



Gerry Leighton
Head of Stations & Depots and Network Code
Office of Rail & Road
One Kemble Street
London
WC2B 4AN

Network Rail
One Eversholt Street
London
NW1 2DN

T 07515 619 692

E matthew.blackwell@networkrail.co.uk

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By email

Dear Gerry

Proposal for Change (PfC 75) to Part B of the Network Code

On 30 November 2017 I sent Notice of a Proposal for Change to the Network Code with associated explanation to ORR, Class Members, Access Option Holders, the Department for Transport and Transport Scotland, inviting responses. Subsequently I called a meeting of the Class Representative Committee to consider PfC 75, to which ORR was invited. The meeting pack issued to attendees included the consultation responses I received which will also be posted to the Network Rail website.

At the meeting of 31 January 2018, the Class Representative Committee unanimously endorsed PfC 75 subject to the amendments being made that were agreed during the course of the meeting. In accordance with Condition C5.4.4 of the Network Code the Committee determined that the changes were not material modifications and as such no further consultation was required.

The Class Representative Committee, in accordance with Condition C7.1.1, formally requests the Office of Rail & Road to approve the proposed changes to the Network Code. The Committee determined that the effect date of this change should be as soon as possible. I therefore request that this Proposal for Change take effect 14 days after the date that you approve this change.

I have attached a memorandum pursuant to Condition C7.1.1 and all Part B of the Network Code marked up with endorsed changes for your consideration. Please do not hesitate to get in touch to discuss further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Blackwell', is written over a light grey, stylized signature graphic.

Matthew Blackwell
Secretary to the Class Representative Committee

Part B - Performance Monitoring

Explanatory Note

- A. *Part B provides for the establishment by Network Rail of a Performance Monitoring System, designed to record whether trains pass specified monitoring points, the times at which they do so and the difference between those times and the corresponding scheduled times. The system is also designed to enable Network Rail to determine and record the cause of any delay or cancellation. Provision is made for Network Rail to notify and seek agreement from affected Train Operators ~~regarding as to~~ the cause of any such delay or cancellation, and there are procedures specified for resolving cases where Network Rail and a Train Operator disagree ~~regarding the as to~~ cause.*
- B. *Train Operators are given the right to notify Network Rail if the Performance Monitoring System is not fit for purpose and require Network Rail to investigate the grounds for such notification and report on its findings.*
- C. *Both Network Rail and Train Operators are given the right to audit and inspect the records and monitoring equipment of the relevant Performance Monitoring System and to require tests of the Performance Monitoring System to be carried out in the presence of an independent expert.*
- D. *Condition B5.3 also makes it clear that the TAC Parties can, however, agree a more onerous Performance Monitoring System than that contemplated by Part B. The model set out in Part B is therefore a minimum standard.*
- E. *Part B also incorporates the Delay Attribution Principles and Rules which is a document providing guidance on the attribution of delay.*
- FE. *Part B also incorporates the Performance Data Accuracy Code which encompasses defined standards of accuracy of performance data.*
- GF. *Provision is made for the setting up of a Delay Attribution Board whose purpose, constitution and procedures are set out in Conditions B6 and B7.*
- HG. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part B, unless the context otherwise requires:

“Alternate”	means an alternate Member appointed pursuant to Condition B6.2.6;
“Band”	has the meaning defined in Part C;
“Board”	means the Delay Attribution Board constituted in accordance with Condition B6.2;
“Board Meeting”	means a meeting of the Board;
“Board Secretary”	means the secretary of the Board;
“Chairman”	means the chairman of the Board appointed pursuant to Condition B6.3.1 and, where he <u>or she</u> is acting as Chairman, the Deputy Chairman;
“Class”	has the meaning defined in Part C;
“Class Member”	has the meaning defined in Part C;
“Class Representative Committee”	has the meaning defined in Part C;
“costs”	includes expenses;
“Delay Attribution Principles and Rules”	means, subject to Condition A1.1(g), the document which provides guidance on the attribution of delay across the Network, entitled “Delay Attribution Principles and Rules” as issued by the Board;
“Deputy Chairman”	means the deputy chairman of the Board appointed pursuant to Condition B6.3.1;
“Franchised Passenger Class”	has the meaning defined in Part C;
“Member”	means a member of the Board and “Board Member” shall be construed accordingly;
<u>“Network Rail Member”</u>	<u>means a Member who has been appointed by Network Rail;</u>
“Non-Franchised Passenger Class”	has the meaning defined in Part C;
<u>“Non-Network Rail Member”</u>	<u>means a Member who has not been appointed by Network Rail;</u>

“Non-Passenger Class”	has the meaning defined in Part C;
“Performance Data Accuracy Code”	means, subject to Condition A1.1(g), the code relating to the standards of performance data accuracy entitled “Performance Data Accuracy Code” as issued by the Board;
“Performance Monitoring System”	means the system for monitoring train performance described in Condition B1;
“Proposal for Amendment”	means any proposal to amend the Delay Attribution Principles and Rules or the Performance Data Accuracy Code; and
“railway safety levy”	has the meaning ascribed to it in regulation 2 of The Railway Safety Levy Regulations 2006.

CONDITION B1 - PROCEDURES FOR MONITORING PERFORMANCE

1.1 *Performance Monitoring System*

Network Rail shall operate a system for monitoring train performance which accurately records:

- (a) the times at which trains arrive at, depart from and pass specified points;
- (b) the difference between the time at which a train arrives at, departs from or passes a specified point and the time published for such arrival, departure or passing in the Working Timetable;
- (c) all cancelled trains and trains failing to pass any specified point; and
- (d) the cause of train delays and cancellations.

1.2 *The Performance Data Accuracy Code*

1.2.1 *Incorporation*

The Performance Data Accuracy Code is incorporated into and shall form part of this Network Code. Condition C8 shall apply, but Conditions C1, C2, C3, C4, C5, C6, C7 and C9 shall not apply, to the Performance Data Accuracy Code.

1.2.2 *Obligations and Rights*

Each TAC Party shall observe and perform its obligations, and shall have the benefit of its rights, under the Performance Data Accuracy Code. For the purpose of Condition B1.1 “accurately” shall be construed in accordance with the Performance Data Accuracy Code.

1.3 *The Delay Attribution Principles and Rules*

The Delay Attribution Principles and Rules is incorporated into and shall form a part of this Network Code. Condition C8 shall apply, but Conditions C1, C2, C3, C4, C5, C6, C7 and C9 shall not apply, to the Delay Attribution Principles and Rules.

CONDITION B2 - DIAGNOSIS OF DELAYS OR CANCELLATIONS

2.1 *Determination of causes of delays or cancellations*

Network Rail shall, in relation to any train delay or cancellation (subject to any thresholds agreed between Network Rail and each Train Operator), determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as practicable, the extent to which each person or cause is so responsible.

2.2 Information relating to causes of delays or cancellations

Network Rail shall, when determining and recording the persons and causes which are responsible for train delays and cancellations, have due regard to all information which is relevant in the circumstances, including the following:

- (a) information from any computerised or other recording system which Network Rail may, for the time being, be permitted to use for the purposes of a particular Access Agreement;
- (b) information supplied by signallers and other persons duly authorised to participate in the signalling of trains;
- (c) information supplied by any operator of trains, whether such information is within its knowledge or based on information supplied by other operators of railway assets;
- (d) information supplied by Network Rail, whether such information is within Network Rail's knowledge or based on information supplied by persons engaged or acting on behalf of, or otherwise in accordance with or subject to the instructions of, Network Rail or other operators of railway assets; and
- (e) information and guidance set out in the Delay Attribution Principles and Rules.

2.3 Notification and agreement of delays or cancellations

2.3.1 Notification of delays or cancellations

Network Rail shall, as soon as reasonably practicable following the occurrence of any train delay or cancellation affecting a Train Operator's train, notify that operator of the occurrence of that delay or cancellation and the responsibility, if any, for that delay or cancellation attributed by Network Rail to that operator. Any such notification shall be sent using the Performance Monitoring System (and/or any such other means of notification that has been agreed for this purpose between that Train Operator and Network Rail) and at the same time provide its reasons for doing so. ~~Any such notices shall be sent to such person as that operator shall have nominated for the purposes of this Condition B2.3.1.~~

2.3.2 Consideration by a Train Operator

A Train Operator shall consider each delay or cancellation attributed to it by Network Rail ~~to that operator~~, and, if the Train Operator wishes to refer the attribution for further investigation it shall do so within two clear Working Days of receipt of that notice, utilising the Performance Monitoring System (or any other means of notification that has been

~~agreed for this purpose between that Train Operator and Network Rail), and at the same time provide~~ its reasons for doing so. ~~Any notification of such referral shall be sent to such person as Network Rail shall have nominated for the purposes of this Condition B2.3.2.~~

2.3.3 *Agreement of delay attribution*

Any attribution shall, unless referred for further investigation by that Train Operator within ~~2two-clear~~ Working Days of receipt of that notice in accordance with Condition B2.3.2, be deemed to be agreed by that ~~Train~~ Operator.

2.4 **Matters referred for further investigation**

2.4.1 *Procedure for conducting further investigation*

~~The representatives nominated, pursuant to Condition B2.3, by Network Rail and the Train Operator shall, W~~within the next ~~2two-clear~~ Working Days after receipt of ~~a~~ notification ~~from a Train Operator in accordance with~~~~pursuant to~~ Condition B2.3.2~~1~~, ~~Network Rail and that Train Operator shall~~ attempt to resolve the matter referred for further investigation. Such further investigation shall take into account all relevant circumstances of the case and ~~the any relevant information~~~~guidance~~ set out in the Delay Attribution Principles and Rules.

2.4.2 *Referral for review*

If agreement has not been reached within the ~~2two-clear~~ Working Days referred to in Condition B2.4.1, the matter shall be referred for review by the designated senior manager appointed by the Train Operator and the designated senior manager appointed by Network Rail for the purposes of this Condition B2.4.2.

2.4.3 *Referral for further guidance or resolution*

If, within 20 Working Days, or such other period as may be agreed by Network Rail and the Train Operator, of the matter being referred for review pursuant to Condition B2.4.2, Network Rail and the Train Operator are unable to agree on the attribution, they shall seek guidance from the Board, or from any sub-committee that the Board has designated for this purpose, on the appropriate application of the Delay Attribution Principles and Rules or on any other relevant matter.

2.4.4 *Guidance from the Board*

If, within ~~10 Working Days~~~~4-days~~ of guidance being received from the Board or any designated sub-committee pursuant to Condition B2.4.3, Network Rail and the Train Operator are unable to agree on the

attribution, they shall refer the matter for determination in accordance with the ADRR.

2.4.5 *Precedence*

For the purposes of operating the procedures set out in this Condition B2.4, in any Access Agreement Network Rail and the Train Operator may substitute for any timescale prescribed in this Condition B2.4 a corresponding timescale in Schedule 8 or its equivalent (Performance Regime) of that Access Agreement.

2.5 *Amendments to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code*

2.5.1 *Entitlement to make a Proposal for Amendment to the Delay Attribution Principles and Rules or the Performance Data Accuracy Code*

- (a) Any Access Party shall be entitled to sponsor a Proposal for Amendment.
- (b) The Board shall be entitled to sponsor a Proposal for Amendment provided that any such proposal is approved by the Board as a resolution in accordance with Condition B7.2.1.
- (c) Any Proposal for Amendment shall:
 - (i) be in writing and sent to the Board Secretary;
 - (ii) contain reasonable particulars of the amendment proposed;
 - (iii) be supported by an explanation in reasonable detail of the reasons for the proposed amendment; and
 - (iv) include, to the extent that it is able to do so, for the benefit of any Access Party to whom a notice is given under Condition B2.5.2(a), an assessment of any wider impact (including commercial impact) that the proposal is likely to have on another Access Party, and a proposed solution to mitigate such impact.

2.5.2 *Notice of Proposal for Amendment*

The Board Secretary shall, within ~~5 Working Days~~~~seven days~~ following receipt of a Proposal for Amendment pursuant to Condition B2.5.1(a), or, if later, within ~~5 Working Days~~~~seven days~~ following receipt of any clarification that the Board may reasonably request from the sponsor of that proposal, or within ~~5 Working Days~~~~seven days~~ of receipt of a Proposal for Amendment pursuant to Condition B2.5.1(b):

- (a) give notice of that proposal (including any associated impact assessment and proposed solution provided in accordance with Condition B2.5.1(c)(iv)) to each Access Party; and
- (b) invite the submission to the Board of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the "Consultation Period"), being a period of not less than ~~30 days~~ 20 Working Days from the date of notification under paragraph (a) above. In making representations, an Access Party should:
 - (i) specify whether or not it accepts the proposed change and provide an explanation for its position;
 - (ii) indicate any wider impact (including commercial impact) that the proposed change is likely to have on its business; and
 - (iii) confirm whether it is content with any solution proposed by the sponsor; or
 - (iv) provide details of any alternative solution it considers appropriate to address the wider impact (including commercial impact); and
 - (v) indicate whether such an alternative has been discussed and agreed with Network Rail and/or a potentially affected Train Operator.

2.5.3 *Calling of Board Meeting to consider a Proposal for Amendment*

The Board Secretary shall, ~~within seven days following at~~ the end of the Consultation Period:

- (a) identify the Board Meeting at which the Proposal for Amendment will be considered~~deal a Board Meeting~~; and
- (b) supply the Proposal for Amendment to each Member together with:
 - (i) copies of all representations received pursuant to Condition B2.5.2(b); and
 - (ii) if the sponsor of the proposal consents, any modification to that proposal.

2.5.4 *Modification of Proposal for Amendment*

2.5.4.1 A modification of any Proposal for Amendment may be proposed:

(a) by any Access Party during the Consultation Period described in Condition B2.5.2(b); or

(b) by any of the Members at the Board Meeting called in respect of such Proposal for Amendment.

2.5.4.2 The Board shall consider any modifications, whether material or otherwise, which are proposed to a Proposal for Amendment.

2.5.4.3 If the proposed modification to any Proposal for Amendment is:

(a) a material modification; and

(b) if seven or more Members (including at least two ~~Network Rail~~ Members ~~representing Network Rail~~ and at least two ~~Non-Network Rail~~ Members ~~representing the other Classes~~) present, and entitled to vote, at the Board Meeting called in respect of such Proposal for Amendment, shall have voted in favour of the proposed modification, the Board shall treat the proposal as a new Proposal for Amendment and the provisions of Conditions B2.5.2 and B2.5.3 shall apply

then the Board shall request the Board Secretary to carry out further consultation in respect of such Proposal for Amendment incorporating the proposed modification.

2.5.4.4 If the proposed modification to any Proposal for Amendment is:

(a) a non-material modification; and

(b) if all the Members present, and entitled to vote, at the Board Meeting called in respect of such Proposal for Amendment, shall have voted in favour of the proposed modification

then no further consultation shall be carried out in respect of such Proposal for Amendment and the Board shall consider the Proposal for Amendment, as modified, pursuant to Condition B2.6.1.

2.5.4.5 For the purposes of Condition B2.5.4.4, the failure of a Member to cast its vote or intimate its abstention shall be treated as a vote in favour of the proposed modification.

2.5.4.6 If Condition B2.5.4.4(a) is satisfied and Condition B2.5.4.4(b) is not satisfied, the proposed modification shall be disregarded and the Proposal for Amendment to which it relates shall be considered without taking the modification into account.

2.5.4.7 If the Board cannot agree unanimously whether or not a proposed modification is material; then, for the purposes of this Condition B2.5.4, the modification shall be treated as though it is a material modification.

2.5.5 *Clarification*

The sponsor of a Proposal for Amendment shall promptly comply with all reasonable written requests of the Board for further clarification of the proposal.

2.6 **Consideration by the Delay Attribution Board**

2.6.1 *Voting passmark*

The Board shall consider and may approve each Proposal for Amendment. A Proposal for Amendment shall have been approved only if seven or more Members (including at least two Network Rail Members ~~representing Network Rail~~ and at least two Non-Network Rail Members ~~representing the other Classes~~) present, and entitled to vote, at ~~the relevant a meeting of the~~ Board Meeting shall have voted in favour of that Proposal for Amendment, provided that the failure of a Member ~~timeously~~ to cast ~~their~~s vote or to intimate ~~their~~s abstention shall be treated as a vote in favour of the Proposal for Amendment.

2.6.2 *Rights of attendance*

A sponsor of a Proposal for Amendment shall be entitled to attend the relevant part of any Board Meeting at which the Proposal for Amendment is to be considered.

2.7 **Consequences of a Board decision**

2.7.1 *Decision to Approve*

Any decision by the Board to approve a Proposal for Amendment shall state the date from which it is proposed that such approved amendment is to take effect being a date no earlier than the date on which the Board reached its decision. The Board Secretary shall, as soon as reasonably practicable following such decision, submit the approved Proposal for Amendment (and any associated impact assessment and proposed

solution) to the Office of Rail and Road, together with a written memorandum:

- (a) explaining in reasonable detail the reasons for the proposed amendment, why the Board considers that the proposed changes are necessary, and how they will improve the industry delay attribution process;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition B2.5.2(b));
- (c) detailing what, if any, changes were made to the original Proposal for Amendment in the light of representations received, and why these changes have been accepted;
- (d) stating the reasons behind the rejection of any representations in respect of the Proposal for Amendment;
- (e) providing details of where a number of Proposals for Amendment put forward to the Board have been merged; and
- (f) stating the reasons for any dissent from the Board's decision by any Board Member.

2.7.2 Requirement for Office of Rail and Road's approval

No Proposal for Amendment shall have effect unless the Office of Rail and Road gives notice to the Board in writing that it approves the proposal and confirms the date of introduction.

2.7.3 Notification of approval

If the Office of Rail and Road gives its approval of the Proposal for Amendment, the Board Secretary shall, as soon as reasonably practicable:

- (a) notify details of the approved amendment and when it will take effect to all Access Parties;
- (b) arrange for the approved amendment to be incorporated into a revised version of the Delay Attribution Principles and Rules or Performance Data Accuracy Code; and
- (c) publish and circulate the revised version of the Delay Attribution Principles and Rules or Performance Data Accuracy Code to all Access Parties and to the Office of Rail and Road.

2.7.4 Decision to Reject

The Board Secretary shall, as soon as reasonably practicable following a decision of the Board, or following receipt of notification of a decision of the Office of Rail and Road, to reject a Proposal for Amendment, notify the sponsor of that decision.

2.8 Power of the Board to make non-material modifications to the Delay Attribution Principles and Rules and the Performance Data Accuracy Code

2.8.1 Without prejudice to Condition B2.5.1(b), the Board is entitled to make modifications to the Delay Attribution Principles and Rules and the Performance Data Accuracy Code provided that such modifications are:

(a) proposed at a Board Meeting;

(b) non-material; and

(c) all the Members present, and entitled to vote, at the Board Meeting called in respect of such non-material amendment, shall have voted in favour of the proposed modification.

2.8.2 For the purposes of Condition B2.8.1, the failure of a Member to cast its vote or intimate its abstention shall be treated as a vote in favour of the modification.

2.8.3 If the Board cannot agree unanimously whether or not a proposed modification is non-material; then, for the purposes of this Condition B2.8, the modification shall not be made.

2.8.4 Following any modifications made by the Board pursuant to Condition B2.8, the Board Secretary shall, as soon as reasonably practicable following such decision, submit the approved modification to the Office of Rail and Road explaining in reasonable detail the reasons for the proposed modification.

2.8.5 No modification made pursuant to Condition B2.8 shall have effect unless the Office of Rail and Road gives notice to the Board in writing that it approves the modification and confirms the date of introduction.

CONDITION B3 - SYSTEM INVESTIGATION

3.1 *Notification of unsatisfactory system*

A Train Operator may, when it has reasonable grounds for considering that the Performance Monitoring System is not satisfying the requirements set out in Condition B1, notify Network Rail of the manner in which the Performance Monitoring System is alleged not to satisfy such requirements.

3.2 Investigation of system

As soon as practicable following receipt of a notice from a Train Operator under Condition B3.1, Network Rail shall investigate the matters complained of and shall, within the period of ~~20 Working Days~~~~8 days~~ following the date of receipt of that notice, prepare and deliver to that ~~Train O~~perator a report of its investigations which shall include:

- (a) details of all relevant tests and checks carried out by Network Rail;
- (b) the results of Network Rail's investigations;
- (c) Network Rail's conclusion as to whether the Performance Monitoring System failed to satisfy the requirements set out in Condition B1 in the manner alleged by that ~~Train O~~perator or in any other respect;
- (d) Network Rail's reasons for its conclusions and copies of all relevant data and documentation in respect thereof; and
- (e) any steps which Network Rail is taking or proposes to take in respect of any failure to satisfy the said requirements.

3.3 Adjustment to prior results

If it is established in accordance with Condition B3.2 or Condition B4.2 that the Performance Monitoring System is not satisfying the requirements set out in Condition B1, the relevant results obtained from the Performance Monitoring System for the period of two months preceding the date of the investigation or, if later, since the date of the last investigation under Condition B3.1 (but not in respect of earlier periods), shall be adjusted in a manner which is fair and reasonable to correct th~~ose~~ose results.

CONDITION B4 - RECORDS, AUDIT AND TESTING

4.1 Obligation to keep information

The TAC Parties shall, for a period of not less than six years, keep summaries of all material information relating to the monitoring of train performance.

4.2 Right to audit and inspect

Either TAC Party may, without prejudice to Condition B3.2 and on giving at least ~~5 five-Working Days~~~~days~~' prior notice to the other TAC Party:

- (a) audit and inspect at any reasonable time all processes, systems and records of the Performance Monitoring System for any particular period and in relation to the Train Operator's Services;
- (b) inspect at any reasonable time all such premises and equipment as are used in connection with the Performance Monitoring System to monitor train performance in respect of the Train Operator's Services; and
- (c) require the other TAC Party to carry out analysis, investigations and tests of the Performance Monitoring System including the processes, systems and equipment used in connection with the Performance Monitoring System in the presence of an independent expert nominated by the first TAC Party, such tests to be as reasonably required by the first TAC Party to determine its accuracy and suitability to monitor train performance in respect of the Train Operator's Services.

4.3 *Costs to be borne by investigating party*

Subject to Condition B4.4, any audit, inspection, analysis, investigation or testing carried out in accordance with Condition B4.2 shall be at the requesting TAC Party's own cost.

4.4 *Costs to be borne by party subject to investigation*

Where the overall results of the Performance Monitoring System for that period are shown as a result of any audit, inspection, analysis, investigation or testing to be inaccurate in any material respect due to any act or omission by the TAC Party which is the subject of the audit, inspection, analysis, investigation or testing, that TAC Party shall bear the reasonable cost of both TAC Parties of that audit, inspection, analysis, investigation or testing.

CONDITION B5 - CO-OPERATION

5.1 *Review of operations*

The TAC Parties shall, not less than once every six months, meet, review performance and discuss alterations to their operations which will improve train performance and reduce train delays and cancellations.

5.2 *Implementation of alterations*

The TAC Parties agree to use all reasonable endeavours to implement any alterations agreed under Condition B5.1.

5.3 *Obligations in Access Agreement*

Nothing in this Part B shall restrict the TAC Parties from agreeing, in an Access Agreement, obligations in relation to performance monitoring which are more onerous than those contained in this Part B.

CONDITION B6 - DELAY ATTRIBUTION BOARD

6.1 Purpose of the Board

6.1.1 Delay Attribution Principles and Rules and Performance Data Accuracy Code

The purpose of the Board is to lead, monitor and advise on the effectiveness and accuracy of the delay attribution process and use of the Delay Attribution Principles and Rules and the Performance Data Accuracy Code.

6.1.2 Proposal for Amendment

The Board may receive, or sponsor, Proposals for Amendment, pursuant to Condition B2.5.1, and has responsibility for considering whether or not the Delay Attribution Principles and Rules or the Performance Data Accuracy Code as appropriate should be amended in accordance with any such proposal, after taking account of information supplied by the Board Secretary pursuant to Condition B2.5.3(b).

6.1.3 Guidance

The Board will also provide guidance to TAC Parties on request to assist in the resolution of disagreements concerning delay attribution.

6.2 Establishment and composition of the Board

6.2.1 General

The Board is hereby established and shall consist of the Chair~~man~~, the Board Secretary and 12 Members of whom one shall be appointed Deputy Chair~~man~~ pursuant to Condition B6.3.1(b). The Members shall ~~consist of be appointed by~~ the following ~~Bands and Classes~~:

- (a) six Network Rail Members ~~by Network Rail~~;
- (b) one Non-Network Rail Member ~~from~~ each of the three Bands of the Franchised Passenger Class;
- (c) one Non-Network Rail Member ~~from~~ each of the two Bands of the Non-Passenger Class; and
- (d) one Non-Network Rail Member ~~from~~ the Non-Franchised Passenger Class.

Neither the Chair~~man~~ nor the Board Secretary shall be a Member.

6.2.2 Appointment of Members

Non-Network Rail Members shall be appointed by election. Elections shall be carried out in the same way as elections of members of the Class Representative Committee are carried out pursuant to Part C.

Network Rail Members can be appointed at any time provided that Network Rail has given at least 10 Working Days' notice of such appointment to the Board Secretary.

The Board Secretary shall, as soon as reasonably practicable following the election or appointment of a new Member, notify the Chairman, all Members and Class Members of that election or appointment.

6.2.3 Duration of appointment

Subject to Conditions ~~B6.2.4 and B6.2.5~~:

~~(a) _____, unless he shall have been re-elected, a Non-Network Rail~~ Member shall be treated as having ceased to hold office on the 1 April which is nearest to the date which is two years after the date of ~~their~~ his appointment; ~~and-~~

~~(b) _____ a Network Rail Member shall cease to hold office when removed by Network Rail in accordance with Condition B6.2.4.1.~~

6.2.4 Loss of office

6.2.4.1 A Non-Network Rail Member:

~~(a) _____~~ may be removed from office and a replacement ~~Member~~ elected in his or her place by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant meeting called for the purpose of such removal and substitute appointment;

A Network Rail Member may be removed from office and a replacement appointed in his or her place provided Network Rail has given at least 10 Working Days' notice of such reappointment to the Board Secretary.

6.2.4.2 A Member:

~~(a)~~ shall be treated as having resigned from office if he or she dies or becomes of unsound mind;

~~(b)~~ shall, if he or she ceases to be an employee of a company which is a member of the Class or Band which elected or appointed him or her but continues to be an employee of an Access Party, as soon

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as is reasonably practicable notify the Board Secretary, and may continue as a Non-Network Rail Member or Network Rail Member (as the case maybe) until such time as that Class or Band has elected or appointed his or her successor pursuant to Condition B6.2.4.1(a); and

- (d) shall, if he or she ceases to be an employee of an Access Party, resign from office; or, if he or she fails to resign, shall be treated as having resigned.

~~6.2.5 Retirement by rotation~~

~~Notwithstanding Condition B6.2.3, Members shall retire in rotation on 1 April in each year in the following order:~~

~~(a) on 1 April 2004:~~

~~(i) the Member appointed by the Band of the Franchised Passenger Class which is highest by value of relevant annual Track Charges payable by the Bands of that Class at the relevant time;~~

~~(ii) the Member appointed by the Band of the Non-Passenger Class which is the higher of the two by value of relevant annual Track Charges payable by them at the relevant time;~~

~~(iii) the Member appointed by the Non-Franchised Passenger Class; and~~

~~(iv) whichever three of Network Rail's six Members as Network Rail shall elect;~~

~~(b) on 1 April 2005, the Board Members who shall not have retired pursuant to sub-paragraph (a) above.~~

6.2.56 Alternates

Each Member (other than an Alternate) ~~shall~~may:

- (a) appoint any other Member or any other person from the same Class or Band who is willing to act to be their ~~his~~ Alternate; and
- (b) remove that Alternate from office as their ~~his~~ Alternate.

The appointment or removal of an Alternate shall be by notice given to the ~~Chairman and the Board Secretary~~ ~~not later than two days before a Board Meeting and signed~~ by the Member making or revoking the appointment not later than 2 Working Days before a Board Meeting.

6.2.67 Rights of Alternates

- (a) An Alternate shall be entitled:
 - (i) to receive notice of all Board Meetings which ~~their~~ appointer is entitled to attend;
 - (ii) to attend and vote at any such Board Meeting at which the Member which appointed him ~~or her~~ is not personally present; and
 - (iii) generally to perform all the functions of the Member which appointed him ~~or her~~ to act in ~~their~~ absence.
- (b) Save as otherwise provided in Conditions B6.2.56 and B6.2.67, an Alternate shall be deemed for all purposes to be a Member.
- (c) An Alternate shall cease to be an Alternate if the Member which appointed him ~~or her~~ ceases to be a Member or revokes ~~their~~ appointment pursuant to Condition B6.2.56.

6.3 The Chairman, Deputy Chairman and Board Secretary

6.3.1 Appointment of Chairman and Deputy Chairman

The Board shall appoint:

- (a) its Chairman, who shall:
 - (i) not be a Member;
 - (ii) have suitable experience of the railway industry; and
 - (iii) not, during ~~their~~ term of office, be employed by or otherwise connected with any Access Party or receive any benefit from any Access Party in return for services provided to it, in either case in a way which may compromise ~~their~~ impartiality; and
- (b) one of its Members to act as Deputy Chairman.

Each such appointment and any re-appointment shall be made by unanimous resolution.

6.3.2 *Declaration of connections*

The Chair~~man~~ shall on appointment declare to the Board Secretary any relevant connection which he or she has or has had with the railway industry, and shall during theirhis term of office promptly disclose any new connection of that kind. The Board Secretary shall provide a copy of any disclosure made under this Condition B6.3.2 to each Member and to every Access Party which requests it.

6.3.3 *Fees, expenses and allowances of Chair~~man~~*

Subject to Condition B6.3.4, the Chair~~man~~ shall hold office on such terms as the Board shall determine. Where the terms on which the Chair~~man~~ holds office include provision for the payment to him or her of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Board.

The terms on which the Chair~~man~~ holds office may, in addition to providing for theirhis remuneration, include provision for the payment of such pensions, allowances or gratuities to or in respect of him or her, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Board.

6.3.4 *Duration of appointment of Chair~~man~~*

The Chair~~man~~ shall be appointed for a term of two years, and may be reappointed. The Board may remove him or her from office on the motion of any Member, provided that at least 10 Working Daystwe weeks' written notice of the intention to table such a motion has been given to all Members and the Chair~~man~~. A motion to remove the Chair~~man~~ shall:

- (a) in the case of removal on the ground of the incapacity or misbehaviour of the Chair~~man~~, be passed on the positive resolution of at least seven Members (including at least two Network Rail Members ~~representing Network Rail~~ and at least two Non-Network Rail Members ~~representing the other Classes~~); and
- (b) in any other case, be passed only by unanimous resolution.

6.3.5 *Appointment of successor Chair~~man~~*

If, within two months45 days of the termination (for whatever reason) of the period of office of a Chair~~man~~, the Board shall have failed to appoint a new Chair~~man~~ pursuant to Condition B6.3.1, the Board shall:

- (a) by unanimous resolution, determine a list of three candidates for the office of Chair~~man~~;

- (b) send the list to the Office of Rail and Road, together with such information in relation to the candidates and the preferences of the Board Members as the Office of Rail and Road may request; and
- (c) be deemed to have appointed as Chair~~man~~ the candidate selected by the Office of Rail and Road.

6.3.6 *Deputy Chair~~man~~ - appointment and removal*

The Deputy Chair~~man~~ shall be appointed by the Board for a term of one year, and may be reappointed. The Board may remove him or her from office on the motion of any Member, provided that at least 10 Working Days~~two-weeks~~ written notice of the intention to table such a motion has been given to all Members and the Chair~~man~~ and, unless the Chair~~man~~ and all Members otherwise consent, a Board Meeting shall have been held at which the motion shall have been debated and, if thought fit, passed.

6.3.7 *Voting by Deputy Chair~~man~~*

The Deputy Chair~~man~~ shall be entitled to cast their~~his~~ vote as a Member notwithstanding that, at the relevant time, he or she may be acting as Chair~~man~~ of the Board or the sub-committee in question.

~~6.3.8 *Standing of the Deputy Chairman pending appointment of the first Chairman*~~

~~Notwithstanding Conditions B6.3.1 to B6.3.4 inclusive, pending the appointment of the first Chairman, the Deputy Chairman elected pursuant to Condition B6.3.1 shall be treated as Chairman, and may be permitted to act in fulfilling all functions as Chairman, including those procedures prescribed in Condition B7.~~

6.3.~~89~~ *Network Rail as secretariat*

Network Rail shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Board Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings. After consulting the Board and after taking account of its comments (if any) made in response, Network Rail shall appoint the Board Secretary and, as soon as reasonably practicable thereafter, ~~immediately~~ notify all Members and the Chair of the appointment.

6.3.10 *Terms of appointment of Deputy Chairman, Board Secretary etc.*

The Deputy Chairman (subject to Condition B6.3.6) and the Board Secretary shall hold office on such terms as the Board shall determine. Where the terms on which each of them holds office include provision for the payment to ~~them~~ of any allowances or expenses, the rate at which those allowances and expenses are paid shall be determined by the Board.

The terms on which each of the Deputy Chairman and the Board Secretary holds office may include provision for ~~their~~ remuneration, the payment of such pensions, allowances or gratuities to or in respect of ~~them~~, or such contributions or payments towards provision for such pensions, allowances or gratuities, as may be determined by the Board.

6.3.10~~4~~ *Chairman etc. not employees*

None of the Chairman, the Deputy Chairman or the Board Secretary shall by virtue of ~~their~~ office be an employee of the Board or any person.

6.4 Funding of the Board etc.

6.4.1 *Payments by TAC Parties*

Each TAC Party shall, within ~~20 Working Days~~~~30 days~~ of being requested to do so by the Board Secretary, pay to the Board Secretary an amount of the estimated costs and expenses of the Board equal to the proportion which the amount of railway safety levy most recently determined as payable by it bears to the aggregate railway safety levy payable by all TAC Parties. The amount payable by any TAC Party which is not required to pay any amount of railway safety levy shall be assessed by the Board and shall be fair and reasonable. The Board Secretary shall receive and hold amounts paid pursuant to this Condition B6.4.1 on behalf of the Board.

6.4.2 *Board to estimate costs*

The estimated costs and expenses of the Board referred to in Condition B6.4.1 shall be the amount which the Board reasonably expects will be its costs of operation in the year (beginning 1 April) in respect of which the activities of the Board are required to be funded, taking into account any receipt, including any sums which it reasonably expects to receive in or for that period pursuant to Condition B6.4.1.

6.4.3 *Adjustments of estimates*

To the extent that the actual costs and expenses of the Board shall have been underestimated or overestimated by the Board in respect of any period, the amount of the difference shall be carried over to the following year and shall be added to or deducted from the amounts payable by TAC Parties in that following year.

Any credit due to an TAC Party may be withheld, in whole or in part, at the sole discretion of the Board if that TAC Party has failed in the previous year to pay the required amount for that year within 20 Working Days~~30 days~~ of being requested to do so by the Board Secretary pursuant to Condition B6.4.1.

6.4.4 *Accountants' certificate*

Any TAC Party shall be entitled to require the Board Secretary to provide ~~it him~~ with a certificate from a firm of chartered accountants of national standing in relation to the costs and expenses of the Board in respect of any year. The Board Secretary shall promptly comply with any such request.

6.5 *Capacity of Board to enter into Contracts with Officers*

In making any appointment or otherwise exercising its powers under this Condition B6, the Board is authorised to act on behalf of the TAC Parties.

6.6 *Indemnities by new, and to retiring, Access Parties*

6.6.1 *New Access Parties*

An Access Party, on becoming such, shall indemnify those who are already Access Parties (the "existing Access Parties") against its share of any liability which arises:

- (a) while it is an Access Party; and
- (b) under a contract of appointment entered into by the Board on behalf of the existing Access Parties (or some of them, and whether or not with others) before it became an Access Party.

Its share shall be the appropriate proportion of the liability calculated in accordance with Condition B6.4.1, applied to the Access Parties at the time the liability arises.

6.6.2 *Retiring Access Parties*

An Access Party which ceases to be such shall be indemnified by the Access Parties which remain as such against any liability which arises:

- (a) after it ceases to be an Access Party; and
- (b) under a contract of appointment entered into by the Board on behalf of it (with other Access Parties) while it was an Access Party,

such that the Access Parties as at the date the liability arises shall bear it in the proportion set out in Condition B6.4.1, applied to them.

6.7 **Sub-committees**

6.7.1 *Setting up sub-committees*

The Board shall be entitled to set up sub-committees to consider particular topics related to the activities of the Board. The Board shall have the power, by unanimous vote, to determine the constitution of any sub-committee. If it shall fail to reach such a decision, the Chair~~man~~ shall make a ruling determining the matter which shall be binding on the Board.

6.7.2 *Membership*

The Board shall have the power, by unanimous vote, to determine the membership of each sub-committee. If it shall fail to reach such a decision, the Chair~~man~~ shall make a ruling determining the matter which shall be binding on the Board. The same person may be a Board Member and a member of any sub-committee.

6.7.3 *Chair~~man~~ship of sub-committees*

The chair~~man~~ of any sub-committee shall be either the Chair~~man~~ or any other person elected by the sub-committee in question and approved by the Chair~~man~~.

6.7.4 *Procedural rules*

Condition B7.3 shall apply in relation to the rules of procedure of sub-committees, except that the Board shall have the power to modify the timescales specified in Condition B7.1.1 in their application to a meeting of a sub-committee.

CONDITION B7 - PROCEEDINGS OF THE BOARD

7.1 Board Meetings

The Board shall meet on average every 20 Working Days in accordance with the provisions of this Condition B7.1.~~at least three times per calendar year.~~

7.1.1 Board Secretary to ~~arrange~~ meetings

The Board Secretary shall:

- (i) ~~no later than 1 December in each calendar year provide the Board with the date, venue and time of each~~within 14 days following receipt of notice in writing from any Member requisitioning a Board Meeting for the forthcoming calendar year and specifying the business to be carried out at that meeting; and
- (ii) ~~at least 3 Working Days prior to each Board Meeting notify the Board the:~~ in respect of any Proposal for Amendment, within the period of seven days following the end of the Consultation Period relating to that proposal

~~call a Board Meeting by giving not less than 14 days, and not more than 60 days, notice specifying:~~

- (a) ~~the~~ date, venue and time of that Board Mmeeting; and
- (b) ~~the~~ business of that Board Mmeeting ~~(which, where it concerns a Proposal for Amendment, shall include any such Proposal for Amendment).~~

7.1.2 *~~Board Secretary to cancel or reschedule m~~Meetings previously arranged*

~~The Board Secretary shall either cancel or reschedule any Board Meeting if the Board has decided at a previous Board Meeting that there is likely at that prospective Board Meeting to be either insufficient business to transact or insufficient Members available to achieve a quorum Business specified in Condition B7.1.1 may be placed on the agenda of a Board Meeting that has already been arranged in accordance with Condition B7.2.4.~~

7.1.3 *~~Business previously advised~~Waiver of notice periods*

~~In addition to the business of a Board Meeting that has been notified to the Board in accordance with Condition B7.1.1(ii)(b), other business arising subsequently may be placed on the agenda of that Board Meeting only at the discretion of the Board Secretary or Chair. The period of notice for calling a Board Meeting notified in accordance with Condition B7.1.1 may be waived prospectively or retrospectively by the consent in writing of all Members.~~

7.2 Conduct of Delay Attribution Board Meetings

7.2.1 *Regulation of business*

Save as otherwise provided in this Part B, Members shall meet at Board Meetings~~may meet together~~ for the despatch of business ~~(including the approval of the sponsorship of any Proposal for Amendment), adjourn and otherwise regulate their Board Meetings as they think fit~~ provided that:

- (a) any resolution in respect of such business, ~~adjournment or regulation~~ shall only be approved if at least seven Members (including at least two Network Rail Members ~~representing Network Rail~~ and at least two Non-Network Rail Members ~~representing the other Classes~~) present, and entitled to vote, at a Board Meeting shall have voted in favour of that resolution; and
- (b) the failure of a Member ~~timeously~~ to cast their~~its~~ vote or to intimate their~~its~~ abstention in respect of a resolution shall be treated as a vote in favour of that resolution.

7.2.2 Quorum

No business shall be transacted at any Board Meeting unless a quorum of Members is present at that Board Meeting.

The quorum for each ~~meeting of the~~ Board Meeting shall be the Chair~~man~~ and seven Members, of which at least three shall be Network Rail Members ~~representing Network Rail~~ and at least three shall be Non-Network Rail Members ~~representing other Classes~~.

With the consent of the Chair~~man~~, or in accordance with such directions as the Chair~~man~~ shall have given, the Deputy Chair~~man~~ may attend in the place of the Chair~~man~~ and shall be counted both as Chair~~man~~ and as a Board Member for the purposes of assessing the quorum.

If, due to unforeseen circumstances (including travel delay or ill health), neither the Chair~~man~~ nor the Deputy Chair~~man~~ are able to attend an ~~arranged~~ Board Mmeeting, and that ~~Board Me~~meeting has a quorum of seven members, of which at least three shall be Network Rail Members ~~representing Network Rail~~ and at least three shall be Non-Network Rail Members ~~representing other Classes~~, then those Members in attendance may elect, for that Board Mmeeting only, a temporary Chair~~man~~ from amongst the Members in attendance to enable the Board to carry out its business. The person elected as temporary Chair~~man~~ shall be counted both as Chair~~man~~ and as a Board Member for the purposes of assessing the quorum.

7.2.3 Adjournment without a quorum

~~If, within half an hour from the time appointed for a Board Meeting, a quorum is not present at a, the Board Meeting, that Board Meeting shall be adjourned and any business carried over to the next Board Meeting to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the Members present shall constitute a quorum.~~

~~7.2.4 Written resolutions~~

~~A unanimous resolution in writing, executed by or on behalf of every Board Member, shall be as valid and effective as if it had been passed at a Board Meeting and may consist of several versions in the same form.~~

7.3 Rules of procedure of the Board and sub-committees

7.3.1 Board to make rules

~~Unless otherwise~~~~Subject as~~ provided in this Condition B7.3, the Board shall be entitled to make and from time to time revise the rules of procedure to be followed by the Board and any sub-committee. If no rules of procedure shall have been made for any sub-committee, the rules of procedure of the Board shall apply *mutatis mutandis* to the proceedings of the sub-committee as if it were the Board.

7.3.2 Power to delegate power to make rules

The Board may delegate the power to make and revise rules of procedure for any sub-committee to the sub-committee in question, subject to such (if any) conditions as the Board shall specify in the delegation. Any such delegation may be revoked at any time by notice in writing given by the Board to the chair~~man~~ of the sub-committee in question. Notice of any such delegation or revocation shall be promptly given to each member of the sub-committee in question. This Condition B7.3 shall apply *mutatis mutandis* to rules made pursuant to a delegation, except that Condition B7.3.3 shall apply as if references in that Condition to “the Chair~~man~~” were references to both the Chair~~man~~ of the Board and the chair~~man~~ of the sub-committee in question.

7.3.3 Consultation with Chair~~man~~

No rules of procedure may be made or revised pursuant to this Condition B7.3 unless the Board shall have:

- (a) consulted the Chair~~man~~ as to the proposed rules or revisions; and
- (b) taken into account any representations or objections he ~~or she~~ shall have made within such time as the Board shall have specified for the purpose.

In so consulting, the Board shall provide a copy of the proposed rules or revisions to the Chair~~man~~.

7.3.4 Part B to prevail

Where Part B provides for the procedure to be followed in the determination of any matter referred to the Board or any sub-committee, those provisions shall prevail and the Board shall have no power to make inconsistent rules of procedure.

7.4 *Minutes*

The Board Secretary shall prepare full and accurate minutes of every Board Meeting. The minutes shall be considered and approved (with or without modification) at the next ~~meeting of the Board~~ Meeting. An Access Party may request the Board Secretary to provide it with a copy of the approved minutes of any Board Meeting. The Board Secretary will comply with any such request as soon as is reasonably practicable. , or, in the circumstances in which the next meeting of the Board is not anticipated to take place within three months, the minutes may be circulated and approved by the assent in writing of all Members who were present at the meeting concerned.

~~The Board Secretary will also compile and publish Copies of the approved minutes shall be provided to every Access Party a summary of the minutes of each Board Meeting on the Board's website not later than 5 Working Daysseven days~~ after their approval.

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7.5 *Liability of Officers*

~~Neither one of~~ the Chair~~man~~, the Deputy Chair~~man~~ or the Board Secretary shall be liable to any Access Party for any act or omission (including negligence) in connection with any Board proceedings under this Part B unless the act or omission is established to have been in bad faith.

7.6 *Website*

The Board Secretary shall, on behalf of the Board, procure the establishment of a website upon which he or she shall publish from time to time relevant documents agreed by the Board as being relevant to its business and which are suitable for general publication.”

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