

Proposed changes to Network Rail's network licence

In chapter 8 of our [Consultation on implementing PR13](#), published in July 2013, we explained the changes we proposed to make to Network Rail's network licence in connection with implementing our 2013 periodic review and updating the licence for the start of control period 5 on 1 April 2014. The drafting changes that we propose to make to the licence are set out in this note.

Proposed deletions to the existing licence are struck through (~~like this~~); additions are in **red**; and descriptions of other changes or guidance are in *italics*.

We do not necessarily replicate conditions or parts of conditions where no changes are proposed. For the current licence conditions in full please see Network Rail's current [network licence](#).

The parts of the network licence covered are:

- Part II Interpretation
- LC1 Long term planning
- LC3 Financial indebtedness
- LC4 Financial ring-fence
- LC5 Interests in railway vehicles
- LC7 Land disposal
- LC8 Stakeholder relationships
- LC12 Annual and periodic returns
- LC15 Governance
- LC20 Insurance.

Part II – Interpretation

~~“LTUC”~~
London
TravelWatch

means the London Transport Users’ Committee and any successor to ~~LTUC body~~ which performs the same functions;

~~“RPC”~~
Passenger
Focus

means the Rail Passengers’ Council and any successor or ~~delegated body~~ which performs the **same** functions of the ~~RPC~~;

...

6A

Any consent given by ORR under this licence shall be in writing and may be expressed in general or specific terms.

....

Part III Conditions

Long term planning

Planning

- 1.4 The licence holder shall plan the means by which it will comply with the general duty in condition 1.2 over the short, medium and long term to meet reasonably foreseeable future demand for railway services.
- 1.5 In complying with condition 1.4, the licence holder shall consult, and take into account the views of, persons providing services relating to railways and funders so as to facilitate effective industry-wide planning.
- 1.6 In complying with condition 1.4, the licence holder shall prepare and provide to ORR plans, strategies or other documents demonstrating its compliance and proposed compliance with the general duty in condition 1.2, including:
 - (a) the delivery plan referred to in condition 1.10;
 - (b) those associated with or arising from the ~~route utilisation strategies~~ long term plans referred to in condition 1.14;
 - (c) other plans, strategies or documents that ORR may reasonably require from time to time; and
 - (d) revisions of the plans, strategies and other documents referred to in condition 1.6 (a) to (c) that ORR may reasonably require from time to time.
- 1.7 Each of the plans, strategies and other documents referred to in condition 1.6 shall demonstrate the position, as appropriate, on a network-wide basis and at a suitably disaggregated level of detail.
- 1.8 Each of the plans, strategies and other documents prepared in compliance with condition 1.6 shall be provided to ORR in respect of such period, in such format and structure, to such standard and level of detail and in accordance with such requirements (including any requirements as to publication) as ORR may, from time to time, specify by notice or in guidelines to the licence holder.
- 1.9 Any notice or guidelines to the licence holder issued under condition 1.8 may include a procedure under which ORR may object to the contents of a plan, strategy or other document on grounds specified in the notice or guidelines.

Long term planning process ~~Route Utilisation Strategies~~

- 1.14 In complying with condition 1.4, the licence holder shall establish and maintain ~~route utilisation strategies~~ long term plans to promote the ~~route utilisation~~ long term planning objective in accordance with guidelines issued by ORR under condition 1.8.

1.15 The long term planning objective referred to at 1.14 means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence.

1.156 The licence holder shall have due regard to the ~~route utilisation strategies~~ long term plans when carrying out its licensed activities.

~~1.16 Each route utilisation strategy shall be established:~~

~~(a) by such dates as are specified in a programme or programmes proposed by the licence holder and approved by ORR or any amendment to such dates which is approved by ORR;~~

~~(b) in accordance with:~~

~~(i) the policies and criteria referred to in condition 1.19(a); and~~

~~(ii) guidelines issued by ORR under condition 1.8.~~

1.17 The licence holder shall from time to time and when so directed by ORR review and, if necessary, amend ~~each route utilisation strategy~~ each long term plan to ensure that it (a) continues to promote the route utilisation long term planning objective. and (b) ~~remains in accordance with the policies and criteria referred to in condition 1.19(a).~~

~~The provisions of condition 1.16 in relation to the establishment of a route utilisation strategy shall apply equally to the amendment of a route utilisation strategy under this condition 1.17.~~

~~Interpretation~~

~~1.24....“route utilisation objective” means the effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or is likely to become, available during the period of the route utilisation strategy and with the licence holder’s performance of the duty in condition 1.2;~~

Proposed changes to the guidelines

ORR also proposes to make the following changes to the current RUS guidelines¹ alongside the licence changes:

1. Change title to ‘ORR guidelines on the Long term planning process’.
2. Throughout changes ‘Route Utilisation Strategies and RUSs’ to ‘Long Term Plans and LTPs’. Change Route Utilisation Objective to Long Term Planning Objective.
3. At footnote 3 change date to April 2011 and add link <http://www.dft.gov.uk/webtag>.
4. At footnote 6 change ‘Stakeholder Management Groups’ to ‘Working Groups’.
5. At footnote 7 update and amend the reference to the directive to European legislation - footnote Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast).
6. At paragraph 26 delete ‘for the purposes of the obligation under condition 1.16 of the network licence.’

¹ <http://www.rail-reg.gov.uk/upload/pdf/rus-guidelines-apr09.pdf>

3 Financial indebtedness

3.1 Except with the written consent of ORR, the licence holder shall use reasonable endeavours to ensure that at any time the total amount of financial indebtedness of:

- (a) the licence holder; ~~any subsidiaries of the licence holder,~~
- (b) Network Rail Infrastructure Finance; and
- (c) any subsidiaries of **the licence holder** or Network Rail Infrastructure Finance

~~shall~~ **does** not exceed the limits applicable at that time ~~that are shown~~ **set out** in table 3.1. ~~which~~ **These limits** are determined by dividing ~~that the total~~ financial indebtedness ~~of the companies in (a)-(c) above for the relevant area~~ by the Value of the RAB ~~for the relevant area~~ at that time.

Table 3.1: Limits to the level of financial indebtedness expressed as a percentage of the Value of the RAB for England & Wales and for Scotland

Financial year	Limit	
	England and Wales	Scotland
2009-10 14-15	70.0% <i>[70-75%]²</i>	<i>[70-75%]</i>
2010-11 15-16	70.0% <i>[70-75%]</i>	<i>[70-75%]</i>
2011-12 16-17	72.5% <i>[70-75%]</i>	<i>[70-75%]</i>
2012-13 17-18	75.0% <i>[70-75%]</i>	<i>[70-75%]</i>
2013-14 18-19 and each subsequent year	75.0% <i>[70-75%]</i>	<i>[70-75%]</i>

3.2 If at any time the total ~~aggregate~~ amount of financial indebtedness of the licence holder, any subsidiaries of the licence holder, Network Rail Infrastructure Finance and any subsidiaries of Network Rail Infrastructure Finance exceeds the limits set out in condition 3.1 applicable to that area **in that** financial year the licence holder shall, within such time periods as ORR may notify as being appropriate in the circumstances:

- (a) provide to ORR details of the steps it intends to take to reduce the amount to those limits or below;
- (b) take those steps; and
- (c) provide to ORR evidence that it has taken those steps.

3.3 The licence holder shall:

- (a) provide, from time to time as requested by ORR and in any event every year in the regulatory financial statements the licence holder prepares pursuant to condition 11, confirmation that, in respect of the financial year to which the statements relate, it has

² Exact numbers in these tables to be confirmed in the final determination.

complied, and, in respect of the following financial year, it is not aware of any circumstances which will prevent it complying and it is likely to comply, with condition 3.1 and (where applicable) condition 3.2 and, if so requested by ORR, evidence in support of that confirmation; and

(b) notify ORR immediately in writing if at any time the licence holder becomes aware of any circumstance that means it is no longer complying, or that causes it no longer to have the reasonable expectation that it is likely to comply, with condition 3.1 and (where applicable) condition 3.2.

3.4 The licence holder shall pay to the Secretary of State, at least annually, a fee in respect of the state financial indemnity.

3.5 In this condition:

“fee” means the amount equal to ~~0.8~~ 1.10 per cent (on an annual basis) of the daily outstanding amount of financial indebtedness incurred by Network Rail Infrastructure Finance and which is supported by the state financial indemnity;

.....

“Network Rail Infrastructure Finance” has the meaning given to it by condition 4.33~~33~~39

.....

(the other definitions in 3.5 are unchanged)

4 Financial ring-fence

.....

Payment of dividends

4.29 The directors of the licence holder shall not, ~~without ORR's consent,~~ declare or recommend a dividend **unless the conditions in condition 4.31 have been met.**

4.30 ~~and~~ The licence holder shall not:

- (a) make any other form of distribution, within the meaning of sections 829, 830, 849 or 850 of the Companies Act 2006; **or**
- (b) ~~or redeem or repurchase any share capital of the licence holder unless prior to the declaration, recommendation or making of the distribution, redemption or repurchase (as the case may be) the licence holder shall have issued to ORR a certificate complying with the following requirements in conditions 4.30 and 4.31.~~
unless the conditions in condition 4.31 have been met.

Conditions for the payment of dividends, distributions, redemptions and repurchases

~~4.30 The certificate shall be in the following form:~~

4.31 The conditions referred to in conditions 4.29 and 4.30 are:

- (a) The licence holder has issued to ORR a certificate in the form specified at condition 4.33 concerning the proposed dividend, distribution, redemption or repurchase; and
- (b) ORR has consented in writing to the dividend, distribution, redemption or repurchase no more than 6 months prior to it being recommended, declared, or made.

4.32 The licence holder shall provide to ORR any information it reasonably requires in order to decide whether to consent to the payment of a dividend or making of a distribution, redemption or repurchase for the purposes of condition 4.31(b).

4.33 A certificate issued under condition 4.31(a) shall:

(a) be in the following form:

"After making enquiries, the directors of the licence holder are satisfied:

- (i) that the licence holder is ~~in compliance~~ **complying** in all material respects with all obligations imposed on it by condition 4 and condition 11 of its network licence;
 - (ii) that the payment of a dividend or making of a distribution, redemption or repurchase of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licence holder to be in breach to a material extent of any of these obligations ~~in the future~~ **for the remainder of the current control period or for the next three full financial years (whichever is the longer);** and
 - (iii) that such payment of dividend or making of distribution, redemption or repurchase will not impair the ability of the licence holder to finance the Permitted Business."
- (b) ~~4.31 The certificate shall~~ be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not more than

14 days before the date on which the consent of ORR to the declaration, recommendation or payment will be made under condition 4.31 is requested in writing.

~~4.32 Where the certificate required by condition 4.29 has been issued in respect of the declaration or recommendation of a dividend or the making of a distribution, redemption or repurchase, the licence holder shall be under no obligation to issue a further certificate prior to payment of that dividend or the making of that distribution, redemption or repurchase provided such payment, distribution, redemption or repurchase is made within six months of the issuing of that certificate.~~

Relevant payments to funders

4.34 For the purposes of this condition a payment to a funder is a relevant payment unless it is a payment made in the ordinary course of business or in order to comply with a legal obligation.

4.35 The licence holder shall not make a relevant payment unless the conditions in condition 4.36 have been met.

Conditions for relevant payments

4.36 The conditions referred to in condition 4.35 are:

- (a) The licence holder has issued to ORR a certificate in the form specified at condition 4.38 concerning the relevant payment; and
- (b) ORR has consented in writing to the relevant payment no more than 6 months prior to it being made.

4.37 The licence holder shall provide to ORR any information it reasonably requires in order to decide whether to consent to a payment for the purposes of condition 4.36(b).

4.38 A certificate issued under condition 4.36(a) shall:

- (a) be in the following form:
 - “Having had regard to:
 - (i) the licence holder’s obligations under this licence and any contracts to which it is a party;
 - (ii) the extent to which its efficiency and economy in discharging the obligations referred to in condition 4.38(a)(i) exceeds any assumptions which ORR made in its most recent access charges review;
 - (iii) the licence holder’s current and foreseeable future financial position including whether it would be more appropriate to use any available financial resources to repay any financial indebtedness of the licence holder or fund research and development expenditure up to the value specified in the final determinations of the 2013 access charges review rather than to make a relevant payment; and
 - (iv) the need for long term investment in the network;

the directors of the licence holder are satisfied that the making of a relevant payment will not impair the ability of the licence holder to finance the Permitted Business for the remainder of the current control period or the next three financial years (whichever is the longer).

- (b) be signed by a director of the licence holder and approved by a resolution of the board of directors of the licence holder passed not more than 14 days before the date on which the consent of ORR to the relevant payment under condition 4.36(b) is requested in writing.

4.3339

“current control period” means the period in respect of which the conclusions of ORR’s most recent access charges review have been implemented.

.....

“access charges review” has the meaning ascribed to it under schedule 4A of the Act.

.....

5 Interests in rolling stock and train operators railway vehicles

- 5.1 Subject to condition 5.2, ~~the~~ licence holder shall not, ~~except in so far as ORR may otherwise consent,~~ be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain.
- 5.2 For the purposes of condition 5.1 the licence holder is “directly interested” in the ownership or operation of railway vehicles where the licence holder:
- (a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or
 - (b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.
- 5.3 For the purposes of condition 5.1 the licence holder is “indirectly interested” in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).
- 5.24 Condition 5.1 shall not apply in respect of any railway vehicle where:
- (a) it is used wholly or mainly for ~~any such~~ the purposes as is mentioned in sub-paragraph 1(b) or (c) set out in paragraph 1 of Part 1 of the (Sscope) of this licence; or
 - (b) it forms ~~ing~~ part of the Royal Train; or
 - (c) ORR has consented to the licence holder having an interest in the ownership or operation of that railway vehicle.
- ~~5.3 The licence holder shall, without limitation to the generality of condition 5.1, be regarded as directly interested in the ownership or operation of railway vehicles where the licence holder:~~
- ~~(a) has any legal or beneficial interest in any railway vehicle (in whole or in part); or~~
 - ~~(b) has the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.~~
- ~~5.4 The licence holder shall, without prejudice to the generality of condition 5.1, be regarded as indirectly interested in the ownership or operation of any railway vehicle which is operated by any of its affiliates or in which the licence holder or any of its affiliates has any legal or beneficial interest (in whole or in part).~~

7 Land disposal

7.1 The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this condition-7.

7.2 The licence holder may dispose of any land where:

- (a) ORR consents to such disposal; or
- (b) the disposal is required by or under any enactment.

7.3 Where the licence holder seeks ORR's consent it must give a minimum of 2 months' prior written notice specifying the land disposal it intends to make (the notice). A notice under this condition shall be in such form and contain such particulars as ORR specifies.

7.4 Having given such notice, the licence holder shall provide further information as ORR may require.

7.5 Unless otherwise agreed between ORR and the licence holder, if ORR does not inform the licence holder of a consent or refusal of consent within the time specified in the notice, the licence holder will be deemed to have consent and may dispose of land in accordance with the notice.

7.6 If ORR refuses consent to the disposal of land specified in the notice, the licence holder will be informed of any entitlement to appropriate compensation for the loss of value (if any) as a result of not being able to make such disposal.

~~7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.~~

~~7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:~~
~~(a) where:~~

~~(i) ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:~~

~~(aa) transactions of a specified description; and/or~~

~~(bb) the disposal of land specified in the directions as excluded land;
and~~

~~which specifies the intervals at which the general consent can be reviewed; and~~

~~(ii) — the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or~~

~~(b) — where the disposal in question is required by or under any enactment and for these purposes a disposal shall be treated as being under an enactment if:~~

~~(i) — the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or~~

~~(ii) — the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.~~

~~7.4 — Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:~~

~~(a) ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or~~

~~(b) ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 7.4(b).~~

7.57 In this condition:

“disposal” includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed accordingly;

“excluded land” means any land which is specified as such in directions issued under condition 7.3;

“land” includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.

8 Stakeholder relationships

Cooperation with passenger representatives

Whenever reasonably requested to do so by ~~Passenger Focus the RPC and LTUC~~ or ~~London TravelWatch~~ (as relevant) in connection with its licensed activities, the licence holder shall cooperate with ~~Passenger Focus the RPC and LTUC~~ ~~London TravelWatch~~ (as relevant) in respect of the proper performance of their respective statutory functions, including the provision of relevant information held by the licence holder.

Interpretation

8.1 In this condition:

.....

- (f) ~~RPC~~ ~~Passenger Focus~~ and ~~LTUC~~ ~~London TravelWatch~~ in respect of their respective statutory functions.

12 Annual and periodic returns

Annual returns

12.1 ~~The licence holder shall prepare and provide to ORR an annual return by 1 July each year (or a later date approved by ORR) a specified return date each year. The annual return shall be prepared in such format and structure, to such standard and level of detail and in accordance with such requirements as ORR shall specify by notice to the licence holder.~~

12.2 ~~No notice of ORR under condition 12.1 shall be effective unless:~~

- ~~(a) it is given on or before 31 December in the year before that in which the annual return is to be published; and~~
- ~~(b) ORR has consulted the licence holder before 31 October in the year before that in which the annual return is to be published and has taken into consideration any representations duly made.~~

The annual return must comply with the requirements set out by ORR following consultation with the licence holder, including:

- (a) as to its form and content; and
- (b) the dates to which the annual return relates.

12.3 The specified return date must be a date:

- (a) not less than 3 months after the last day to which the annual return relates; and
- (b) at least 6 months after the date on which ORR notifies the licence holder of the annual return requirements unless the licence holder otherwise agrees.

~~12.3 To the extent that a notice of ORR under condition 12.1 requires the inclusion of statistical and other data, the notice shall not be effective unless it is given on or before 31 December in the year which is two years before that in which the annual return is to be provided, or such shorter period as may be agreed with the licence holder.~~

~~12.4 If ORR has not given an effective notice under condition 12.1 in respect of any year, the notice last given under that condition shall apply to that year.~~

12.4 If, in any year, ORR has not consulted upon the annual return requirements or specified a return date in accordance with conditions 12.2 and 12.3, the licence holder shall prepare and provide an annual return for that particular year by the day and month previously specified in accordance with condition 12.3 and on the basis of the annual return requirements relevant to that specified return date.

12.5 Within one calendar month of delivery to ORR the return date, subject to any modification (including deletions on the grounds of confidentiality) approved by ORR, the licence holder shall publish the annual return, except to the extent that ORR is satisfied that the information would or might seriously and prejudicially affect the interests of the licence holder or any other person and has so notified the licence holder.

.....

15 Governance

All of the existing condition 15 will be deleted and replaced with:

15 Governance

15.1 The licence holder must adhere to best practice corporate governance arrangements, so far as is reasonably practicable, by:

- (a) complying with the relevant provisions and principles of the UK Corporate Governance Code;
- (b) maintaining a board of directors with an appropriate balance of skills, experience, independence and knowledge, where at least two non-executive directors have substantial experience of working in the rail industry; and
- (c) publishing, or procuring the publication of, such information as is required by the rules of the Financial Conduct Authority of a company whose ordinary shares are for the time being admitted to the Official List of the UK Listing Authority.

15.2 ORR may consent to, or specify that the licence holder complies with, any other arrangements which:

- (a) provide at least equivalent standards of best practice corporate governance; or
- (b) relieve the licence holder of its obligations under any part of condition 15.1 to such extent, for such period of time, and subject to such conditions as may be specified in the consent or specification.

15.3 In this condition:

“the UK Corporate Governance Code” means the code published by the Financial Reporting Council in September 2012, or any successor document having a similar purpose and content;

and

“rules of the Financial Conduct Authority” means the rules made by or under Part VI of Financial Services and Markets Act 2000 and contained in the Financial Conduct Authority Handbook, or equivalent rules of any successor body.

20 Insurance

- 20.1 The licence holder shall, in respect of licensed activities, maintain insurance against third party liabilities in accordance with any relevant ORR ~~general or specific approval consent~~, as amended from time to time.