



## 2018 periodic review

Implementing PR18: consultation  
on changes to access contracts

July 2018

# Contents



<b>1. Introduction</b>	<b>4</b>
The implementation process and timetable	8
<b>2. Contingency arrangements for a delay to the implementation of PR18</b>	<b>10</b>
Overview	10
Introduction	10
The contingency provision used in PR08 and PR18	11
Contingency arrangements for PR18	11
Drafting of the contingency provision	12
<b>3. Changes affecting franchised, freight and open access track access contracts</b>	<b>13</b>
Overview	13
Introduction	13
Contingency arrangements for subsequent periodic reviews	13
Indexation	14
Removal of capacity charge and the route-level efficiency benefit sharing mechanism	15
Changes to the Traction Electricity Rules and related changes to Schedule 7	16
Other changes	19
<b>4. Changes to passenger operator access contracts</b>	<b>20</b>
Overview	20
Introduction	20
Schedule 7	20
Network grant and related provisions	25
Schedules 4 and 8	27
<b>5. Changes to freight track access contracts</b>	<b>29</b>
Overview	29
Schedule 7	29
Schedules 4 and 8	31
Changes to the freight customer contract and freight customer train operator contracts	31
<b>6. Changes to charter track access contracts</b>	<b>33</b>
Overview	33
Proposed changes	33
<b>7. Changes to station access contracts</b>	<b>34</b>

Overview	34
Introduction	34
Station long term charge	34
Indexation	35
<b>Appendix A: Responding to this consultation</b>	<b>39</b>
<b>Appendix B: Implementation process</b>	<b>41</b>
Changes to the Traction Electricity Rules	42
<b>Appendix C: Proposed contingency provision drafting</b>	<b>43</b>

# 1. Introduction

- 1.1 The 2018 periodic review (PR18) is the process through which we determine what Network Rail<sup>1</sup> should deliver in respect of its role in operating, maintaining and renewing its network in control period 6 (CP6)<sup>2</sup> and how the funding available should be best used to support this. This feeds through into:
- the service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
  - the charges that Network Rail's passenger, freight and charter train operator customers will pay for access to its track and stations during CP6.
- 1.2 On 12 June 2018, we published our draft determination on PR18 (available [here](#)), setting out our proposed overall decisions for consultation. In October 2018, having considered stakeholders' responses, we will publish our final decisions in our final determination. Following this, we will need to implement our decisions. For access charges and contractual incentives (in particular), this means amending relevant access contracts so that they reflect our decisions.
- 1.3 This document provides an overview of the changes to track<sup>3</sup> and station access contracts that we currently consider are necessary or expedient to implement the proposed decisions set out in our draft determination. It sits alongside proposed revised contractual wording that we have produced. These changes also include changes that we propose to make to improve the drafting of certain track access contract provisions following our January 2018 consultation<sup>4</sup> on this. Our conclusions on this consultation are published [here](#).
- 1.4 We are consulting on these changes to inform the final wording that will be implemented in track and station access contracts on and from 1 April 2019. More detail on the implementation process itself is set out in Appendix B.
- 1.5 We are also consulting on a provision that we propose Network Rail and train operators adopt to provide a contingency arrangement in the event that the statutory implementation process for PR18 is delayed (e.g. if Network Rail exercised its right to object to our overall PR18 decisions). There are also proposals to include similar

---

<sup>1</sup> All references to Network Rail in this document are to Network Rail Infrastructure Limited.

<sup>2</sup> CP6 will run from 1 April 2019 to 31 March 2024.

<sup>3</sup> This includes changes to the Traction Electricity Rules that are incorporated into most track access contracts. The track access contracts within scope for PR18 implementation are those that contain an access charges review reopener in Schedule 7 (this is normally set out under the heading "Future access charges reviews" or, in freight contracts, "Freight Charging Review").

<sup>4</sup> Consultation on improvements to the drafting of Schedules 4, 7 and 8 of the passenger and freight model track access contracts, ORR, January 2018, available [here](#).

provisions for future periodic reviews, to make this a standard feature of the contracts. This would bring the arrangements for Network Rail into line with practice for other regulated network monopolies.

## Structure of this document

1.6 This document is structured as follows:

- Chapter 2 discusses the provision that we propose that Network Rail and train operators add into their track access contracts to provide a contingency arrangement in the event that PR18 implementation is delayed;
- Chapter 3 discusses broadly common drafting changes that we currently propose to apply to **franchised, freight and open access** track access contracts to implement PR18. We then discuss in the subsequent chapters changes that are specific to:
  - **franchised and open access passenger operators** (Chapter 4);
  - **freight train operators** (Chapter 5);
- Chapter 6 sets out the main changes we propose to make to the drafting of **charter train operators'** track access contracts to implement PR18; and
- Chapter 7 sets out the changes we propose to make to **station access contracts** for which Network Rail is the facility owner or lessor (with the exception of those with full repairing and insuring leases, as Network Rail does not have responsibility for maintenance, repair or renewal for these);
- Appendix A sets out how to respond to this consultation;
- Appendix B provides an overview of the statutory implementation process; and
- Appendix C sets out our proposed drafting for the contingency provision discussion in Chapter 2.

1.7 Table 1.1 below provides links our proposed changes to model contracts/provisions (with changes from the CP5 provisions marked up). Proposed changes to the relevant station access conditions are set out in Chapter 7.

**Table 1.1: Links to proposed contractual wording**

Relevant model contract / document	Link / reference
Franchised passenger	<a href="#">Mark-up</a> of proposed changes against the current model contract.
Open access passenger	<a href="#">Mark-up</a> of proposed changes against the current open access Schedule 7. (See franchised passenger contract for Schedules 4 and 8 changes.)
Freight operator	<a href="#">Mark-up</a> of proposed changes against the current CP5 model contract.
Freight customer operator	Please see the mark-up of proposed changes for the freight operator contract (above) and the additional commentary in paragraph 5.18, for proposed amendments relating to this contract (along with chapters 2, 3 and 5).
Freight customer	Please see paragraph 5.19 of this document for details of proposed changes.
Charter train operator	<a href="#">Mark-up</a> of proposed changes against the current CP5 model contract. See Chapter 6 for an overview of the main changes.
Traction Electricity Rules	<a href="#">Mark-up</a> against the 1 April 2018 version of the Traction Electricity Rules.

### Bespoke provisions in existing track access contracts

- 1.8 This consultation focuses principally on the new versions of Schedules 4, 7 and 8 of model track access contracts<sup>5</sup> that will apply to track access contracts in CP6. Generally speaking, we expect to replace the current Schedules 4, 7 and 8 wording in existing contracts with the CP6 model versions when we implement PR18.
- 1.9 There will, however, be some exceptions to this. In particular, some existing track access contracts contain bespoke provisions, such as facility charges for investments or bespoke definitions in Schedule 8 for peak/off-peak services. We need to decide whether these provisions need to be rolled-forward into CP6, when we apply the new model drafting.
- 1.10 On 26 March 2018, we wrote to Network Rail customer teams and train operators asking them:
- to review whether there were any bespoke provisions in their contracts; and, if so,

<sup>5</sup> Schedule 4 is the restrictions of use regime, Schedule 7 sets out provisions relating to access charges and other payments and Schedule 8 is the performance regime.

- to advise us whether they considered that these provisions should be retained and incorporated into their contracts when we apply the new model CP6 provisions.

1.11 We have reviewed the submissions sent to us and, alongside this consultation, we have written to Network Rail and train operators setting out the approach that we propose to take. We are providing until 14 September 2018 for them to make representations to us if they disagree with our proposed approach.

## Other processes relating to implementation of PR18

1.12 As well as the changes to access contracts required to implement PR18, there are other processes relevant to PR18 implementation:

- **production of the price lists for CP6:** Network Rail plans to publish draft versions of its CP6 price lists on 31 July 2018 (mid-August 2018 for the fixed track access charge), which are based on our draft determination decisions. We strongly encourage train operators to take this opportunity to review the draft price lists. Once finalised, the price lists are fixed until the next periodic review. In December 2018, Network Rail will then publish its final price lists for CP6. These will reflect our final determination decisions.
- **recalibration of the parameters in Schedules 4 and 8 of track access contracts:** While this document discusses the changes to the contractual wording of Schedules 4 and 8, the recalibration of Schedule 4 and 8 parameters is being led by industry. More information on the recalibration of these regimes is available in our draft determination supplementary document on charges and incentives<sup>6</sup>; and
- **review of Network Rail's network licence:** alongside this document we are consulting on changes to Network Rail's network licence ([here](#)), to implement PR18 and also wider changes to reflect Network Rail's devolved structure;

## Responding to this consultation

1.13 We **welcome comments on this consultation by 31 August 2018**. Appendix A sets out how to respond.

1.14 We would be happy to arrange or attend meetings during the consultation period to discuss particular drafting issues with stakeholders (including their lawyers) if this would be helpful. Please contact [pr18@orr.gsi.gov.uk](mailto:pr18@orr.gsi.gov.uk).

---

<sup>6</sup> '2018 periodic review draft determination: supplementary document – overview of charges and incentives decisions', ORR, June 2018, available [here](#).

## The implementation process and timetable

1.15 The timetable for implementation is set out in Table 1.2 below. Further detail on the statutory process for implementing PR18 is set out in Appendix B.



**Table 1.2: Timetable for contractual and licence implementation**

Date	Milestone
<b>12 July 2018</b>	Publication of: (1) this consultation on implementing PR18; and (2) our consultation on changes to Network Rail's network licence. ORR writes to Network Rail and train operators regarding bespoke provisions.
<b>31 July 2018</b>	Network Rail publishes its draft track usage price list and draft list of station long term charges. This will provide an opportunity for train operators to scrutinise the price lists and identify any factual errors.
<b>Mid-August 2018</b>	Network Rail publishes draft price lists for fixed track access charges (which applies to franchised passenger operators). This will provide an opportunity for train operators to scrutinise the price lists and identify any factual errors.
<b>31 August 2018</b>	Deadline for responses to this consultation (and the consultation on our draft determination).
<b>14 September 2018</b>	Deadline for Network Rail and train operators to make further representations to ORR on bespoke provisions (where appropriate).
<b>31 October 2018</b>	ORR publishes its final determination for CP6.
<b>20 December 2018</b>	We publish 'review notices', setting out the changes to access contracts needed to implement our final determination. We begin a statutory consultation on modifications to Network Rail's network licence.
<b>20 December 2018</b>	Network Rail publishes its price lists for CP6, setting out the specific access charge rates that would be payable by train operators.
<b>7 February 2019</b>	Deadline for Network Rail to confirm whether to accept or reject our final determination. If it accepts, we will then give train operators 28 days in which to terminate their access contracts, as required by law.
<b>Mid-March 2019</b>	We issue our 'review implementation notices', confirming that the review will be implemented on 1 April 2019.
<b>March 2019</b>	We publish Network Rail's revised network licence, following completion of the statutory consultation. We also confirm and publish our enforcement policy for CP6.
<b>1 April 2019</b>	CP6 begins. Changes to train operators' access contracts, including new access charges, and Network Rail's network licence, take effect.

## 2. Contingency arrangements for a delay to the implementation of PR18

### Overview

This chapter sets out the contingency arrangements that we propose Network Rail and train operators include in their track access contracts, by way of a supplemental agreement, to deal with the potential consequences of a delay to PR18 implementation.

---

### Introduction

- 2.1 As set out in Appendix B, as part of the formal implementation process for a periodic review, we must:
- (a) issue review notices, setting out the changes we propose to make to access contracts to give effect to the review; and
  - (b) give Network Rail a period of at least six weeks to decide whether to object or accept the review (we expect the deadline for PR18 to be 7 February 2019).
- 2.2 If Network Rail were to object, we would have to decide whether to revise our decisions or refer the matter to the Competition and Markets Authority (CMA). In either scenario, the periodic review would not be able to be implemented by 1 April 2019 (i.e. the start of CP6). If this were to happen, most of the CP5 access charges (and financial parameters in Schedules 4 and 8 of track access contracts) would expire. This is because they relate to particular years in CP5. For example:
- freight charges on the Track Usage Price List;
  - fixed charges on the Schedule of Fixed Charges and Access Charges Supplements in Schedule 4 for franchised operators; and
  - performance benchmarks in Schedule 8 Appendix 1 for passenger operators.
- 2.3 If the charges were to expire, Network Rail would quickly run out of funding. This is likely to mean that Network Rail would not be able to continue operating. But also, in contractual terms, the basis on which Network Rail had agreed to sell access rights (in return for access charges) would have changed. Theoretically, this could call into question the ongoing validity of the contracts and, clearly, there would be significant uncertainty if this were to happen.
- 2.4 For this reason, in PR08 and PR13, we asked Network Rail and train operators to include a provision in their track access contracts that would apply a contingency arrangement should implementation be delayed.

## The contingency provision used in PR08 and PR18

- 2.5 The contingency provision in PR08 and PR18 provided that, if implementation did not take place as planned on the first day of the new control period:
- (a) the contracts would apply ORR's **proposed changes**<sup>7</sup> (i.e. the ones that Network Rail had objected to) on **an interim basis**; and
  - (b) then, once the periodic review process has been duly concluded and formally implemented (either by ORR or the CMA), **the final set of changes** to track access contracts (including access charges) would take effect and **confirm or supersede the interim arrangements**.
- 2.6 There would then be an adjustment so that the final set of changes to access contracts would be applied from the beginning of the new control period (including any access charges). Network Rail and train operators would therefore end up in the same financial position as they would have been in had the final settlement been applied in the first place.

## Contingency arrangements for PR18

- 2.7 We do not consider that there are any other good alternatives to the arrangement applied in PR08 and PR13.
- 2.8 We have previously explored whether the access charges of the previous control period could be rolled-forward. We concluded in PR08 and PR13 that this would not be viable, because of the profiling of many of the access charges<sup>8</sup> and the charges in the final year of a control period may be materially different to those relating to the revenue that Network Rail should receive in the first year of the subsequent new control period.
- 2.9 Therefore, we propose that the same arrangements for contingency be used again in PR18.
- 2.10 So, subject to stakeholder views, we will write to Network Rail and train operators in the autumn to ask them to agree a supplemental agreement to include the contingency provision in their track access contracts.
- 2.11 A contingency arrangement for station access contracts is not required because the long term charges in station access contracts do not expire.

---

<sup>7</sup> As set out in the review notices issued by ORR.

<sup>8</sup> In particular, according to the work (i.e. outputs or activities) expected to be delivered and according to the profile of the network grants from governments.

## Drafting of the contingency provision

2.12 The proposed drafting of the contingency provision is included in Appendix C.

2.13 We have improved the drafting of the contingency provision used in PR08 and PR13.

In particular, we have included greater clarity on how the final set of contractual provisions would be applied from the start of CP6. In particular, this includes invoicing arrangements and clarity on when any reconciliation payment (either from Network Rail to a train operator, or vice versa) would be payable. These timescales are:

- within 28 days of the final changes being implemented, Network Rail shall calculate any reconciliation payment and provide a statement of this to the train operator; and
- within 28 days of Network Rail providing this statement, the amount shall be due (either from the train operator or Network Rail).

2.14 We think these are reasonable periods and broadly consistent with those in the track access contract for other invoice arrangements. However, we invite views on these timescales.

## 3. Changes affecting franchised, freight and open access track access contracts

### Overview

This chapter sets out broadly common drafting changes that we currently propose to apply to franchised, freight and open access track access contracts to implement PR18. We then discuss in the subsequent chapters changes that are specific to a particular type of train operator.

Some of the changes in this chapter will also apply to charter train operators; we have indicated in Chapter 6 on charter contracts what these are.

---

### Introduction

- 3.1 This chapter sets out proposed changes to track access contracts in relation to:
- contingency arrangements for the implementation of future periodic reviews;
  - indexation provisions;
  - removal of capacity charge and route-level efficiency benefit sharing mechanism (REBS); and
  - changes relating to traction electricity, in particular the Traction Electricity Rules and related changes to Schedule 7.

### Contingency arrangements for subsequent periodic reviews

- 3.2 Chapter 2 describes the contingency arrangement we propose that Network Rail and train operators include in their track access contracts to deal with the scenario that PR18 is unable to be implemented on 1 April 2019 as planned.
- 3.3 As mentioned in Chapter 2, this is the third periodic review in which we have asked Network Rail and train operators to amend their track access contracts to include the contingency provision. We expect such a provision to continue to be needed in future periodic reviews.
- 3.4 Rather than ask the industry to make the same amendment again in PR23, with the administrative cost that this entails for industry parties, we propose to include the contingency arrangement as a standard clause in the new CP6 model versions of Schedule 7. As such, it would be included in track access contracts from 1 April 2019 when our review notices take effect and in all relevant future track access contracts.

3.5 The provision is set out in paragraph 4 of Part 7 of the proposed passenger franchised, open access and charter passenger Schedule 7, and paragraph 3 of the freight Schedule 7.

## Indexation

3.6 In CP5, Network Rail's regulatory asset base (RAB), access charges, and payment rates in other mechanisms where we set the method of indexation, have been indexed using the retail prices index (RPI) measure of inflation. Our draft determination sets out our draft decision (following earlier consultation) to use the consumer price index (CPI) instead<sup>9</sup>.

3.7 Reflecting this, the indexation provisions in the model versions of Schedules 4, 7 and 8 that will apply in CP6 will be based on CPI rather than RPI. We will also amend Schedule 9 of track access contracts (relating to limitation of liability) to be consistent with this. The proposed model CP6 provisions reflect this.

## Adjustments in respect of the switch to CPI indexation

3.8 In our consultations on the PR18 financial framework, we considered whether we should make an upward adjustment to opening levels of track access charges in CP6 in light of lower expected indexation increases under CPI compared to RPI during CP6.

3.9 However, we noted that we have separately announced proposals to cap the variable usage charge (VUC) for freight and charter operators and that, consistent with this, there will be no upward adjustment to VUC for the RPI/CPI differential for these operators and the yearly charges will be indexed by CPI. We have not yet decided on the position with respect to VUC for franchised and open access operators (OAOs).

3.10 In any case, however, we will need to make appropriate upward adjustments to opening levels of fixed track access charges because:

- we have decided to include a real price effect factor equating to the forecast one percentage point differential between CPI and RPI in the expenditure assumptions we will use to calculate Network Rail's revenue requirements in CP6; and
- network grant amounts for CP6 are capped in cash terms.

3.11 This adjustment approach means that all of our references to indexation in CP6 track access contracts can be to CPI indexation.

---

<sup>9</sup> See chapter 8 of our draft determination overview document (available [here](#)) and chapter 2 of our supplementary document on the financial framework (available [here](#)).

## Values used in indexation provisions

- 3.12 Indexation provisions in the current (CP5) track access contracts all refer to RPI values, but the time periods referred to and the methods used to calculate values, are not consistent across all the formulae. For example, some formulae compare the values of the RPI index for the month of November in different years, whereas others refer to values in the first month in contract years or average values for calendar years.
- 3.13 We welcome the views on whether we should use a consistent formula approach for CPI indexation formulae in CP6 track access contracts and, if so, which of the existing variations we should use.

## Indexation in other contractual provisions

- 3.14 We are aware that several track access contracts contain facility charges. Given that these reflect commercial arrangements previously agreed between Network Rail and train operators (such as in respect of investments), we do not propose to change the method of indexation for these.
- 3.15 The total network grant amounts available from the governments for CP6 have been specified in cash prices and, once set out in our final determination, will not be subject to indexation for inflation during CP6.

## Removal of capacity charge and the route-level efficiency benefit sharing mechanism

- 3.16 Reflecting our decisions to remove<sup>10</sup>:

- (a) the capacity charge; and
- (b) REBS,

the proposed CP6 versions of Schedule 7 do not include these provisions.

- 3.17 We propose to insert transitional provisions in place of the current text, to make clear that these sums remain to be calculated and paid for the year ending 31 March 2019 according to the terms of the access contracts in place up to that date. Thereafter, the capacity charge is valued at zero for the purpose of calculating the charging principal formula, and REBS ceases to be calculated at all.
- 3.18 We have removed the transitional provision for the 'efficiency benefit sharing' (EBS) mechanism that was in place during control period 4 (2009-2014). This provision

---

<sup>10</sup> See our 'Overview of charges and incentives decisions' document for further detail, available [here](#).

enabled payments to be made during CP5 for the year ending 31 March 2014, after we deleted the EBS mechanism as part of PR13.

## **Changes to the Traction Electricity Rules and related changes to Schedule 7**

3.19 The Traction Electricity Rules (TERs) set out the framework for charges relating to traction electricity, including on-train metering. The TERs are currently incorporated into franchised passenger and freight track access contracts only. No open access passenger operator currently pays traction electricity charges to Network Rail in CP5 (and their contracts do not contain the corresponding provisions). However, we are aware that there will be some open access operators that will use electric traction in CP6.

3.20 For the model version of Schedule 7 that we create for new OAOs in CP6, we intend to include traction electricity provisions so these are available and ready to be used in CP6, should these be needed. In the meantime, however, we do not propose to include these provisions in the track access contracts of existing OAOs. As such, the proposed Schedule 7 we have circulated for OAOs alongside this consultation does not include these provisions. If existing OAOs would like us to include these when we implement PR18 in their contracts, we are happy to do so.

3.21 Paragraph 11 of Appendix B sets out the process we plan to use to amend the TERs for PR18.

## **Deletion of defunct transitional risk sharing mechanism text**

3.22 We have deleted defunct text in their TERs relating to the application of the transitional risk sharing mechanism for the year ending 31 March 2014 (paragraph 18A.1).

## **Network Rail's conclusions on power factor corrections and default modelled consumption rates for passenger train operators**

3.23 In its July 2017 consultation, Network Rail sought views on (among other things):

- (a) removing the power factor correction provisions from traction electricity charges for metered trains<sup>11</sup>. This was on the grounds that the provisions were not currently used in practice (or used previously); and

---

<sup>11</sup> Paragraphs 5.33-5.43 of 'Network Rail consultation on variable and station charges in CP6', Network Rail, July 2017, available [here](#).



- (b) introducing default modelled consumption rates. Its reasoning for this was to:
  - (i) provide Network Rail with a contractual basis for billing modelled services where a specific or generic modelled consumption rate does not yet exist; and
  - (ii) provide an incentive for train operators to apply for a modelled consumption rate at the earliest available opportunity.

3.24 Following consideration of stakeholder responses, Network Rail concluded on these issues in May 2018, confirming its proposed approach.

3.25 Network Rail will be formally writing to us to ask us to agree its conclusions on these matters (as well as regarding the level of the recalibrated Distribution System Loss Factors and regenerative braking discounts for CP6). We will then make our decision. Without prejudice to the decisions that we may make, in the proposed contractual drafting for CP6 on which we are consulting, we have reflected Network Rail's conclusions on power factor correction and the default modelled consumption rates for passenger train operators. If we subsequently decide not to confirm its conclusions, we would expect to retain the existing CP5 drafting in respect of these provisions.

3.26 The changes to remove the power factor correction provisions principally affects paragraphs 9, 12, 13 and 18 and Appendix 2 of the TERs. There will also be consequential changes to Schedule 7 of franchised passenger and freight contracts to remove related terms from the traction electricity charges formulae.

3.27 The application of the default modelled consumption rate for passenger operators is discussed in Chapter 4.

## **Meter tolerance factors**

### **Background**

3.28 The TERs and Schedule 7 of franchised passenger and freight contracts include provisions relating to the accuracy tolerance of on-train meters. These stem from when the contractual framework for on-train metering was first established in 2011.

3.29 At that time, there was a train operator wishing to use on-train meters that were not fully compliant with the relevant Railway Group Standard<sup>12</sup> in respect of minimum accuracy levels<sup>13</sup>. The train operator (First Capital Connect) obtained a derogation

---

<sup>12</sup> GM/RT2132.

<sup>13</sup> Our understanding is that the Railway Group Standard was established after the train operator had purchased the meters.

for this, subject to an adjustment to the charge being applied to account for the potential inaccuracy.

- 3.30 As it was uncertain whether there would be further applications for such derogations, the contractual framework that was established included provisions relating to meter tolerances, with a tolerance factor included in the relevant charging formulae to allow an adjustment to be made. Appendix 4 of the TERs lists the tolerance factors for all currently metered types of rolling stock.
- 3.31 Since 2011, whenever a train operator has sought to opt-in to metered billing, it has needed to apply for our consent for the relevant meter tolerance parameters to be added to Appendix 4 of the TERs. This has been needed even if the tolerance factor is zero (i.e. where the meters are compliant with the required standard). This is in addition to having to obtain our approval under section 22 of the Railways Act 1993 to amend the relevant track access contract to include the Train ID for the metered trains.

## Proposal

- 3.32 In September 2016, the industry's Traction Electricity Steering Group (led by the Rail Delivery Group (RDG)) discussed potential simplifications to on-train meters and processes. It concluded that "as all meters (other than two exceptional cases) were standard, that this additional requirement [to include tolerance factors] could be removed from the TER."<sup>14</sup>
- 3.33 It remains the case that, other than the train operator that obtained the derogation in 2011, no other train operators have required a 'non-zero' parameter. We think it may also be the case that the train units with the non-standard meters may no longer be in active service<sup>15</sup>.
- 3.34 Given that tolerance factors relate to the charging provisions in the TERs, the implementation of PR18 presents an opportunity to remove the tolerance factor provisions in the TERs (principally in paragraphs 11, 12 and 13 and in Appendix 4) and Schedule 7 of track access contracts.
- 3.35 We are therefore seeking wider views on whether the provisions relating to tolerance factors should be removed, in case any train operators consider that they are likely to be needed in future. We will then make a final decision on whether to remove them. However, we have included these changes in the proposed revisions to the TERs and proposed CP6 Schedule 7 provisions.

---

<sup>14</sup> Minutes of the Traction Electricity Steering Group (TESG) Meeting, 5 September 2016.

<sup>15</sup> Certain Class 319 units previously operated by First Capital Connect.

## Hybrid trains

- 3.36 In December 2016, Network Rail consulted the Traction Electricity Steering Group on proposed wording in Schedule 7 of passenger and freight track access contracts to cater for the use of hybrid (electric and diesel) rolling stock on the network. With the exception of some minor drafting changes, the group agreed the proposed wording. This has been applied in two freight operators' track access contracts.
- 3.37 We propose to incorporate the provisions for hybrid trains into the model passenger and freight Schedule 7 so that these are ready for any train operator to use them in CP6. This will avoid train operators have to apply for our approval of these.

## Other changes

### Paperless billing

- 3.38 We have included a provision in the front end of the proposed model provisions to enable train operators to opt for paperless billing. This was proposed by Network Rail in 2017.

### Rounding

- 3.39 We have included a rounding rule (to three decimal places) in specific places to address suggestions previously made by Network Rail (and raised in the January 2018 consultation on improving drafting). We are open to any further such suggestions where this would bring useful clarity.

## References to default charges/rates

- 3.40 In CP5, we introduced a default charge for freight, franchised and open access operators for situations where there is no specific variable usage charge rate in place. This was referred to as the "Default Charge".
- 3.41 As the proposed CP6 drafting for franchised passenger operators includes a new default modelled consumption rate for traction electricity charges (as noted above), this means there would be two sets of 'default' provisions in existence. For clarity, we have renamed the "Default Charge" for the VUC to be "VUC Default Charge", and named the traction electricity default rate "Traction Electricity Modelled Default Rate", with related terms renamed accordingly.
- 3.42 We have applied this change to freight provisions, even though the traction electricity default rate will not apply to them. We have done this because we think it is clearer and supports an easier read-across between provisions in the different types of contract. This makes no material difference to the operative provisions.

## 4. Changes to passenger operator access contracts

### Overview

Along with the changes set out in Chapter 3, this chapter discusses the main changes that we are making to franchised and open access passenger contracts to implement PR18.

---

### Introduction

- 4.1 This chapter explains the main changes we are making to franchised and open access passenger contracts as a result of policy decisions (other than those discussed in Chapter 3). Changes we are making in response to our January 2018 consultation on improvements to Schedules 4, 7 and 8 are published separately ([here](#)).
- 4.2 This chapter discusses changes to Schedule 7, in particular the implementation of the infrastructure cost charge, respectively for franchised and open access operators, proposed changes to traction electricity provisions and provisions relating to network grant.

### Schedule 7

#### Infrastructure cost charges

- 4.3 In CP5, franchised passenger operators have paid the fixed track access charge (FTAC), recovering fixed network costs. These charges are set out in the schedule of fixed charges that was published by Network Rail in December 2013. Open access operators have not, to date, paid charges recovering fixed network costs.
- 4.4 Following earlier consultation, in our PR18 draft determination, we confirmed our decision that, in CP6, open access operators should contribute to Network Rail's fixed costs.
- 4.5 As part of the draft determination, we published a consultation on charges recovering fixed network costs (which we are calling infrastructure cost charges or ICCs)<sup>16</sup>. This set out how we proposed that ICCs should be recovered from different types of train operators. We have used the term ICC to describe charges that recover fixed network costs in general. But the actual name of the ICC charge paid by each type of operator, for contractual and billing purposes, will depend on whether a charge has already been in place to recover fixed network costs in CP5.

---

<sup>16</sup> '2018 periodic review draft determination Supplementary document – Charges and incentives: Infrastructure cost charges consultation', ORR, June 2018. This may be accessed [here](#).

4.6 Our proposed CP6 versions of Schedule 7 for each of the franchised and open access operators include ICC provisions. We have set out some background on these below.

## Franchised operators

4.7 As set out in our June 2018 ICC consultation, ICCs for franchised passenger operators (which would continue to be called FTACs for contractual purposes) would be set ahead of the start of the control period. As per the CP5 approach, there would be a separate FTAC value for each year of CP6<sup>17</sup>. These would be set out on the schedule of fixed charges for CP6 that Network Rail publishes in December 2018.

4.8 At the end of each year in CP6, franchised passenger operators' FTACs would be recalculated to reflect the difference between their baseline timetabled traffic and their actual timetabled traffic for that year. (We currently expect the baselines for each train operator to be set at the same time as the FTACs, and be included on the schedule of fixed charges in December 2018.) If a franchised operator's services that are included in the timetable are greater than its baseline level, the operator will make an adjustment payment to Network Rail through a wash-up mechanism; conversely, if the services that are included in the timetable are lower than the baseline level, Network Rail will make an adjustment payment to the train operator.

4.9 In the ICC consultation, we also set out detailed proposals for the design of franchised passenger operators' ICCs. These were to<sup>18</sup>:

- annually adjust franchised passenger operators' FTACs based on variations in annual timetabled train miles (as opposed to another traffic metric, such as, passenger kilometres or vehicle miles);
- apply the annual adjustment to franchised passenger operators' FTACs at the operator level (rather than at a lower level, e.g. the service group);
- annually adjust franchised passenger operators' FTACs by the percentage change in their annual timetabled traffic (as opposed to making the adjustment using a unit rate); and
- set a limit on the level of the adjustment payment from Network Rail to franchised train operators when annual timetabled traffic is lower than the baseline level of timetabled traffic for that year. This is to reduce Network Rail's exposure to income volatility. This limit would be set as a floor corresponding to

---

<sup>17</sup> This will be net of the money to be paid to Network Rail by government grants in lieu of FTAC.

<sup>18</sup> Where we refer to alternative options in brackets, these correspond to the other options that we considered in our draft impact assessment relating to this charge. Further details can be found in our document 'PR18: Infrastructure cost charges – draft impact assessment on the design of franchised passenger operators' infrastructure cost charges', ORR, June 2018, available [here](#).

a 5% decrease in a franchised passenger operator's timetabled traffic across CP6. In practice, we propose to implement this as a floor of 1% per annum.

4.10 More detail on these proposals and our rationale for them (including the other options we considered in each area) is available in the impact assessment published alongside the ICC consultation<sup>19</sup>.

4.11 The main changes we are proposing to the model franchised passenger Schedule 7 to implement these proposals are to include the following:

- (a) a definition for the annual FTAC wash-up,  $FW_t$ , in paragraph 1 of Part 1;
- (b) the term 'FW<sub>t</sub>' in the principal formula for track access charges;
- (c) the formula for calculating the annual ICC wash-up for franchised passenger operators in paragraph 2.2 of Part 2; and
- (d) drafting that would, if necessary, apply the floor for the percentage decrease in a franchised passenger operator's timetabled traffic (that is reflected in its ICC adjustment in paragraph 2.2 of Part 2). As noted in our draft contractual wording, we are still considering how we will assess timetabled train miles for the purposes of this wash-up arrangement.

## Open access operators

4.12 In the infrastructure cost charges consultation, published alongside the draft determination, we proposed to levy ICCs on open access operators as a rate per train mile. However, ICCs will not be levied on existing open access operators in CP6, unless they apply for (and are granted) different access rights, based on an updated access policy which will be in place for the start of CP6.

4.13 More information on this proposal and our rationale for it is available in the impact assessment published alongside the ICC consultation<sup>20</sup>.

4.14 This will be the first time that open access operators will contribute to the recovery of Network Rail's fixed network costs. As a result, this charge needs to be included in the open access operator Schedule 7 (rather than amending an existing charge, as we are doing for franchised operators).

4.15 Specifically, in the OAO Schedule 7 we are proposing to include:

---

<sup>19</sup> 'PR18: Infrastructure cost charges – draft impact assessment on the design of franchised passenger operators' infrastructure cost charges', ORR, June 2018. This may be accessed [here](#).

<sup>20</sup> 'PR18: Infrastructure cost charges – final impact assessment of units of traffic for levying infrastructure cost charges on open access operators', ORR, June 2018. This may be accessed [here](#).

- (a) a definition for OAOs' ICCs,  $F_t$ , in paragraph 1 of Part 1;
- (b) the term 'F<sub>t</sub>' in the principal formula for track access charges;
- (c) the formula for calculating the ICC for OAOs in paragraph 2 of Part 2; and
- (d) the formula for uplifting the rate per train mile for each service coded group,  $R_t$ , annually for inflation in paragraph 2 of Part 2.

4.16 Network Rail will publish a price list setting out which service coded groups will pay ICCs and the level of their ICCs for each year of the control period. Reflecting that new relevant service coded groups are likely to emerge over the course of the control period, we have included provisions in paragraph 9 of Part 2 of the OAO Schedule 7 that provide for the price list to be supplemented with new groups during CP6.

## Traction electricity

### Partial fleet metering

4.17 In 2017, the TERs were amended to include provisions to enable the billing of traction electricity using information from partially metered fleets. That is, to use the metered consumption data from metered trains to calculate an annual consumption rate that can be used for the unmetered trains operating in the same train service code.

4.18 In CP5, to switch to this form of billing, as well as following the process in the TERs, train operators have needed to agree some amendments to Schedule 7. This contractual wording was consulted on by Network Rail at the same time it consulted on changing the TERs to enable partial fleet metering.

4.19 We propose to include this wording as part of the model Schedule 7 for passenger operators, so that these provisions are ready should a train operator wish to switch to this form of billing in CP6.

### Application of default modelled rate

4.20 As discussed in Chapter 3, Network Rail has concluded that there should be a default modelled consumption rate for passenger train operators running electric trains that are not billed on the basis of meters and which do not have a specific or generic modelled rate. As set out in paragraph 3.25, Network Rail needs to write to us formally to propose that we accept its conclusion and we will then decide whether this should be implemented.

4.21 Pending this, we have included provisions in Schedule 7 that would implement the default modelled rate, to provide stakeholders with the opportunity to comment on the contractual approach. We explain this below, with reference to the policy underpinning it, which Network Rail consulted on.



## Proposed contractualisation of the default modelled rate

4.22 Network Rail has said the default modelled rate should be implemented by including default rates on the CP6 Traction Electricity Modelled Consumption Rates List (TEMCRL) for:

- (a) services using electric multiple units (EMUs); and
- (b) electrified locomotive-hauled passenger services.

4.23 The rates for these would be equal to the highest rates for EMU services and locomotive-hauled services (respectively) that exist on the TEMCRL at the point that it is finalised in December 2018.

4.24 Where a default rate is applied, the train operator would (as now) be able to obtain a specific rate for the services (or to opt-in to metered billing) and seek our consent to supplement this rate to the TEMCRL. However, the same constraints that exist now to the retrospective application of new modelled rates would apply, as discussed in Network Rail's July 2017 consultation and May 2018 conclusions<sup>21</sup>. In particular:

- (a) Network Rail has an obligation to calculate the annual volume reconciliation for modelled charges between 1 April and 30 June for the previous year. This is to enable it to provide all relevant train operators with an invoice or credit note (as the case may be) for their share of the difference between modelled consumption already billed over the year and actual consumption;
- (b) because of this, no supplements can be applied retrospectively beyond the year in which the supplement is consented to or determined by us. This is because it would impact on the volume reconciliation for the previous year(s), which would have been settled or be in the process of being calculated; and
- (c) paragraph 9 of Part 2 of Schedule 7 already prohibits the retrospective application of supplements to the TEMCRL to previous financial years.

4.25 The model passenger Schedule 7 for CP6 that we have produced would apply the default rate by including a provision in paragraph 4.1.2 of Part 2 which sets out the formula for calculating modelled charges. The relevant default rate would be applied where a specific or generic rate does not exist. We will also make related changes to:

- (a) definitions in paragraph 1.1. of Part 1 to include "New Modelled Train", "Traction Electricity Modelled Default Reconciliation Period" and "Traction Electricity Modelled Default Rate";

---

<sup>21</sup> Paragraphs 4.44-4.56 of 'Network Rail consultation on variable and station charges in CP6', July 2017, available [here](#), and 5.18-5.22 of 'Network Rail's conclusions on variable charges and station charges in Control Period 6 (CP6)', May 2018, available [here](#).



- (b) the supplements provision in paragraph 9 of Part 2. This makes clear the arrangements and constraints for any retrospective application of a specific modelled consumption rate, should one be supplemented to the TEMCRL; and
- (c) the TERs to reflect consequential changes to the volume reconciliation provisions (as discussed in Chapter 3).

## **Deletion of transition arrangement for the volume and cost reconciliation**

4.26 We propose to delete paragraph 4A of Part 2 (volume and cost reconciliation in respect of the year ending 31 March 2014) entirely. This was included when PR13 was implemented because the volume and cost reconciliation provisions were moved to the TERs. The transition arrangement is no longer needed.

## **Network grant and related provisions**

4.27 Schedule 7 of franchised passenger track access contracts contain provisions relating to the payment of network grants by the Secretary of State (or in the case of Scottish franchised train operators, the Scottish Ministers). These include provisions relating to 'grant dilution' and rebates of access charges by Network Rail.

4.28 We are continuing to engage with both the Department for Transport (DfT) and Transport Scotland regarding the changes that may be needed to these provisions, as part of continuing discussions on the detailed application of the financial arrangements for CP6.

4.29 Accordingly, at this point, we are only setting out some of the changes we expect to be required to the network grant provisions. Depending on the nature of any further changes, we will consider whether it would be appropriate to consult further at a later stage.

## **Grant dilution provision**

4.30 For CP5, there has been a deed of grant between DfT and Network Rail, and a grant agreement between Transport Scotland and Network Rail, in respect of network grant payments.

4.31 The track access contracts for franchised passenger operators currently contain network grant dilution provisions. These provide that, in the unlikely event that a network grant payment was not made, the franchised train operators would each be obliged to pay a share of the shortfall amount to Network Rail, three months after the 'dilution date'. This reflects that network grant is used to offset an amount of the fixed track access charge. So, if network grant is not paid, the fixed track access charges effectively adjust as a result.

- 4.32 Our understanding is that, for CP6, in light of Network Rail’s reclassification as a public sector arm’s length body, the network grant deeds/agreements might be replaced by more straightforward grant award letters. This is something that remains to be agreed by each of DfT and Transport Scotland with Network Rail. We expect that, as with a grant deed or agreement, a grant award letter would still set out a schedule of network grant payments and dates payable<sup>22</sup>.
- 4.33 In any case, we need to review the grant dilution provisions in franchised passenger operator track access contracts, in the context of the funding arrangements for CP6. This is because there are some circumstances where the grant payments might need to vary in particular years because, for example:
- (a) Network Rail’s other single till<sup>23</sup> income might be higher than we had forecast in our final determination; and
  - (b) Network Rail might want to bring forward or defer grant funding for capital expenditure under budgetary flexibility allowed in CP6<sup>24</sup>.
- 4.34 We would need to be able to distinguish in the dilution provisions, between:
- (a) variations of the type in paragraph 4.33, which will be allowed, so will not be treated as a grant dilution; and
  - (b) actual shortfalls of funding, e.g. where one or both of the governments inappropriately fails to pay in full any of the grants referred to in the deed of grant/grant agreement/letter of grant (as the case may be) or if there is an inappropriate condition placed on the payments – this would be a grant dilution.
- 4.35 We will continue to discuss these issues with Network Rail, DfT and Transport Scotland, but also seek the views of respondents to this consultation.

## Rebates

- 4.36 The CP5 track access contracts for franchised passenger operators currently contain a provision under which Network Rail can rebate income that *‘it does not require in order to discharge its obligations under its network licence and any contracts to which it is a party to train operators’*. ORR’s approval is required before a rebate is paid.

---

<sup>22</sup> Grant letters might also refer to other payments from the governments such as other types of grant.

<sup>23</sup> For example, income from property letting. See chapter 1 of our March 2018 consultation on the PR18 financial framework for further information on other single till income, available [here](#).

<sup>24</sup> See the section headed ‘Position on budgetary flexibility’ in chapter 4 of our 2018 periodic review draft determination supplementary document – financial framework, available [here](#).

- 4.37 We said in chapter 4 of the supplementary document on the financial framework that the public sector spending rules that will apply to Network Rail in CP6 mean that we do not need to separately consider provisions around rebate payments to the governments. This is because, subject to the budgetary flexibility it has been allowed, income that is not spent by Network Rail in a particular year in CP6 is liable to be reclaimed by DfT as the funding government department.
- 4.38 It may yet be the case that the rebate arrangement can be removed (with the associated term in the principal formula for track access charges), however we have retained the current drafting for now (subject to one addition, as identified below).
- 4.39 We have inserted a VAT provision in the rebate arrangement at paragraph 7.4 of Part 2 of Schedule 7 for franchised operators. This was previously in the REBS provision (and the rebate provision cross-referred to this text). We have moved it here because the REBS provision has been deleted (as discussed in Chapter 3).

## Scotland-specific changes

- 4.40 The version of the model franchised passenger contract we have published is drafted for England & Wales (e.g. references to the Secretary of State and related arrangements). Below we set out the key differences for the version of the model that we would propose to implement for Scottish franchised passenger operators:
- (a) the model Schedule 7 refers to a 'Deed of Grant'. In Scotland, the equivalent document is a 'Grant Agreement'. But as discussed above, we understand that the nature of how governments set out network grant may, subject to discussions with Network Rail, be different in CP6. Whatever approach is agreed, we will reflect this in the version of Schedule 7 for Scottish franchises. E.g. we would replace the definition and reference to "Deed of Grant" with "Grant Agreement" (or "Grant Letter", as appropriate), and reference to the Scottish Ministers; and
  - (b) as with the England & Wales version, we would delete the indexation provision in relation to the grant calculation, so that paragraph 1.2 of Part 3A is marked "Not used".

## Schedules 4 and 8

- 4.41 This consultation does not include any policy driven changes to the drafting of Schedule 4 or Schedule 8. However, we propose to make some non-policy changes based on the responses to our January 2018 consultation on improving contractual drafting. Please see our [conclusions document](#) on this for further detail on the decisions we have made in response to that consultation.

4.42 There are no amendments to either the OAO Schedule 4 or Schedule 8 that are not already identified in the franchise passenger wording. For this reason, we have not published a separate Schedule 4 or 8 for OAOs.

### **Appendix 1 of Schedule 8**

4.43 We propose to delete the columns previously marked “Not used” from the Appendix 1 table. These columns have not been used since control period 3. We have reflected this change in the draft model passenger contract that we have published, including re-lettering the remaining columns and making consequential changes to references to these in Schedules 4 and 8.

4.44 We invite respondents to advise us if there are any good reasons why we should not make these changes.

## 5. Changes to freight track access contracts

### Overview

Along with the changes that we set out in Chapter 3, this chapter describes the main changes we propose to make to freight track access contracts to implement PR18.

---

- 5.1 This chapter explains the main changes we are making to freight track access contracts as a result of policy decisions (other than those discussed in Chapter 3). Changes we are making in response to our January 2018 consultation on improvements to Schedules 4, 7 and 8 are published separately ([here](#)).
- 5.2 In particular, this chapter discusses changes to Schedule 7 to reflect the combining of the freight specific charge and freight only line charge, and deletion of the coal spillage charge.

### Schedule 7

#### Baseline date for Operating Constraints and other provisions

- 5.3 Paragraph 2.8 of Schedule 7 of freight track access contracts (Incremental costs) refers to the 'Operating Constraints' of the network applying at 1 April 2014 (the start of CP5). Our proposed CP6 Schedule 7 updates this date to reflect the start of CP6.
- 5.4 We have also updated this date elsewhere in other provisions, where appropriate.

#### Infrastructure cost charge

- 5.5 In PR13, freight services carrying one of three commodities (ESI<sup>25</sup> coal, iron ore or spent nuclear fuel) were identified as being able to bear mark-up charges<sup>26</sup>. Specifically, in CP5, these three freight commodities have been subject to two different charges recovering fixed network costs, which for contractual and billing purposes have been called the Freight Specific Charge (FSC) and the Freight Only Line (FOL) charge. As mentioned in Chapter 4, in general we are calling charges that recover fixed network costs 'infrastructure cost charges' (ICCs).
- 5.6 In our September 2017 consultation<sup>27</sup> we proposed to merge the FSC and FOL charges into a single ICC, retaining the name 'Freight Specific Charge' for

---

<sup>25</sup> Electricity supply industry.

<sup>26</sup> In CP5, we referred to charges recovering fixed network costs from freight operators as mark-ups, reflecting the language of the European directives and domestic legislation. In PR18, we have referred to these charges, for all types of operators, as ICCs.

<sup>27</sup> 'PR18 consultation on charges recovering fixed network costs', ORR, September 2017. This may be accessed [here](#).

contractual and billing purposes. We confirmed this decision in our draft determination in June 2018.

- 5.7 In the proposed contractual wording for CP6, we reflected this by removing key references to the FOL charge in Schedule 7 (we included transitional provisions to make clear that any sums that remain to be calculated and paid for the year ending 31 March 2019 are not affected by this change).
- 5.8 The FSC in CP6 will recover an equivalent amount as the previous FSC and FOL (minus any increases in variable charges in CP6, which will be offset by a reduction in the FSC).
- 5.9 In our infrastructure cost charges consultation, published alongside the draft determination<sup>28</sup>, we proposed to allow Network Rail to levy infrastructure cost charges on freight trains carrying ESI biomass in CP6, in addition to the three commodities mentioned above, which have already been paying these charges in CP5.
- 5.10 To implement this proposal, we have included references to a new commodity vehicle type, “ESI Biomass Vehicle”, in Schedule 7 of the freight track access contract.
- 5.11 In December 2018, Network Rail will publish a price list setting out the new FSC rates for all freight services identified as being able to bear charges, including proposed rates for vehicles carrying ESI biomass. It will publish a draft of this on 31 July 2018.

## **Removal of coal spillage charge and related provisions**

- 5.12 In addition to the removal of the capacity charge and REBS (discussed in Chapter 3), we are also removing the coal spillage charge for CP6. We have included a transitional provision for this, similar to that for the FOL as referred to above.
- 5.13 We have deleted the references to Coal Spillage Investment and the Coal Spillage Reduction Investment Charge. These charges ceased at the end of CP4 and there is no longer a need for a transition arrangement.

## **Traction electricity charges**

- 5.14 We plan to delete paragraph 2.4.2 of Schedule 7 relating to the ‘Traction Electricity Reconciliation’ as this was a transitional provision for the year ending 31 March 2014.

---

<sup>28</sup> ‘2018 periodic review draft determination Supplementary document – Charges and incentives: Infrastructure cost charges consultation’, ORR, June 2018. This may be accessed [here](#).

## Schedules 4 and 8

- 5.15 We are not making any policy driven changes to the drafting of Schedule 4.
- 5.16 In accordance with our decision to remove the annual adjustment to freight operator benchmarks for CP6<sup>29</sup>, we have deleted the contractual provisions referring to this adjustment in Schedule 8.
- 5.17 However, we propose to make some non-policy changes based on the responses to our January 2018 consultation on improving contractual drafting. Please see our [conclusions document](#) on this for further detail on the decisions we have made in response to that consultation.

## Changes to the freight customer contract and freight customer train operator contracts

### Freight customer operator track access contracts

- 5.18 The freight customer operator track access contract will adopt all the amendments which are proposed in relation to the freight track access contract, and therefore we have not presented the same amended contract as part of this consultation. The sole exception is that the freight operating company customer version has an additional necessary amendment: paragraph 10.2.3(a) of Schedule 8 has references to 2013 and 2014; these will need to be amended to 2018 and 2019 respectively.

### Freight customer track access contracts

- 5.19 The freight customer track access contract requires some minor amendments to reflect the amendments proposed to the freight contract generally, and again we do not propose to present the complete contract as part of this consultation. Instead, we have summarised the proposed changes below, which are to:
- (a) replace the definition of “RPI” with the proposed “CPI” wording;
  - (b) amend clause 16.1.2 to insert provision for email of invoices;
  - (c) amend the definition of “access charges review” in Schedule 7 to “has the meaning ~~ascribed~~ ~~attributed~~ to it ~~in paragraph 1(1) of~~ by Schedule 4A to the Act”;
  - (d) update two references to “2014” in paragraph 2.8 of Schedule 7 2 with “2019”;

---

<sup>29</sup> Final Decision: Proposal to remove the annual adjustment to the freight and charter operator Schedule 8 benchmarks, ORR, March 2018. This may be accessed [here](#).

- (e) amend paragraph 3 of Schedule 7 to reflect the proposed contingency provisions (with associated definitions); and
- (f) amend paragraph 1 of Schedule 9 to reflect the change from RPI to CPI.



## 6. Changes to charter track access contracts

### Overview

This chapter sets out the changes that we propose to make to the terms of the model charter track access contract for CP6, to implement PR18.

---

- 6.1 This chapter sets out the changes that we propose to make to the terms of the model charter track access contract for CP6, to implement PR18. These would be applied to any charter track access contract that is in place at the time we implement PR18.
- 6.2 Changes we are making in response to our January 2018 consultation on improvements to Schedules 4, 7 and 8 are published separately ([here](#)).

### Proposed changes

- 6.3 The changes we propose to make to the model charter track access contract are relatively minor compared to other contracts, and can be summarised as follows.
- **Front end:** minor drafting improvements (in particular, the option to switch to paperless billing, as previously proposed by Network Rail).
  - **Schedule 7:** the main changes include:
    - the removal of the capacity charge (as discussed in Chapter 3);
    - the switch from RPI to CPI (discussed in Chapter 3); and
    - inclusion of the contingency provision for a delay to the implementation of future periodic reviews (i.e. PR23) (discussed in Chapter 3).
  - **Schedule 8:** the main changes include:
    - amendments to reflect the change from RPI to CPI (discussed in Chapter 3);
    - amendments to reflect our decision to remove the annual adjustment to charter operator benchmarks for CP6<sup>30</sup>; and
    - as with other types of contract, the financial parameters in this schedule will be updated as part of the recalibration work that is currently ongoing.

---

<sup>30</sup> *Final Decision: Proposal to remove the annual adjustment to the freight and charter operator Schedule 8 benchmarks*, Office of Rail and Road, March 2018. This may be accessed [here](#).

# 7. Changes to station access contracts

## Overview

This chapter sets out the changes we propose to make to station access contracts to implement our PR18 decisions.

---

## Introduction

7.1 This chapter sets out the changes we propose to make to station access contracts to implement our PR18 decisions.

## Station long term charge

### Recalibration

7.2 When we implement PR18, we will revise the station long term charges set out in station access contracts. This will be a relatively straightforward change to the National Station Access Conditions (NSACs) and Independent Station Access Conditions (ISACs)<sup>31</sup>.

7.3 We will make this change through the review notice that we issue for station access contracts in December 2018. Before doing so, we must have consulted the parties to the contracts and franchising authorities and taken into account their responses. We are meeting this obligation through: our December 2016 policy consultation, which has informed Network Rail's work to recalibrate the charges; our oversight of the process that Network Rail has run to consult and engage with relevant parties; and this consultation.

### Network Rail's methodology for recalibration

7.4 In our June 2017 conclusions<sup>32</sup> to our December 2016 consultation on charges and incentives, we confirmed our support for Network Rail to make improvements to its methodology for calculating the station long term charge (SLTC). Network Rail then consulted on its proposed methodology in July 2017 and issued its conclusions in May 2018<sup>33</sup>.

7.5 Network Rail's conclusions were to aim to calculate the SLTC using its revised methodology. However, on one aspect of its confirmed approach, it noted a potential

---

<sup>31</sup> The National Station Access Conditions (England & Wales), the National Station Access Conditions (Scotland) and Independent Station Access Conditions are available on our website [here](#).

<sup>32</sup> 'Charges and contractual incentives – consultation conclusions', ORR, June 2017, available [here](#).

<sup>33</sup> 'Network Rail's conclusions on variable charges and station charges in Control Period 6 (CP6)', Network Rail, May 2018, available [here](#).

issue with using data from the Operational Property Asset System (OPAS). It has been working to resolve this issue since May 2018. For managed stations, Network Rail has confirmed that this issue has been resolved; it will therefore use the methodology it concluded on in May 2018 to calculate the SLTC for managed stations. However, for franchised stations it has not been possible to resolve this issue. As a result, Network Rail has developed a methodology that differs slightly from what it concluded on in May 2018. It has communicated this change to the industry through RDG's PR18 working group, and has published the material presented to the working group on the Network Rail website<sup>34</sup>. Therefore, if any stakeholders are not familiar with this, they may wish to read it.

- 7.6 Network Rail will submit its final proposal to us on the methodology for calculating the SLTC at both managed and franchised stations before our final determination. We will review Network Rail's submission, taking into account any concerns or suggestions raised by stakeholders. Our decision on whether to approve the methodology will be in our final determination.
- 7.7 Our approval of the SLTCs is pending Network Rail's submission of its final SLTC price list to us later this year.
- 7.8 Network Rail will publish a draft of this price list on 31 July 2018.

## **Indexation**

### **Changes to the SLTC provisions of the NSACs and ISACs**

- 7.9 As discussed in Chapter 3, we are changing the method of indexation from RPI to CPI for access charges, the RAB and payment rates in other mechanisms where we set the method of indexation. This includes the station long term charge.
- 7.10 We will therefore be amending the indexation formulae relating to the SLTC to reflect this change. This affects condition F11 of the National Station Access Conditions (NSACs) and condition 42 of the Independent Station Access Conditions (ISACs), and the definition of RPI in paragraph 1.2 of Part A (of the NSACs; Part 1 of the ISACs). We will use the reopener provision relating to the SLTC to do this. The proposed changes are set out in paragraph 7.16 below.

### **Other references to RPI elsewhere in the SACs and ISACs**

- 7.11 There are two definitions in the front end of the SACs and ISACs (paragraph 1.2 of Part A of the SACs and paragraph 1.2 of Part 1 of the ISACs) that contain references to RPI. We cannot amend these using our periodic review reopener, as they do not

---

<sup>34</sup> 'CP6 Station long term charge calculation: June 2018 update', Network Rail, June 2018, available [here](#).

relate to the SLTC. The definitions are to “Financial Impact Test” and “Station Investor’s Qualification”.

- 7.12 We do not think it would be appropriate for there to be an inconsistent approach to indexation within the ISACs and NSACs (i.e. where some provisions use RPI and some use CPI).
- 7.13 While we have powers to amend the ISACs and NSACs unilaterally, the provisions for this require a six month delay before the changes could take effect. As our final determination is due on 31 October 2018 (and the formal implementation process scheduled to begin in late December 2018), using this approach would mean the changes would take effect later than the start of CP6 on 1 April 2019.
- 7.14 It would be open for another party to propose that this change be made through the industry change process (which requires industry support but does not require a six month delay to implementation).
- 7.15 We have begun discussing with Network Rail whether it would be willing to propose a change to the ISACs and NSACs for this. However, we specifically welcome views on:
- (a) whether there are good reasons for not changing the method of indexation for the “Financial Impact Test” and “Station Investor’s Qualification” to CPI, even though this would mean inconsistency with the rest of the NSACs/ISACs; and
  - (b) whether the definition of RPI should be retained (albeit not used) in the NSACs and ISACs (for example, do contracts/annexes that incorporate these documents rely on the definition of RPI contained within them)?

## Drafting change for indexation

- 7.16 Below we set out proposed amendments to reflect the change in indexation. The main extract is from the Long Term Charge provision in National Station Access Conditions 2013 (for both England & Wales and Scotland). We would propose to make analogous changes to the ISACs in conditions 42 and 42.5.

### **Proposed change to indexation provisions**

In the definition of the Initial Indexation Factor definition in paragraph 1.2 of Condition A1 (Part 1 of ISACs), references to ‘RPI’ shall be changed to ‘CPI’. Also, in the definition of the Initial Indexation Factor, we propose that the resultant value shall be rounded to three decimal places, in line with what has been included in track access contracts (see paragraph 3.39).

In addition, “CPI” needs to be defined as “‘CPI’ means the Consumer Price Index as defined in Condition F11 of these Station Access Conditions”.

### “F11.2.1

During each relevant year t (and so in proportion for any period comprising less than a full relevant year), the Long Term Charge shall be such amount as is calculated in accordance with the following formula:

$$LTC_t = S_t + L_t$$

where

$LTC_t$  means the Long Term Charge in relevant year t;

$S_t$  means an amount which is derived from the following formula:

$$S_t = S_{t-1} \bullet \left( 1 + \frac{(CRPI_{t-1} - CRPI_{t-2})}{CRPI_{t-2}} \right)$$

where:

$CRPI_{t-1}$  means the value of RPI-CPI published or determined with respect to the month of November in Relevant Year t-1;

$CRPI_{t-2}$  means the value of RPI-CPI published or determined with respect to the month of November in Relevant Year t-2; and

[...]

### F11.5

Definitions

In this Condition F11, unless the context otherwise requires:

[...]

“Retail Prices IndexCPI” means the general index of retail Consumer Prices Index (all items) whose value is published each month by the Office for National Statistics in its statistical bulletin on consumer price inflation prices published by the National Statistics each month in respect of all items or:

- (a) if the index Consumer Prices Index for any month in any year shall not have been published on or before the last day of the third month after such month, such index for such month or months as ORR may, after consultation with the Secretary of State, Network Rail and each

Relevant Operator, determine to be appropriate in the circumstances; or

- (b) if there is a material change in the basis of the ~~index~~ **Consumer Prices Index**, such other index as ORR may, after consultation with the Secretary of State, Network Rail and each Relevant Operator, determine to be appropriate in the circumstances.”

# Appendix A: Responding to this consultation

## Responding to this consultation

1. This **consultation closes on 31 August 2018**. Please submit your responses, in electronic form, to our PR18 inbox (pr18@orr.gsi.gov.uk).
2. We plan to publish all responses to this consultation on our website. Accordingly, when sending documents to us, we would prefer that you send your correspondence to us in Microsoft Word format or Open Document Format. This allows us to apply web standards to content on our website. If you do email us a PDF document, where possible please:
  - create it from an electronic word processed file rather than sending us a scanned copy of your response; and
  - ensure that the PDF's security method is set to "no security" in the document properties.
3. Should you wish any information that you provide, including personal data, to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the General Data Protection Regulation (GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.
4. Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
5. If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.
6. Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our [privacy notice](#) which sets out how we comply with the General Data Protection Regulation and Data Protection Act 2018.

## Consent

7. In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation;
  - publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above).
8. Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our [privacy notice](#).



## Appendix B: Implementation process

1. The statutory process for implementing access charges reviews (the formal term for a periodic review) is set out in Schedule 4A to the Railways Act 1993. This requires us to issue a series of notices:
  - (a) a review initiation notice;
  - (b) review notices;
  - (c) notices of agreement; and
  - (d) review implementation notices.
2. A review initiation notice formally sets out our intention to carry out an access charges review. On 27 March 2017, we issued a [review initiation notice](#) relating to both track and station access agreements.
3. Once we have reached our conclusions (i.e. our final determination) in an access charges review, we then issue review notices to begin the implementation process. These must:
  - (a) state our conclusions and the reasons why we have reached those conclusions. We will do this by referring to our published final determination documentation in the notice;
  - (b) specify the changes which we propose to make to any access agreements for or in connection with giving effect to our final determination. This will include:
    - (i) any changes to the financial parameters in Schedules 4 and 8 of track access contracts arising from recalibration undertaken as part of PR18; and
    - (ii) the inclusion of references to Network Rail's CP6 price lists (or in the case of station access contracts, amendment of long term charge values);
  - (c) state the date on which we propose that each of those changes should come into operation; and
  - (d) specify a period of not less than six weeks from the date of issue of the review notices in which Network Rail may object to any of the proposed changes.
4. As required by the Act, we will send a copy of the review notices containing revised provisions to Network Rail, each affected beneficiary<sup>35</sup>, the Scottish Ministers, the Secretary of State and HM Treasury. We intend to issue the review notices on 20 December 2018. At the same time, we expect to approve the price lists produced

---

<sup>35</sup> Network Rail's beneficiaries are generally train operators, but we recognise that beneficiaries need not be train operators. References in this document to train operator, should – if the context requires it – be interpreted to include non-train operator beneficiaries, where they exist.

by Network Rail that will set out the access charges to be paid by train operators in CP6.

5. We will publish the review notices on our website after making any appropriate redactions.
6. Consistent with previous practice, our review notices will also include a provision providing that if we approve or direct amendments to an access agreement after we have served the review notice but before it comes into effect, then those later amendments will come into effect subject to the changes we propose in the review. If there is any conflict between the changes we propose in the review notice and the changes we have approved or directed subsequently, the latter will take precedence.
7. Any access contracts entered into after the date we issue our review notices cannot be included within the scope of the notice. Nonetheless, from the start of CP6, the provisions in these contracts will need to be consistent with PR18. We will therefore ensure there are arrangements in those contracts to enable this to happen. We will also need to make similar arrangements for those contracts that may be entered into shortly before the review notice is issued.
8. If Network Rail objects to any review notice, we may issue a new review notice or make a reference to the Competition and Markets Authority (CMA). Should we issue a new review notice, then Network Rail would have a further period of not less than six weeks to make any objections to the new notice.
9. If Network Rail does not object to the review notices, we must then serve a 'notice of agreement' on each beneficiary to an access agreement. The beneficiaries then have a period of 28 days to give notice to terminate their access agreements, should they wish to do so.
10. Following the expiry of this 28 day period, we will publish review implementation notices, stating that our determination is to be implemented on 1 April 2019 as proposed in the review notices.

## Changes to the Traction Electricity Rules

11. As part of PR18, we will need to amend the Traction Electricity Rules, which are incorporated into the track access contracts of franchised and freight train operators. We plan to do this through the statutory implementation process by including amendments set out in our review notices to give effect to this. This will ensure that the changes are aligned with amendments to Schedule 7 of the relevant track access contracts.

# Appendix C: Proposed contingency provision drafting

Further to Chapter 2, the below text sets out the wording of the contingency provision that, subject to stakeholder views, we propose that Network Rail and train operators agree to put into their track access contracts.

This would be inserted as paragraph 4 of Part 7 of Schedule 7 in franchised, OAO and charter operator track access contracts, and (with appropriate paragraph references altered) as paragraph 3.3, 3.4 and 3.5 in Schedule 7 of freight track access contracts.

---

## 4 Interim treatment of the 2018 periodic review

### 4.1 Interim treatment prior to implementation

If the terms of a Proposed Review Notice proposing amendments to the contract are not implemented in accordance with paragraph 7 of Schedule 4A to the Act on the date stipulated that they will come into operation in the Proposed Review Notice for any reason, then, irrespective of such terms not having been so implemented, each proposed amendment to the contract set out in the Proposed Review Notice shall have effect for the period (the “Interim Period”) commencing on that date (or from any later date (or dates) specified in the Proposed Review Notice in respect of any individual amendment), in each case until such time as:

- (a) following the service of a Review Implementation Notice relating to the Proposed Review Notice, the changes specified in that Review Implementation Notice come into operation; or
- (b) following a reference to the Competition and Markets Authority in accordance with paragraph 9 of Schedule 4A to the Act, any amendments to the contract, made in accordance with paragraphs 12(8), 12(9) or 14(3) of Schedule 4A to the Act, come into operation.

### 4.2 Reconciliation Payment

- (a) Within [28] days after the end of the Interim Period, Network Rail shall calculate whether a reconciliation payment is due to or from the Train Operator. In order to calculate such reconciliation payment, Network Rail shall compare (i) the sums paid by the Train Operator during the Interim Period with (ii) the sums which would have been payable if the amendments required by either paragraphs 4.1(a) or (b) above had taken effect on the date(s) stipulated in the Proposed Review Notice, and shall provide to the Train Operator:

- (i) a statement of the amount due to or from the Train Operator; and
  - (ii) such background data and workings as may reasonably be required for a proper understanding of the calculation.
- (b) Within [28] days after the date upon which Network Rail shall have provided to the Train Operator the information referred to in paragraph 4.2(a) above, any amount due shall be invoiced (or presented in a credit note, as the case may be) for payment, and payable, as provided under this contract.

#### 4.3 Definitions

For the purposes of this paragraph 4, the following definitions apply:

“Current Control Period” is the period of five years commencing at 0000 hours on 1 April 2014 and due to end at 2359 hours on 31 March 2019;

“Proposed Review Notice” shall mean the most recently proposed Review Notice given by ORR during the course of the Current Control Period, in accordance with Schedule 4A of the Act; and

“Review Implementation Notice” has the meaning ascribed to it in paragraph 4 of Schedule 4A of the Act.



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [orr.gov.uk](http://orr.gov.uk)

Any enquiries regarding this publication should be sent to us at [orr.gov.uk](http://orr.gov.uk)