

## Part G issues list

By no means exhaustive, this list is intended to provide a flavour of the issues and concerns that were raised with us regarding Part G of the network code during our informal stakeholder meetings prior to the publication of our consultation document.

This list should be read in the context of the 'review of access contractual arrangements' consultation document, available on our website [here](#).

- a) We note the specific concerns of smaller operators, particularly those operating across multiple routes, who are generally not resourced to deal with the significant volumes of proposals which they might receive, and intend that our review addresses this concern, with the aim of reducing the overall burden.
- b) It is clear that there is no consistency in the way Part G is applied across the industry. Experiences of the network change process appear to depend on the route on which the proposed change is occurring. Parties also have different experiences depending on whether the proposed change is a minor one, or part of a major project, with both complaints and praise received for the handling of minor and major changes.
- c) Irrespective of these differing experiences, the consistent message we have received is that Network Rail fails to inform and engage operators at an early stage on forthcoming changes. Informal consultees have cited various consequences as a result of their lack of engagement and awareness.
- d) Lack of early notice has not allowed operators – particularly those with fewer resources and those covering multiple routes – to plan in advance their workloads to assess and respond (if necessary) to notices issued under Part G. There is a strong feeling that Network Rail should be doing more to engage informally at an early stage to prevent this burden on operators – irrespective of their resourcing capacity.
- e) Informal consultees have also noted the increasing use of 'no material effect' letters to provide advance notice of a proposed change, and to inform consultees that the proposal is unlikely to affect them materially. Whilst operators have generally welcomed this form of early engagement – although, again, it is not used consistently, even within the same route – the experience of operators is that the proposals often *do* have a material effect, rendering such letters meaningless.
- f) Informal consultees have tended towards the view that Network Rail should not issue 'no material effect' letters, and should instead declare that they believe the change constitutes no material effect when the proposal is issued for consultation. We are of the view that this approach, if adopted, should not preclude early engagement by Network Rail in another format. The principle of 'no material effect', and associated correspondence, is not enshrined within Part G.
- g) Due to insufficient early information and engagement, operators are unsighted on whether the proposals they receive form part of a wider package of changes, or are standalone items. There is considered to be a lack of logical 'packaging up' of major projects in particular. These are then often consulted on in a piecemeal fashion. This approach has not enabled operators to form a full view of the impact of more significant changes occurring as a result of major projects. The feeling is that Network Rail should be packaging up major projects as one network change proposal. Where this is not possible, consultees should be given advance notice that other proposals allied to the same network change will be forthcoming, with reasons for this fragmentation given.

h) Additionally, informal consultees have told us that a lack of prior engagement from Network Rail has led to them having no opportunity to input into the design or implementation of the change itself. When the consultation is subsequently issued, there is a substantial cost element to Network Rail of redesigning or respecifying the proposal to take account of consultees' comments.

i) Parties have told us of instances where time and effort is wasted in revisiting proposals once they have been agreed. This has been caused by risk analyses being carried out following agreement which have materially changed (and even overturned) the benefits of the proposal, leading to the proposal needing to be considered again. Network Rail should consider not issuing a formal proposal until after it has carried out all of its evaluation and risk assessment work.

j) One party understood that Network Rail's business manual for processing network change required the consultation to be issued at the GRIP4 stage of the project (when a single option has been identified and is being developed). In its view, consulting at GRIP4 would be an appropriate arrangement, provided that Network Rail had already gathered views on an informal basis to influence the design of that single option, and to prevent duplication of work at a later stage. For further information on GRIP, please see Network Rail's [website](#).

k) Parties have also cited instances where the consultation material relating to a proposal has been different, depending on the medium by which it was accessed. There have been cases of proposals containing three sets of information where a change has been issued in hard copy through the post, in soft copy via email, and posted on Network Rail's website. In some instances, pertinent information has been missing from some or all of these iterations. Whilst consultees are able to object to a change on the grounds of insufficient particulars, under condition, G2.1.1(a)(ii), there should not be an expectation that this condition is used as a fall-back for circumstances where Network Rail has not checked the accuracy and consistency of its consultation material.

l) When posting responses to consultations on its website, parties have told us that Network Rail occasionally redacts pertinent information from the consultation material. However, consultee responses are often published in full, even in circumstances where it might be more appropriate to redact parts of the response. This has led to specific instances where comments in responses have been taken out of their correct context, and erroneously reprinted in other publications.

m) A number of informal consultees also raised concerns over instances where Network Rail had carried out work amounting to a network change without issuing a consultation or establishment letter at all, noting that there was no current retrospective obligation on Network Rail to rectify this. As a corollary, we have received representations that Network Rail has also issued consultations on proposals where there is no discernible change to the network.

n) We have also been informed of instances where a piece of infrastructure has been out of use due to malfunction or breakage for a period of six months or more, and instances where a speed restriction has been in place for six months or more. Where parties might have expected that the Part G process should commence at this point, this has not happened in practice.

o) During the consultation, when consultees have requested further information from Network Rail, the information has occasionally proven to be material enough to significantly

alter the nature of the proposal. When this has occurred, parties have told us that this information is not then shared with other consultees by Network Rail as a matter of course.

p) We have also received a number of representations on making objections to a proposal. Some parties have suggested that consultees should be able to object to a proposed change on the grounds that Network Rail has failed to identify the optimal solution to a change, and on the grounds that the proposed implementation process is in some way unsatisfactory.

q) It is permitted, under condition 2.1.1(a)(iv), to object to a proposal on the grounds that it does not adequately take account of the reasonable expectations of a consultee as to the future use of the relevant part of the network. Some parties consider that Network Rail's definition of 'future use' is too narrow, and that further guidance should be provided on how objections based on this condition should be considered.

r) Additionally, some parties have noted discomfort at being required to share commercially confidential information with Network Rail to justify an objection on the grounds of future use.

s) Conversely, we are aware of instances where an operator has objected to a proposal on the grounds of 'future use', whilst failing to provide any evidence to back up this assertion.

t) Informal consultees have told us that their objections frequently receive no response for a considerable time after the consultation period has ended, and often only a short time before Network Rail wishes to undertake the work in question. An objector can, in these circumstances, be made to feel as though it is acting unreasonably as a project could then incur additional cost and/or be delayed due to its continuing objection, rather than Network Rail's handling of the process. In certain circumstances, Network Rail has proceeded, regardless of an outstanding objection, to issue an establishment notice or even implement the proposal. Network Rail has occasionally cited health and safety grounds where none apparently exist.

u) There have been instances where Network Rail, in the face of an objection, has been reluctant to either withdraw and amend the proposal, or to initiate the dispute process. This leads to proposals lying dormant, sometimes for several years.

v) Pursuant to condition G1.5, a consultee is entitled to the reimbursement by Network Rail of 75% of the costs it incurs in assessing a network change proposal. We have received representations that Network Rail has made a party requesting this reimbursement feel unreasonable, disputed the reimbursement and expressed the view that reimbursement happens exceptionally, rather than as the norm.

w) When making a claim for compensation as a result of a network change, many operators have told us of difficulties they have encountered with the claim process. Operators have experienced a considerable lack of transparency over the information Network Rail requires to progress an application for compensation, which has substantially delayed the process. Parties are also unable to address Network Rail's Commercial Claims Group of Route Claims Panel directly, instead relying on Network Rail to present their case, leading to a further lack of transparency.