reason why operators have chosen not to sign up to enhanced levels of compensation is that they might expect their up-front ACS payment to exceed the additional compensation that they are likely to receive. This could be because open access operators already receive some compensation (i.e. for type 3 possessions and SPD) without paying an ACS, yet this compensation would be included in the forecast Schedule 4 costs that are used to calculate the ACS payment. Effectively, the ACS would recover that element of compensation that

operators currently receive for free, as well as the additional compensation for shorter possessions (i.e. compensation for type 1 and type 2 possessions, including formulaic compensation) that they would be eligible for in return for the ACS.

Proposal

- 4.34 We propose to review the methodology for calculating the ACS for open access operators. This would involve calibrating the ACS for open access operators so that it covers only the additional expected compensation that would be provided (i.e. compensation for type 1 and type 2 possessions, including formulaic compensation). In other words, the compensation to which open access operators are already eligible for would be excluded when calculating the ACS.
- 4.35 Under this option, open access operators may be more likely to choose to opt into more comprehensive compensation, and compensation would more closely align with the cost and revenue impacts of possessions. This would strengthen incentives on Network Rail to minimise the impact of possessions and may increase the willingness of operators to co-operate with Network Rail in planning and managing possessions. However, this option would create a difference in treatment between open access operators and operators on concession-style contracts, as the methodology for calculating the ACS for the latter group of operators would not change. In addition, designing and implementing this regime could be time-consuming and costly for ORR and industry. It could also put additional costs on Network Rail in the longer run for calculating and administering two methodologies for calculating the ACS.
- 4.36 At this point we are not persuaded that the benefits of a change would outweigh the costs. We encourage stakeholders to share views and evidence, particularly on the current methodology for calculating the ACS and on the proportionality and feasibility of our proposal.

Consultation questions

Question 9: Should proposal F should be a priority for reform in PR23? Do you have any views on the proposed methodology for calculating the ACS for open access operators?

5. Proposal: Freight regime

Freight regime: High-level approach

- 5.1 Freight operators have told us that Schedule 4 broadly works as intended but that there is a mismatch between compensation levels and the costs they incur due to possessions, which effectively means Network Rail does not consider the full impact of disruption on freight operators when planning possessions.
- 5.2 We propose to keep the structure of the freight regime unchanged for CP7 but to review freight compensation rates as a priority for PR23, in light of any new evidence provided by freight operators.

G. Review freight operator compensation rates

- 5.3 We are proposing to review freight operator compensation rates in light of any new evidence supplied by freight operators. As part of this work, we would also consider how any potential changes in compensation could be funded.

Current approach

- 5.4 Schedule 4 is intended to compensate freight operators for the additional operating costs they incur due to possessions. Compensation is calculated based on pre-set payment rates, which vary depending on the disruption faced and the amount of notice given by Network Rail. The payment rates are linked to the overall amount of funding ear-marked by Network Rail for this purpose and were set in the 2008 periodic review (PR08) (and subsequently increased in line with inflation) rather than necessarily reflecting actual operating costs incurred¹⁰. For more severe disruption or in case of late notice given by Network Rail, freight operators can claim compensation for actual costs.
- 5.5 In principle, freight operators could also choose to pay an ACS in return for more comprehensive Schedule 4 compensation. However, no operator has ever chosen to do so.
- 5.6 A more detailed description of the freight Schedule 4 regime is available in the [accompanying Schedule 4 factsheet](#).

¹⁰ The freight Schedule 4 budget was set to broadly reflect amounts available under Part G of the Network Code which was replaced by the revised Schedule 4 freight regime established at PR08.

Issues with current approach

- 5.7 Freight compensation rates were first determined by the amount of funding earmarked by Network Rail for Schedule 4 freight compensation as part of PR08. In PR13 and PR18, we decided not to recalibrate freight compensation rates other than to reflect inflation. This was in part because freight operators were not able to demonstrate sufficiently the costs they face as the result of possessions. Freight operators have told us that their operating costs have risen faster than the general rise in prices since PR08. So, even if original payment rates were set at an appropriate level in PR08, they may no longer be appropriate today.
- 5.8 Freight operators have also told us that the cost to them of cancellations relative to diversions or delays is far greater than that implied by the ratio between the corresponding Schedule 4 payment rates. This may lead Network Rail to choose to cancel services when a diversion would be a better outcome from the overall industry point of view.
- 5.9 A further issue is that, whilst freight operators have the option, in principle, to sign up for more comprehensive compensation in return for an ACS, it is not clear what this more comprehensive compensation would cover, how it would be calculated or how the ACS would be set. This is because no operator has yet requested this feature to be included in their track access contract. It is not surprising that no operator has requested this when no information is available on the cost of this feature or what benefit they would gain in return.

Proposal

- 5.10 We are proposing to review freight compensation rates as part of PR23, subject to freight operators providing new evidence on the costs incurred as the result of possessions. We are particularly keen to review evidence on the cost differential between cancellations and diversions or delays. We would welcome views from freight operators on the merits of this work and potential sources of data.
- 5.11 As part of this work, we will consider the funding implications of any changes in payment rates. Any rise in compensation levels may be conditional on the payment of an ACS by freight operators to fund the additional Schedule 4 costs.
- 5.12 Subject to the outcome of this work, freight operators may in future benefit from more accurate levels of compensation than at present. This would improve incentives on Network Rail to minimise disruption to this market segment. It may also encourage greater co-operation between Network Rail and freight operators in planning maintenance and renewals and implementing emergency timetables.

Consultation questions

Question 10: Do you agree with our preferred high-level approach for the freight regime, to keep the current regime broadly unchanged for CP7? Are there other elements of the freight regime or its calibration that should be considered for reform in PR23?

Question 11: Do you consider we should review freight payment rates as a priority for PR23?

Question 12: Do you have any evidence on the appropriate level for freight Schedule 4 compensation and any views on how any increase might be funded? Do you have any views and evidence on the difference in freight compensation payments between service disruption and cancellation?

Annex 1: Objectives for Schedule 4 in PR23

Objectives

The following proposed Schedule 4 scheme objectives for PR23 are adapted from the stated purposes and principles of the regime in PR18.

These objectives are:

1. To compensate train operators for the financial impact of possessions.
2. To provide incentives for Network Rail to minimise the level of service disruption as a result of possessions.
3. To provide information about the impact of possessions on users of the railway.

In addition, the following objectives may be best thought of as 'constraints' for the scheme:

4. To avoid undue discrimination between different services.
5. To avoid perverse incentives.
6. To be simple, predictable and practicable.
7. To be resilient to changing circumstances (for example to developments in rail reform).

Annex 2: Summary of proposals and questions in this consultation

Proposals

Cross-cutting proposal across regimes

Proposal A: To introduce an opt-out mechanism to Schedule 4, whereby train operators could completely or partially opt out of Schedule 4.

Passenger regime proposals

Proposal B: To increase incentives on Network Rail to notify possessions early once the “informed traveller” notification threshold (T-22) has been passed, either by introducing an additional notification threshold or by monitoring possessions notification on a more granular basis.

Proposal C: To develop a method and/or process for settling compensation claims for lengthy possessions and periods of sustained planned disruption.

Proposal D: To monitor and report on late possession changes and cancellations on a more granular basis.

Proposal E: To develop a tool to estimate Schedule 4 formulaic compensation.

Proposal F: To review the methodology for calculating the ACS for open access operators.

Freight regime proposal

Proposal G: To review and, if necessary, update freight compensation rates.

Consultation questions

Chapter 2 – ORR’s proposed approach and priorities

Question 1: Do you have any views on the objectives and benefits of a mechanism such as Schedule 4, for the range of different industry parties, both in the current contracting model and once the rail transformation programme has been fully developed and implemented?

Question 2: Do you have any views on whether we should make no fundamental changes to Schedule 4 in PR23, or, as proposed, pursue a small number of incremental reforms to ensure it remains fit for purpose as a baseline regime?

Question 3: Do you agree with the areas we have identified as priorities for PR23? Are there any other significant issues that we should seek to address?

Chapter 3 – Proposal: Cross-cutting change across sector regimes

Question 4: Do you support proposal A? If an opt-out mechanism were to be implemented, would you support a complete (option A1) or partial opt-out (option A2)? Do you have any views on when operators should be allowed to opt out and what duration any opt out should have, as set out in paragraph 3.8?

Chapter 4 – Proposals: Passenger regime

Question 5: Do you support proposal B, implemented through option B2? Do you have any views on the options set out?

Question 6: Do you support proposal C? Do you have any views on options C1 and C2? Do you have a preference for one of the options?

Question 7: Do you have any views on the scale and impact of this issue? Do you have any views on our wider approach to monitoring possessions and how this can have the greatest impact on driving better possession planning in Network Rail?

Question 8: Would you find a user-friendly tool to estimate Schedule 4 formulaic compensation helpful? What are your views on the feasibility of developing an estimator tool? Should proposal E be a priority for PR23?

Question 9: Should proposal F be a priority for reform in PR23? Do you have any views on the proposed methodology for calculating the ACS for open access operators?

Chapter 5 – Proposal: Freight regime

Question 10: Do you agree with our preferred high-level approach for the freight regime, to keep the current regime broadly unchanged for CP7? Are there other elements of the freight regime or its calibration that should be considered for reform in PR23?

Question 11: Do you consider we should review freight payment rates as a priority for PR23?

Question 12: Do you have any evidence on the appropriate level for freight Schedule 4 compensation and any views on how any increase might be funded? Do you have any views and evidence on the difference in freight compensation payments between service disruption and cancellation?

Annex 3: Other options considered

We have considered a number of other ideas for reform of Schedule 4 in PR23, but which we are not at this time proposing to take forward. The table below presents ORR’s initial views on the merits of these options. We welcome stakeholders’ views on these initial assessments and whether the options should instead be considered as priority areas for reform in PR23.

No.	Idea	Description	Initial assessment
1	Cross-cutting: Implement a single regime for open access, third party, and freight operators.	Currently, open access, third party and freight operators receive different levels of compensation for the impact of possessions, depending on the market in which they operate, their contractual arrangements, and whether they pay an ACS.	While creating a single regime for open access, third party and freight operators would reduce the complexity of Schedule 4, it would also result in less accurate compensation for these operators.
2	Passenger regime: Reviewing sustained planned disruption thresholds (SPD).	Operators can claim actual revenue loss and cost compensation when disruption caused by possessions surpass specific thresholds. Operators believe these are set too high to ever trigger compensation, even in cases where operators suffer an extended period of disruption.	The net benefit of lowering the SPD thresholds is uncertain. On the one hand, it could increase the opportunity for operators affected by long lasting possessions to receive compensation, thereby strengthening incentives on Network Rail to minimise disruption. On the other hand, it could result in increased complexity and more disputatious negotiations around compensation claims. Additional funding may also be necessary.
3	Passenger regime: Offering compensation to operators indirectly affected by possessions.	Operators indirectly impacted by possessions, for example because passengers switch onto their service, could receive some Schedule 4 compensation.	This would introduce additional complexity in the regime and could require additional funding while the benefits in terms of compensation and incentives on Network Rail seem small. In particular, we have not seen evidence demonstrating the scale of the issue and the necessity to adequately compensate affected operators.

No.	Idea	Description	Initial assessment
4	Passenger regime: Estimating emergency timetable (ET) compensation payments costs in the ACS calculation.	Network Rail estimates ET costs based on historic payments during the ACS recalibration period. Operators have said that this means Network Rail is paid back for the amount of ET-related S4 payments made in the previous CP. One option is to move toward a trajectory for estimation of ET costs.	Whilst this option would provide Network Rail with an incentive to reduce the impact of emergency timetables, it is inconsistent with the direction of travel on Schedule 8 reforms, where ORR is moving away from regulatory trajectories.
5	Cross-cutting: Excluding enhancements from Schedule 4.	Schedule 4 would no longer require Network Rail to compensate operators for the impact of possessions necessary to complete enhancement projects.	This option would reduce not the cost of enhancement projects, since possessions would continue to be necessary to complete enhancements and the subsequent losses would ultimately be borne by funders. In addition, it would significantly reduce incentives on Network Rail to manage these possessions efficiently and it could endanger the commercial viability of open access and freight operators.
6	Passenger regime: Replace notification thresholds with a continuous discount.	Under this option, the discount received by Network Rail for notifying operators early about possessions would depend on the exact date when notification is given, with a progressively larger discount being applied the earlier the possession is notified.	The main benefit of this option is that it would sharpen incentives on Network Rail to notify possessions as early as possible. However, it would add further complexity to the regime. The continuously scaled discount may be challenging to calibrate and would increase the administrative costs of calculating the compensation due for each possession.
7	Passenger regime: Introduce a modest penalty for late possession cancellation.	Network Rail would face a modest penalty for cancelling at short notice possessions it had previously notified to operators.	The main benefit of this option is that it would disincentivise Network Rail to notify possessions too early to obtain the maximum discount and improve the reliability of information that operators have about planned possessions. However, this option risks incentivising Network Rail to leave notified possessions in place even as they are found to be unnecessary.



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