

Responses to April 2022 consultation on ORR's PR23 review of the Schedule 4 possessions regime and Schedule 8 performance regime



Respondent	PDF pack page number
Arriva Trains UK	2
DB Cargo UK Limited	6
DfT	9
Freightliner Group Limited	14
GB Railfreight Limited	20
Govia Thameslink Railway	24
Greater Anglia	28
Heathrow Express Operating Company Limited	31
MTR Elizabeth Line	34
Network Rail & GBRTT	36
Nexus	60
Northern Trains Limited	62
Rail Freight Group	65
Rail Partners	68
SE Trains Limited	73
Seilwaith Amey Cymru / Amey Infrastructure Wales Limited	76
South Western Railway	79
Transport for London (TfL)	81
Transport for Wales Rail Ltd (TfWRL) & Transport for Wales (TfW)	84
Transport Scotland	86



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

As identified in our original consultation response, an opt-out mechanism would provide a degree of flexibility to Operators in order to manage the various risks that individual operators may be exposed to. However, its implementation must be balanced by other changes to reinforce the incentive on Network Rail to plan possessions efficiently.

The additional monitoring regime proposed goes some way to addressing this. However, if a significant number of larger operators were to opt-out the visibility to Network Rail of the revenue and operating cost impact on Operators would reduce significantly and we would welcome further consideration in this area.

Schedule 4 compensation for Maintenance and Renewals activity is funded through the ACS payment received, and Enhancement RoU compensation is funded from

the individual project budgets. Given Network Rail's view that RoU compensation for Network Changes is not available under Part G of the Network Code, we would welcome clarity on the proposed approach for calculating an ACS charge as early as possible.

Open Access Operators have historically never received an ACS estimate, nor offer to opt-in to a full schedule 4 and therefore sufficient time must be made available to effectively evaluate the proposal in order to understand the impact and make an informed decision.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

We agree that Schedule 8 must continue to apply between Network Rail and Operators for PR23, particularly in relation to freight and Open Access Operator's and the financial impact of significant disruption.

Even if legislation was sufficiently changed to remove the need for Schedule 8, we do not feel it would be appropriate to completely remove the financial element of schedule 8, given the financial risk that will remain for some Operators. However, we would welcome consideration of additional arrangements which would focus more on collaboration between NR / GBR and the Operators and initiatives to improve performance vs a purely transactional regime.

Whilst these additional arrangements are not fully considered within this latest consultation document, there are examples which have been utilised over the last control period. Network Rail has seen some success with the use of local Schedule 8 overlays, which create mechanisms for Operators and Network Rail to work together on developing performance improvement plans and investment. Encouragement of these local arrangements could drive further benefits but should be approached in a controlled way.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

Given the potential for further change as a result of rail reforms, this seems sensible.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Preferred Option 1 – Opt-out

We agree with the proposed opt-out provision, but sufficient time must be provided to Operators to understand and evaluate the estimated ACS before choosing to opt-out.

Preferred Option 2 – Additional Monitoring

We would support increased monitoring of possessions notifications, in order to better incentivise Network Rail to plan possessions effectively. More recently, Sufficient notification of possession is provided by Network Rail have been unable to fulfil the additional obligation of Restrictions of Use being reflected in the Working Timetable at T-12, triggering use of late notification factors. Whilst we are aware of wider issues regarding Informed Traveller Timescales, this may warrant further consideration.

Preferred Option 3 – Additional Monitoring Late Cancellations

We are supportive of the proposed approach.

Preferred Option 4 – Update Freight Compensation Rates

We are comfortable with this approach.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

We are comfortable with this approach.

Are there any other comments you would like to make?

A key objectives of the Rail Transformation work is to simplify industry processes and to enable industry parties to work as delivery partners. This objectives could be progressed in respect to one of the proposals NOT being taken forward as set out in Annex 4 of the Schedule 4 & 8 consultation: Proposal C. It is disappointing that the ORR is not minded to take forward a proposal (Options C1 and C2 in the September 2021 consultation) to develop a method for improving the calculation and settling of claims, as this would seem to have been in everyone's interests, where the formulaic

regime has not adequately compensated a party. We note ORR's assessment on this aspect in Annex 4 paragraph 10 and also the contents of paragraph 11, where NR are stated to be working on a framework to improve the claims negotiation process. Whilst this is being left as an "industry-led solution", our view is whilst this will be helpful NR must also consider establishing parameters and timeframes for successfully concluding claims as well as for initiating them, including the role of its claims panel(s).



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Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

DB Cargo is not convinced that an Opt-Out mechanism would encourage Network Rail to plan possessions efficiently and achieve an optimum balance in minimising disruption to Passenger and Freight services. Freight Operators are concerned that weakened financial incentives on the Infrastructure Manager would result from a scenario where multiple Passenger Operators decided to opt out from the Schedule 4 mechanism. Freight Operators are unlikely to use an Opt-Out given the significant impact of disruptive possessions on National Freight Operators.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

DB Cargo supports the position outlined. It does not wish to make any new proposals for alternative arrangements. It believes the Schedule 8 Performance Regime (“the regime”) to be a key mechanism in providing a continued focus on good levels of performance and reliability, ensuring these are achieved and maintained. It is essential that the regime remains in place for Open Access Freight Operators in CP7.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

DB Cargo supports ORR’s proposal to limit the number of changes to Schedules 4 and 8. Freight Operators are likely to remain locked into Schedules 4 and 8 in CP7, therefore changes which refine the freight regime would be of clear benefit.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

DB Cargo is content with ORR’s proportionate approach to changes to Schedule 4. National Freight Operators wish to maintain the protection offered by the Schedule 4 regime. DB Cargo would like to see the CP7 accountability framework include the outcome of late possession changes and cancellations. DB Cargo welcomes a review of Freight Operator compensation rates and notes that any proposals will take account of the funding implications of any changes.

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

DB Cargo is supportive of ORR’s preferred approach to restrict change to an update of the evidence base underpinning the calibration of the freight payment rate. DB Cargo believes a review of the Network Rail payment rate in the freight regime is overdue, given that it was last changed (other than for inflation) back in PR08. Since then, there have been fundamental changes in the mix of rail freight commodities carried and further efficiencies resulting in the amount of goods conveyed on each train increasing. DB Cargo would wish to understand what categories of costs would be encompassed within the Network Rail payment rate (i.e. would the review maintain the status quo of a delay minute being based on short-run costs or whether other categories of cost should also be considered, such as marginal revenue

effect?) It is acknowledged that it will require the industry to agree on a process through which data can be confidentially submitted and scrutinised.

Are there any other comments you would like to make?

DB Cargo hopes that the comments made in this response to the ORR's consultation document are helpful. It looks forward to continuing to work with ORR and the rest of the industry to take forward any changes ORR decides to make to Network Rail's Schedule 4 and Schedule 8 regimes.



Department
for Transport

Dan Moore

Web Site: www.dft.gov.uk

27 July 2022

Dear Sir/Madam,

Department for Transport's response to the Office of Rail and Road's consultations on Schedules 4 and 8 and access charges

I am writing on behalf of the Department for Transport (DfT) in response to the Office of Rail and Road's (ORR) publication on 14 April of its proposed approach to Schedules 4 and 8 of the track access agreement and infrastructure access charges in Control Period 7 (CP7), as part of Periodic Review 2023 (PR23). I am grateful for the opportunity to respond and look forward to continuing the positive working relationship with the ORR throughout the PR23 process to help secure a railway for better works for passengers, freight customers and taxpayers.

Introduction

PR23 and the ORR consultations come at a time of significant change on our railways as the consultations acknowledge. The Williams-Shapps Plan for Rail (the Plan for Rail) and the creation of Great British Railways provides a unique opportunity to deliver positive reform, creating a better, simpler and more efficient railway. We strongly consider that PR23 is an important element of delivering that reform and supporting the financial sustainability of the railway into the future.

The ORR's decisions on Schedules 4 and 8 and infrastructure access charges will have a direct bearing on this. While the Plan for Rail is in the process of being implemented with important steps still to be taken, we consider that it is vital that the PR23 process, including the key decisions around charges and incentives, are consistent with and support implementation of the Plan for Rail, so that its benefits are maximised.

Overall response

DfT is generally supportive of the general proposals put forward by the ORR in response to the consultations. In line with our engagement with the ORR to date on PR23, we support the implementation via PR23 of measures, initiatives and amendments that promote the principles of accountability, flexibility, simplicity, fairness and transparency,

delivered through practical and effective arrangements that support effective collaboration and efficiency across the sector.

However, we do consider that there are certain important areas where it remains important that we continue to work more closely together, most particularly:

- With respect to the arrangements for **Schedule 8**, we consider it vital to ensure there is sufficient flexibility for Great British Railways and operators contracted to it to facilitate an effective regime into the future.
- With respect to infrastructure cost charges, continuing to develop an appropriate approach to **infrastructure cost charges for open access operators**, so that they are fair and reasonable for taxpayers.

We discuss these issues below, alongside broader observations.

Schedules 4 and 8 consultation

Schedule 4

We agree with the ORR's conclusions regarding the preferred option for Schedule 4, which we consider to be a practical approach. This includes the position regarding appropriate decisions being made before the start of CP7, subject to the exceptions discussed in the document.

Schedule 8

Ensuring strong and effective arrangements to incentivise performance are a critical element of securing a well-functioning rail industry. We strongly support the ORR's approach as set out in the consultation to take a proportionate approach, including the areas that the ORR has indicated (in table 3.1) of the consultation that it is not minded to take forward. We equally agree that there is merit in updating the evidence base underpinning the calibration of the freight regime to reflect market developments; it will clearly be key for the ORR to continue to work closely with the rail freight industry to do so.

With respect to the coverage of Schedule 8 more generally, we note the ORR's minded-to conclusions about Schedule 8 continuing to apply to all operators. We strongly agree that this is necessary for operators such as freight, open access and devolved operators, providing them with critical certainty.

We welcome the ORR's recognition of the links between rail transformation and the Schedule 8 regime. The Government is strongly committed to ensuring that contracts between Great British Railways and operators include strong performance incentives; and considers that ensuring a coherent and effective regime is essential to delivering for passengers and taxpayers. We have noted the ORR's conclusions that appropriate amendments to Regulation 16 and Schedule 3 of the 2016 Access and Management Regulations could mean that Schedule 8 payments may no longer need to be made between GBR and its operators.

The recently published consultation on the legislation required to implement the Plan for Rail highlighted that the Government was exploring whether changes to the 2016 Access and Management Regulations are required to ensure that the full benefits of Great British Railways acting as the guiding mind are realised. As part of this work, and subject to results of the consultation and usual clearance processes, we are considering if minor

and technical changes are necessary to Regulation 16 and Schedule 3 to enable the guiding mind function and smooth transfer of responsibilities from DfT to Great British Railways. If so these should be made in the forthcoming Transport Act.

We note the ORR's deadline of Autumn 2022 for alternative arrangements, which we welcome. We would propose continuing to work closely with the ORR on this issue to explore alternatives in the period before autumn.

Access charges consultation

Overall

DfT considers that an effective charging regime, which is transparent and well understood by all parties, is an important means of promoting efficiency and cost reflectiveness and certainty for operators. We broadly welcome the ORR's proposals in the consultation.

This includes the emphasis on proportionate steps to improve and simplify the regime, particularly:

- The removal of the partial fleet metering charge; the loss incentive mechanism for EC4T; and the FTAC wash up mechanism.
- Working with Network Rail to improve published guidance on station charges and explanatory notes on station long term charges.

We also very much welcome the following steps which increase certainty and predictability for operators:

- Maintaining the existing phasing in of Variable Usage Charge increases for freight and charter – subject to further review later in PR23. This reflects the Government's strong support for supporting the rail freight industry to maximise its economic and environmental benefits, and for the unique journey opportunities provided by charter services.
- Retain the freight Infrastructure Cost Charge for iron ore, spend nuclear fuel, and ESI biomass, but remove it for coal (subject to review later in PR23).
- Retaining EUAC in its current form.
- Maintaining the existing cost categories and track damage formulae that are used to calculate VUC rates.

Furthermore, we consider it is important, consistent with the representations from freight operators, that the regime permits Variable Usage Charges to be modified during CP7 if Network Rail withdraws heavy axle weight capability on the network.

Moreover, we agree with the proposed approach to station charges and the indexation of inflation by reference to CPI.

Infrastructure Cost Charges for Open access

As set out in the Plan for Rail, the Government welcomes the potential for new open access services to be explored where spare capacity exists to make best use of the network and grow new markets for rail.

In doing so, to ensure sustainability it remains critical to reflect the implications of open access operators on taxpayers, which is particularly relevant given the current pressure

on the finances of the railway. In that regard, we welcomed the steps that the ORR took to introduce an Infrastructure Cost Charge for new inter-urban Open Access Operators in PR18, although we did not consider that it went far enough to sustainably address the implications for taxpayers of new services.

In considering the consultation, we have noted the ORR's updated market-can-bear analysis and the core conclusions of the Steer analysis (as per paragraph 2.45 of the consultation document) and we have noted the three options for changes included in the consultation.

We are unclear however as to the ORR's basis for adopting Option 1 from the material presented with respect to market segmentation. We note the uncertainty around passenger services recovery, but equally note that the conclusions of the Periodic Review will have an impact on the industry until 2029; the uncertainty would suggest that this decision would be more appropriate if taken at later stage of the Periodic Review when the position on passenger recovery may be better understood. We would welcome further engagement on the detailed underpinning on this issue. In particular, we considered that Option 2 was more likely to provide a sustainable basis for more effectively balancing the requirements of open access operators and taxpayers; indeed, it was not clear to us the reason why the regime would not reflect the greater proportion of services that are estimated to be highly profitable.

It is important to highlight that under any regime we fully acknowledge the need for appropriate protection for existing operators (as defined in PR18) not covered by an Infrastructure Cost Charge and consider that the ORR's approach to this issue as reflected in PR18 – most particularly with respect to “significant variations” was a reasonable one. For any new open access operators, we do have considerable concerns about the basis for the phase-in arrangement: while we fully accept that some degree of phasing-in arrangements would be appropriate to enable a period for new operators to develop their business, we do not consider that an appropriate balance is struck in the current phase-in approach: operators would not pay any charge in the first two years, and not pay the full charge until Year 5. We consider that a pathway to full payment of the charge in Year 4 would be more appropriate.¹

With respect to the level of the Infrastructure Cost charge, we note the ORR's initial estimate with respect to the likely level of Infrastructure Cost charge, noting the importance of the market can bear analysis in ultimately setting that charge.

At this stage, the DfT would benefit from further discussions on the Infrastructure Cost Charge, but considers that it would be premature at this stage to settle on option 1 given the long-term effects. We consider that securing a robust and sustainable position, which enables open access operators to play an appropriate role, whilst mitigating taxpayer impacts is important – and we consider that the position would merit further development in discussion with all parties.

Concluding remarks

We are grateful to the ORR for the opportunity to comment and to the overall approach to charges and incentives reflected in the consultation document. We very much look

¹ For example, this could lead to a 0% charge in Year 1, 25% in Year 2, 50% in Year 3 and 100% in Year 4.

forward to continuing to work closely with ORR to develop this position during the remainder of PR23.

Yours faithfully,

Dan Moore



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Freightliner does not consider that the introduction of an opt out of Schedule 4 should be a priority for PR23. Schedule 4 plays an important role in incentivising the infrastructure manager to minimise the impact of planned possessions. Opting out would risk severely weakening the incentives. For freight this will be severely exacerbated under Great British Railways (GBR), as most passenger operators will be vertically integrated into GBR. Without a balancing incentivisation regime, like Schedule 4, that risks the infrastructure manager seeking to minimise the impact of planned disruption to their own services, to the detriment of operators sitting outside the remit of GBR, like freight operators.

While we understand that any opt out will be discretionary, and it is highly unlikely that any freight operator would choose to exercise such an opt out, there is a risk that the incentivisation properties of Schedule 4 overall are weakened were

operators to start opting out. Therefore, even with freight operators continuing to be in Schedule 4, there is a risk that industry incentives overall are weakened by this proposal, worsening outcomes for freight. This risk will be exacerbated in the event that Schedule 4 rates received by freight continue to be less than the cost of the disruption caused.

Consequently, it is important that the proposal to introduce an opt out also considers the wider incentive framework and aligns to the development of cost reflectivity within the Schedule 4 rates, to ensure that the rates are sufficient to drive behaviours.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

Freightliner welcomes the ORR’s proposal that would see the retention of the Schedule 8 regime. Schedule 8 provides an important mechanism for incentivising Network Rail, operators and freight customers to reduce delays caused on the network. The reform of the railways amplifies the need for a strong performance regime for operators, like freight operators, which continue to bear revenue risk for the services that they run and sit outside the GBR tent. There is a risk that the vertical integration of passenger operators into GBR could result in greater disruption to freight services, as GBR seek to minimise disruption and prioritise their own services.

Freightliner notes that ORR have set a deadline of autumn 2022 for the development of any alternative proposals that meet the legal requirements being suggested. We welcome confirmation that any new proposals would not affect freight operators and that the existing structure of Schedule 8 will continue in CP7. We continue to work with ORR, Network Rail and other operators via the Schedule 8 working group on this basis.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Freightliner supports the ORR’s proposed approach to Schedule 4 and 8 that recognises the limited bandwidth of the industry to engage across multiple issues and will therefore limit the number of changes. Freightliner agrees that any changes should be proportionate and targeted, and limited to where there is a demonstrable value in doing so. That said there are proposals that we would not consider to be industry priorities – for instance the opt out mechanism, which is discussed above.

Furthermore, there are policy matters that still need to be addressed, for instance linking increased Schedule 4 rates to the payment of an ACS, which is discussed below.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Proposal G

Freightliner supports the ORR’s intention to review and, if appropriate, update freight compensation rates – proposal G, on the proviso that this update is not contingent on ACS payment. The mismatch between compensation levels and the costs freight operators incur as a result of possessions means that Network Rail are not appropriately incentivised to avoid causing disruption to freight operators when planning possessions.

While accurate payment rates should support better decision-making, Freightliner remains concerned that the consultation links the implementation of cost-reflective rates to the payment of an ACS. If cost reflective rates are obtained through payment of an ACS to Network Rail then it is unlikely to change behaviours or create stronger incentives. That is because the net payment is likely to be the same in both arrangements – i.e.

Current Schedule 4 = x	Cost Reflective Schedule 4 – ACS paid = x
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Should this be the intention, it is difficult to understand the rationale or any benefit of this proposal. Indeed the administration burden and likely risk associated with managing the ACS process will negate this proposal.

It should also be considered that if rates are set at a cost reflective level to ensure that Network Rail is appropriately incentivised, then it follows that additional funding of the higher rates may not be necessary. If cost reflective rates result in less disruption to freight operators because of more considered possession planning from Network Rail, then any requirement for additional funding maybe negligible.

Proposal A

As detailed in our answer to Question 1, Freightliner does not support ORR’s intention to pursue Proposal A to introduce an opt-out mechanism to Schedule 4. We remain concerned that the incentivisation properties of Schedule 4 overall would be weakened were operators to start opting out.

Proposal B

Freightliner supports the ORR’s proposal to report on possessions notification on a more granular basis.

While the freight regime is different from the passenger Schedule 4 regime discussed in Proposal B, Freightliner notes some parallel issues, which we ask the ORR to consider. Currently where possessions are “*notified in all material respects*”

to the freight operator in accordance with the Engineering Access Statement (EAS) then Schedule 4 compensation is applicable. Where the notification is later than EAS timescales then the higher rate of Service Variation is due. This is designed to incentivise Network Rail to notify possessions with good notice, to enable the freight operator to be able to plan to minimise the impact.

For freight operators and customers, the materiality of the impact of the possession on the train service is crucial. That means understanding the impact on the train – for example what any revised timings are, whether there is capacity on diversionary routes and whether the train can even still run. Those impacts are not known until Network Rail send through the revised timings for services. Aligned to the Informed Traveller process that should happen at T-14, with the final timings uploaded into downstream systems at T-12.

Over the past couple of years, Network Rail has not been meeting these Network Code timescales. Final timings have been provided for services at a much later stage (as low as T-4). However, Network Rail has maintained throughout that because the possessions themselves had been established following the usual Engineering Access Statement timescales, then Schedule 4 rather than Service Variation is applicable. As we cannot plan with any certainty until the train times have been established the impact of these late offers has been significant and it is of little comfort that the possessions themselves were established much earlier.

This has highlighted how the current Schedule 4 regime is not providing an incentive around the notification of the train plan as a result of planned disruption. Freightliner asks ORR to consider how PR23 could either provide clarification in this matter or explore what contractual changes could be applied to provide better outcomes.

Proposal D

Freightliner supports ORR's intention to take forward proposal D to monitor and report on late possession changes and cancellations on a more granular basis. The issue with late notice possession changes and cancellations has become increasingly acute over recent months. Coupled with the Network Rail policy that means that train timings will not be revisited when possessions are changed or cancelled the issue is becoming increasingly problematic. The policy means that trains that have been diverted or retimed and then will not ordinarily be reinstated into Working Timetable paths when the possession is cancelled or amended. This means that Freightliner services are still impacted and disrupted by possessions which may have been cancelled. This is becoming increasingly common and currently occurs multiple times a week.

The issue of Network Rail booking and then subsequently cancelling possessions is having an unnecessary burden on industry resources and in replanning services. This is particularly acute at a time when NR is already not meeting Informed Traveller contractual timescales. This practice is leading operators to seek assurances that Network Rail will actually use access opportunities efficiently when future requests are made.

Proposal F

Freightliner does consider that there would be benefit in pursuing Proposal F, to review the methodology for calculating the ACS for open access operators. This would be especially important should ORR align any cost reflective freight Schedule 4 rates to the payment of an ACS. While Freightliner does not support linking cost reflective rates to an ACS, transparency over how those ACS rates are calculated would be absolutely crucial in the event that such a scheme is pursued. Not taking forward Proposal F will act as a barrier and the lack of transparency will impact on the effectiveness of Proposal G.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Freightliner supports the ORR in taking an early decision to rule out making changes to many areas of the Schedule 8 regime. In our previous consultation we had expressed concern with some of the proposals and therefore we support the ORR in seeking to reach an early decision on those areas to avoid any protracted and unnecessary uncertainty.

Proposal G

Freightliner welcomes the decision to proceed with Proposal G, to update the evidence base underpinning the calibration of the Network Rail payment rate. It has been circa 15 years since this was reviewed and it is clear that it understates the impact of delays. The current rate is broadly set on a short-run cost basis – reflecting the impact of a minute's delay on short-term costs. While this rate has been adjusted for inflation, it has not been updated to reflect the much longer and heavier freight trains that are now running on the network. Consequently, the impact of each delay minute is now greater. The freight operators provided evidence outlining this position in PR13, following work completed by consultants at LEK.

The other key change over the past 15 years are changes in the commodity mix being transported. 15 years ago coal represented by far the largest commodity transported by rail. Today coal has virtually disappeared from the rail network and intermodal and construction volumes make up around two-thirds of rail freight volumes. Unlike coal, which was often transported to power stations and added to a stockpile of coal, today's commodities being transported by rail are very time-sensitive. Intermodal containers are often transported with same-day delivery to customers on the import-leg, or booked onto a specific vessel on the export leg. Construction materials are transported to urban receiving terminals to discharge materials for immediate use on and around the site. Many of the receiving terminals have a small footprint and therefore the reliable operation of train services is fundamental to the efficient functioning of the sector. Biomass, which has replaced some previous coal traffic, is very different from coal from a time-sensitivity perspective as it cannot be stored like coal could be, making the reliable running of train services absolutely essential. These changes mean that the impact of delays to

train services downstream are now much greater than they were when this payment rate was initially calculated.

The changes above do support the need to reassess the payment rate to consider these new dynamics. However, before the freight operators can begin engaging with other parties to recalculate the rate we need to understand the future framework and basis for setting the payment rate. Currently the Network Rail payment is based on short-run costs of a delay minute to a freight operator. The changes in the time-sensitivity of the commodities being transported by rail and the impact that a delay minute has on downstream customers impacts the relative attractiveness of rail freight and therefore suggests the need to consider a different basis for calculating the payment rate, perhaps more like the current NR on TOC methodology. While short-run costs will remain an important consideration in the calculation, long-run revenue implications of delay minutes should also be considered.

Freightliner continues to work with the ORR, Network Rail and other freight operators on the proposal to update the payment rate through the Schedule 4 & 8 working group. It remains crucial that the industry agrees on the appropriate framework and specifically the basis of setting that payment rate, particularly in the context of the above changes in the freight market and considers contractual changes introduced by the rail reform agenda before work begins to update the evidence base.

Are there any other comments you would like to make?

n/a



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

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Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

GBRf believe that a schedule 4 type mechanism is essential to ensure that freight remains a viable option. A freight operator needs clear visibility of planned disruption and requires to be compensated when disruption occurs. The mechanism should incentivise the infrastructure operator to minimise significant disruption to users of that network.

As routes and key passenger operators become more integrated, it is essential that the correct incentives are in place to ensure fair access to the network, whilst understanding the need for growth and maintenance of the network. We do not want to end up with all disruptive work only being planned for nights/weekends, this would disproportionately affect freight operators more than passengers.

GBRf does not oppose the position of opting out of schedule 4. GBRf are unlikely to opt out of schedule 4 as it does offer some limited financial protection for planned disruption on the network.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

GBRf believe the schedule 8 regime to be an important tool to ensure both NR and FOC’s take seriously their performance obligations. It is a tool that organisations can use when creating business cases for significant investments in people, assets and technology.

It places a financial value on poor performance and these values can be used internally to strengthen business cases. Some examples of recent investments that have been strengthened by schedule 8 considerations are below:-

- Locomotive CCTV installation,
- New GBRf integrated planning system,
- Locomotive remote data download systems,
- Increased number of performance staff being employed.

GBRf would be open to ideas of incremental change to the schedule 8 regime if it led to a more efficient process and a reduction in any administrative processes. GBRf feel that this would not be feasible by Autumn 2022 and therefore not appropriate for any PR23 decision.

GBRf would not support any decisions that removes or changes the financial payment principles of schedule 8. These payments (and therefore costs of failure) are the reason that FOC’s spend so much time and resource on ensuring a right time railway. These principles are embedded in many customer and supplier contracts to incentivise their good performance.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

GBRf supports the ORR’s proposal to limit the number of changes to schedule 4 and schedule 8. Changes that are proposed/made should be in the interest of streamlining any inefficient processes and should not fundamentally change the principles of the regimes.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Proposal A – GBRf do not oppose this proposal.

Proposal B2 – GBRf are happy to support this proposal, GBRf would welcome more detail and any KPI's surrounding this proposal. GBRf are unsure at this stage what mechanisms would be available to ensure the freight industry is not adversely affected by any increase in planned possessions.

Proposal C – GBRf would still like this area to be looked into, the current category 3 process is a long and complicated process with some claims taking years to be processed. GBRf still believe there would be significant benefits to streamlining the process or working through some sort of enhanced rate (similar to the cancellation rates in SV&C).

Proposal D – GBRf are happy to support this process, but have similar concerns as those outlined in proposal B2. What would be the KPI's? What would be considered as a breach? What powers would the ORR have to reduce any breaches?

Proposal E – GBRf would still like this area to be considered and therefore agree with the proposal that NR should keep the idea under review. In terms of costs, GBRf believe that the costs need to be in place to ensure correct behaviours by the infrastructure suppliers.

Proposal F – GBRf supports the ORR's decision on "Minded not to take forward".

Proposal G – GBRf support the ORR's position but believe that time constraints could put this process in jeopardy for PR23.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Proposal A – GBRf supports the proposed position. Network rail are funded to deliver a reliable and punctual network, this funding needs to be reflected in any Network Rail benchmark.

Proposal B – GBRf supports the proposed position. The current process allows for investment decisions to be made, any movement to annual recalibration would move away from that and significantly increase administrative burden.

Proposal C – GBRf supports the proposed position.

Proposal D – GBRf supports the proposed position.

Proposal E – GBRf supports the proposed position. There are currently agreed methodologies for splitting out unidentified delay.

Proposal F - GBRf supports the proposed position.

Proposal G – GBRf support the ORR’s position but believe that time constraints could put this process in jeopardy for PR23.

Proposal H - GBRf supports the proposed position.

Are there any other comments you would like to make?

The schedule 4 and 8 regimes encourage good practice from FOCs, TOCs and infrastructure suppliers, the importance of these should not be diluted in any changes over the coming years.

The current methodologies (and levels of compensation) are fully integrated into contracts that GBRf hold with many of its customers and suppliers.

Consistent access to the network is key to freight operators being able to grow new markets in rail freight distribution, allowing the government to meet green agenda targets. Any monitoring of possession and late notice changes to possessions need to be backed up with strict measures and penalties to ensure the freight companies are not overly affected by any increases in disruption. GBRf fully understand the need for maintenance and upgrading works, the “Pain” of these works need to be shared by both the freight and passenger operators equally.



Response to ORR's technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Govia Thameslink Railway (GTR) broadly agrees with the principle of having the option to opt out of Schedule 4 in CP7. However, we believe the proposal needs further work, with a clearer understanding of how the new financial structure would work both under the existing financial arrangements with the Government (DfT) as the party taking revenue risk and any future one where GBR does so. We assume that this opt-out would also include the SPD arrangement. Also, the implications need to be understood on the removal of Schedule 4 for TOC's. Presently, Schedule 4 provides NR with economic signals as to the revenue impact of taking long possessions on key parts of the network over and above its direct costs of the engineering work itself. If Schedule 4 was removed, or distorted as a result of some TOCs having opted out, this may lead to the full railway-wide impact not being accounted for.

Each component should be considered separately to understand more fully how these will be funded in future, these being Revenue, EBM, and TMC.

EBM: (Bus Costs) Within any future remapping of revenue ownership it should be clear that bus costs resulting from NR/GTR engineering work (or anything else currently picked up in Schedule 4) should still be paid for by the owner of this work even if bus provision responsibility sits with the Franchise/Concession holder. It is also worth ensuring that the industry continues to understand the overall cost of replacement bus provision for engineering work as this may help inform possession arrangements (i.e. on 4-track railway). This future financial arrangement will require a broader discussion with the DfT and GBR.

TMC: (Train Mileage Costs) If train companies are no longer being compensated for lost revenue, and ownership sits with the infrastructure owner, then we agree there is no longer any need for this part of the regime. However, GTR acknowledges the ORR's current intention for this to be a complete all or nothing opt out, as opposed to being able to opt out of specific parts. We believe there would be potential benefit in maintaining the flexibility to only opt out of specific linked elements of Schedule 4 given that the full detail on the structure of Great British Rail is yet to be established. It would therefore also be helpful for TOCs to be able to make this decision for the start of any rail year within CP7.

If this is implemented, even only for some specific train operators, there must still be some form of incentive on Network Rail (GBR) to plan possessions efficiently and recognise the greater disruptive passenger impacts on particular lines of route (e.g. Brighton Mainline). While the use of concession style contracts will mean TOC's are not exposed to passenger revenue risk during engineering works, there would still be the element of incurred costs which would need some method of addressing.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

GTR supports the ORR position for the continuation of the Schedule 8 mechanism application between Network Rail/GBR and all other operators. We consider Schedule 8 to be a useful regime in that it has both financial benefits and acts as a driver for the production of accurate information. However, there is also the belief that Schedule 8 should exist in a suitably revamped format when GBR picks up most revenue risk. Without this, there may well be perverse implications from the passing of money to and from the same organisation (i.e. the current NR regime compensates revenue loss) for no obvious purpose as this would be part of the overall revenue risk. It should also be clearer how such a regime would work should a train company be picking up some revenue risk.

The continuation of the TOC regime also appears to be unnecessary as TOC performance will be incentivised by the Concession specifier and this is an opportunity to remove unnecessary overlap, simplify cost flows. This could easily be included in any future primary legislation setting up the new industry structure.

Schedule 8 does help NR currently understand the impact of poor infrastructure performance. With GBR holding most/all revenue risk in future this should now be felt directly but Schedule 8, backed by the latest research, can help to quantify performance benefits for business cases etc. We consider Schedule 8 to be a useful regime in that it has financial benefits and acts as a driver for the production of accurate information.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

GTR agrees with ORR's proposal that there should be a limit on the number of changes to Schedule 4 and 8 for CP7. This is due to both the likely imminent change in industry structure and the already apparent difficulties in recalibrating the regime for CP7 in a post-Covid world where we are yet to fully understand the future level of passenger demand. Given this uncertainty, we strongly agree with the principle of building in greater flexibility and agility to improve our ability to make both structural and further recalibration changes to Schedule 8 across CP7, and to minimise further administrative costs. This will help mitigate any unforeseen changes both in industry structure but also to adjust to the more settled level of passenger journeys and revenues.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Proposal A: GTR notes the ORR's proposal to introduce an opt out mechanism for Schedule 4 on a complete or partial basis and is largely in agreement with this option being available. However, it is not clear if SPD is part of any Schedule 4 opt-out mechanism but we assume it will be, when without the constraints of Schedule 4 compensation it might be most needed to prevent an excessive level of planned disruption

Proposal B: GTR Agree with Option B2

Proposal C: GTR is not entirely against a method or process being developed to aid in the compensation claims process that would work in conjunction with TOC & NR negotiation. Please see further comments on this below following Question 5.

Proposal D: In support of this.

Proposal E: The need and level of such a development is dependent on the future

level of opt-out from Schedule 4 but some further automation (even if not a bespoke new system) of particular parts of the calculation process would be beneficial and might be obtained at much less cost.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

No comment

Are there any other comments you would like to make?

At an industry meeting on the 22nd June 2022 attended by both TOC's and Network Rail representatives, it was suggested that some form of provision could be included into Schedule 4 to aid the resolution of Schedule 4 related Restriction of Use claims (primarily between TOC's and NR). This could take the form of outlining clear timeframes for the different stages of a claim. The intention of this would be to contractualise what should be expected from each party and at what time, and possibly even put in a "deadline" by which milestone in the process should be completed. The idea behind this is to add some additional structure to the claims process and to reduce the instances where claims remain ongoing for very long periods of time without any movement or resolution. This should be laid out in such a way as to aid in the process and not just create another unnecessary layer of "process", nor become a prohibitor in raising the claim in the first place, This provision should hold both TOC and NR accountable for their respective sides of the claim process.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

GA agrees in principle that operators should be able to opt out of Schedule 4 in CP7 to facilitate future industry reform. As stated in our original response to the September 2021 consultation we would also like to see a partial opt out facility which could potentially accommodate individual operators’ circumstances better. Industry should be mindful that once operators begin to opt out there needs to be other sufficiently robust mechanisms in place to incentivise positive industry behaviours in respect of possession planning activity and to provide transparency and clarity for industry and its stakeholders on the economic effects of engineering work and impact of emergency timetables on operators. The additional monitoring proposed by ORR, whilst undoubtedly useful, does not appear substantial enough in itself to offset weakened incentives and provide informed economic signals to inform future industry investment decisions if operators opt out of Schedule 4 en masse. Further details on this are required to assess future impacts of this proposal to enable

industry to make fully informed investment decisions in a post-Schedule 4 framework.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

Greater Anglia supports ORR’s position. With remaining uncertainty over future industry structure, we cannot afford to weaken current performance incentives, regardless of perceived weaknesses in the regime, before understanding future alternative proposals, their compliance with any legal requirements and their suitability for alignment with future industry performance aspirations.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Greater Anglia agrees with ORR’s proposal to limit the number of changes to Schedules 4 and 8. We believe this is the most pragmatic approach at this point in time.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Greater Anglia broadly agrees with ORR’s proposals in chapter 2 however we are disappointed to note the ORR does not intend to develop further proposals C1 and/or C2 further. Behaviours around settlement of claims remains a significant area of contention between access parties and a barrier to closer working. We note that since publication of ORR’s preferred options in April, Network Rail has made initial proposals to operators via Rail Partners in respect of this and we hope that ORR will give further consideration to proposals in this area as part of PR23.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Greater Anglia supports ORR's preferred approach in taking only Option 5 forward. We will continue to engage with and support the work of the Schedule 8 passenger recalibration working group.

Are there any other comments you would like to make?



Response to ORR's technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

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Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

HEOC are not supportive of this position as it is not clear how, if operators opt out of Schedule 4, this will affect the current NR incentive to ensure that possessions are planned efficiently. There is a risk that as they are no longer required to compensate operators for any planning inefficiency and late notice changes, there will be less incentive to follow this through. It is particularly unclear what effect the changes envisioned by the creation of GBR will have. Therefore, it is HEOC's view that any change to Schedule 4 should not take place until the transition to GBR has been completed and the industry has a better view of the likely consequences of this change.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

HEOC has no objection to the concept of reviewing and adopting alternative arrangements should future legislation permit the setting aside of Schedule 8 financial payments. However, the scope of any future change must be clearly set out in a timely manner so that impacts can be fully assessed.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

HEOC has no objection to the proposed limit to the number of changes to SCH4 and SCH8

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

HEOC agrees with the overall approach to take forward limited proposals related to Schedule 4. HEOCs comments on each of the 4 preferred options are as follows:

1. HEOC do not agree with this proposal for the reasons set out in the answer to Question 1;
2. HEOC agrees with the proposal to increase incentives on Network Rail to notify possessions early once the ‘informed traveller’ notification threshold (T-22) has been passed, by monitoring possessions notification on a more granular basis. However, for the avoidance of doubt, HEOC would not support an additional threshold / discount being added between the T-22 and the actual possession.
3. HEOC agrees with the proposal to monitor and report on late possession changes and cancellations on a more granular basis.
4. HEOC is neutral on the proposal to review and, if appropriate, update freight compensation rates. It is HEOCs view that the move towards more granular data in Proposals 2&3 will allow for greater transparency and will enable the ORR to hold NR / GBR accountable for efficient possession planning irrespective of the eventual decision around opting out of SCH4.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

HEOC agree with the approach to only take forward one of the initial proposals.
HEOC has no specific comment on that proposal.

Are there any other comments you would like to make?

N/A



Response to ORR's technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

We acknowledge that there could be benefits from opting in or out of Schedule 4 depending on the precise circumstances of the operator.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

No specific comment.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

No specific comment.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

No specific comment.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

No specific comment.

Are there any other comments you would like to make?

No specific comment.



Caitlin Scarlett

Will Godfrey
Director of Economics, Finance and Markets
Office of Rail and Road
1 July 2022

Dear Will

Network Rail and GBRTT's response to ORR's preferred options consultation on the PR23 review of the Schedule 4 possessions regime and the Schedule 8 train performance regime

1. This letter sets out Network Rail and the Great British Railways Transition Team's (GBRTT) response to ORR's technical consultation "PR23 – Review of Schedule 4 possessions regime and Schedule 8 performance regime: preferred options", issued on 14 April 2022. The main body of this letter summarises the key points of Network Rail's response, alongside a high-level overview of our views on the more detailed preferred options proposed by ORR. Appendix A to this letter contains detailed responses and supporting evidence for each of ORR's proposed decisions. Appendix B sets out information on the recalibration process, timings and PR23 specific issues. We also intend to share with ORR separately details of a number of proposed changes to the Track Access Contract (TAC) for ORR's consideration. We will share this document with ORR shortly.
2. The remainder of this letter is structured as follows:
 - a) Summary
 - b) Schedule 4: High-level Network Rail response
 - c) Schedule 8: High-level Network Rail response
 - d) Appendix A – Network Rail's response to ORR's detailed consultation questions
 - e) Appendix B – Recalibrating Schedule 8: Overall process and timings based on previous reviews and highlighting PR23 specific issues

Summary

3. The performance (Schedule 8) and possessions (Schedule 4) regimes provide operators with the necessary protections from revenue losses experienced as a result of poor performance and an inability to run trains during possessions, respectively. Schedule 8 also provides a financial reward to Network Rail when it performs better than expected, and Schedule 4 incentivises Network Rail to take efficient possessions. These regimes have been particularly important in times where operators faced the full revenue risks and rewards of their operations.

4. Whilst the regimes may have been necessary at their inception, we must now recognise that things have moved on. A large majority of operators are no longer exposed to revenue risks through their National Rail Contracts (NRCs), and it is likely to remain this way for the foreseeable future with the introduction of concession style Passenger Services Contracts (PSCs). From CP7 onwards these contracted (NRC/PSC) operators will have performance incentives and possessions protections through their contracts with Great British Railways (GBR), and therefore no longer require the regulated regimes as determined by ORR. This has been acknowledged in ORR's consultation, and ORR has been supportive of this by allowing operators to opt-out of Schedule 4 in CP7. However, we are disappointed that ORR expects Schedule 8 to apply to all operators in CP7. We discuss this in more detail throughout our response. In addition, once the Infrastructure Manager functions become part of GBR, GBR will directly experience the revenue loss/gain from poor/good performance and possessions (for most if not all of its contracted operations), so a regime to incentivise the Infrastructure Manager in this way is no longer necessary.
5. ORR is also minded not to take forward a number of its proposals to reform Schedule 8. We were supportive of many of these proposals such as; annual updates to benchmarks, sharing allocation of delays and exposing train operators to the actual TOC-on-TOC delays that they cause. These reforms sought to incentivise collaborative working and make the regime more flexible as the industry recovers from the impacts of Covid-19, so we are disappointed to see that such reforms are not being implemented. On Schedule 4, ORR is minded to only pursue a small number of proportionate changes to improve the regime. We are broadly supportive of this and discuss this in more detail in the summary below and the appendices that follow.

Schedule 4: High-level Network Rail response

Schedule 4 opt-out mechanism:

6. ORR has expressed that it is minded to allow operators to opt-out of Schedule 4 in CP7 and that the decision to opt-out for the entirety of the control period must be taken by operators as part of the periodic review process i.e. before the start of CP7. We agree with ORR's proposed decision as this will allow contracted operators to focus on the incentives within their contracts with GBR. It also removes them from a regime which focusses on revenue risk, which such operators will no longer face. We also note that Schedule 4 covers cost compensation for unplanned disruption. We welcome a full opt-out which includes exemption from the cost compensation aspect of the regime, as GBR's preferred option is to set out its own unplanned disruption cost compensation mechanisms in the NRCs, and later the PSCs where TOCs bear relevant costs (or, alternatively, pay for the costs of e.g. replacement buses directly). We agree with ORR's proposal not to make opt-outs flexible and/or partial, notwithstanding the circumstances in which a mid-control period opt-in or out might be acceptable, for example if there are changes in the way that GBR contracts with its operators, or if a new operator is contracted (which we agree are valid exceptions to the rule). We were concerned that such an arrangement could permit operators to arbitrage the regime by only paying an Access Charge Supplement (ACS) in years where they expect a net benefit. We were also concerned about the anticipated additional costs of creating an ACS model to manage flexible opt-outs, at a time where we anticipate that many operators will choose to fully opt out of the regime in any case due to their contractual arrangements.
7. Whilst we strongly agree with ORR's proposed decision to allow Schedule 4 opt-outs in CP7, it would be helpful for ORR to set out in its conclusions:
 - The timings of an opt-out decision (i.e. at what stage in the periodic review process must an operator choose to opt-out of the regime, recognising that this is likely to be dependent on when Network Rail will produce a draft ACS for each operator); and



- If there are exceptional circumstances where this decision can be reversed, for example if there are delays to the industry reform programme which make future possession compensation arrangements unclear
8. We agree that some operators, such as freight and open access, are likely to require the necessary protections that Schedule 4 provides, so it is useful to retain the regime for freight operators, and allow open access operators the opportunity to opt in if they wish to do so. It would also be helpful for ORR to set out the process for open access to opt in or out of Schedule 4 (i.e. will the operator be automatically opted in and take a decision to opt out or vice versa), as this is not something which has been explored in previous periodic reviews but may be of interest for CP7.
9. Other reforms proposed by ORR:
- ORR is **minded to increase its monitoring of possessions** and not to take forward the proposal to add an additional Schedule 4 Notification Discount Factor (NDF). We agree with this and will work closely with ORR over the coming months to understand its reporting requirements and aid with appropriate interpretations of the results.
 - ORR is **minded not to take forward its proposal to improve the claims process** for Type 2 and 3 possessions either through a defined methodology or a set of rules/set process. **We somewhat agree** with this decision, however we do think that there are a small number of 'quick wins' in this area which could improve the existing process for NR and operators. We discuss this at a high-level in appendix A and will provide more detail to ORR separately, alongside other contractual changes that we believe would be beneficial to take forward for CP7.
 - ORR is **minded not to take forward its proposal to create a calculator** which estimates the expected Schedule 4 costs of a possession. **We agree** with this decision and have provided evidence which further supports ORR's decision in appendix A below.
 - ORR is **minded not to introduce a new methodology to calculate an ACS for Open Access (OA) operators** which would exclude the expected costs of type 3 possessions. **We agree** with ORR's decision and provided evidence to support this in response to ORR's initial consultation.
 - ORR is **minded to fully review the Schedule 4 payment rates for freight operators**. **We agree** with ORR's decision and will support the recalibration pending freight operators providing the necessary supporting evidence. However, any increase in the payment rates will need to be funded.

Updates to timetabling process

10. Network Rail is seeking to improve the way in which timetabling works in the future to allow a passenger and freight end-user focussed approach that can adapt to industry changes more quickly. Updates to the timetabling process are being led by Network Rail, in agreement with the industry. We are engaging with ORR's Access Team on this change.
11. Whilst the details of such changes are still being agreed, it is likely that timetabling processes will be different in CP7 with three timetables a year, replacing the existing bi-annual timetabling process. This change will require updates to the Network Code. This will mean that the existing Schedule 4 Notification Discount Factors (NDFs), which are based on the current bi-annual timetable process, will therefore no longer be appropriate. We raised this in response to ORR's initial consultation on Schedule 4, and we encourage ORR to continue to work with Network Rail as this work evolves, and the need for changes to the Schedule 4 NDFs become clearer.

Schedule 8: High-level Network Rail response

Schedule 8 opt-out mechanism

12. During CP7, GBR will come into effect and will take over as the franchising authority, replacing DfT's role in this regard. GBR operators, and the developing PSC model is likely to see limited (or no) revenue risk for at least a significant portion of operators. Operators on NRCs will not be exposed to revenue risk. As ORR's Schedule 8 regime aims to keep train operators financially neutral to the revenue impacts of performance, Schedule 8 is no longer a necessary protection mechanism for NRCs and is likely to be inappropriate for future PSCs. This is why we requested that ORR consider allowing an opt-out mechanism for Schedule 8. We note that, even with an opt-out mechanism, in future the framework would still exist for these operators to opt-in, if they later became exposed to revenue risk through their contracts with GBR. We do however agree that some operators, such as freight and open access, are likely to require the necessary protections that Schedule 8 provides, so it is useful to retain the regime for these operators.
13. In our response to ORR's initial consultation we provided the arguments for an opt-out mechanism and provided our own legal advice as to how such a mechanism may be feasible under existing legislation. We considered, and still consider, that the legislation allows for Schedule 8 payment rates to reflect the actual revenue loss to the operator, i.e. setting Schedule 8 payment rates to zero (where contracted operators no longer face any revenue risk). Since then we have been working closely with the Department for Transport (DfT) to try to find ways for ORR to allow such an opt-out mechanism for GBR contracted operators.
14. We disagree with ORR's latest opinion that Schedule 8 must continue for all operators in CP7 (if legislative change is not achieved). In fact, we are of the view that alternative interpretations of the existing legislation are available, and that it could be possible to allow operators to opt-out of the regime in CP7 without legislative change. We discuss this in more detail in appendix A below. Given ORR's interpretation, we have serious concerns over the ability of GBR to achieve its desired arrangements and aims if there is no mechanism to neutralise Schedule 8 for GBR contracted operators as a result of ORR's decision. We also have concerns over the consistency of ORR's assumptions. For example, ORR has made it clear that it will not allow Schedule 8 opt-outs under the existing legislation, however there are instances where ORR highlights that making changes to the regime would be disproportionate as there is an assumption that the regimes will apply to fewer operators in future. These two positions are clearly in conflict.
15. We have two main concerns with ORR's position on Schedule 8 opt-outs:
 - The provisions of NRCs may be in breach of the regulations, as ORR perceives them, as soon as those contracts are transferred to GBR. This is because ORR considers that Schedule 8 cannot be 'neutralised' for operators on NRCs or PSCs through back-to-back arrangements (as DfT does now with its operators), once GBR is formed. Therefore, in order for NRCs to be transferred to GBR, GBR would not be able to neutralise Schedule 8 for these operators, rendering the NRCs unviable since they are non-revenue risk contracts. The position remains the same for future PSCs as these are also likely to be non-revenue risk or limited-risk contracts.
 - Furthermore, GBR will want to establish a new performance scheme for its operators through PSCs. If Schedule 8 must continue to apply, this could create a direct conflict with GBR's desired performance scheme, limiting the design options for future PSC contracts and potentially prohibiting a regime that encourages deeper collaboration and whole industry performance outcomes. This is something that the Williams-Shapps Plan outlines as a key priority for the future success of the industry.



16. Given the risks associated with the continuation of Schedule 8 for GBR operators, we continue to work with colleagues in GBRTT and DfT to push forward legislative change which will exempt GBR operators from Schedule 8's financial flows. In our view, this is an important change to primary legislation which is necessary to take account of the new industry structure (an area highlighted in the DfT's Bill Consultation published on 9 June 2022). Should this be included in the planned Future of Transport Bill, we anticipate that this legislation will come into force prior to the start of CP7 and once GBR is fully operational. This work, as we understand, is progressing positively and could mitigate many of the concerns outlined in this response.
17. Given the importance of this change, we ask that ORR sets out in its autumn conclusions:
- How ORR will take account of any legislative change prior to the start of CP7;
 - How ORR will take account of new legislation if it is passed during CP7;
 - The overall process for enabling exempt operators to no longer face the financial flows associated with the Schedule 8 regime. In our view this is best achieved by setting Schedule 8 payment rates to zero for these operators; and
 - Any reopening/recalibration provisions that ORR may consider in the event that legislation is not passed in time for the start of CP7 (where it is clear that legislative change will enable Schedule 8 opt-outs in the near future).
18. Other reforms proposed by ORR (notwithstanding the arguments around Schedule 8 opt-outs for some operators in CP7):
- ORR is **minded not to take a more flexible approach to setting benchmarks** e.g. through annual updates, rolling benchmarks and no longer basing the NR benchmark on performance trajectories. **We strongly disagree** with ORR's proposed decision as it will be incredibly difficult to set benchmarks for the entirety of the control period with historic data which is marred by the impacts of Covid-19 on the railway. In fact, any attempt to do so will likely lead to wholly unrepresentative parameters for CP7. We would therefore like to work closely with ORR and industry to determine a more suitable approach over the coming months, preferably via annual updates, but recognising that a one-off mid Control Period recalibration would be preferable to a fixed 5-year approach (something which we note ORR has considered in past discussions). In appendix B we set out further discussion on the recalibration process and timings, including arguments supporting an alternative approach to counter the impacts of Covid-19 on the Schedule 8 parameters.
 - ORR is **minded not to increase the sharing of allocation of some types of delays** within Schedule 8. **We disagree** with ORR's proposed decision. This proposal could have led to improved collaboration with operators and more accurate allocation of delays on the basis of both cause and ability to recover. This is something which the Williams-Shapps plan set out as a priority for reforming the railway, which unambiguously establishes the need to reduce the 'blame culture' associated with current delay attribution.
 - ORR is **minded not to take forward its proposals to incentivise a reduction in TOC-on-TOC delays** through annual updates to the TOC-on-Self to TOC-on-TOC relationship. **We disagree** with ORR's decision, particularly as this would afford the opportunity for the regime to evolve and reflect the latest information about TOC-on-TOC delays as the industry recovers from the impacts of the pandemic.



- ORR is **minded not to make payment rates ‘full and final’** and to therefore remove the Sustained Planned Performance (SPP) mechanism. **We disagree** as fully reflective payment rates aid decision making and improve outcomes for passengers where they are provided with adequate compensation for the delays that they experience. Furthermore, SPP causes rancour between NR and operators and often claims can take months if not years to settle.
- ORR is **minded to fully review the Schedule 8 payment rates for freight** operators. **We agree** with ORR’s decision and will support the recalibration pending freight operators providing the necessary supporting evidence.
- ORR is **minded not to review freight incident caps** to check for appropriateness. **We disagree** with ORR’s proposed decision and have already provided evidence to support the need for review, particularly for larger FOCs where the cap may no longer be appropriate.
- ORR is **minded not to change the regime for charter** operators. **We agree** with this decision but would like to work with ORR to make some small, targeted improvements to the regime where necessary in the interest of NR and charter operators collectively. We will discuss these proposed improvements in our list of changes to the Track Access Contracts, which we will share separately.

Reform of Delay Attribution

19. Proper understanding of the causes of delay is important both now, and will be in the future under GBR. Delay Attribution will continue to be applicable to both Network Rail and all operators in the future. Therefore it is paramount that the industry gets Delay Attribution ‘right’ to inform appropriate decision making and incentives.
20. We are working separately with ORR on wider reform to the delay attribution process and have recently set out the early stages of our plan to do so in response to ORR’s letter dated 29 April 2022.
21. We would encourage ORR to support the reform of Delay Attribution through the existing channels, and look forward to achieving a deeper understanding of delays as part of the wider package of railway reforms.

Next steps

22. Generally, we are supportive of the proposed decisions and context of the review on Schedule 4. However, we have concerns around ORR’s overall approach to Schedule 8 and would like to work with ORR and DfT jointly to resolve these issues over the coming months. We look forward to working together on this in the near future.
23. Once ORR has absorbed the feedback from its consultation, we believe that some sensible next steps may be as follows:
 - i. For NR and ORR to work closely together with DfT on enabling legislative change to allow GBR operators to opt-out of Schedule 8, by setting the payment rates to zero, in CP7.
 - ii. We would like ORR to set out how it will manage any legislative change impacting on Schedule 8.
 - iii. For NR and ORR to work closely with industry on the various recalibration issues highlighted above and in appendix B, with ORR setting out its overall plan to recalibrate both regimes within the time available.
 - iv. For ORR to provide a briefing document to freight operators, to allow them to start their work to calculate new payment rates in their Schedule 4 & 8 regimes.



* * *

If you would like to discuss the content of this letter in more detail, please contact myself or my colleague Rachel Grashion ([REDACTED]).

Yours sincerely

Caitlin Scarlett

Appendix A – Network Rail’s response to ORR’s detailed consultation questions

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

- 1.1 We agree with ORR’s decision. As noted in the covering letter and our response to ORR’s initial consultation, contracted operators (i.e. those on NRCs/PSCs) will no longer face revenue risk, which is what Schedule 4 seeks to compensate operators for (as well as some costs associated with possessions). We understand that Schedule 4, if it were to still apply to contracted operators, would be treated as a passthrough mechanism as a result - i.e. Schedule 4 would become a money-go-round between GBR and the operators that it procures, again making the regime redundant and creating an additional and unnecessary administrative burden. We also note that Schedule 4 covers cost compensation for unplanned disruption. We welcome a full opt-out which includes exemption from the cost compensation aspect of the regime, as GBR’s preferred option is to set out its own unplanned disruption cost compensation mechanisms in the NRCs, and later the PSCs (or, alternatively, pay for the costs of e.g. replacement buses directly).
- 1.2 In terms of the incentives that Schedule 4 creates, as GBR becomes the contracting authority it will hold all of the revenue risk associated with taking possessions for its contracted operators. As a result it will be well equipped to make appropriate trade-offs between disruptive possessions and revenue impacts (in the interest of passengers). Given GBR will be fully exposed to all of the revenue and cost implications associated with possessions, GBR will have better information regarding this than Schedule 4 alone creates and will therefore have a stronger and more accurate incentive to plan possessions optimally. The financial incentives to manage the disruption to external operators will remain through the Schedule 4 regime which incentivises early notification and minimising disruption. These incentives may also become relevant to GBR contracted operators if revenue risk is reintroduced in the future.
- 1.3 We strongly agree with ORR’s decision to allow opt-outs for the entirety of the control period only, with the decision to be taken by operators before CP7 commences. We also agree with the exceptions which allow a mid-control period opt-out as this will enable some small but necessary flexibility where operator ownership changes hands, where there is a new operator, or where the nature of the operators’ contractual arrangements change substantially. We also welcome ORR’s proposal not to allow flexible opt-outs for the many reasons cited in our previous response. This included some of the difficulties in creating an ACS model that would be sophisticated enough to enable flexible and partial opt-out options, and the possibility that operators could arbitrage the regime.
- 1.4 We would like to work closely with ORR to enable opt-outs via contractual mechanisms for CP7. We would also like to work with ORR to understand how to take forward the recalibration of the regime’s parameters given the opt-out mechanism, and to create a timeline for when the ACS offer will be made available to operators both in provisional and final form.



Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

- 2.1 As discussed in our covering letter, we strongly disagree with ORR’s position that Schedule 8 must continue to apply to all operators in CP7. Around the start of CP7, GBR will come into effect and will take over as the franchising authority, alongside being the Infrastructure Manager (IM). GBR operators, through NRCs/PSCs, are currently not exposed to revenue risk, nor are they likely to be in future. As ORR’s Schedule 8 regime aims to keep train operators financially neutral to the revenue impacts of performance, Schedule 8 is no longer a necessary protection mechanism for them, and in fact, has effectively already been ‘switched off’ via arrangements between DfT and each NRC TOC.
- 2.2 In light of the current situation (where Schedule 8 is effectively turned off through back-to-back arrangements between operators and DfT) and GBR’s desired future arrangements, we requested, alongside DfT, that ORR consider the possibility of operators being able to ‘opt-out’ of Schedule 8, or to remove the financial flows (by setting payment rates to zero). This was something that we believed to be possible (in contrast to ORR’s view) under the existing legislation which states that a performance regime ‘may’ contain financial payments (e.g. penalties/compensation/bonuses)¹, and that the regime must apply in a non-discriminatory manner. It could be interpreted as being non-discriminatory if the payments were set to zero for all operators of a similar nature, i.e. for those which will be contracted by GBR. Furthermore, as NRC operators (and future PSC operators) already have a performance regime to incentivise performance improvements within their contracts (which will be with GBR in CP7), it could be argued that this regime meets the requirement to have a performance regime between the IM and the operator. Additionally, as GBR will hold the revenue risks associated with the performance that it delivers to the TOCs that it contracts, and indeed the revenue risks of those operators delivering poor performance to others, it could be argued that this meets the requirement for the IM to also have an incentive regime in place.
- 2.3 It is therefore our view that the current legislation could be interpreted differently, and that alternative interpretations could allow Schedule 8 opt-outs via setting payment rates to zero.
- 2.4 We therefore disagree with ORR’s latest opinion that Schedule 8 must continue for all operators in CP7 in the absence of legislative change and have profound concerns over the ability of GBR to achieve its desired arrangements and aims if there is no mechanism to neutralise Schedule 8 for GBR contracted operators as a result of ORR’s decision. ORR’s decision not only undermines GBR’s desired operating model, but it sends out confused messaging to operators, who will rightly be concerned over their ability to face revenue risk in the future and will question whether their operation will be viable under two conflicting performance regimes whose incentive effects are at loggerheads with one another.

¹ The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, Paragraph 16(2)



- 2.5 There is also the question of how NRC and future PSC contracts will be managed in the absence of legislative change, for example, if ORR confirms its current position, it is unlikely to be possible to transfer the contracts from DfT to GBR, unless there is a desire to re-introduce revenue risk. This undermines the entire operating model of GBR, and the guiding mind principle as set out in The Williams-Shapps plan. Without such reform there is significant risk of seeing the industry's progress come to a halt, and the perceived future benefits of a reformed railway not being realised. This goes against the best interest of the taxpayer, and most importantly passengers and freight users who desire an efficient, high performing railway.
- 2.6 ORR has suggested that a critical remedy would be to change the provisions within current legislation, namely 'The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016'. In light of this, we have been working closely with colleagues in GBRTT and DfT to propose a number of small but essential changes to the regulations to allow Schedule 8 opt-outs for GBR operators. This change envisages a situation where the Schedule 8 payment rates can be set to zero for GBR contracted operators, as this provides a simple and flexible solution. We note that any such opt-outs need not be permanent. If there was a future desire to reintroduce revenue risk into operators' contracts with GBR, the Schedule 8 framework will still exist and could be 'switched back on' for these operators, by reinstating full (i.e. non-zero) payment rates, if that was deemed to be necessary.
- 2.7 As this work evolves, we would strongly encourage ORR to work closely with us to understand and enable the necessary changes as envisaged by the legislation, by setting payment rates to zero. We also ask that ORR sets out how any changes would be implemented either prior to or during CP7, depending on when the legislation change takes effect. We would also like to work with ORR to understand alternative provisions in the event of delays to the legislation, such that the NRCs can be handed over to GBR without delay and that the Schedule 8 regime can be reopened and recalibrated consistently with any changes to the legislation.

[Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?](#)

- 3.1 As discussed in our covering letter, we agree with most of ORR's proposals on Schedule 4 and agree that a limited approach is proportionate given the opportunity for operators to opt-out of the regime. We disagree with ORR's limited approach to changes to the Schedule 8 regime, particularly as ORR's initial proposals were in support of a more flexible approach to setting parameters, which is critical as the industry recovers from the impacts of Covid-19 on the railway. ORR's initial proposals were supportive of collaborative working and delivering whole industry outcomes, so again it is disappointing to see that ORR does not propose to pursue such reforms further. We discuss our views on this in more detail in our response to the Schedule 8 consultation questions.

Schedule 4

[Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?](#)

- 4.1 We broadly agree with the approach proposed by ORR in Chapter 2 of its consultation. Below we discuss in more detail our views on each of ORR's proposals A to G with supporting evidence where necessary.

[Proposal A: To introduce an opt-out mechanism to Schedule 4, whereby train operators could completely or partially opt out of Schedule 4](#)



4.2 We agree with the approach proposed by ORR, especially ORR's decision to not allow partial opt-outs of Schedule 4. Please see our answer to question 1 for our views on this proposal.

Proposals B and D: To monitor possessions notification and late possession changes and cancellations on a more granular basis

4.3 We broadly agree with the proposal to monitor possessions notifications and late possession changes and cancellations on a more granular basis as we recognise ORR's position in view of the expectation for some operators to opt-out of Schedule 4.

4.4 To ensure we can provide the most appropriate information to ORR for monitoring of possessions, we first need to be clear in our understanding of the information ORR requires and the inferences that will be drawn from that information. We would like to work with ORR to better understand its specific requirements of monitoring before we progress this further.

4.5 Our view is that this proposal could be taken forward outside of the Periodic Review process, since it is not in itself a change to the Schedule 4 framework. Instead, it is more a monitoring and reporting effort which may help to understand any impact which may be seen following implementation of other proposals within this consultation.

4.6 Of the information ORR proposes that Network Rail shares, some is already produced by our National Access Planning team and is shared with ORR on a periodic basis. Therefore, we anticipate that this proposal is best taken forward through this existing set up to avoid duplication.

4.7 **Error! Reference source not found.** summarises the information currently produced and shows whether it is already shared with ORR. Where information is not currently produced or shared, notes are provided to indicate Network Rail's view on its ability to share this information in future.



Table 1: A summary of the information ORR is proposing Network Rail provides, the current availability of that information and the predicted ability to produce and share additional information in future. *Confirmed Period Possession Plan.

ORR proposal		Does NR already produce this?	Detail	Already shared with ORR?	Can this be produced/shared?	Detail
<i>Additional monitoring to mitigate the impacts of removing financial incentives from some operators</i>	ORR proposes that Network Rail collects information on the number of planned possessions to look for indications for a trend change in number of possessions taken by Network Rail.	✓	The total number of possessions at the regional level is recorded and reported periodically. The report details changes to disruptive access which have been made post CPPP*. Changes are broken down by possession type: new, extended, cancelled, or eased.	✓	✓	Already shared periodically with ORR
	ORR proposes that Network Rail collects information on the length of planned possessions to look for indications for a change in average length of possessions taken by Network Rail.	✗	Not currently recorded. However the additional effort required to set up a new report for sharing is considered feasible.	✗	✓	Not currently available to share. Considered to be achievable, to be explored.
<i>Monitor and report on possessions notification and on late possession changes and cancellations on a more granular basis</i>	ORR proposes that NR records the specific date of first notification and then dates and reasoning for any subsequent cancellations or changes to possessions.	✗	Currently do not record the exact date and time of possessions notifications. It is considered feasible to explore focussing on the late notice changes post-CPPP. Further work is required to ensure full feasibility.	✗	?	Not currently available to share. Based on the data currently held, we expect it possible to record changes to the number of weeks out from the possession, but will need to conduct further work.



- 4.8 Network Rail's view is that reporting on changes and cancellations to possessions prior to the CPPP (which is created 26 weeks prior to the possession taking place) would be burdensome and would unlikely bring additional benefit. The reason for this is that the CPPP is the point at which the possessions plan is fixed; prior to this date lots of amendments are made following discussions and agreement between Network Rail and affected operators. It is also after the CPPP that any amendments to the access plans may become difficult for the operators to incorporate into their plans. Therefore, we believe that it would add more value to report on changes to possessions at this later (post CPPP) stage.
- 4.9 The length of planned possessions is not currently recorded or reported, however this is something we are willing to explore. It will require additional effort to create a new report for sharing with ORR and would take a number of days to set up, but if feasible this should be something that we can create and share with ORR to aid its reporting. We would also like to work closely with ORR to understand how the results of possessions length monitoring will be used. For example, whether an average increase in possession length would be deemed to be negative, or will ORR consider the wider strategies and plans agreed between Network Rail and operators with regards to possession length? Given the interaction between possession length and agreed strategy, we would encourage ORR to also report on disputed possessions (something which we already capture) as this measure is much more indicative of tension with regards to possession length.
- 4.10 With respect to the more granular reporting of notification and late changes/cancellations of possessions, though we do not currently report on precise timings of possession notifications this is something that we are open to exploring with a focus on late notice changes post -CPPP. We have reviewed the data that is currently held and anticipate that it should be possible to begin recording the number of weeks out that changes or cancellations have been made to possessions. We would find it beneficial to work with ORR to understand whether this level of granularity would suffice.
- 4.11 Once a possessions monitoring framework has been established, we would like to work alongside ORR to help with the interpretation of the results to ensure that the reasons for any late change notifications and/or cancellations are recognised. This will be integral to the process as some late changes are agreed with operators directly in the interest of passengers and freight users, hence it will be important to capture such details as part of the reporting process to ensure accurate conclusions are drawn. Further to this, we ask that ORR sets out how they will use the data provided, what the trigger points will be based on the results, and the kind of questions and/or actions that ORR plan to ask and/or take as a result of their findings. Understanding this is critical to Network Rail as we will need to ensure that our routes and regions are geared up to assist ORR in its enquiries, and work alongside ORR to take appropriate action where required.

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

- 4.12 We agree that it may be disproportionate to do a substantial amount of work in this area given the likelihood that many operators will choose to opt out of the Schedule 4 regime. However, we believe that the long-term benefits of developing a structured process for settling compensation claims would justify a few light-touch changes to the current process, particularly as we expect the Schedule 4 regime to remain in place for a number of operators post-reform.

4.13 Therefore, we propose that ORR considers a small number of minor contractual changes to improve the process by making it more proactive and the timescales more well defined, which we expect would ultimately make the process less rancorous and costly. Below is a short list of proposed contractual changes intended to streamline some targeted areas of the process. We will provide further details on the issues identified within the current process and further explanation of the proposed contractual changes separately, alongside other contractual changes that we believe would be beneficial to take forward for CP7.

- Specify timescales for substantiating a claim, with a (very high-level) minimum standard around the quality of supporting evidence and a much earlier resolution date than the default statutory cut-off.
- Specify timescales for TOCs to share revenue loss information relevant to any claim.
- Further promote upfront compensation agreements.

4.14 We share ORR's aspiration to work towards a more structured process/methodology for settling compensation claims for lengthy possessions and periods of sustained planned disruption, and recognise the concerns raised around the potential complexity in a change of process at this time. Nevertheless, we are optimistic that these minor contractual changes need not be overly complex or disproportionate and will attain measurable improvements in the long run. We are keen to work collaboratively with the industry and ORR to support these changes and provide reassurance that they are manageable and proportionate, and plan to do so through the ongoing workstream which covers changes to the contractual framework for CP7.

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

4.15 As part of its initial consultation, ORR highlighted that it would be helpful if Network Rail could create a Schedule 4 calculator tool which could be used by TOCs to obtain an estimate of the Schedule 4 formulaic compensation receivable (if affected) or payable (if commissioning works) for a given possession. ORR considered that this tool would be helpful to Network Rail's infrastructure project planners as it potentially could have given them an estimate of the Schedule 4 costs under a range of different possession strategies. ORR suggested that this would be particularly useful in instances where it is the operator that sponsors works, as it is currently quite difficult for them to estimate the resulting Schedule 4 cost.

4.16 We agree with ORR's decision not to pursue this further. We have previously provided evidence to ORR as to why the introduction of a calculator tool would be problematic and the costs disproportionate to the benefits. We provide this evidence below for reference.

Issues with creating a Schedule 4 calculator tool:

4.17 Schedule 4 costs are calculated based on differences between the planned and amended timetables. Unfortunately, these differences are not knowable at the possessions planning development stage (typically around 2 years prior to the actual possession) as the applicable amended timetable is only available at TW-12 i.e. 12 weeks before the possession is due to take place. Therefore, it is incredibly difficult, if not impossible, to produce an accurate estimate of the Schedule 4 cost of a possession until this late stage.

4.18 Given the late stage at which an accurate estimate can be provided, any tool which does this is unlikely to be useful for the intended purpose as:

- **The possession will already have been agreed** by this point. While the information from the tool may be useful for TOCs for accounting purposes, the tool will not be able to provide TOCs with any useful financial information at the point when they need to make decisions about whether to accept/reject a possession or to commission work.



- Network Rail's infrastructure project planners (and TOCs where they are commissioning works) **would require an estimate much sooner** in the planning process, to be able to use this to inform their possession strategy

4.19 To produce an estimate at an earlier stage than TW-12 would be incredibly resource-intensive. It would require a timetabling expert to make a judgement about the timetable that might be in place to facilitate the work being undertaken, and then comparing this estimate to the planned timetable to estimate Schedule 4 costs. This would need to be done for each possession on an individual basis, and therefore would require considerable additional work to gather the inputs before being able to use a calculator. It is also highly unlikely that the timetabling expert would be able to accurately predict the amended timetable that would be in place for the possession. Many different aspects will impact on the actual amended timetable which are not possible to predict, not least it depends on the TOC's reaction to the possession and their ability to use diversionary routes etc.

4.20 A ready reckoner tool would also suffer with many other issues, other than the information being provided too late. We have explained these other issues below:

- It could **only include formulaic compensation**, and not any claims-based compensation. Whilst this is the only compensation available for shorter (Type 1) possessions, the calculator would not be able to predict claims-based compensation for the bigger and longer possessions with any degree of accuracy. Arguably, it is these possessions for which an accurate assessment of Schedule 4 costs would be the most useful.
- It is **impossible to predict the TOC's response to a possession plan** which will consider several issues (driver availability, competence on diversionary routes, rolling stock, ECS (Empty Coaching Stock) movements, stabling requirements etc). Without knowing this response, it is impossible for Network Rail to estimate the impact of this on Schedule 4 costs.
- Given the likelihood of a 'wrong answer' through this method, we are concerned that **disputes may arise** wherever the actual Schedule 4 cost/payment is different from the estimate provided.

Previous attempts to estimate Schedule 4 costs:

4.21 Despite the issues raised, Network Rail has historically attempted to estimate Schedule 4 costs through a 'simplified approach' used in early-stage project investment papers, and to estimate costs for large-scale maintenance works. This approach compares the proposed possession to those with similar characteristics that have already occurred. It then uses the historic Schedule 4 costs for those similar possessions as a proxy for the proposed possession costs.

4.22 This approach can be helpful, in that it can quite quickly provide an estimate, however we do not recommend that this methodology be adopted for the suggested ready reckoner for the following reasons:

- The level of confidence that the user can have in the estimate is relatively low, as no two possessions are the same;
- The Schedule 4 formula has almost 20 variables and is calculated at a service group level per day. Slight changes in these variables can have a significant impact on the Schedule 4 compensation amount, again rendering the simplistic approach unreliable;
- Schedule 4 payment rates are updated occasionally for recalibrations (as are the notification factors). These changes make it increasingly difficult to find a like for like historical possession as Schedule 4 payments between years and control periods are not comparable;

- Operators' access rights vary over time. These variations add an additional layer of complexity when trying to find a like-for-like possession; and
- The simplistic approach can only look at a single possession in isolation. As it relies on a comparison of 'similar' possessions, it is not possible to convert this into a simple 'tool' for estimation of Schedule 4 costs. If this approach were to be scaled up for all possessions it would require intense resource to process requests and compare each possession to historic ones to produce an estimate.

4.23 Given the issues with the 'simplified approach', NR has also previously considered (and used) an 'analytical approach' to estimating Schedule 4 costs. This approach is tailored to individual possessions, using experts to make assumptions on the affect any Restriction of Use will have on the timetable, calculating the variances and applying the Schedule 4 formula to these variances.

4.24 Whilst this is a more considered approach, it is incredibly resource intensive requiring people with network, timetable and Schedule 4 knowledge. Currently this approach is only used in limited circumstances, however, a mass introduction of this would require manual deep dives into every single possession to calculate the inputs to the calculator for the end-user to use, again taking up precious resource at a time where NR is trying to cut its costs and improve its efficiency. When weighted against the potential benefits that a calculator could bring, it is highly unlikely to be worth the additional resourcing and cost. Furthermore, though this approach is probably more accurate than the 'simplified approach', the accuracy of the output is only as good as the assumptions that are made. Estimates using this approach to date have varied by +/-50% compared to actual costs, thus the overall benefit that this approach brings is unlikely to be worth it vs the additional resourcing cost.

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

4.25 We agree with ORR's decision not to introduce a different methodology for calculating an Access Charge Supplement (ACS) for OA operators. This was supported in our response to ORR's initial consultation where we expressed concerns over the additional complexity that this methodology would bring, the likelihood of undue discrimination and the additional costs of creating a new ACS model for OA operators (with costs likely outstripping the benefits).

4.26 We did however suggest that there was a need to review the current regime for operators who do not pay an ACS (currently only OA) to ensure a level playing field. This included the possibility of both formulaic and claims-based compensation for type 3 possessions.

4.27 We are now also of the view that ORR should consider how Schedule 4 deals with enhancements for non-ACS paying operators. Schedule 4 for passenger operators is currently a two-tiered system. Passenger operators can choose to pay the ACS, essentially an insurance premium against unforeseen or inefficient levels of possessions, receiving in return full compensation for all possessions, or to not pay the ACS, and in return only receiving compensation for the most disruptive possessions (i.e. Type 3 possessions or those which trigger Sustained Planned Disruption).

4.28 Whilst possessions can vary in length, the nature of a possession can also vary. For example, the possession can be taken for typical Maintenance, Repair and Renewals (MRR) work, or it can be taken to enhance or improve the network. It is also the case that possessions can contain elements of both MRR and enhancement works, such that it is not always easy to define which aspects of a possession fall within each category. In CP6, the ACS was calibrated to be equal to Network Rail's expected, efficient Schedule 4 costs for MRR work for each year of the control period. However, an ACS payer receives full compensation for all disruption regardless of length or nature, whereas a non-ACS payer will only receive compensation for longer possessions. This includes compensation for enhancements.



4.29 This leaves a position whereby non-ACS paying operators are not compensated for shorter enhancement related possessions and ACS paying operators are. ORR should consider a review of this position as part of PR23 and clarify any existing and future arrangements (including how to distinguish between MRR and enhancement works in cases where both happen concurrently). This is particularly a concern given the considerable number of strategically important enhancement projects due to commence across the network in CP7. Any unexpected delays to such projects (as a result of objections for example) could lead to large additional costs to the taxpayer, so we are keen to work with ORR and industry to resolve this issue as part of the review of Schedule 4.

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

4.30 We agree with ORR's view that the freight regimes payment rates have not been updated for a long time and are therefore in need of an update. We would like to work to support the industry with this review and encourage freight operators to commission work to do so as soon as possible to allow time to recalibrate the regimes incorporating any new evidence (noting that freight operators are awaiting a briefing note from ORR on the suggested scope of this work).

4.31 As stated in our response to ORR's initial consultation, we are of the view that any substantial increase to freight payment rates would need to be funded somehow. We agree with ORR that this could be funded through an ACS payment (or alternatively by setting Schedule 4 'benchmarks' to reflect that 100 % network availability is not guaranteed).

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

5.1 We broadly disagree with the approach proposed by ORR in Chapter 3 of its consultation. Below we discuss in more detail our views on each of ORR's proposals A to H with supporting evidence where necessary.

Proposal A: Change the way Network Rail's benchmarks are set, basing them only on historical data

5.2 In our response to ORR's initial consultation we agreed with ORR's proposal to focus Network Rail's benchmarks on historic performance data only. We are therefore disappointed to see that ORR is no longer pursuing this policy as it would remove the need to forecast performance up to 7 years ahead of time, at a point where performance is entirely uncertain as the railway recovers from the impacts of Covid-19.

5.3 Evidence supplied in our initial response demonstrated the vast inaccuracies of a forecasting approach which has often led to perverse payments under Schedule 8 as a result of using performance trajectories. We also demonstrated how an historical approach could reduce large swings in Schedule 8 payments through more accurate benchmarks that reflect actual/current performance. It is disappointing that this evidence was not considered further by ORR.

5.4 In terms of the performance trajectory, we understand that this could be considered when setting out performance targets. However, an accurate prediction of future Network Rail performance is likely to be impossible to create, and any performance trajectory will likely need to adapt to changing circumstances as the industry reaches a new normal post Covid-19. We would therefore like to work closely with ORR to understand its requirements for CP7 to ensure that benchmarks are set appropriately.

Proposal B: Update benchmarks annually to make them more flexible during control periods



- 5.5 Whilst we understand ORR's position above, that the Network Rail benchmarks could include performance improvements that Network Rail is committed to deliver through ORR's Final Determination, a more flexible approach to setting the baseline (i.e. pre-trajectory) benchmarks and operator benchmarks is something that Network Rail considers an essential feature of Schedule 8 for CP7. Any attempt to set benchmarks for the entirety of the control period will lead to wholly inaccurate results and therefore perverse payments of potentially great magnitude.
- 5.6 Therefore, a more flexible approach to setting benchmarks is welcomed. We discuss matters relating to benchmark setting and wider CP7 recalibration issues in appendix B that follows. This includes further information on why a more flexible approach is appropriate and how this could be achieved in practice.

Proposal C: Share allocation of some types of delay within Schedule 8, to help to reduce a possible barrier to industry collaboration

- 5.7 Increased sharing of delays through Schedule 8 ought to lead to more joined up incentives between operators and Network Rail as the sharing mechanism would recognise that both parties have a role in minimising the delays that they cause and aiding in the recovery from delays where both parties can influence such recovery.
- 5.8 Increased whole industry incentives such as delay sharing would recognise and bring forward the aims of the reform programme which envisages a more joined up railway, with joined up incentives, and better whole industry outcomes in the interest of passengers and freight users. This is particularly important for OA and freight operators, whose incentives are likely to be more inward facing than those of GBR in the absence of such mechanisms.
- 5.9 It is disappointing that ORR has proposed not to pursue this further, as the reforms brought about by improvements to the Delay Attribution process will take time to implement vs the quick wins that could be achieved through ORR's delay sharing proposal. In fact, in our recent reply to ORR's letter on Delay Attribution, we note that reforms to Delay Attribution take time and it won't be possible to align these to the PR23 process. We are concerned that ORR's provisional decision on this proposal means that such important reforms won't happen until much later in CP7, or even in the following Control Period. It is therefore unfortunate to see that this was one of the reasons cited by some operators and ORR for not pursuing such reform, as this would have brought forward some of the collaborative incentives envisaged in a reformed railway. Further to this, we question why some operators felt that this was not the right time to implement such reform given the ongoing requirement to have Schedule 8 in CP7, a time where industry reform is expected to really take shape and start to deliver against key aims such as improved industry collaboration. We also question the need for Delay Attribution and Schedule 8 to be entirely consistent, for example, just because a delay has been caused by a single party, does not necessarily mean that they are the only party that have a role to play in recovery from such delay. Reforming Schedule 8 to incentivise joined up recovery planning is the right thing to do in the interest of passengers and freight users, rather than relying solely on the outputs of Delay Attribution which does not consider delay and delay minimisation in the round.
- 5.10 We therefore ask ORR to reconsider its current position in this area and would encourage ORR to enter into talks with colleagues at GBRTT to understand how sharing mechanisms could align to the aims of the reform programme, and with the performance regimes that will be contained in future PSCs (which will contain whole industry incentives).

Proposal D: Change how TOC-on-TOC delay is handled within Schedule 8 to address an existing gap in TOCs' incentives



5.11 We disagree with ORR's proposed decision not to increase TOC-on-TOC incentives within Schedule 8 and provided evidence to support ORR's initial proposal last year. Whilst we agree that current system capability means that we cannot move to a full TOC-on-TOC regime, we were supportive of more frequent updates to recognise changes in the TOC-on-Self to TOC-on-TOC relationship and thus incentivise reductions in TOC-on-TOC delays.

5.12 As ORR suggests, we agree that it would be useful to consider this reform as part of broader recalibration conversations to assess if there is merit in a more flexible approach to TOC-on-TOC delay.

Proposal E: Change the allocation of delay within Schedule 8 for unidentified incidents to make the split more accurate

5.13 We supported this proposal in ORR's initial consultation and still agree that there is merit, and evidence to support shared allocation of unexplained delays. However, we recognise that ORR should instead focus on other Schedule 8 reforms such as enabling of Schedule 8 opt-outs (subject to legislative change) and getting the recalibration of Schedule 8 'right'. It may be appropriate to revisit this reform at a later date.

Proposal F: Change Schedule 8 compensation to more fully reflect the financial impacts of delay (to include cost compensation)

5.14 We supported this proposal in ORR's initial consultation as we could see merit in a 'full and final' approach to compensating operators which would remove the need for the SPP mechanism and encourage delay repay payments to passengers. However, we recognise that ORR should instead focus on other Schedule 8 reforms such as enabling of Schedule 8 opt-outs (subject to legislative change) and getting the recalibration of Schedule 8 'right'. It may be appropriate to revisit this reform at a later date.

Proposal G: Update the evidence base underpinning the calibration of freight payment rate

5.15 We agree with ORR's view that the freight regimes payment rates have not been updated for a long time and are therefore in need of an update. We would like to work to support the industry with this review and encourage freight operators to commission work to do so as soon as possible to allow time to recalibrate the regimes incorporating any new evidence and accounting for any differences in the approach to what freight payment rates cover. We note that freight operators are awaiting a briefing note from ORR on the suggested scope of this work.

Proposal H: Revisit calibration of caps in freight regime

5.16 The evidence that we provided in response to ORR's initial consultation supported a review of the freight incident caps. We demonstrated that the caps may not be appropriate for some larger operators, and that a bespoke operator-by-operator approach may be more appropriate in achieving incident caps that were sufficiently high to only be hit in exceptional circumstances, whilst being low enough to afford freight operators the necessary protections from extreme performance scenarios.

5.17 We still hold the view that a review of these caps could improve the regime for freight operators. However, we recognise that ORR should instead focus on other Schedule 8 reforms such as enabling of Schedule 8 opt-outs (subject to legislative change) and getting the recalibration of Schedule 8 'right'. It may be appropriate to revisit this reform at a later date.

Are there any other comments you would like to make?

Please see appendix B for further comments on the recalibration process.



Appendix B – Recalibrating Schedule 8: Overall process and timings based on previous reviews and highlighting CP7 recalibration issues

- 1.1 We recognise that the national recalibration of the Schedule 8 regime at Periodic Review is a big task. As ORR will be aware, the Rail Delivery Group (RDG) previously led the passenger operator Schedule 8 recalibration for CP6 on behalf of the industry. This was to create a more industry-led process, with greater levels of industry involvement. This will unfortunately not be possible for the CP7 recalibration, due to the changing role of RDG. Regardless of who leads the recalibration, there will always be a need for significant ORR involvement. ORR is responsible for the final sign-off of all Schedule 8 parameters for all parties, and ORR instructs Network Rail and operators to enter the new parameters into their Track Access Agreements prior to the start of the control period.
- 1.2 We welcome ORR taking on the responsibility of recalibrating Schedule 8 for CP7, given the significant changes that the industry is facing in the coming months and years. We will support ORR in this process wherever we can, and have technical experts ready to provide data and support as and when required. This has been demonstrated through the initial Schedule 8 recalibration working groups which ORR helpfully set up, in which Network Rail experts have led discussions on important topics such as the recalibration period, and the use of new evidence in setting the Network Rail Payment Rates. We have also offered to fund half of the Schedule 8 recalibration (in line with the funding arrangements for the CP6 recalibration). In this appendix, we have provided some high-level timings of the CP6 recalibration which we hope that ORR will find helpful in its planning of the work. We also highlight some key issues with that we have identified so far with the upcoming CP7 recalibration.
- 1.3 The remainder of this appendix refers to the recalibration of the passenger operator Schedule 8 regime. We believe that the issues discussed below are less significant for the freight recalibration. For example, rail freight was still required throughout the pandemic, and so train movements (and presumably revenues) have remained relatively stable, to the best of our knowledge. We believe that we can work with the freight industry to overcome the Covid-related issues that do exist, and that the industry and ORR can come up with a reasonable freight Schedule 8 recalibration for CP7.

Overall approach to the recalibration and timings

- 1.4 RDG took a phased approach to the Schedule 8 recalibration for CP6. This was to allow early work to begin on the Monitoring Point Weightings and Cancellation Minutes, which had not been updated for many years prior to this recalibration. Before submitting any results to ORR for sign-off, RDG ensured that every aspect of the recalibration was audited by independent consultants and RDG also asked all operators and Network Rail regions to approve (or otherwise, with explanation) their specific results.
- 1.5 The table below sets out some high-level timings for the CP6 recalibration. We hope that ORR finds these timings useful in developing its own plans for the CP7 recalibration. We note that these timings do not include the procurement process for getting consultants on board, as we recognise that ORR's processes for this may be different to RDG's. ORR will also appreciate that the Network Rail Payment Rates were calibrated in advance of the other parameters. This is quite a typical approach to a Schedule 8 recalibration, as it is generally felt that setting benchmarks in advance may subconsciously bias the approach to setting the payment rates.

Recalibration task	Key dates
Monitoring Point Weightings and Cancellation Minutes	June 2017 – March 2018
Discussion on methodology	June 2017 – September 2017
1-2-1 engagement with regions and operators	September 2017 – January 2018
Submission to ORR for formal sign-off of results	February 2018
Network Rail Payment Rates	September 2017 – June 2018
Discussion on methodology	September 2017 – January 2018
Methodology submission to ORR for sign-off	February 2018
1-2-1 engagement with regions and operators	January 2018 – May 2018
Draft results shared with regions and operators	April 2018 and May 2018
Submission to ORR for formal sign-off of results	June 2018
Train Operator Payment Rates, Train Operator Benchmarks, Network Rail Benchmarks and SPP thresholds	January 2018 – November 2018
1-2-1 engagement with regions and operators	January 2018 – May 2018
Draft results shared with regions and operators	July 2018 and September 2018
Submission to ORR for formal sign-off of results	November 2018
Audit of Payment Rates, Benchmarks and SPP thresholds	March 2018 – November 2018
Completed alongside recalibration work.	

1.6 Projecting this timeline forward by 5 years shows that, excluding the recalibration of Monitoring Point Weightings and Cancellation Minutes, the technical recalibration work will need to start in the next few months (with consultants on board by this point). We are concerned that this may not be possible to achieve, and this will place a considerable time constraint on an already difficult recalibration. We note that there is new PDFC evidence that could be used in setting the Network Rail Payment Rates for CP7, and this will take time to consider and gain industry agreement / ORR approval for. This will most likely result in a change in methodology for setting the Network Rail Payment Rates, which will inevitably be more contentious than simply following the status quo and will likely take longer to do the work given that it is so new. We encourage ORR to start the procurement process for the Schedule 8 recalibration as soon as possible, closing down issues / areas of disagreement early on wherever possible, in order to not further compress the recalibration timescales.

Other issues with the Schedule 8 recalibration for CP7

1.7 We are concerned about ORR's proposed approach to the Schedule 8 recalibration for CP7. In ORR's consultation document, ORR appears to suggest that the PR23 recalibration of Schedule 8 should be undertaken in the traditional way, with Schedule 8 parameters set up front for the full 5-year control period. We strongly disagree with this approach to the recalibration.

- 1.8 The first stage of a 'typical' periodic review recalibration would be for the industry and ORR to select a 2-year recalibration period. However, with the exception of 2019/20, the remainder of CP6 has been severely affected by the impacts of Covid. Covid has had a large impact on both performance and revenue data since the first lockdown – with fewer passengers using the trains (reducing train operators' revenues), and fewer trains operating (improving performance for those services still running). The industry is currently in a stage of recovery from these Covid impacts, with demand and performance far from settled into a 'new normal'. To compound this issue, we are also restricted in terms of the most recent data which arguably has a weaker 'Covid impact'. Later this year, there is the potential for further rail industry strikes, which will mean that several periods of this year's data will also be unusable for the Schedule 8 recalibration. This leaves us with very few options for a Schedule 8 recalibration which seeks to set Schedule 8 parameters upfront for the full 5-year control period. We are concerned that, basing the Schedule 8 recalibration on such an uncertain base, significantly increases the risk of an inaccurate recalibration leading to inappropriate payment flows between industry parties. This in turn makes it more likely that either Network Rail or operators will seek mid-control period recalibrations, to mitigate the impact of an inappropriate recalibration. Mid-control period recalibrations of this sort are costly, time-consuming and often complex. This will reduce funding available to the industry for other, important projects, and distract management time that could otherwise be used on improving passenger outcomes. This is something that we should all seek to avoid in CP7, if possible.
- 1.9 We recognise that there are situations in which mid-control period recalibrations are entirely appropriate. For CP7, in particular, it may also be necessary to undertake a mid-control period recalibration to account for any changes in delay attribution resulting from our upcoming review.
- 1.10 We note that ORR has effectively ruled out its original proposals which would have made the recalibration much more straightforward and would have allowed the process to better account for the impacts of Covid, and the industry's recovery, as discussed above. We note that ORR rules out several of these proposals on the basis of not wanting to overcomplicate the recalibration process. However, we believe that there are a number of proposals which would instead simplify the recalibration and would ask that ORR reconsiders these. For example, we consider that the following three proposals that ORR originally put forward would greatly improve recalibration outcomes for all industry parties:
- 1. ORR's "proposal A" - change the way Network Rail's benchmarks are set, basing them only on historical data.*

1.11 This would have placed less reliance on producing accurate performance trajectories, up to 7 years in advance, upon which significant financial flows through Schedule 8 are based. As demonstrated from past periodic reviews, producing accurate performance forecasts so far in advance is fraught with difficulties. These difficulties are made even worse, as the industry is not yet certain of the long-term changes as a result of the Covid pandemic. Basing Network Rail's benchmarks on these performance trajectories will lead to inappropriate and likely significant financial flows from one party to the other through Schedule 8. Instead, we suggest that the Network Rail benchmarks could be set annually, using the annual performance trajectories that Network Rail and operators work together to set. We note that ORR has previously expressed concern that setting benchmarks in this way could undermine the incentive effects of Schedule 8. However, we firmly believe that the current process of using the Final Determination trajectories sets inaccurate and inappropriate incentives. Furthermore, having Schedule 8 based on the Final Determination trajectories often causes misalignment within the control period between performance levels that are actually being targeted (I.e. the annual performance targets), and those that are set through Schedule 8 (using the Final Determination trajectories). Aligning the Schedule 8 benchmarks with the annual performance targets would ensure that incentives were aligned and that all industry parties knew what level of performance was being targeted.

2. ORR's "proposal B" - update benchmarks annually to make them more flexible during control periods.

1.12 This proposal would help to minimise the importance of selecting an appropriate recalibration period, as the results from that recalibration period would only be in place for the first year of CP7 (rather than the whole Control Period). ORR's concerns around this proposal seem to centre around the incentive effects of changing benchmarks annually. Whilst we recognise these concerns, these seem to be on the basis that setting and fixing the benchmarks for the full control period creates better incentives. As discussed above, there is significant uncertainty in the base data that would be used for such a recalibration, so we question whether this approach would create better, or much worse, incentives for the industry. We strongly consider that an annual, mechanistic change to the benchmarks would be the least worst option for CP7, and would allow the benchmarks to account for the industry's recovery from the Covid pandemic.

3. ORR's "proposal D" - change how TOC-on-TOC delay is handled within Schedule 8, e.g. through annual updates on the TOC responsibility matrix.

1.13 As with ORR's proposal B, this would have helped to minimise the importance of selecting an appropriate recalibration period. We believe that it would be possible to undertake annual, mechanistic updates of this throughout CP7.

1.14 Instead of setting Schedule 8 parameters, upfront, for the full 5-year control period, we instead recommend that ORR adopts a different approach. We believe that ORR should lead on a basic recalibration of Schedule 8 during the periodic review, identifying priority areas with the industry. As part of this recalibration, ORR should instruct its consultants to produce a model that can be mechanistically updated each year for the latest available data, to recalibrate the parameters annually, effectively using a different recalibration period. We consider that this approach would minimise the impact of Covid on the Schedule 8 recalibration, while accounting for the ongoing industry recovery from the pandemic. This approach would also be pragmatic, as it recognises that many GBR operators may wish to opt-out of Schedule 8 shortly before, or during, CP7 if legislation can be changed to allow them to do so. We would therefore not need to recalibrate these parameters annually, which would reduce the cost and complexity of the annual recalibration updates.



1.15 Given the time constraints noted above, we encourage ORR to take early decisions on these recalibration issues, so that there is enough time to implement these decisions and avoid unnecessary industry rancour.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: James Parkinson

Job title: Metro Head of Contracts & Commercial

Organisation: Nexus

Email*: [REDACTED]

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Nexus agrees with the proposal to provide the option to opt out of Schedule 4 in CP7, subject to the limitations outlined.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

Nexus supports the potential option to adopt alternative arrangements such as opting out of financial payments. As a public body running the Tyne & Wear Metro service, and with a strong collaborative relationship with Network Rail, the focus is on improving system performance for the customer rather than driving financial outcomes through the Schedule 8 regime. The potential volatility of the Schedule 8 regime payments can result in budget pressures, with this volatility exacerbated for Nexus due to the short stretch of Network Rail infrastructure it operates on.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Nexus is supportive of the proposal to limit the number of changes.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Nexus is supportive of the ORR’s proposals it is minded to take forward. In particular, granular monitoring of possession notification dates and late possession changes/cancellations is a proportionate approach to incentivise Network Rail to perform as well as possible in these areas, maximising the certainty on service provision and hence information for customers.

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Nexus is supportive of the preferred approach.

Are there any other comments you would like to make?



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

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Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Nicola Eyre

Job title: Head of Access and Strategic Partnerships

Organisation: Northern Trains Limited

Email*: [REDACTED]

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

As per our response to the first consultation, NTL would not advocate changes to the current Schedule 4 ACS mechanism at this point in time due to the uncertainty the industry currently faces, in particular, The lack of clarity around Passenger Service Contracts, and the associated cost risk. When deciding upon offering an opt out mechanism – it must be considered if there could be an impact on other operators who use the same line of route as an operator who has chosen to opt out of schedule 4. As an example, an operator who has opted out could refuse to agree possessions that are deemed to be detrimental to their organisation or could request that another operator have their services flexed or cancelled to allow the opted-out operator to continue running their service because the Operators who are ‘opted in’ will receive schedule 4 compensation. It must be considered that opting out could affect behaviours which could drive the wrong outcome for passengers, this could be the case particularly around notification of possessions and late notice cancellation of possessions. Compensation serves a purpose as it acts as an incentive and drives

behaviours aimed at minimising the financial impact of possessions to the businesses i.e., early notification of possessions etc... These behaviours are also a benefit to passengers as they promote early notification and aim to prevent late cancellation. If compensation doesn't exist, behaviours could alter as the incentive is gone. Therefore, if an opt out mechanism is to be determined via the PR23 process, then, protections must be put in place to ensure that other Operators are not unduly impacted by resultant behaviours.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

NTL believes that Schedule 8 serves an important function in protecting revenue for franchised operators and so we would not advocate changing this whilst there is so much uncertainty around GBR and how the future industry model will work.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

As per our original response to both the Schedule 4 and 8 consultations, NTL believes that in the short-term it is correct to limit the number of changes given the uncertainty in relation to covid recovery and new travel patterns, alongside the impact of GBR which is not yet clear. Supo

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

As per our response to question 1, NTL would not support an opt out mechanism for the reasons detailed in the response to Q1.

Option B2, seems logical and NTL supports this option being taken forward. As per our response to the first consultation we outlined that this option could be delivered through other means but add value by scaling the level of change/work associated with the notification using trains affected or extended journey time which already exists within the regime. If the process was amended to enable exact notification dates for possessions to be tracked via Schedule 4, this would require people to audit this for accuracy and there is a question as to whether the outputs would add any value to the process. It could therefore be more useful to monitor the impact of the changes instead, for example 10 changes that adjust the length of the possession by 10 minutes

and affecting one train each time is less important than 1 change that affects 200 trains. Therefore, it could be more powerful to incentivise Network Rail to minimise change by factoring in the overall impact of the possession change. This could help to raise awareness about the impact of changes on resource, costs and also on the customer.

We are disappointed that Option E is not being taken forward. NTL believes that a tool would be beneficial to evaluate the impact of large projects and programmes (e.g., TRU), for inclusion in requests for proposals and for the annual business planning process. Even if the resultant model would be something high-level that parties are signed up to, to aid the activities described.

Proposal G – NTL is comfortable with the proposed review; however, it must be taken into consideration that if freight indexation uplifts come in, that any compensation is based on actual costs and not used as a way of supplementing income.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

NTL supports this, as we believe minimal change should be made to regime due to the current industry uncertainty.

Are there any other comments you would like to make?

No other comments, however, NTL wish to continue to be involved in any PR23 working groups.

PR23 Review of Schedule 4 and Schedule 8

Response from Rail Freight Group

June 2022

1. Rail Freight Group (RFG) is pleased to respond to the consultation on PR23 Review of Schedule 4 and Schedule 8. No part of this response is confidential.
2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have around 120 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

General Comments

3. Schedules 4 and 8 remain important components of the relationship between the infrastructure owner and freight operators, both as compensation and incentives regimes. Even with the establishment of GBR, these fundamental requirements will remain critically important for the relationship with non GBR operators, including freight. Arguably they will be more important than ever, given that GBR will have a particular interest in, and control over, its own passenger services, as well as stretching cost efficiency targets.
4. We note that, since the publication of this consultation, DfT have announced a Commission to oversee changes to EU retained legislation, which could impact on the legal framework surrounding the access framework. It will therefore be important that there is alignment between these proposals and any changes which are planned through the Commission.
5. Although we are broadly content with the proposals for Schedule 8, we remain concerned that Schedule 4 is being significantly weakened by these changes, and that the incentives on Network Rail / GBR to take efficient possessions and reduce the costs to freight from disruption will be negligible in the new regime. The ORR actions of post hoc monitoring and reporting seem unlikely to make any meaningful difference given the incentives on GBR for longer possession windows, and we believe that a stronger incentive regime is likely to be required to ensure that network capacity can be used most effectively to support growth. In particular, the case for diverting freight, rather than cancelling it, needs to be

promoted.

Comments on Specific Proposals

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

6. As outlined above, this is a significant weakening of the incentive on GBR to manage possessions effectively, essentially meaning that GBR can take access whenever it likes without compensating operators who have opted out (which we expect would include all GBR operators). The proposed measures of post hoc monitoring and reporting do not appear to offer a strong alternative incentive. If this proposal proceeds, ORR should consider what measures it can implement to properly ensure that access is being managed as efficiently as possible.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

7. This is a pragmatic approach to the changes which are being proposed in reform. It remains essential that freight operators are fairly compensated for disruption and that the right incentives exist on infrastructure and operators to manage performance.
8. Any changes to the passenger regime must be aligned with a clear understanding of the incentives that will arise from the new passenger service contracts to ensure that the incentives on GBR (infrastructure) are aligned to deliver good network performance for all operators.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

9. We agree with this proposal, but note that the DfT's Commission could make changes to these areas during the next control period which would need to be properly assessed and managed accordingly.

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

10. Preferred Option 2 – no comment.

11. Preferred Option 3 – we support more granular monitoring of possessions and notice. As outlined above however, post hoc monitoring may not be sufficient to compensate for the loss of incentive if operators opt out of Schedule 4. We would also welcome a wider range of monitoring, not just on late possession changes but on other factors affecting the freight customer experience.

12. Preferred Option 4 – we support the action to review and update freight compensation rates. However we do not agree that this would need freight operators to pay more, particularly if the differential between a diverted train and a cancellation were reviewed. Network Rail would then be incentivised to divert trains, meeting customer needs, rather than cancel them which could reduce overall costs. This should be explored in more detail.

13. We do not agree that any changes to compensation rates should require operator to 'stop objecting' to plans which damage their business and customer expectations. Network Rail and operators should work together to try and align possessions to meet customer needs whilst giving access for efficient possession work.

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

14. We support this proposal. It is over 15-years since this rate was calculated and since then the commodity mix moved by rail has changed significantly and longer and heavier trains means that each train is now carrying more freight, exacerbating the impact of delays for customers. An increase in the time-sensitivity of goods moved by rail today, compared with 15 years ago, suggests the need to consider the revenue impact as well as the cost impact of unplanned delays.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: **Liam Bagues**

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Email*: [REDACTED]

**This information will not be published on our website.*

This response is on behalf of the owning group and freight operator members of Rail Partners.

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Rail Partners’ passenger operator members in principle broadly support the ability to opt-out, as it provides operators with the flexibility they need to reflect their own specific contractual and commercial situation in a reformed railway with new contracts. Operators that are on revenue risk (freight operators and certain passenger operators) are unlikely to opt out given the importance of Schedule 4 to their business models and are concerned about the weakened financial incentives on Network Rail if many operators do decide to opt out. We note ORR’s intention only to allow a full opt-out but we flag that some operators may wish to have the

flexibility to opt out of certain elements of Schedule 4 to reflect the new contractual landscape resulting from rail reform which has yet to be determined.

Rail Partners supports the mechanism for open access operators to retain the right to opt out of ACS and receive limited compensation. Rail Partners supports ORR's proposals around the timing of the opt-out decision being prior to the start of each control period, with an ability to opt back in mid-control period in the circumstances set out in paragraph 1.23 of the consultation document

As acknowledged by ORR in the consultation document, appropriate incentives on Network Rail need to be maintained, particularly if a large number of operators do choose to opt out from the Schedule 4 mechanism. Rail Partners agrees with the proposed additional reporting requirements on Network Rail and for ORR to publish the information. However, close scrutiny will be needed to ensure that these incentives are effective in the longer-term. This includes ensuring that Network Rail has a strong understanding of the revenue and cost implications from service disruption in order to balance this against the costs of different types of possessions.

For operators outside the remit of GBR in the future, including freight operators, a possessions regime will be an even more crucial mechanism to compensate operators for the impact of possessions and to incentivise the infrastructure manager to minimise planned disruption. However, if too many operators opt-out completely from Schedule 4 the incentivisation properties of Schedule 4 could become significantly weakened. This will more likely be the case if freight compensation rates continue to be set at a non-cost reflective level.

ORR should set out criteria on how it will assess whether an increase in the number of possessions and/or an increase in the length of possessions is not justifiable given the amount of engineering work being undertaken. Furthermore, ORR should set out the potential regulatory remedies available if trends in possessions were not justifiable.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

The Schedule 8 regime provides an important mechanism for incentivising Network Rail and operators to reduce delays thereby creating a secure and investable contractual environment for private operators. Rail Partners agrees with ORR's position and acknowledges the rationale behind not allowing for an opt-out at this time. Rail Partners also supports ORR's position of not proposing any changes to the regime for FOCs, charter operators, and passenger open access. In the freight sector, Schedule 8 also helps to create a strong focus on performance across customers, ports and terminals.

Rail Partners supports the timely and appropriate consideration of practicable new proposals that meet the necessary legal requirements and where changes would reduce the unnecessary administrative burden without harming the strong incentive for all parties to contribute to a high performing railway. Good performance is one of the key drivers of revenue. Even though the Plan for Rail states that many future Passenger Service Contracts will not contain revenue risk, it also states that there should be revenue incentives in contracts and at the right time some revenue risk transfer back to long-distance operators. Therefore, even if future legislative changes enables alternative arrangements, it is critical that strong performance incentives remain with GBR.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

Rail Partners agrees with ORR's proposal to limit the number of changes to Schedule 4 and 8. We support making a limited number of incremental changes. This will help ensure the system remains flexible enough to deal with the range of potential outcomes from the implementation from the Plan for Rail, without fundamentally changing the nature of the regime.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Rail Partners broadly agrees with ORR's position on the proposals they are minded to take forward as set out in the consultation document. More detail is provided below.

As detailed in our answer to Question 1, Rail Partners' passenger operator members broadly support ORR's intention to pursue Proposal A to introduce an opt-out mechanism to Schedule 4, whereby train operators could opt out of Schedule 4. Freight operator members of Rail Partners continue to be concerned about the incentive effects on Network Rail if a large number of passenger operators decide to opt out. It is important that strong reputational incentives on Network Rail through monitoring and reporting on the trend of possessions and regulatory intervention where necessary adequately replace the weakening of financial incentives, and that operators on revenue risk are not commercially affected. It is important that the introduction of an opt-out to Schedule 4 does not weaken the incentives of the possessions regime for operators sitting outside the direct remit of GBR.

Rail Partners strongly supports ORR's proposal to take forward Option B2 – ORR monitoring and reporting on possessions notification on a more granular basis – with passenger owning groups and freight operators noting the importance of early notification of possessions from Network Rail.

There continues to be a mix of views between owning group members of Rail Partners regarding ORR's intention not to take forward proposal C. Some operators would welcome the clarity and potential administrative/ time savings that a

methodology for calculating cost and revenue loss compensation for lengthy possessions and periods of sustained planned disruption could bring. However, there is concern by some that such a methodology is unnecessary and would limit operators' ability to negotiate the costs and losses they incur as a result of possessions.

Rail Partners supports ORR's intention to take forward proposal D to monitor and report on late possession changes and cancellations on a more granular basis.

We note that ORR is minded not to take forward proposal E to develop a tool to estimate Schedule 4 formulaic compensation. Some owning group members of Rail Partners expressed interest in a formulaic tool for Schedule 4 compensation and so we agree with ORR that the concept should be kept under review by Network Rail.

Rail Partners does consider that there would be benefit in pursuing Proposal F to review the methodology for calculating the ACS for open access operators. The current mechanism for calculating the ACS is considered to be unduly complicated and lacks transparency. Previously, Network Rail has been unable to provide estimated ACS costs to a passenger open access operator upon request. Reviewing the methodology and calculations for the ACS would enable open access operators to make informed decisions on whether to participate in the full Schedule 4 regime – though it is unlikely that an open access operator would opt to do so. While it has not been identified as a priority, operators do think there would be merit in reviewing ACS estimates, particularly if as per Proposal G, an ACS is introduced to fund the additional costs required to update freight compensation rates.

Rail Partners supports ORR's intention to review and, if appropriate, update freight compensation rates – proposal G. Freight operator members of Rail Partners believe that current compensation rates significantly under-represent the costs incurred due to disruption from possessions. We believe that the current arrangements, where no ACS is payable to fund the current levels of compensation, should remain. As is the case today, estimated compensation levels should be funded through additional funding from railway funders. Higher compensation levels would still remain a very small proportion of Network Rail's revenue requirement and importantly would likely provide better incentives on Network Rail thereby reducing the overall disruption of planned possessions on freight operators.

If the payment of an ACS is required by freight operators to qualify for higher, cost-reflective Schedule 4 rates, then the net payments will likely remain the same, given that the freight operators are in effect funding the additional Schedule 4. If the net payments remain the same, it is unclear what the benefit of cost-reflective rates would be if they are funded solely via the ACS. Cost reflective Schedule 4 rates should drive better incentives on Network Rail and therefore are supported by freight operators, but the funding of those rates should not be levied by way of a charge on the freight operators.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Rail Partners agrees with ORR's preferred approach to only take forward Proposal G. Updating the evidence base underpinning the calculation of the Network Rail payment rate is important to ensure rates are accurate and reflect the commodities currently being carried. It is important that the scope of this work is appropriately set out and considers both long-run and short-run costs and revenue impacts of unplanned disruption, to ensure that it captures all of the impact of poor performance. It should also consider the longer and heavier freight trains that operators are now running and therefore the increased impact that delays have on operators and their customers. As noted in a previous response, it will be important to understand how this relates to the calculation of other relevant rates.

Are there any other comments you would like to make?

n/a



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Susan Ellis

Job title: Track Access & HS1 Contracts Manager

Organisation: SE Trains Limited

Email*: [REDACTED]

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Southeastern are generally supportive of simplifying the process of Schedule 4 and allowing operators the option to opt out however would need to undertake some in depth analysis before considering it as an option that Southeastern might like to pursue. We note ORR’s alternative proposals to incentivise Network Rail to manage their maintenance and possessions in the event that Schedule 4 is opted out of and concerns remain that the removal of a financial incentive would lead to NR taking many more possessions with no financial exposure. What levels of confidence do the ORR have that these measures will be sufficient to manage these potential behaviours and will there be a way to hold NR to account in the event that the proposed incentives do not deliver what is expected. Will the reporting requirements/reputational incentives be strong enough over a financial incentive?

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

Southeastern note and agree with the ORR’s position that Schedule 8 will continue to apply for GBR/all operators and welcome consideration to any new proposals from the industry. Southeastern acknowledge that there is room for improvement within the current regime and believe that this can be done within the scope of the 2016 Regulations.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Southeastern believe there is room for improvement within the current Schedule 8 regime and have been working with Network Rail to assess various options. As expressed above, Southeastern remain uncertain about the removal of financial incentives on Network Rail within Schedule 4 but can understand the merits of the ‘Opt Out’ option for other operators.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Southeastern support the enhanced monitoring of possessions on a more granular basis and also the monitoring and reporting of late possession changes and cancellations. When added to the financial incentive of the current Schedule 4 regime, this additional scrutiny can only strengthen the requirement to consider the overall impact of these things on passengers.

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Southeastern are disappointed that further consideration will not be given to an annual update of benchmarks however acknowledge both the financial and administrative burden that this would have put on the industry. We do support the use of mid-control period recalibrations in the event of volatility and forecast uncertainty. Southeastern note the establishment of Schedule 4 & 8 Working

Groups and are keen to be part of this. We will be in touch in due course to advise of our nominated representative.

Are there any other comments you would like to make?

With the recent rises in inflation, is there any scope to review the retention of CPI and consider setting a stand-alone rate that would help to control the ongoing impacts of inflation. Continuing to use CPI will only work to encourage the growth of national inflation and this may be an opportunity to work together to control the impact of these rising rates on the industry.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g., letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Gary Davies-Knight

Job title: Track Access Manager

Organisation: Seilwaith Amey Cymru / Amey Infrastructure Wales Limited

Email*: [REDACTED]

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Yes AIW believes that operators should be able to choose whether to have a schedule 4. It is potentially a better solution where there is a greater degree of vertical integration. For example, with Great British Railways and one of its Public Service Contract Operators, opting out would reduce a money go round in compensation payments. However, on routes where there are operators who have opted out and those who have opted in it is likely that the financial cost could change behaviours. For example, an operator without a full schedule 4 could find that their services are disrupted more because it would be cheaper to do so than an operator who has schedule 4. In addition, where the Schedule 4 covers two networks (as it does with Network Rail and the CVL network) greater consideration should be given to the practicalities of whether a schedule 4 applies to both networks or only one. AIW believes that where a schedule 4 regime can operate across two networks an opt out on one network only could lead to a greater administrative burden in the

management of schedule 4. Consideration should be given to the significance of these options for devolved administrations and independent infrastructure managers

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

AIW is supportive of the ORR position. However, where the Schedule 8 covers two networks (as it does with Network Rail and the CVL network) greater consideration should be given to the practicalities of how the schedule 8 might work if the rules or legal position differ between the two networks. AIW could only support changes if these applied to Independent IM’s as well as Network Rail / GBR. In addition, the schedule 8 regime does incentivise the industry to manage performance better. AIW believes that if there are differing levels of incentives dependant on operator that this could negatively influence the way in which train plans are devised following disruption.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Yes

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Yes

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Yes. Though consideration should be given to the significance of this approach for devolved administrations and independent infrastructure managers

Are there any other comments you would like to make?

In terms of this periodic review, we feel that there needs to be more consideration given to how the proposals will work in practice where a train crosses from one IM to another. For example, will the common downstream systems and processes will work? AIW has raised its concerns with the ORR previously, particularly about the need for close cooperation with Network Rail. We believe it is important that where economies of scale can benefit the rail industry, made by closer cooperation between IMs, that these continue throughout CP7. AIW would ask that the ORR is mindful of the importance of maintaining alignment of this Periodic Review and other IM charging reviews. AIW would be concerned that where significant divergence takes place between IM's that this could result in increase in cost to the rail industry as a whole.



Response to ORR's technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name:

Job title:

Organisation: South Western Railway

Email*:

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR's position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

Yes, provided that a sensible timescale is given in which TOCs can make a decision on whether to Opt-In or Opt-Out of Schedule 4, following NR's publication of draft / indicative ACS amounts.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

Broadly agree with this, so long as adequate incentivisation and appropriate benchmarks / targets are set within the Schedule 8 regime.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

Yes – given the uncertainty arising from the implementation of 'Plan for Rail' there seems little point in expending time & resource on major regime change at this juncture.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Agreed yes. Monitoring of possession notification date by ORR should also incorporate subsequent amendments or cancellations by NR; these seem to be uncomplicated tasks.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

No comment.

Are there any other comments you would like to make?

Concern that engagement with SWR, on calibrating the Schedule 8 metrics for CP7, is yet to commence – this concern is exacerbated by the course taken by the regime during CP6, the root of which is the easing of Network Rail's Benchmarks during the PR19 process.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

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Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Alan Smart (Schedule 4 response) and Russell Parish (Schedule 8 response)

Job title: Principal Planner and Network Performance and Strategy Manager respectively

Organisation: Transport for London

Email*: [REDACTED] and [REDACTED]

**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

We agree to ORR’s proposal in this regard. We consider that the Schedule 4 mechanism should be retained for operators that wish to make use of it, for the reasons outlined in our previous consultation response on this matter.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

Transport for London (TfL) operates Elizabeth Line and London Overground concessions over Network Rail infrastructure which falls outside the future scope of Great British Railways (GBR). TfL currently carries (and will continue to carry after the transition to GBR) considerable revenue risks resulting from below par network performance. TfL therefore welcomes the retention of the Schedule 8 mechanism for all operators. This will ensure that marginal revenue effects from service performance continue to be recognised and that bodies sitting outside the future GBR will benefit from the incentivisation this mechanism is intended to deliver. TfL therefore agrees with the ORR’s position and acknowledges the rationale behind not allowing for an opt-out at this time.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

We agree to this for Schedule 4 and 8.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

Yes we agree with the approach proposed. Additional monitoring of late changes to possessions and late cancellation of possessions will be particularly useful to reduce this practice which damages customer confidence in the railway. Further consideration should be given as to how to incentivise NR financially to reduce this practice by (for example) withdrawing any discount they receive for early notification of a possession when it is either changed or cancelled at a later date. It is important that any increased monitoring motivates Network Rail to plan possessions efficiently and effectively rather than just extending the time available for them to mask any deficiencies in their planning processes.

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

TfL agrees with ORR’s preferred approach to only take forward Proposal G.

Are there any other comments you would like to make?

Where bespoke approaches are adopted for regime calibration (necessary at times for substantial service changes such as full Elizabeth Line timetable implementation) it is essential to be able to utilise the existing mechanisms or reopeners available to re-adjust the Schedule 8 regime numbers to address emerging discrepancies, for example where performance sums are clearly disproportionate to revenue effects. Such uncertainty inherent in forecasting effects of substantial change with little historic data requires Network Rail or GBR to readily act to correct any errors.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Chris Dellard

Job title: Head of Access Planning

Organisation: Transport for Wales Rail Ltd (TfWRL), also representing Transport for Wales (TfW). This is a joint TfWRL / TfW response in terms of the Wales and Borders Network Rail network only.

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

In its second consultation ORR stated that TfW had given no view on this in response to the original consultation, but we did make the point that there is a risk that Network Rail might give less consideration to the end user when planning possessions on routes where most operators have opted out of Schedule 4, because Network Rail’s cost exposure would be reduced. We still believe that this is a risk. In general, any weakening of the incentives on Network Rail to plan possessions efficiently could put operators at a disadvantage. This risk could be more acute for TfW Rail on those routes that we share with other operators – particularly intercity

operators that have higher revenues and so receive higher payments under Schedule 4 – should those operators opt out of the Schedule 4 mechanism.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8’s financial payments. Do you agree with this position?

As we stated in our response to the previous consultation, we would expect any future performance incentive mechanism to continue to provide the same incentives and financial protections to TfW as the current mechanism.

Question 3: Do you agree with ORR’s proposal to limit the number of changes to Schedules 4 and 8?

Yes.

Schedule 4

Question 4: Do you agree with ORR’s preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

See our comments on the opt-out proposal in Question 1. We also agree with ORR’s proposal to not introduce an additional notification threshold; and to monitor and report on late possession changes and cancellations on a more granular basis.

Schedule 8

Question 5: Do you agree with ORR’s preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

We agree with ORR’s position not to take forward any of its initial proposals to amend the passenger regime.

Are there any other comments you would like to make?

No.



Response to ORR’s technical consultation on the Schedule 4 possessions regime and Schedule 8 performance regime

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response and any queries to performance.incentives@orr.gov.uk by 1 July 2022.

About you

Full name: Raymond Convill

Job title: Senior Rail Policy Officer

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**This information will not be published on our website.*

Overall approach

Question 1: Do you agree with ORR’s position that train operators should be able to opt out of Schedule 4 in CP7, subject to limitations on timings of decisions to opt in or out?

As noted in Transport Scotland (TS’s) response to the initial Schedule 4 consultation, our view is that the approach to Schedule 4 should be efficient, promote collaboration and alignment, not be overly complex or over-bureaucratic and should be flexible with the ability to adapt to the specific needs of the Scotland route as part of a whole system approach.

With this in mind, TS can confirm it supports the option of an opt-out from the Schedule 4 regime being available for ScotRail Trains Ltd and Caledonian Sleepers were Scottish Ministers to consider that approach an appropriate one.

TS recognise why it would be desirable to limit when Operators can choose to opt in or out of Schedule 4 to the start of a Control Period. This would reduce the potential for the opt-out producing the opposite of the desired effect by actually generating more complexity. However, TS agrees with the ORR’s assessment that flexibility

should be given in the form of exemptions as set out in section 1.23 of the consultation i.e. change of ownership of a concession contract mid-term that involves significant changes in service levels or launch of a completely new franchise/open access operator. This is of particular importance when we consider potential changes that may be brought forward through the ongoing Rail Reform process.

With such changes it is imperative that operators are well informed in order for them to make the appropriate decision. This will require information from Network Rail to be shared with operators, for example, the full list of planned possessions taking place within the control period (as far as possible), along with Access Charge Supplement as highlighted in the consultation document. It is also important that notification is given to operators setting a clear deadline for when the decision on opting in or out must be made. This information is also necessary for TS's own management arrangements.

Finally, with the primary operators in Scotland (ScotRail and Caledonian Sleeper) potentially choosing to opt-out the financial incentive element for Network Rail will be greatly reduced and, in some instances, removed all together. Therefore, the ORR must feel confident that it will be able to effectively monitor and ensure Network Rail continues to deliver efficiently when planning possessions and the ORR must be able to demonstrate (to TS as the funder) how they will do this.

Question 2: We envisage that Schedule 8 will continue to apply between Network Rail/GBR and all operators. We would consider timely and practicable new proposals for alternative arrangements that meet legal requirements – these would need to be settled by autumn 2022 for them to be reflected in our PR23 decisions on charges and incentives. If current legislation is amended, it may be possible to adopt alternative arrangements that for example do not feature Schedule 8's financial payments. Do you agree with this position?

Whilst TS recognises the legal requirements on Operators to comply with Schedule 8 it believes arrangements should evolve with industry reform and whatever is developed must align with the industry structure for Scotland agreed by the Scottish Ministers and agreed between UK and Scottish Ministers.

As the ORR is aware, the Department for Transport recently launched its "Consultation on Legislation to Implement Rail Transformation" which states that Great British Railways Transition Team will be commissioned to lead work developing and delivering reforms to the framework that governs access across the multi-user railway. TS are yet to fully consider what this means for Schedule 8 and whether material changes are likely to be made to the existing legislation, in part because the necessary level of detail is not yet available or provided. This is an area which we expect the ORR to consider also. If the required legislation is amended through this process, or at a later date, TS would expect the ORR's approach to Schedule 8 to align with the Schedule 4 proposals. Therefore, offering Operators the option to opt-out of Schedule 8 should they choose to do so.

TS believes the most efficient way to approach both Schedules 4 and 8 is through consistency. Take up of any opt-out for either Schedule is likely to depend on the

other mirroring this. This is because the staff responsible for administering Schedule 4 and 8 payments are the same and the greatest efficiencies will only be realised if less complexity is added to the process. The use of two separate systems for managing Schedule 4 and 8 removes consistency and adds complexity. However, at this stage TS's main goal is to secure flexibility in the system to allow for a decision to be made on opt-outs once more information is known around Rail Reform and its impact on Schedule 8.

Question 3: Do you agree with ORR's proposal to limit the number of changes to Schedules 4 and 8?

TS's view is with Rail Reform on the horizon, limiting the number of changes is an appropriate approach to take. However, this comes with the assumption that the ORR will be willing to make more changes should Rail Reform offer the opportunity to do so.

Schedule 4

Question 4: Do you agree with ORR's preferred approach to take forward the proposals detailed in chapter 2? Do you have comments on these proposals and the specific implementation approaches for each?

TS broadly agree with the approach set out by the ORR in Chapter 2. The introduction of an opt-out of Schedule 4 would be welcomed and should help cut down on the administrative burden.

TS have no particular concerns from a freight or cross border perspective and note representations and points made by the FOCs and RFG on the initial proposals, though it is important that Network Rail is tightly monitored by the ORR to ensure it efficiently plans for network disruption (schedule 4), responds efficiently to unplanned disruption (schedule 8), and is not discriminatory in their behaviours. However, that being said the change to calculation of freight payments would require extra vigilance from Network Rail for the Scotland Route. It is even more important that we accurately calculate any compensation flow to FOCs as this is an external cost to the Scottish Government (whereas it's an internal cost for passenger services given current Operator of Last Resort arrangements).

TS would suggest that the ORR look to share more details with funders (and stakeholders) on the frequency/granularity of reporting it anticipates to receive from Network Rail and when it proposes to inform TS of the Scotland Route reporting.

Schedule 8

Question 5: Do you agree with ORR's preferred approach to only take forward one of our initial proposals? Do you have any comments on this proposal?

Whilst TS has been clear in the past that it would prefer an opt-out mechanism to be included for Schedule 8, it recognises the current legislation does not allow for this. Therefore, TS is content with the ORR's approach, subject to the comments raised above in answer question 2, regarding the potential Network Rail alternative options.

When looking specifically at the delay attribution proposals, TS considers these will need further review/development but recognise that this is being considered in a separate industry-led review.

Are there any other comments you would like to make?

Reporting on Schedule 4

In the consultation paper the paragraph 1.25 states in reference to Schedule 4:

“In addition we propose an additional level of reporting, which would require Network Rail to collect information on the number and length of planned possessions. ORR would monitor this information for indications of a trend increase in overall possessions taken by Network Rail after the opt-out mechanism is implemented, or for an increase in the average length of possessions.”

If the ORR identifies an increasing trend it is assumed some action will be taken. It would make sense for the ORR to be explicit in stating what action it would take in these circumstances once the process has been agreed.

Also where the ORR states *“require Network Rail to collect”*, it is TS’s understanding that this information is already collected by Network Rail. Therefore, is the requirement actually for Network Rail to provide this existing information to the ORR? Although TS note Chapter 2 states that the *“ORR would require Network Rail to record the exact date on which each possession was notified, and not just the threshold that was met”*, we recognise it may be the level of additional detail that ORR will require Network Rail to collect and provide but it would be helpful if this was clarified.