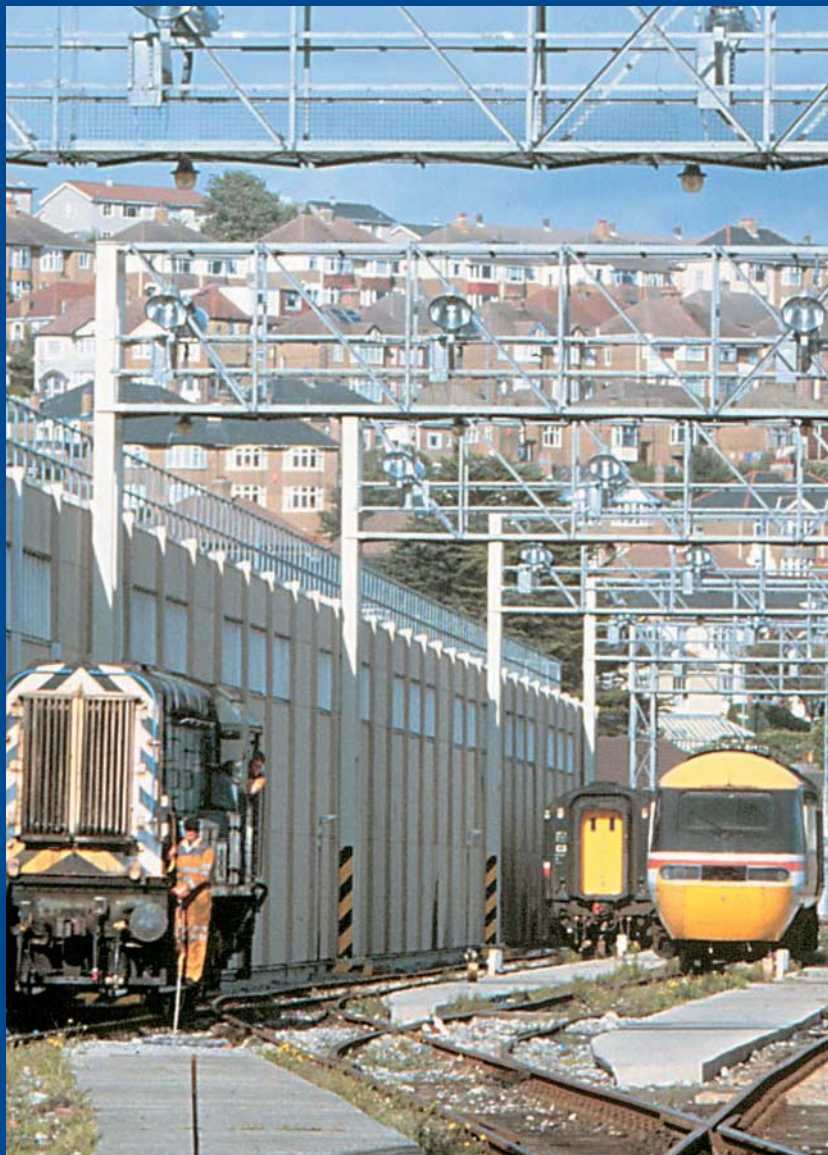


A GUIDE TO PARTS B AND C OF THE NATIONAL DEPOT ACCESS CONDITIONS



**A GUIDE TO PARTS B AND C OF THE
NATIONAL DEPOT ACCESS CONDITIONS**

Nick Olley
Burgess Salmon Solicitors

2002

Burges Salmon

Burges Salmon has been heavily involved with the rail industry since 1994 so the firm is one of the most experienced legal practices dealing with this sector in the United Kingdom. Our expertise has three essential features:

- A real understanding: having played an active role in the development of the regulated access regimes for track, stations and light maintenance depots.
- A practical approach: gained from working extensively alongside train operators and other parties representing a broad spectrum of the industry through periods of fundamental change.
- An unparalleled breadth: stemming from experience of acting on operational rail matters for both passenger and freight operators, bidders for first and second generation franchises, and industry bodies such as ATOC.

First appointed by InterCity Great Western in April 1994, Burges Salmon acted for Great Western Trains and West Anglia Great Northern Railway throughout the privatisation and first franchising processes. The firm also advised the British Railways Board (and a number of its operating subsidiaries), on the development and implementation of the track, station and light maintenance depot access arrangements.

During the first franchising process, the firm advised three separate bidders for passenger rail franchises (two of whom were successful) on bids relating to a dozen separate franchises. Our advice to bidders for second generation franchises has included submission of Best And Final Offers for the South West Trains and TransPennine Express franchises.

Burges Salmon's continuing role on operational rail issues has included detailed advice in relation to the Rail Regulator's 2001 Charging Review, extensive dealings with the SRA and an ongoing involvement with ATOC in revising a number of industry arrangements relating to safety and engineering issues.

If you would like further information about any of the firm's services or to discuss how we might help you, please contact:

Simon Coppen, Clive Fletcher-Wood, Chris Jackson or Nick Olley

Burges Salmon, Narrow Quay House, Narrow Quay, Bristol BS1 4AH

Tel: 0117 939 2000 Fax: 0117 902 4400 www.burges-salmon.com

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The information in this publication is stated as at 1 January 2002.

No responsibility can be accepted by Burges Salmon or the author for action taken as a result of information contained in this publication. Readers should take specific advice when dealing with specific situations.

Preface

The template documentation for regulated depot access, developed at the time of the privatisation by the Depot Operators' Group, has now been in use for over five years. During that time industry parties have, no doubt, become gradually more familiar with the provisions of the various documents. Certain areas, especially parts of the National Depot Access Conditions, have such a direct relevance to the day to day operation of depots that those charged with responsibility for depot access issues will, of necessity, have spent long hours fathoming their intricacies in order to ensure proper compliance.

Two sections of the National Depot Access Conditions stand out in particular, Part D Works, Repairs and Maintenance and Part C Changes to the Depot. This handbook looks at the provisions of Part C, together with those of its close relative Part B Modifications to the Depot Access Conditions.

We hope that by making available Burges Salmon's experience of depot change issues in a way which is as accessible and user-friendly as possible all may benefit from a better and wider understanding of the issues which may, in time, lead to a more standardised industry approach.

Inevitably, there are points of detail which a work of this size cannot hope to address and, as always with documents as complex as those dealing with regulated depot access, issues will still arise which can only be resolved in the light of more detailed analysis and, where appropriate, professional advice.

A sister volume covering the same issues as they apply to station access is also available.

Burges Salmon
January 2002

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A GUIDE TO PARTS B AND C OF THE NATIONAL DEPOT ACCESS CONDITIONS

Introduction

Some basics explained

A depot is any land or property which is normally used for, or in connection with, the provision of light maintenance services, whether or not it is also used for other purposes. Light maintenance services has a special meaning under the Railways Act 1993, namely, the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock; or the carrying out to locomotives or other rolling stock of maintenance work of a kind which is normally carried out at intervals of twelve months or less to prepare them for service.

The light maintenance depots across the network are divided into two groups, those used predominately by passenger operators and those used principally by freight operators. The latter are the subject of licence and facility exemptions, granted either by the Railways (Class and Miscellaneous Exemptions) Order 1994 or by individual Orders, the practical effect of which is that they are not subject to regulation by the Regulator and their operators do not need to be licensed. As such they are not covered by this Handbook which confines itself to the documentation applying to passenger depots.

With one or two exceptions, all passenger depots in Great Britain are owned by Railtrack, though none are operated by it as it lacks the engineering expertise to do so. Instead Railtrack leases them to train operating companies who, in turn, provide services to other train operators which wish to have their rolling stock serviced at that depot.

Under the Railways Act the lease of a depot is not subject to the provisions of sections 17 and 18 of the Act and is, therefore, not "regulated". By contrast, any contract under which a person obtains permission from the depot facility owner to use that depot for the purpose of obtaining light maintenance services is subject to regulation.

At the time of privatisation standard form documents were developed for the lease of a depot by Railtrack to a train operating company (here referred to as the Depot Lease) and for the regulated contract granting permission to use that depot between the depot operator, or Depot Facility Owner, and another User (here referred to as a Depot Access Agreement). A further standard form template was also developed which created a separate contractual relationship between Railtrack as the owner and landlord of the depot and each User (here referred to as a Collateral Agreement). Since the Collateral Agreement does not, of itself, grant permission to use the depot but simply establishes a contractual relationship between Railtrack and the User, like the Depot Lease, a Collateral Agreement is not subject to the provisions of sections 17 and 18 of the 1993 Act and is, therefore, not "regulated". Finally a fourth standard template was created which establishes a separate contractual relationship between Railtrack as the operator of the wider rail network and the Depot Facility Owner as the operator of the depot and which governs the terms on which the connection between the depot and the wider network is maintained (here referred to as the Connection Agreement).

Since the Connection Agreement grants access to Railtrack's regulated network, it amounts to an access agreement which is therefore "regulated".

It was recognised from an early stage that there would be a number of common provisions in each of these documents so a separate standard form document was created, known as the Depot Access Conditions, which are incorporated by reference into the Depot Lease, the Connection Agreement, each Depot Access Agreement and each Collateral Agreement. The Depot Access Conditions are in two parts, the first a set of conditions which are the same for all depots across the network, titled the National Depot Access Conditions (December Standard) (there are two versions of this, one for use in relation to depots in England and Wales and a Scottish equivalent) and the second, a set of Annexes to those conditions, which follow a standard format but are customised for each depot and are known as the Depot Specific Annexes.

In this Guide and the accompanying documents words and expressions which have been given particular meanings in the Depot Lease, the Connection Agreement, the Depot Access Agreement, the Collateral Agreement, the National Depot Access Conditions or the Depot Specific Annexes, are used with those meanings. When we refer to the National Depot Access Conditions, or NDACs, we are referring to the National Depot Access Conditions (December Standard), whilst a reference to the Depot Specific Annexes means the particular Annexes applicable to the depot in question. A reference to the Depot Access Conditions is a reference to the composite document comprising the NDACs and the relevant Depot Specific Annexes for that depot.

Having established our nomenclature we are now ready to look at the detail of the two change mechanisms.

Which procedure applies and when?

What are the change mechanisms and what is their purpose?

The National Depot Access Conditions contain two change mechanisms. Part B sets out two procedures by which the wording of the Depot Access Conditions may be changed, the first allowing the Depot Facility Owner (DFO), Users and Railtrack to bring about change, the second enabling the Regulator to compel change. Part C provides a procedure to control the carrying out of physical changes to the depot.

Do the procedures apply separately or together?

It may be thought that as Part B relates to changes to the Depot Access Conditions whilst Part C relates to physical changes to the depot facility the two would apply wholly independently from each other. However, it is often the case that a physical change to the depot also necessitates changes to the text of the documents, in which case the Part B and Part C procedures may both apply.

Condition C5.1 says that consequential amendments to Depot Access Agreements can be approved as part of the approval process under Part C (Form C5.1 Amend. Ag.). This suggests that there is no need to carry out a Conditions Change Proposal under Part B as a separate exercise. Take care, however, because Condition C5.1 only validates consequential

amendments to Depot Access Agreements. If you only want to change the Depot Access Conditions (either the NDACs or the relevant Depot Specific Annexes) as they apply in the Depot Access Agreement, Condition C5.1 can be safely relied upon. However, in almost all cases it will be desirable to change the Depot Access Conditions as they apply in all the documents into which they have been incorporated (the Depot Lease, the Connection Agreement, each Depot Access Agreement and each Collateral Agreement). In that case Condition C5.1 will not do the job as that will only change them as they apply in the Depot Access Agreement. To change them as they apply in all the documents it is necessary to run concurrent Part B and Part C procedures.

Precisely when does the Part B procedure apply?

The Part B procedure applies whenever there is a proposal to change the text of the Depot Access Conditions, be it the NDACs or the relevant Depot Specific Annexes. The Depot Access Conditions are incorporated by reference into the Depot Lease, each Depot Access Agreement and, to a limited extent, in the Connection Agreement and each Collateral Agreement. Implementation of a Conditions Change Proposal in accordance with the procedure in Part B will change the text of the Depot Access Conditions as it applies in all these documents.

If the desire is to change the text of the Depot Lease, the Connection Agreement, a Depot Access Agreement or a Collateral Agreement in some part of the document other than the Depot Access Conditions, this cannot be done using the Part B procedure. The procedure which should then be used depends upon the document. If the change is to the text of a Depot Access Agreement or to the Connection Agreement both of which are regulated, section 22 of the 1993 Act applies so the change should be documented in a supplemental agreement to that Depot Access Agreement or Connection Agreement which will require the approval of the Regulator, either specifically, or through a General Approval. If the change is to the text of the Depot Lease or a Collateral Agreement, since neither document is regulated, the change is not covered by section 22 so it can be effected by a supplemental agreement without the need for the Regulator's approval.

Precisely when does the Part C procedure apply?

The Part C procedure applies to any proposal which amounts to a Proposal for Change or Railtrack Change Proposal. These are defined in similar terms though the latter is prefaced by the concept that the change is caused by the desire to carry out works of construction, development or refurbishment at the depot.

Since the permission to use the depot granted by a Depot Access Agreement is essentially a permission to obtain light maintenance services, the definitions of Proposal for Change and Railtrack Change Proposal are designed principally to control changes which would materially affect the DFO's ability to perform such services, either for others or for its own benefit. The definition also covers any proposal to enter into any agreement or other arrangement the purpose or effect of which involves, or is likely to involve, such an effect.

Next the definitions cover any proposal to enter into an agreement or other arrangement (or vary any existing agreement or arrangement) so as to result, or so as to be likely to result, in a Relevant Restriction, that is any material restriction, limitation or other impairment of the

DFO's right to quiet use and enjoyment of the depot, or a User's permission to use the depot.

Finally the definition of a Proposal for Change includes any proposal to close all or any part of the depot.

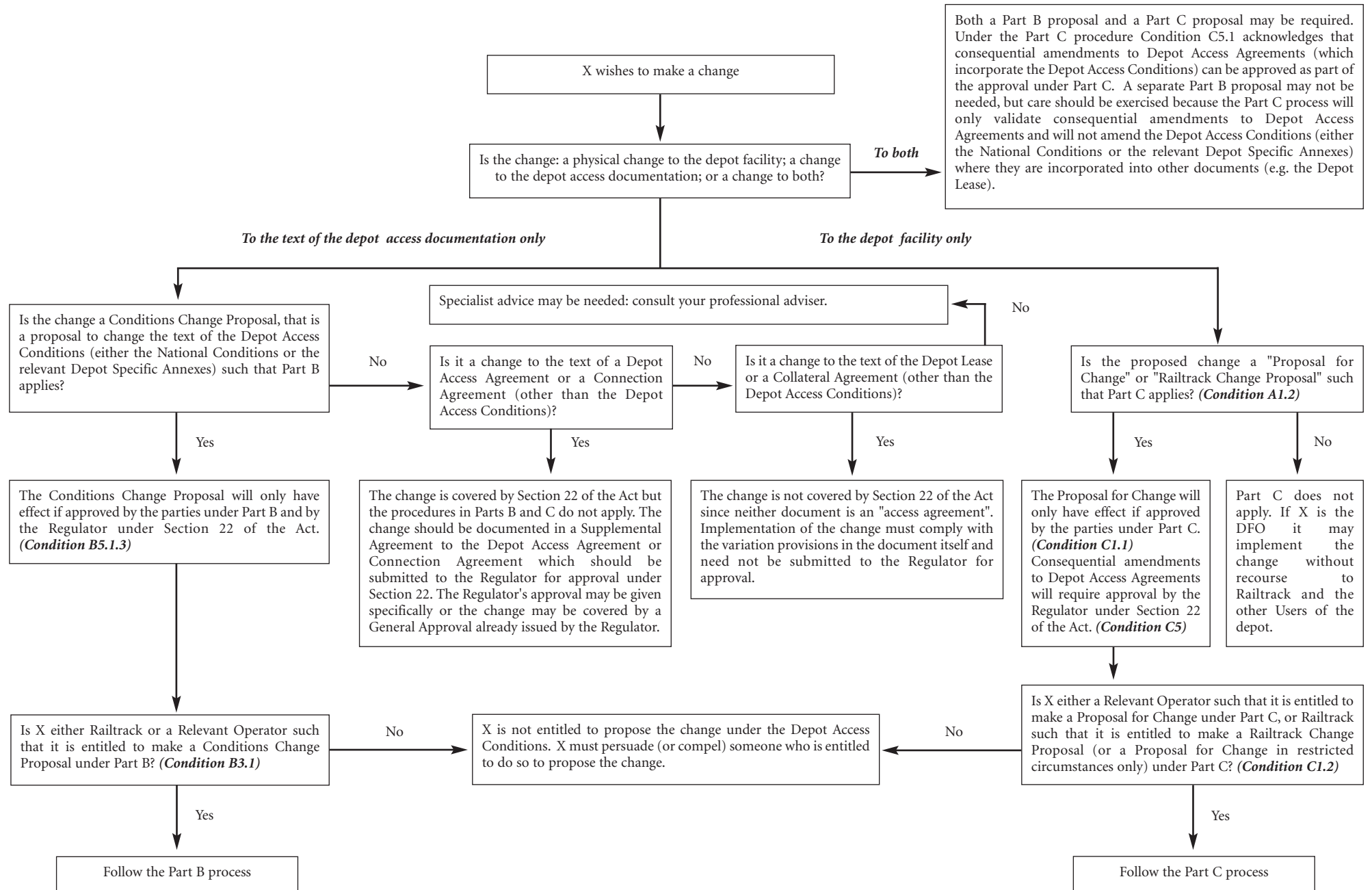
Thus, the focus is on the effect that a proposal has, or may have, on the DFO's ability to perform light maintenance and certain related matters. Many proposed changes will not have the effect, or the degree of effect, prescribed by the definitions and will not, therefore, be subject to the Part C procedure.

Is anything exempt from the Part C procedure?

Even if a proposal falls within the definition of a Proposal for Change or Railtrack Change Proposal, if the action is required to fulfil an obligation imposed by the Depot Access Conditions which expressly states that compliance with Part C is not required; or is carried out in exercise of a right granted, excepted or reserved to the DFO under Condition M2.15 or M3.1; or is carried out pursuant to the DFO's rights to restrict, suspend or alter any permission to use the depot under Condition D1 or D2.1 and the relevant condition does not expressly require compliance with Part C; or is specifically exempted from Part C by the provisions of Condition G8.5, that action can be carried out without the need to comply with the Part C procedure.

Proposals for Change and Railtrack Change Proposals required as a result of a Change of Law or any Direction of any Competent Authority (other than the Regulator or Industry Committee) may also be implemented without complying with the full Part C procedure, provided that the DFO (or Railtrack as appropriate) complies with more limited requirements to give details of the change and to invite representations on it (Form C9).

Which procedure applies and when?



Part B

The procedure explained

Who can make a Conditions Change Proposal?

Only the DFO, a User or Railtrack may make a Conditions Change Proposal. If the sponsor of the Conditions Change Proposal is not one of these parties (e.g. a lessee of operational accommodation at the depot) it would have to persuade the DFO, a User or Railtrack to propose the change on its behalf.

How does one make a Conditions Change Proposal?

The requirements for a Conditions Change Proposal are set out in Condition B3.1 (Form B3.1).

Can a Conditions Change Proposal be amended?

A proposal can be amended (Form B3.4), but if it is materially modified the DFO must treat it as a new Conditions Change Proposal and the Part B process must be recommenced.

What must the DFO do on making, or receiving, a Conditions Change Proposal?

The DFO manages the consultation and approval process. On receipt of a Conditions Change Proposal from a User or Railtrack, the DFO may make any reasonable request for clarification (Form B3.5) before it then publicises the proposal to relevant parties (Form B3.2.1), prescribing a Consultation Period within which those parties may submit written representations (Form B3.2.2).

Are costs and expenses incurred in considering Conditions Change Proposals reimbursed?

Unlike the Part C procedure, the Part B procedure does not entitle consultees to be reimbursed for their costs incurred in evaluating and responding to a Conditions Change Proposal.

How is a Conditions Change Proposal approved?

Following the end of the Consultation Period the DFO must convene a Depot Meeting to consider the Conditions Change Proposal (Form B3.3) and must recirculate relevant paperwork, including copies of any written representations the DFO has received in relation to that proposal.

A Conditions Change Proposal is approved if either there is a unanimous decision in writing by all Relevant Operators (Form B1.2.6), or the Requisite Majority vote in favour of it at the relevant Depot Meeting. Unlike the position under the National Station Access Conditions the failure of a Relevant Operator to vote is not deemed to be a vote in favour. The Requisite Majority means passenger service operators whose train departures from the depot, as at the relevant date, expressed as a percentage of the total departures, are at least equal to the percentage specified in paragraph 4 of Annex 5 of the Depot Specific Annexes.

What is the position of Railtrack?

Since it is not a passenger service operator, Railtrack has no vote. Instead it can object to a Conditions Change Proposal where its implementation is likely to have a material and adverse

effect on its interest in the depot, or any other part of Railtrack's land over which the DFO has an interest under the Depot Lease or the Connection Agreement. To do so Railtrack must notify the DFO of the exercise of its veto before the end of the Consultation Period (Form B4.1.2). Note, Railtrack can only veto Conditions Change Proposals that would otherwise be approved, it has no ability to overturn a decision to reject a Conditions Change Proposal.

What is the position of freight operators?

Although they qualify as a User and so can make a Conditions Change Proposal, are involved in the consultation process and are entitled to attend and speak at the relevant Depot Meeting, like Railtrack, non-passenger operators have no vote. However, unlike Railtrack, they have no veto right, so their only protection derives from the fact that changes which have been approved by the DFO and the other passenger operators still need the Regulator's approval before they become effective.

Can one appeal against Railtrack's exercise of its veto?

If Railtrack exercises its veto, the DFO or any User (which includes both passenger and freight operators) can appeal to the Regulator.

How does one appeal if Railtrack exercises its veto right?

Notice of appeal must be given to the Regulator, Railtrack, the DFO and each other User within 65 days after the exercise of the Railtrack veto (Form B8.2). The notice must give the reasons why the appellant considers that the Railtrack veto should not have effect.

How does the Regulator determine the matter?

Unlike the Part C procedure, there is very little direction for the Regulator as to how he must determine any matter referred to him. As with other matters, he will act principally in accordance with the duties placed on him by section 4 of the 1993 Act.

In addition, the Regulator may decline to determine the appeal if he believes it should not proceed, including on the grounds that the matter in question is not of sufficient importance to the industry; the reference to him is frivolous or vexatious; or the appellant is acting in bad faith. The Regulator's determination is final and binding on all parties and cannot be further appealed.

Can one appeal against the decision at a Depot Meeting to approve or reject a Conditions Change Proposal?

Unlike Part C which contains a mechanism allowing an appeal to the Regulator against the approval or rejection of a Proposal for Change, Part B has no such provision. Nor on the face of the Conditions is there any equivalent of the Part C mechanism of providing Financial Undertakings to "buy" the desired decision. However, the absence of express provisions to that effect does not prevent that tactic being employed.

Railtrack does, of course, have a type of appeal right in the form of its veto, but as we have seen, this must be exercised before the end of the Consultation Period not after the outcome of the Depot Meeting.

The DFO also has a limited right of appeal if the other Users reject a Conditions Change

Proposal proposed by the DFO to make any amendment to the Depot Facility Owner's Own Services set out in Annex 7, that is the services which the DFO performs on its own trains. In the first instance the DFO may refer the matter for expert determination under Part D of the Access Dispute Resolution Rules. If the DFO or any User is dissatisfied with the outcome of those proceedings it may refer the matter to the Regulator on the grounds that the expert's determination was so unreasonable no reasonable expert could have made it. The Regulator may decline to act if, having consulted with the parties concerned, he believes it should not proceed, including on the grounds that the matter in question is not of sufficient importance to the parties; the reference to him is frivolous or vexatious; or the person referring the matter is acting in bad faith.

What should the DFO do following the approval or rejection of a Conditions Change Proposal?

If the Conditions Change Proposal is rejected, nothing further need be done. If it is approved, as soon as reasonably practicable, the DFO should submit details to the Regulator seeking his approval (Form B5.1.1). Once the Regulator's decision is received the DFO should communicate that decision to all relevant parties (Form B5.1.4 or B5.2 as appropriate) within 14 days.

What else must the DFO do?

The DFO must notify any change made in accordance with Part B (other than changes imposed by the Regulator under Condition B6) to all Users, Railtrack, the Regulator and the Strategic Rail Authority (Form B7.1). Before the change becomes effective the DFO should also issue to all Users, Railtrack, the Regulator and the Strategic Rail Authority, a revised version of the Depot Access Conditions incorporating the change (Form B7.2).

Details of the Conditions Change Proposal must also be placed on the Depot Register.

When does the Conditions Change Proposal become effective?

Save as specifically provided in Condition B6 for changes imposed by the Regulator under that Condition, a Conditions Change Proposal will take effect 21 days after the date of the DFO's notification to the prescribed parties under Condition B7.1.

Part B – Modifications to the Depot Access Conditions

The DFO or any User may make variations or amendments to their respective Diagrams, Running Maintenance Programmes or Specifications provided that the variation or amendment is permitted by a General Approval or General Consent and its implementation would not, or could not reasonably be expected to, have the effect of changing materially and adversely affecting the DFO's ability to provide Depot Services or, in the case of a User's variation or amendment, DFO's Own Services. (**Condition B11**)

Otherwise all Conditions Change Proposals must comply with the following procedure:

Making the Proposal

The DFO, a User or Railtrack may make a Conditions Change Proposal which, in the case of a User or Railtrack, should be sent to the DFO. (**Condition B3.1**)



The Conditions Change Proposal must be in writing and must contain:

- reasonable particulars of the change proposed; and
- the proposed text for the Conditions affected by the proposed change; and must be supported by an explanation, in reasonable detail, of the purpose of the proposed change. (Form B3.1) (**Condition B3.1**)



DFO's Obligation

On making a Conditions Change Proposal as the DFO, or within 5 Business Days of receipt of such a proposal from a User or Railtrack (or within 5 Business Days of receipt of any clarification reasonably requested by the DFO), the DFO shall:

- supply a copy of that proposal to each User, Railtrack and the Strategic Rail Authority; (Form B3.2.1) (**Condition B3.2.1**)
- invite the submission of written representations within a reasonable period (the "Consultation Period") being not less than 30 days from the date of notification. (Form B3.2.2) (**Condition B3.2.2**)



Consultation

The DFO may make, and the proposer of the Conditions Change Proposal shall promptly comply with, reasonable requests for further clarification. (Form B3.5) (**Condition B3.5**)



If, either as a result of a request for further clarification or otherwise, the proposal is materially modified the DFO shall treat the modified proposal as a new Conditions Change Proposal and give notice accordingly. (Form B3.5) (**Condition B3.1**)



Railtrack may object to a Conditions Change Proposal where its implementation is likely to have a material and adverse effect on Railtrack's interest in the depot or any Adjacent Property over which the DFO has or will have any rights under the Depot Lease or the Connection Agreement, but must notify the DFO of the exercise of its veto before the end of the Consultation Period. (Form B4.1.2) (**Condition B4.1.2**)



Getting Approval

Following the end of the Consultation Period, the DFO shall:

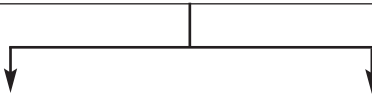
- within 5 Business Days convene a Depot Meeting in accordance with Condition B.1.1.1(b); (Form B3.3) (**Condition B3.3.1**) and
- at least 5 Business Days before the date of that Depot Meeting supply a further copy of the Conditions Change Proposal to each previous recipient together with copies of all written representations that have been received and, if the person making the proposal consents, any modification to that Conditions Change Proposal which has not required the recommencement of the Consultation Period under Condition B3.4. (**Condition B3.3.2**)



A Conditions Change Proposal is approved only if either:

- the Requisite Majority vote in favour at the relevant Depot Meeting; or
- it is approved by a unanimous decision in writing under Condition B1.2.6; (Form B1.2.6) (**Condition B4.1.1**)

and in either case Railtrack has not exercised its veto right within the Consultation Period. (Form B4.1.2) (**Condition B4.1.2**)



Appeal Procedures

If Railtrack exercises its veto, any Relevant Operator may appeal by giving notice of appeal (containing the reasons why the Relevant Operator believes the Railtrack veto should not have effect and requesting the Regulator to determine the matter) to the Regulator, Railtrack and each other Relevant Operator within 35 days after the exercise of the Railtrack veto. (Form B8.2) (**Conditions B8.1 and B8.2**)

If a Conditions Change Proposal made by the DFO to make a change to the DFO's Minimum Level of Services or the DFO's Maximum Level of Services set out in Annex 7 is not approved under Condition B4.1.1, the DFO may refer the matter to an expert for determination under Part D of the Access Dispute Resolution Rules. (Form B10.1) (**Condition B10.1**)



Railtrack and the Relevant Operators shall use their respective reasonable endeavours to furnish the Regulator with sufficient information to dispose of the appeal. (*Condition B8.4*) The Regulator's determination of the appeal shall be final and binding on Railtrack and each Relevant Operator. (*Condition B8.7*)

If the DFO or any User is dissatisfied with the expert's determination it may refer the matter to the Regulator for determination on the grounds that the expert's determination was so unreasonable no reasonable expert could have made it. (Form B10.3) (*Condition B10.3*)



Approval/
Rejection by the
Regulator

The DFO shall, as soon as reasonably practicable, submit the proposal to the Regulator together with a written memorandum containing the prescribed information. (Form B5.1.1) (*Condition B5.1.1*)



The Regulator's approval may be given specifically or the change may be covered by a General Approval already issued by the Regulator. If the Regulator approves the proposal the DFO shall notify Railtrack, all Relevant Operators and the Strategic Rail Authority within 14 days of receipt of the Regulator's notice of approval. (Form B5.1.4) (*Condition B5.1.4*) If the Regulator rejects the Conditions Change Proposal the DFO shall, as soon as reasonably practicable, notify the proposer of the change of its rejection and shall notify all other Relevant Operators and Railtrack of that decision within 14 days of the receipt of the Regulator's notice of rejection. (Form B5.2) (*Condition B5.2*)



The DFO shall notify any change made under Part B (excluding modifications imposed by the Regulator under Condition B6) to all Users, Railtrack, the Regulator and the Strategic Rail Authority (Form B7.1) (*Condition B7.1*) and following approval of the change by the Regulator the DFO shall, as soon as reasonably practicable, and in any event before the change becomes effective, issue a revised version of the Depot Access Conditions incorporating the change to all Users, Railtrack, the Regulator and the Strategic Rail Authority. (Form B7.2) (*Condition B7.2*)



Updating the
Depot Register

Details of the Conditions Change Proposal, as required by Condition I2.1.3, should be placed on the Depot Register. (**Condition I2.1.3**)



Implementation

The Conditions Change Proposal will take effect 21 days from the date of the DFO's notification under Condition B7.1. (**Condition B7.1**)

Part B - Pro Forma documents

This section contains a series of standard forms which should assist when complying with the requirements of Part B. When used each form will require careful customisation to meet the particular circumstances of the case. Ordinary text in square brackets shows where a choice needs to be made between alternative texts provided whilst italic text in square brackets indicates the nature of the further customisation required.

The table below sets out a complete list of the Forms provided, each of which is cross-referred in the Guide to Part B and the Part B Flowchart where appropriate. If any other form is needed it should be capable of being created using one of the Forms provided as a starting point.

Form	Purpose
B1.1.1R	Notice requisitioning a Depot Meeting
B1.1.1N	Notice convening a Depot Meeting
B1.2.6	Unanimous decision(s) of all Relevant Operators
B1.2.7A	Notice of the [appointment/removal] of an Alternate
B1.2.7CR	Notice of the [appointment/removal] of a Corporate Representative
B2.2	Details of all Users
B2.3	Minutes of a Depot Meeting
B3.1	Proposal of a Conditions Change Proposal
B3.2.1	Notice of a Conditions Change Proposal
B3.2.2	Representations on a Conditions Change Proposal
B3.3	Notice of a Depot Meeting to consider a Conditions Change Proposal
B3.4	Notice of modification to a Conditions Change Proposal
B3.5	Request for further clarification of a Conditions Change Proposal
B4.1.2	Notice of objection by Railtrack to a Conditions Change Proposal
B5.1.1	Submission of an approved Conditions Change Proposal to the Regulator
B5.1.4	Notice of approval by the Regulator of a Conditions Change Proposal
B5.2	Notice of rejection by the Regulator of a Conditions Change Proposal
B7.1	Notice of changes to the Depot Access Conditions made by a Conditions Change Proposal
B7.2	Revised Depot Access Conditions resulting from changes made by a Conditions Change Proposal
B8.2	Notice of appeal against the exercise of the Railtrack veto in relation to a Conditions Change Proposal
B10.1	Notice of referral of a matter for expert determination
B10.3	Notice of referral of the expert's determination to the Regulator

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**]**

Notice requisitioning a Depot Meeting

Date: [date]

To: [Depot Facility Owner]
[address]

From: [User/Railtrack PLC]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

Please convene a Depot Meeting for the following purpose[s]:

[Set out the purpose[s] of the meeting].

.....

Signed for and on behalf of
[User/Railtrack PLC]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

Notice convening a Depot Meeting

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

A Depot Meeting will be held at [address] on [date, being not less than 14 and not more than 28 days after the date of this notice] at [time] am/pm for the following purpose[s]:

[Set out the purpose[s] of the meeting].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Unanimous decision[s] of all Relevant Operators

Date: [date]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in [this/these] decision[s].

We, the undersigned, being all the Relevant Operators at [name of depot] Depot hereby make the following decision[s]:

[Set out the decision[s]].

.....
Signed for and on behalf of
[Depot Facility Owner]

.....
Signed for and on behalf of
[User]

.....
Signed for and on behalf of
[User]

.....
Signed for and on behalf of
[User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

Notice of the [appointment/removal] of an Alternate

Date: [date]

To: [Railtrack PLC] [Depot Facility Owner]
[address] [address]

[User] [User]
[address] [address]

From: [Person entitled to attend Depot Meeting]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

With effect from [date] I [appoint/remove] [name] as my alternate for the purposes of the Depot Access Conditions.

.....
Signed by
[Person entitled to attend Depot Meeting]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of the [appointment/removal] of a Corporate Representative

Date: [date]

To: [Railtrack PLC] [Depot Facility Owner]
[address] [address]

[User] [User]
[address] [address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

With effect from [date] we [appoint/remove] [name] as our Corporate Representative for the purposes of the Depot Access Conditions.

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Details of all Users

Date: [date]

To: [User/Railtrack PLC]
[address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

The following comprise all the current Users:

[Set out names and addresses of all Users].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Minutes of a Depot Meeting held at [address] on [date] at [time] am/pm

Present: [name] representing the Depot Facility Owner ("Chairman")
[name] representing Railtrack Plc
[name] representing [User]
[name] representing [User]
[name] representing the Strategic Rail Authority

In attendance: [name] [professional adviser to [name]]

1 Introduction

1.1 Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in these minutes.

1.2 The Chairman having confirmed that notice had been given to all those entitled to receive it, the meeting proceeded to business.

1.3 The meeting had been called for the purposes of [set out the purpose(s) of the meeting].

2 Minutes of last meeting

2.1 The minutes of the last meeting were discussed and approved [without modification] [with the following modification[s]:

[Set out any modification[s]].

3 Business of meeting

3.1 [Minute the business of the meeting].

4 Conclusion

4.1 There being no further business the Chairman declared the meeting closed.

.....
Signed for an on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Proposal of a Conditions Change Proposal

Date: [date]

To: [Depot Facility Owner]
[address]

From: [User/Railtrack PLC]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this proposal.

We propose the following Conditions Change Proposal and request that you give notice of it as required by Condition B3.2.

Purpose of change[s]: [Give reasonable particulars of the change[s] proposed and an explanation in reasonable detail of the purpose of the proposed change[s]].
(Conditions B3.1.2 and B3.1.4)

Change[s]: The change[s] proposed [is/are]:
(Conditions B3.1.2 and B3.1.3)

Condition [Condition to be amended] **Change** [Set out in full any text to be deleted and any text to be inserted].

.....
Signed for and on behalf of
[User/Railtrack PLC]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of Conditions Change Proposal No. [number]

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this Conditions Change Proposal.

We hereby give notice of a Conditions Change Proposal relating to [name of depot] Depot which is made by [proposer's name].

Purpose of change[s]: [Give reasonable particulars of the change[s] proposed and an explanation in reasonable detail of the purpose of the proposed change[s]].
(Conditions B3.1.2 and B3.1.4)

Change[s]: The change[s] proposed [is/are]:
(Conditions B.3.1.2 and B3.1.3)

Condition [Condition to be amended] **Change** [Set out in full the text to be deleted and the text to be inserted].

You may make written representations on this Conditions Change Proposal at any time up to [specify the number of days - minimum 30] days from the date of this Conditions Change Proposal.

If you approve this Conditions Change Proposal, please sign the enclosed copy of it and return it to the Depot Facility Owner at the above address.

.....
Signed for and on behalf of
[Depot Facility Owner]

[For addressees other than Railtrack]

We acknowledge receipt of the Conditions Change Proposal of which this is a copy and irrevocably confirm that we approve it.

.....

Signed for and on behalf of

[Addressee]

[For Railtrack only]

We irrevocably confirm that implementation of this Conditions Change Proposal is not likely to have a material and adverse effect on our interest in relation to the Depot and we irrevocably confirm that we have no objection to it.

.....

Signed for and on behalf of

Railtrack PLC

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Representations on Conditions Change Proposal No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [User/Railtrack PLC/Strategic Rail Authority]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in these representations.

We set out below our representations on Conditions Change Proposal No. [number].

Condition	Representation[s]
[Condition to be amended]	[Set out representation[s]].

.....
Signed for and on behalf of
[User/Railtrack PLC/Strategic Rail Authority]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Notice of a Depot Meeting to consider Conditions Change Proposal No. [number]

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Railway Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

A Depot Meeting will be held at [address] on [date, being not less than 14 and not more than 28 days after the date of this notice] at [time] am/pm to consider Conditions Change Proposal No. [number] made by [proposer] on [date], a copy of which, together with copies of any representations received pursuant to Condition B3.2.2 and any modification to the original Conditions Change Proposal made by its proposer, is attached.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of modification to Conditions Change Proposal No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [Proposer of Conditions Change Proposal]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions shall have the same meanings in this notice.

We wish to make the modification[s] set out below to our Conditions Change Proposal No. [number].

Condition	Modification[s]
[Condition to be amended]	[Give reasonable particulars of the modification[s] proposed and an explanation in reasonable detail of the purpose of the proposed modification[s]].

.....
Signed for and on behalf of
[Proposer of Conditions Change Proposal]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Request for further clarification of a Conditions Change Proposal

Date: [date]

To: [Proposer of Conditions Change Proposal]
[address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

Further to your Conditions Change Proposal dated [date] we require further clarification of the following:

[Set out details of the clarification required].

Please respond by [date].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of objection by Railtrack to Conditions Change Proposal No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: Railtrack PLC
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

Conditions Change Proposal No. [number] dated [date] is likely to have a material and adverse effect on our interest in relation to [name of depot] Depot and we object to it for the following reason[s]:

[Set out the reason[s]].

.....
Signed for and on behalf of
Railtrack PLC

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**/**] and DSA/**/**/**/**]**

Submission of an approved Conditions Change Proposal to the Regulator

Date: [date]

To: The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this submission.

On [date] Conditions Change Proposal No. [number] was approved [by a unanimous decision of all Relevant Operators under Condition B1.2.6] [at a duly convened Depot Meeting]. A copy of the Conditions Change Proposal is attached which sets out the text of the changes and explains the reasons for them.

Railtrack has confirmed that [the Conditions Change Proposal is not likely to have a material and adverse effect on its interest in relation to the Depot/although the Conditions Change Proposal is likely to have a material and adverse effect on its interest in relation to the Depot it does not object to it].

[No objections to the Conditions Change Proposal were received from Relevant Operators.] [Objections to the Conditions Change Proposal were received from the following Relevant Operators for the following reason[s]:

Relevant Operator Reason[s] for objection

[Name] [Give reasonable particulars of the reason[s] for the objection]].

[As part of the consultation process representations were made pursuant to [Condition B3.2.2 and] [Condition B4.2] by [name[s]] of which the following have been neither accepted nor withdrawn:

Representor Representation

[Name] [Give reasonable particulars of the representation]].

We believe that the changes effected by the Conditions Change Proposal are [[not] covered by a General Approval] and accordingly request your confirmation that the Conditions Change Proposal is approved pursuant to section 22 of the Railways Act 1993.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

Notice of approval by the Regulator of Conditions Change Proposal No. [number]

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

On [date] we received notice from the Regulator, pursuant to section 22 of the Railways Act 1993, of his approval of Conditions Change Proposal No. [number].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

Notice of rejection by the Regulator of Conditions Change Proposal No. [number]

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

On [date] we received notice from the Regulator, pursuant to section 22 of the Railways Act 1993, of his rejection of Conditions Change Proposal No. [number].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

**Notice of changes to the Depot Access Conditions made by
Conditions Change Proposal No. [number]**

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

Pursuant to Conditions Change Proposal No. [number] the following changes have been made to the Depot Access Conditions which shall be effective on expiry of 21 days from the date of this notice:

Condition

Change[s]

[Condition to be amended]

[Set out in full any text to be deleted and any text to be inserted].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Revised Depot Access Conditions resulting from changes made by
Conditions Change Proposal No. [number]**

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

Further to our notice of changes to the Depot Access Conditions effected by Conditions Change Proposal No. [number] please find enclosed a revised version of the Depot Access Conditions as amended by that Conditions Change Proposal.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

**Notice of appeal against the exercise of the Railtrack veto in relation to
Conditions Change Proposal No. [number]**

Date: [date]

To: The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

Railtrack PLC
[address]

[Depot Facility Owner]
[address]

[User]
[address]

[User]
[address]

[User]
[address]

From: [Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

On [date] Railtrack objected to Conditions Change Proposal No. [number].

We believe that the Railtrack veto should not have effect for the following reason[s]:

[Set out reason[s]].

We request the Regulator to determine the matter.

.....
Signed for and on behalf of
[Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Notice of referral of matter for expert determination in relation to
Conditions Change Proposal No. [number]**

Date: [date]

To: Railtrack PLC [User]
[address] [address]
[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

As Conditions Change Proposal No.[number] proposing changes to an allowance specified in Annex 7 [Depot Facility Owner's Own Services] has not been approved in accordance with Condition B 4.1.1(a), we request your agreement to the appointment of [name] as the expert for the purposes of determining, pursuant to Part D of the Access Dispute Resolution Rules, whether such Conditions Change Proposal shall be deemed approved for the purposes of Part B. If the agreement of all parties is not obtained within 14 days we will request the Disputes Secretary appointed under the Access Dispute Resolution Rules to make the appointment.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Notice of referral of the expert’s determination to the Regulator in relation to
Conditions Change Proposal No. [number]**

Date: [date]

To: The Rail Regulator [Depot Facility Owner]
Office of the Rail Regulator [address]
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

Conditions Change Proposal No.[number] proposing changes to an allowance specified in Annex 7 [Depot Facility Owner's Own Services] was referred for the determination of an expert pursuant to Part D of the Access Dispute Resolution Rules. We believe the expert's determination, [give identification details of the expert's determination], was so unreasonable that no reasonable expert could have made it. Accordingly we are referring the matter to the Regulator with a request that he determine it.

.....
Signed for and on behalf of
[Depot Facility Owner]

Part C

The procedure explained

Who can make a Proposal for Change or Railtrack Change Proposal?

Only the DFO, a User or, in limited circumstances, Railtrack may make a Proposal for Change. If the sponsor of the Proposal for Change is not one of these parties (e.g. a lessee of operational accommodation at the depot) it would have to persuade the DFO, a User or Railtrack to propose the change on its behalf. Railtrack may also make a Railtrack Change Proposal.

How does one make a Proposal for Change or Railtrack Change Proposal?

The requirements for a Proposal for Change or Railtrack Change Proposal are set out in Condition C1.4 (Form C1.4). A Railtrack Change Proposal must also contain the further information required by Condition C3.1 and must be accompanied by the indemnities and undertakings required by Condition C3.2. The extent of the information required to support a Railtrack Change Proposal differs depending on whether it is made as an Initial Proposal, a Material Variation or a Full Proposal.

Can a Proposal for Change or Railtrack Change Proposal be amended?

The sponsor of a Proposal for Change or Railtrack Change Proposal may amend its proposal and, if it is not the DFO, resubmit it to the DFO. The DFO must then recommence the Part C procedure.

What must the DFO do on making, or receiving, a Proposal for Change or on receiving a Railtrack Change Proposal?

The DFO manages the consultation and approval process. On receipt of a Proposal for Change or Railtrack Change Proposal from a User or Railtrack, the DFO must publicise the proposal to relevant parties (Form C1.5).

At the same time the DFO must invite the submission of representations on the proposal within a reasonable period of at least 30 days and prescribe a second reasonable period, of at least 45 days, for the service of a Notice of Objection (Form C1.5REP). The DFO must send a copy of any representations or objections received to the sponsor of the change and every other User within 5 Business Days of receipt (Form C1.6).

On request from the DFO (Form C2.2R) each Consultee must provide its preliminary response to the Proposal for Change or Railtrack Change Proposal (Form C2.2PR) within 28 days of being requested to do so.

Can one make a Proposal for Change or Railtrack Change Proposal which is not completely finalised?

There is no mechanism in Part C for a Proposal for Change to be made in stages but a Railtrack Change Proposal may proceed by way of an Initial Proposal followed by a Full Proposal. Once an Initial Proposal has been approved no party can withdraw its approval, though that approval may lapse if it is timed out under the provisions of Condition C3.4. Where Railtrack makes its proposal in stages it may not proceed with any works falling within

the definition of a Railtrack Change Proposal until a Full Proposal has been accepted in accordance with the Part C procedure.

Are costs and expenses incurred in considering Proposals for Change or Railtrack Change Proposals reimbursed?

A consultee is entitled to be reimbursed by the proposer of a Proposal for Change or Railtrack Change Proposal for 100% of its costs reasonably incurred in evaluating and responding to that proposal.

Each consultee must use its reasonable endeavours to minimise those costs, including by liaising with other consultees, and must incur no further costs following receipt of notice in writing from the proposer of the change (Form C2.6) that it does not wish to proceed with it. When requested (Form C2.3R) a consultee must provide a written estimate of these costs and appropriate supporting information (Form C2.3E). If requested (Form C2.4R) the proposer of the change must provide a consultee with reasonable assurances of payment of its consultation costs (Form C2.4AP).

The proposer of a change may require the DFO to exercise its rights to ask for a preliminary response and for estimate of costs from consultees (Form C2.9).

How is a Proposal for Change or Railtrack Change Proposal approved?

A Proposal for Change or Railtrack Change Proposal will be deemed accepted if either every Relevant Operator and Railtrack (other than the proposer of the change) consents in writing to the proposal (Form C4.8) or if neither any Relevant Operator nor Railtrack serves a Notice of Objection.

Who can serve a Notice of Objection and how?

The Depot Facility Owner, Railtrack or any User may serve a Notice of Objection and to do so must send a copy to each of the other parties. The Depot Access Conditions do not lay down any prescribed form (Form C4.1).

Can one "buy" the decision one wants?

If one or more Relevant Operators and/or Railtrack are willing to provide Financial Undertakings to the other Relevant Operators or Railtrack, as appropriate, a Proposal for Change or Railtrack Change Proposal which will not be deemed accepted under Condition C4.1 may nonetheless be deemed accepted at the expiry of the relevant Decision Period. For these purposes Financial Undertakings essentially means a promise to pay the whole costs of carrying out the Proposal for Change or Railtrack Change Proposal including consequential costs e.g. reasonable costs, direct losses and expenses incurred by relevant parties which are directly attributable to the change, or any increase in the net cost of operating the depot which is directly attributable to carrying out the change. Financial Undertakings must be on terms, and accompanied by such assurances of performance, as are reasonably acceptable to the recipient (Form C4.3).

One slight difficulty here is that any Financial Undertakings must be provided before the end of the relevant Decision Period so there may be gamesmanship where a party threatens the last minute service of a Notice of Objection hoping to obtain Financial Undertakings from the

sponsor of the Proposal for Change or Railtrack Change Proposal.

Note that Financial Undertakings are defined in terms of "the whole of the costs of carrying out a Proposal for Change". Although on the face of it this precludes an offer of lesser amounts clearly, if any lesser offer has the desired effect of preventing the service of a Notice of Objection, the Proposal for Change or Railtrack Change Proposal will be deemed accepted pursuant to Condition C4.1.

Can one appeal against the acceptance or rejection of a Proposal for Change or Railtrack Change Proposal?

Any Relevant Operator or Railtrack can seek to overturn the acceptance or rejection of a Proposal for Change or Railtrack Change Proposal. To do so it must give notice (Form C4.5) to all other Relevant Operators and Railtrack, as appropriate, within 30 days of the end of the Decision Period. The notice must state an intention to commence proceedings under Condition H5 and the objector must then commence those proceedings not later than 30 days after the date of its notice.

To be successful the objector must establish that its interests pursuant to the Depot Lease in the case of the DFO, or its Depot Access Agreement in the case of any other User, or its interests in relation to the depot in the case of Railtrack (and in the limited circumstances referred to in Condition C4.6.1(b) its interests in its network), would be, or are likely to be, unfairly prejudiced and that the degree of such prejudice outweighs, or is likely to outweigh, the prejudice suffered by the other Relevant Operators or Railtrack, as appropriate.

How does the Regulator determine the matter?

Condition C4.6 lists the various matters to which the Regulator must have regard, or not have regard, in making his determination. His starting point is the duties imposed on him by section 4 of the 1993 Act. A range of other considerations are then set out.

What must the DFO do following the acceptance or rejection of a Proposal for Change or Railtrack Change Proposal?

As soon as reasonably practicable after the expiry of 8 Business Days from the end of the Decision Period the DFO must notify each User, Railtrack, and the Strategic Rail Authority of the acceptance or rejection of the relevant Proposal for Change or Railtrack Change Proposal (Form C4.4). At the same time, if the DFO has already received notice of an intention to appeal under Condition C4.5 it must also give notice of that fact. If there is then an appeal, the DFO must await the outcome of the Regulator's decision.

Where the Proposal for Change or Railtrack Change Proposal involves consequential amendments to any Depot Access Agreement details of those amendments must be submitted to the Regulator for his approval (Form C5.1), unless, of course, the change in question is covered by a General Approval already issued by the Regulator. The DFO must also submit to the Regulator any Proposal for Change or Railtrack Change Proposal whose implementation would be likely to materially and adversely affect for more than 28 days the capacity of the depot to provide light maintenance services, even if that Proposal for Change or Railtrack Change Proposal does not require consequential amendments to a Depot Access Agreement (Form C6).

The DFO should submit details to the Regulator as soon as possible but need not do so until any proceedings under Condition C4.5 are concluded or if the change is dependent upon the implementation of approval procedures under Parts F and G of the Track Access Conditions or requires some other statutory or third party consent, until those approval procedures have been completed or the relevant consent obtained.

As soon as reasonably practicable after receipt of notice of the Regulator's decision, the DFO must notify each User and Railtrack of that decision (Form C7). Details of the Proposal for Change or Railtrack Change Proposal should also be placed on the Depot Register.

When may the Proposal for Change or Railtrack Change Proposal be implemented?

Where the Proposal for Change or Railtrack Change Proposal requires the Regulator's approval it will not take effect, and can not therefore be implemented, unless or until such approval has been granted.

Subject to obtaining that approval where required, the DFO shall carry out the changes proposed in any approved Proposal for Change which is not a Railtrack Change Proposal. The costs of implementation shall be borne by each Relevant Operator and Railtrack as agreed in the Proposal for Change, subject to any Financial Undertakings which may have been given to secure its acceptance.

In the case of Railtrack Change Proposals, Railtrack is not obliged to implement an approved proposal, but must give notice to each Relevant Operator as soon as it becomes aware that there is no reasonable prospect of its doing so. If Railtrack does implement the proposal, the implementation costs are borne by Railtrack.

The approval given to a Railtrack Change Proposal will lapse if that Railtrack Change Proposal is not implemented within a specific period. The duration of this period depends on whether the Full Proposal was preceded by an Initial Proposal. If it was not then the works must be commenced within 3 years of the approval of the Full Proposal. If it was then the Full Proposal itself must be submitted within 3 years of the last approval of the Initial Proposal and the works must then be commenced within 2 years of the date of approval of the Full Proposal. Railtrack may seek to vary these time periods in the Railtrack Change Proposal itself in which case different periods will apply.

Part C - Changes to the Depot

Not all actions falling within the definition of a Proposal for Change or Railtrack Change Proposal require compliance with the Part C procedure. If the action is:

- required to fulfil an obligation imposed by the Depot Access Conditions which expressly states that compliance with Part C is not required; or
- carried out in exercise of a right granted, excepted or reserved to the DFO under Condition M2.15 or M3.1; or
- carried out pursuant to the DFO's rights to restrict, suspend or alter any permission to use the depot under Condition D1 or D2.1 and the relevant condition does not expressly require compliance with Part C; or
- specifically exempted from Part C by the provisions of Condition G8.5, that action can be carried out in any event. (**Condition C1.1**)

Proposals for Change or Railtrack Change Proposals required as a result of a Change of Law or any Direction of any Competent Authority (or any body appointed under Condition H5) may be implemented, provided that the DFO (or Railtrack as appropriate) complies with the Condition C1.5.1 requirement to give details of the change and the Condition C1.5.2 requirement to invite representations on it and thereafter keeps each Relevant Operator or Railtrack (as appropriate) informed of the progress made in implementing the change. (Form C9) (**Condition C9.1**) Any costs incurred by any Relevant Operator in complying with, or in consequence of, any such change shall be borne as between Railtrack and the Relevant Operators on a fair and equitable basis. (**Condition P2**)

Otherwise all Proposals for Change or Railtrack Change Proposals must comply with the following procedure:

Making the Proposal

The DFO or any User may make a Proposal for Change, as may Railtrack if it is required to satisfy an obligation imposed on it by the Depot Access Conditions. Railtrack may also make a Railtrack Change Proposal. (**Condition C1.2**) Where a Proposal for Change or Railtrack Change Proposal is made by a User or Railtrack, it should be sent to the DFO together with sufficient copies to enable the DFO to distribute a copy to each person entitled to receive one. (**Condition C1.3**)



A Railtrack Change Proposal may be made by an Initial Proposal, a Full Proposal or a Material Variation (**Condition C1.8**) but Railtrack may not proceed with, or commence, any works under any Railtrack Change Proposal until a Full Proposal has been accepted. (**Condition C1.10**)



A Proposal for Change or Railtrack Change Proposal must be in writing and must contain the information prescribed by Condition C1.4.1. (Form C1.4) In the case of a Railtrack Change Proposal it must also contain the further information prescribed by Condition C3.1 and must be accompanied by the indemnities and undertakings required by Condition C3.2. (**Condition C1.4**)



DFO's
Obligation

On making a Proposal for Change as the DFO, or on receipt of a Proposal for Change or Railtrack Change Proposal from a User or Railtrack, the DFO shall: (Form C1.5)

- promptly provide a copy of such proposal to each User and Railtrack (other than its proposer) and to the Strategic Rail Authority together in each case with a copy of the prescribed information under Condition C1.4; (**Condition C1.5.1**)
- invite the submission of representations within a reasonable period, being not less than 30 days but not more than the number of days allowed under Condition C1.5.3; (**Condition C1.5.2**) and
- give a reasonable period, being not less than 45 days (the "Decision Period"), for the service of a Notice of Objection. (**Condition C1.5.3**)

The DFO must send a copy of any representations or objections received to the proposer of the change and every other User within 5 Business Days of receipt. (Form C1.6) (**Condition C1.6**)



Consultation

The DFO shall consult with the proposer of the change and that person may amend its proposal and resubmit it to the DFO under Condition C1. (**Condition C1.7**)



On request from the DFO (Form C2.2R) each Consultee must provide a preliminary written response to the Proposal for Change or Railtrack Change Proposal within 28 days of first notification of the proposal or, if later, receipt of the request for the preliminary response. (Form C2.2PR) (**Condition C2.2**)



Each Relevant Operator and Railtrack as a consultee to a Proposal for Change or Railtrack Change Proposal ("Consultee") shall be entitled to be paid by the proposer of that change for 100% of its costs reasonably incurred in evaluating and responding to that change. (**Condition C2.1**)



On request from the DFO (Form C2.3R) a Consultee must provide a written estimate of such costs and supporting information (Form C2.3E) (**Condition C2.3**) which must be as accurate as is practicable. (**Condition C2.5**) Each Consultee must use its reasonable endeavours to minimise such costs, including by liaising with other Consultees, (**Condition C2.7**) and shall incur no further costs on receipt of notice in writing from the proposer of the change that it does not wish to proceed with it. (Form C2.6) (**Condition C2.6**) If requested (Form C2.4R) the proposer of the change must provide each Consultee with reasonable assurances of payment of its consultation costs. (Form C2.4AP) (**Condition C2.4**)



Getting Approval

A Proposal for Change or Railtrack Change Proposal shall be deemed to have been accepted at the expiry of the Decision Period if:

- neither any Relevant Operator nor Railtrack has given a Notice of Objection; (Form C4.1) (**Condition C4.1.3**) or
- if every Relevant Operator and Railtrack (other than the proposer of the change) shall consent in writing to the proposal. (Form C4.8) (**Condition C4.8**)



Deemed Approval

Subject to Condition C4.5, a Proposal for Change or Railtrack Change Proposal which has not been deemed to be accepted under Condition C4.1 may still be deemed to be accepted at the expiry of the Decision Period if Railtrack, or any number of Relevant Operators, shall within the Decision Period, either individually or collectively, provide Financial Undertakings to the remaining Relevant Operators or Railtrack (as appropriate). (Form C4.3) (**Condition C4.3**)



Initial Notification of Outcome

As soon as reasonably practicable after the expiry of 8 Business Days from the end of the Decision Period the DFO shall notify each User, Railtrack and the Strategic Rail Authority of the acceptance or rejection of the relevant Proposal for Change or Railtrack Change Proposal and of any notice under Condition C4.5 which has already been received by the DFO. (Form C4.4) (**Condition C4.4**)



Appeals
Procedures

A Proposal for Change or Railtrack Change Proposal shall not be accepted or rejected if a Relevant Operator or Railtrack:

- gives notice to all other Relevant Operators and Railtrack (as appropriate) within 30 days of the end of the Decision Period of its intention to commence proceedings under Condition H5; (Form C4.5)
- commences such proceedings within 30 days after giving such notice; and
- establishes in those proceedings that if the Proposal for Change or Railtrack Change Proposal is or is not carried out (as the case may be) in accordance with its terms, in the case of a Relevant Operator its interests under a Relevant Agreement; or in the case of Railtrack its interests in relation to the depot (and in the limited circumstances referred to in Condition C4.1.6(b) its interests in relation to its network); would be, or would be likely to be, prejudiced (as determined primarily in accordance with the matters in respect of which duties are imposed on the Regulator under section 4 of the Act but subject thereto in accordance with certain other matters specified in Condition C4.6) to an extent which outweighs, or is likely to outweigh, the prejudice to the interests under a Relevant Agreement, or in relation to the depot/network (as appropriate) which any other Relevant Operators or Railtrack, either individually or collectively, shall establish would result to it or them as a result of the acceptance or rejection of that Proposal for Change or Railtrack Change Proposal (as appropriate). (*Condition C4.5*)

If the change is approved

If the change is rejected

Approval
by the
Regulator

The DFO shall submit any proposed consequential amendments to any Depot Access Agreement to the Regulator for his approval, provided that no approval shall be sought if and to the extent that (or, if applicable, for so long as):

- the change in question is covered by a General Approval already issued by the Regulator; or
- proceedings under Condition C4.5 have commenced and the result of those proceedings is still pending; or
- the change is dependent upon the implementation of approval procedures under Parts F and G of the Track Access Conditions which are still pending; or
- any other statutory or third party consent is still required. (Form C5.1) (*Condition C5*)

No further notification is required.

No Proposal for Change or Railtrack Change Proposal whose implementation would require consequential amendments to any Depot Access Agreement, or would be likely materially and adversely to affect for more than 28 days the capacity of the depot to provide light maintenance services, shall take effect, or be implemented, unless or until it and any such consequential amendments have been approved by the Regulator. (*Condition C6*)

The Regulator's approval may be given either specifically or the change may be covered by a General Approval already issued by the Regulator. As soon as reasonably practicable after receipt of notice of the Regulator's decision, the DFO shall notify each User and Railtrack of that decision. (Form C7) **(Condition C7)**

Updating the Depot Register

Details of the Proposal for Change, as required by Condition I2.1.3, shall be placed on the Depot Register. **(Condition I2.1.3)**

Implementation of the Change

Subject to the approval of the Regulator where required, the DFO shall carry out the changes proposed in any approved Proposal for Change. **(Condition C8.2)** Subject to any Financial Undertakings which may have been given, the costs of implementation shall be apportioned between each Relevant Operator and Railtrack as agreed in the Proposal for Change. **(Condition C8.3)**

Railtrack shall not be obliged to implement an approved Railtrack Change Proposal, but shall give notice to each Relevant Operator as soon as it becomes aware that there is no reasonable prospect of its being implemented. **(Condition C8.1)** The costs of implementation shall be borne by Railtrack. **(Condition C8.4)** A Railtrack Change Proposal ceases to have effect:

- in the case of a Full Proposal not preceded by an Initial Proposal, if the works have not been commenced within three years (or such other period as is specified in the approved Railtrack Change Proposal) of the date upon which the last approval of that Railtrack Change Proposal required by Part C was obtained; or
- where Railtrack makes an Initial Proposal in respect of a Railtrack Change Proposal:
 - if the Full Proposal for that Railtrack Change Proposal is not submitted for approval under Part C within three years of the date upon which the last approval of the Initial Proposal required by Part C was obtained; or
 - if the works described in the approved Railtrack Change Proposal have not been commenced within two years (or such other period as is specified in the approved Railtrack Change Proposal) of the date upon which the last approval of that Railtrack Change Proposal required by Part C was obtained; or
- in the case of a Material Variation, if the works described in the approved Material Variation have not been commenced within three years (or such other period as is specified in the Railtrack Change Proposal) of the date upon which the last approval of that Railtrack Change Proposal required by Part C was obtained. **(Condition C3.6)**

Where required to implement an approved Railtrack Change Proposal Railtrack may serve notice to determine the Depot Lease at such time and in respect of such part or parts of the depot as are specified in that Railtrack Change Proposal. **(Condition C10)**

Part C - Pro Forma documents

This section contains a series of standard forms which should assist when complying with the requirements of Part C. When used each form will require careful customisation to meet the particular circumstances of the case. Ordinary text in square brackets shows where a choice needs to be made between alternative texts provided whilst italic text in square brackets indicates the nature of the further customisation required.

The table below sets out a complete list of the Forms provided, each of which is cross-referred in the Guide to Part C and the Part C Flowchart where appropriate. If any other form is needed it should be capable of being created using one of the Forms provided as a starting point.

Form	Purpose
C1.4	Request for a Proposal for Change or Railtrack Change Proposal
C1.5	Notice of a Proposal for Change or Railtrack Change Proposal
C1.5REP	Representations on a Proposal for Change or Railtrack Change Proposal
C1.6	Copies of representations or objections received on a Proposal for Change or Railtrack Change Proposal
C2.2R	Request for preliminary response to a Proposal for Change or Railtrack Change Proposal
C2.2PR	Preliminary response to a Proposal for Change or Railtrack Change Proposal
C2.3R	Request for estimate of costs of evaluating and responding to a Proposal for Change or Railtrack Change Proposal
C2.3E	Estimate of costs of evaluating and responding to a Proposal for Change or Railtrack Change Proposal
C2.4R	Request for reasonable assurances of payment of costs of evaluating and responding to a Proposal for Change or Railtrack Change Proposal
C2.4AP	Assurance of payment of costs of evaluating and responding to a Proposal for Change or Railtrack Change Proposal
C2.6	Notice to incur no further costs in relation to a Proposal for Change or Railtrack Change Proposal
C2.9	Request for the Depot Facility Owner to exercise its rights under Condition C2 in relation to a Proposal for Change or Railtrack Change Proposal
C3.5	Request for the appointment of an expert to determine a Material Variation Question relating to a Railtrack Change Proposal
C4.1	Notice of Objection to a Proposal for Change or Railtrack Change Proposal
C4.3	Offer to provide Financial Undertakings in relation to a Proposal for Change or Railtrack Change Proposal
C4.4	Notice of acceptance or rejection of a Proposal for Change or Railtrack Change Proposal and of any notice given under Condition C4.5
C4.5	Notice of intention to commence proceedings under Condition H5 in relation to a Proposal for Change or Railtrack Change Proposal
C4.8	Unanimous consent in writing to a Proposal for Change or Railtrack Change Proposal
C5.1	Submission to the Regulator of consequential amendments to Depot Access Agreement(s) following acceptance of a Proposal for Change or Railtrack Change Proposal
C5.1 Amend. Ag.	Amendment Agreement to Depot Access Agreement – single Beneficiary
C5.1 Amend. Ag.	Amendment Agreement to Depot Access Agreements – multiple Beneficiaries
C6	Submission to the Regulator of a Proposal for Change or Railtrack Change Proposal having a long term diminishing effect on the Depot's capacity
C7	Notice of Regulator's approval or rejection of consequential amendments to Depot Access Agreement(s) following approval of a Proposal for Change or Railtrack Change Proposal
C9	Details of mandatory change resulting from a Change of Law or a Direction of a Competent Authority

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Request for a [Railtrack Change] Proposal [for Change]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [User/Railtrack PLC]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

This request for a [Railtrack Change] Proposal [for Change] relates to [name of depot] Depot [and is made as an Initial Proposal/Full Proposal/Material Variation].

Please find attached [number] copies of this proposed [Railtrack Change] Proposal [for Change] to enable you to distribute a copy to each person entitled to receive one.

Proposal: [Set out reasonable detail of the proposed change].
(Condition C1.4)
[If the proposed change will require a closure application under section 41 of the Railways Act 1993 give details of the proposed application].

Supporting information: [Give such information in relation to the proposal as is reasonably necessary to enable the consultee to evaluate the effect which the change in question or the process of its implementation will have, or be likely to have, on their customers and/or business].
(Condition C1.4.1 and C1.4.2)

[In the case of a Railtrack Change Proposal such of the information required by Condition C3.1 as is relevant to the proposal type (i.e. Initial Proposal, Full Proposal or Material Variation) must be given].

Indemnities/undertakings: We hereby offer the indemnity required by Condition C3.2.1 and the undertaking required by Condition C3.2.2.
(Condition C3.2)

[Preliminary response: Please exercise your rights under Condition C2.2 to obtain from each person entitled to receive a copy of this [Railtrack Change] Proposal [for Change] a preliminary response to it.
(Condition C2.9)

[Consultation costs: Please exercise your rights under Condition C2.3 to obtain from each person entitled to receive a copy of this [Railtrack Change] Proposal [for Change] an estimate of the costs they will reasonably incur in evaluating and responding to it.
(Condition C2.9)

.....
Signed for and on behalf of
[Proposer]

[Name of depot] Depot Access Conditions**ORR References: [NDC/95/01] [DAC**/**/**] and DSA/**/**/**/******Notice of a [Railtrack Change] Proposal [for Change] No. [number]****Date:** [date]**To:** Railtrack PLC [User]
[address] [address][User] [User]
[address] [address]Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU**From:** [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

This [Railtrack Change] Proposal [for Change] No. [number] relates to [name of depot] Depot, [is made by [proposer's name]] [and is made as an Initial Proposal/Full Proposal/Material Variation].

Proposal: [Set out reasonable detail of the proposed change].

(Condition C1.4)

[If the proposed change will require a closure application under section 41 Railways Act 1993 then give details of the proposed application]

Supporting information:

(Condition C1.4.1 and C1.4.2)

[Give such information in relation to the proposal as is reasonably necessary to enable the consultee to evaluate the effect which the change in question or the process of its implementation will have or be likely to have on their customers and/or business].

Consultation costs:

(Condition C2.1)

You are entitled to payment of 100% of all costs reasonably incurred by you in evaluating and responding to this [Railtrack Change] Proposal [for Change].

Preliminary response:

(Condition C2.2)

Please provide your preliminary written response to this [Railtrack Change] Proposal [for Change] within 28 days of the date of this notice.

Estimate of costs:

(Condition C2.3)

Please provide a written estimate of your evaluation/response costs and such information as may be reasonably necessary to access the reasonableness of that estimate.

You may make representations on this [Railtrack Change] Proposal [for Change] at any time up to [30] days from the date of this notice.

You may submit a Notice of Objection to this [Railtrack Change] Proposal [for Change] at any time up to [45] days from the date of this notice.

If you approve this [Railtrack Change] Proposal [for Change], please sign the enclosed copy and return it to the Depot Facility Owner at the above address.

.....
Signed for and on behalf of
[Depot Facility Owner]

[On the copies sent to Railtrack and the Users]

We acknowledge receipt of the notice of a [Railtrack Change] Proposal [for Change] of which this is a copy and irrevocably confirm that we approve it and will not give a Notice of Objection in relation to it.

.....
Signed for and on behalf of
[Addressee]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC**/**/**] and DSA/**/**/**/**

Representation[s] on [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [Railtrack PLC/User/Strategic Rail Authority]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in these representation[s].

We wish to make the following representation[s] on [Railtrack Change] Proposal [for Change] No. [number].

[Set out representation[s]].

.....
Signed for and on behalf of
[Railtrack PLC/User/Strategic Rail Authority]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Copies of representations or objections received on
[Railtrack Change] Proposal [for Change] No. [number]**

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

We enclose copies of representations or objections received from [name] in relation to [Railtrack Change] Proposal [for Change] No. [number].

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

**Request for a preliminary response to [Railtrack Change]
Proposal [for Change] No. [number]**

Date: [date]

To: [Consultee]
[address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

Please provide your preliminary written response to [Railtrack Change] Proposal [for Change] No. [number] no later than 28 days after the date of this request.

If you dissent from the [Railtrack Change] Proposal [for Change], please give your reasons.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Preliminary response to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [Railtrack PLC/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this response.

Our preliminary response to [Railtrack Change] Proposal [for Change] No. [number] is as follows:

[Set out details of response, giving reasons where one opposes the proposal].

.....
Signed for and on behalf of
[Railtrack PLC/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Request for an estimate of the costs of evaluating and responding to
[Railtrack Change] Proposal [for Change] No. [number]**

Date: [date]

To: [Railtrack PLC] [User]
[address] [address]

[User] [User]
[address] [address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

Please provide your written estimate of the costs you may reasonably incur in evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number] together with such information as may be reasonably necessary to assess the reasonableness of that estimate.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

**Estimate of the costs of evaluating and responding to
[Railtrack Change] Proposal [for Change] No. [number]**

Date: [date]

To: [Depot Facility Owner]
[address]

From: [Railtrack PLC/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this estimate.

We estimate that we shall reasonably incur costs of £[amount] in evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number].

The following information is enclosed to enable you to assess the reasonableness of our estimate:

[Set out details of information enclosed].

.....
Signed for and on behalf of
[Railtrack PLC/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Request for reasonable assurances of payment of costs of evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Railtrack PLC/Depot Facility Owner/User]
[address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

Please provide a written assurance that you will pay for the costs of any material work which we carry out in evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number].

We will not commence work until we receive your assurance of payment.

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

**Assurance of payment of evaluation and response costs for
[Railtrack Change] Proposal [for Change] No. [number]**

Date: [date]

To: [Railtrack PLC/Depot Facility Owner/User]
[address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this assurance.

We confirm that we will pay those costs which you reasonably incur in respect of any material work you carry out for the purposes of evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number] [up to a maximum of £[amount]].

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/****

Notice to incur no further costs in relation to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Railtrack PLC/Depot Facility Owner/User]
[address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

We no longer wish to proceed with [Railtrack Change] Proposal [for Change] No. [number] and request that you incur no further costs (other than those which you cannot reasonably avoid) in evaluating and responding to it.

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Request for the Depot Facility Owner to exercise its rights under Condition C2 in relation to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Depot Facility Owner]
[address]

From: [Railtrack PLC/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

Please exercise your rights under [Condition C2.2 to request each Consultee to provide you with a preliminary response to [Railtrack Change] Proposal [for Change] No. [number]] [and under] [Condition C2.3 to request each Consultee to provide you with a written estimate of the costs which may be reasonably incurred by it in evaluating and responding to [Railtrack Change] Proposal [for Change] No. [number]].

.....
Signed for and on behalf of
[Railtrack PLC/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

**Request for the appointment of an expert to determine a Material Variation
Question relating to Railtrack Change Proposal No. [number]**

Date: [date]

To: Railtrack PLC [Depot Facility Owner]
[address] [address]
[User] [User]
[address] [address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this request.

We request your agreement to the appointment of [name] as an expert for the purpose of determining a Material Variation Question relating to Railtrack Change Proposal No. [number]. If the agreement of all parties is not obtained within 14 days we will request the Disputes Secretary appointed under the Access Dispute Resolution Rules to make the appointment.

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of Objection to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Depot Facility Owner] [Railtrack PLC]
[address] [address]

[User] [User]
[address] [address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

We object to [Railtrack Change] Proposal [for Change] No. [number] [for the following reason[s]:

[Set out reason[s]].

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Offer by [Railtrack] [and] [Relevant Operator[s]] to provide Financial Undertakings in relation to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Railtrack PLC] [User]
[address] [address]

[User] [Depot Facility Owner]
[address] [address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this offer.

We undertake to pay the whole of the costs of carrying out [Railtrack Change] Proposal [for Change] No. [number], together with:

- any other reasonable costs, direct losses and expenses (including loss of revenue) which you incur, to the extent that such costs are directly attributable to the change in question; and
 - such part of any increased net costs of operating the Depot that you incur as are directly attributable to the carrying out of the change in question,
- upon the following terms:

[Set out details of the terms of the offer].

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User(s)]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

Notice of acceptance or rejection of [Railtrack Change] Proposal [for Change] No. [number] and of any notice given under Condition C4.5

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

[Railtrack Change] Proposal [for Change] No. [number] has been [accepted/rejected].

As at the date of this notice, we have received [no notices of an intention to commence proceedings under Condition C4.5]/[a] notice[s] of intention to commence proceedings under Condition C4.4 from [Railtrack PLC/User].

[However,]/[In addition]we intend to commence proceedings under Condition C4.5.]

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC 95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of intention to commence proceedings under Condition H5 in relation to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: [Railtrack PLC] [User]
[address] [address]

[User] [Depot Facility Owner]
[address] [address]

From: [Railtrack PLC/Depot Facility Owner/User]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

We intend to commence proceedings under Condition H5 (Resolution of disputes and claims) in relation to the [acceptance/rejection] of [Railtrack Change] Proposal [for Change] No. [number].

.....
Signed for and on behalf of
[Railtrack PLC/Depot Facility Owner/User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Unanimous consent in writing to [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this letter.

We the undersigned, being all the Relevant Operators and Railtrack, hereby consent to [Railtrack Change] Proposal [for Change] No. [number].

.....
Signed for and on behalf of
[Depot Facility Owner]

.....
Signed for and on behalf of
Railtrack PLC

.....
Signed for and on behalf of
[User]

.....
Signed for and on behalf of
[User]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**

Submission to the Regulator of consequential amendments to Depot Access Agreement(s) following acceptance of [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this submission.

[Railtrack Change] Proposal [for Change] No. [number] has been accepted in accordance with Condition C4 and requires consequential amendments to the following Depot Access Agreement(s):

[Set out the details, including the ORR Reference numbers, for the Depot Access Agreement(s) concerned].

We confirm that:

- [we have received no notice of any intention to commence proceedings in accordance with Condition C4.4]; [OR]
- [to the extent that any proceedings have been commenced in accordance with Condition C4.4, no such proceedings are still pending;]
- to the extent that the [Railtrack Change] Proposal [for Change] requires any approval pursuant to Parts F or G of the Track Access Conditions, this has been given; and
- to the extent that any other statutory consent or approval is required, it has been obtained.

The following amendments are required to the Depot Access Agreements as a consequence of the [Railtrack Change] Proposal [for Change]:

[Set out the text of the amendments].

Please confirm your approval of this proposal.

.....
Signed for and on behalf of
[Depot Facility Owner]

AMENDMENT AGREEMENT – Single Beneficiary

THIS AGREEMENT is made on [] 200[] **BETWEEN:**

- (1) [] (a company registered in [England/Scotland] number []) whose registered office is at [] (the "**Depot Facility Owner**"); and
- (2) [] (a company registered in [England/Scotland] number []) whose registered office is at [] (the "**Beneficiary**"),

AND IS SUPPLEMENTAL TO the Depot Access Agreement.

WHEREAS:

- (A) The Depot Facility Owner is the facility owner of the Depot and is the present grantor of the permission to use the Depot for or in connection with the operation of trains contained in the Depot Access Agreement.
- (B) The Beneficiary is the present grantee of a permission to use the Depot for or in connection with the operation of trains contained in the Depot Access Agreement.
- (C) The Depot Facility Owner and the Beneficiary wish to make the Amendments to the Depot Access Agreement.
- (D) By the Approval the Regulator has given approval under section 22[(2)/(3)] of the Act to the making of the amendments to the Depot Access Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 In this Agreement, except where the context otherwise requires, the following words and expressions have the following meanings:

"the Act"	means the Railways Act 1993, as amended by the Transport Act 2000;
"the Amendments"	means the amendments set out in Schedule 1;
"the Approval"	means [an approval dated [] (ORR Reference []) [General Approval[s] No.[s]]];
"the Depot"	means [] light maintenance depot; and

"Depot Access Agreement"

means an agreement between the Depot Facility Owner and the Beneficiary dated [], (ORR Reference []).

- 1.2 References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, sub-Clauses, Schedules and paragraphs are to recitals, clauses and sub-clauses of, and schedules to, this Agreement and paragraphs of such schedules. References to this Agreement include, unless otherwise indicated, the Depot Access Conditions. References to any Condition shall be construed as a reference to the relevant Depot Access Condition.
- 1.3 Where the context admits, words and expressions defined in the Depot Access Conditions or the Depot Access Agreement, or which fall to be construed in accordance with the Depot Access Conditions or the Depot Access Agreement, shall bear the same meanings and constructions in this Agreement and the rules of interpretation set out in the Depot Access Conditions shall apply throughout this Agreement.

2 AMENDMENTS

- 2.1 With effect from the date of this Agreement the Depot Access Agreement shall apply as amended by the Amendments.
- 2.2 Save as specifically provided in this Agreement, the Depot Access Agreement shall remain in full force and effect and the parties shall observe and perform their respective obligations under the Depot Access Agreement subject to the Amendments.
- 2.3 Nothing in this Agreement constitutes a waiver of any outstanding breach of the Depot Access Agreement.

3 REGISTRATION

The Depot Facility Owner shall send a copy of this Agreement to the Regulator not later than 14 days after the date of this Agreement.

4 CERTIFICATE

The Depot Facility Owner confirms that the Depot Access Agreement comprises the only access contract under which any person obtains a permission to use the Depot for or in connection with the operation of trains.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties the day and year first above written.

SCHEDULE 1

The Amendments

Provision

Amendment

SIGNED on behalf of)
)

Name:
Title:
Date of signature:

SIGNED on behalf of)
)

Name:
Title:
Date of signature:

AMENDMENT AGREEMENT – Multiple Beneficiaries

THIS AGREEMENT is made on 200[] **BETWEEN:**

- (1) [] (a company registered in [England/Scotland] number [] whose registered office is at [] (the "**Depot Facility Owner**"); and
- (2) **THE COMPANIES** (each of which is registered in England [or Scotland, as indicated]) referred to in Schedule 1 (the "**Beneficiaries**"),

AND IS SUPPLEMENTAL TO each Depot Access Agreement.

WHEREAS:

- (A) The Depot Facility Owner is the facility owner of the Depot and is the present grantor of the permission to use the Depot for or in connection with the operation of trains contained in each Depot Access Agreement.
- (B) Each Beneficiary is the present grantee of a permission to use the Depot for or in connection with the operation of trains contained in the Depot Access Agreement to which it is a party.
- (C) The Depot Facility Owner and each Beneficiary wish to make the Amendments to each Depot Access Agreement to which they are both parties.
- (D) By the Approval the Regulator has given approval under section 22[(2)/(3)] of the Act to the making of the amendments to each Depot Access Agreement.

IT IS AGREED as follows:

1 INTERPRETATION

- 1.1 In this Agreement, except where the context otherwise requires, the following words and expressions have the following meanings:

"the Act" means the Railways Act 1993, as amended by the Transport Act 2000;

"the Amendments" means the amendments set out in Schedule 3;

"the Approval" means [an approval dated [] (ORR Reference [])] [General Approval[s] No.[s]];

"the Depot" means [] light maintenance depot; and

"Depot Access Agreement" means an agreement referred to in Schedule 2.

1.2 References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, sub-Clauses, Schedules and paragraphs are to recitals, clauses and sub-clauses of, and schedules to, this Agreement and paragraphs of such schedules. References to this Agreement include, unless otherwise indicated, the Depot Access Conditions. References to any Condition shall be construed as a reference to the relevant Depot Access Condition.

1.3 Where the context admits, words and expressions defined in the Depot Access Conditions or a Depot Access Agreement, or which fall to be construed in accordance with the Depot Access Conditions or a Depot Access Agreement, shall bear the same meanings and constructions in this Agreement and the rules of interpretation set out in the Depot Access Conditions shall apply throughout this Agreement.

2 AMENDMENTS

2.1 With effect from the date of this Agreement each Depot Access Agreement shall apply as amended by the Amendments.

2.2 Save as specifically provided in this Agreement, each Depot Access Agreement shall remain in full force and effect and the parties to it shall observe and perform their respective obligations under that Depot Access Agreement subject to the Amendments.

2.3 Nothing in this Agreement constitutes a waiver of any outstanding breach of a Depot Access Agreement.

3 REGISTRATION

The Depot Facility Owner shall send a copy of this Agreement to the Regulator not later than 14 days after the date of this Agreement.

4 CERTIFICATE

The Depot Facility Owner confirms that the Depot Access Agreements between them comprise all the access contracts under which any person obtains a permission to use the Depot for or in connection with the operation of trains.

IN WITNESS whereof this Agreement has been executed by or on behalf of the parties the day and year first above written.

SCHEDULE 1

The Beneficiaries

Name	Company Number	Registered Office
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SCHEDULE 2

The Depot Access Agreements

Date	Party (other than the Depot Facility Owner)	ORR Reference DAA/**/**/**/**/**
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SCHEDULE 3

The Amendments

Provision	Amendment
------------------	------------------

SIGNED on behalf of)
)

Name:
Title:
Date of signature:

SIGNED on behalf of)
)

Name:
Title:
Date of signature:

[Further signature clauses for other parties as required]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Submission to the Regulator of [Railtrack Change] Proposal [for Change] No. [number] by reason of its effect on depot capacity

Date: [date]

To: The Rail Regulator
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

[Railtrack Change] Proposed [for Change] No. [number] has been accepted in accordance with Condition C4. Although it does not require consequential amendments to Depot Access Agreements, its implementation is likely to materially and adversely affect the capacity of the Depot in relation to the provision of light maintenance services for a period longer than 28 days.

Please confirm your approval of this proposal.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC//**/**] and DSA/**/**/**/**]**

Notice of Regulator's approval or rejection of consequential amendments to Depot Access Agreement(s) following approval of [Railtrack Change] Proposal [for Change] No. [number]

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

The Regulator has [approved/rejected] the consequential amendments to Depot Access Agreements required following the approval of [Railtrack Change] Proposal [for Change] No. [number] which are shown in the attached copy Form C5.1.

.....
Signed for and on behalf of
[Depot Facility Owner]

[Name of depot] Depot Access Conditions

ORR References: [NDC/95/01] [DAC/**/**/**] and DSA/**/**/**/**

**Details of mandatory change resulting from a Change of Law or
a Direction of a Competent Authority**

Date: [date]

To: Railtrack PLC [User]
[address] [address]

[User] [User]
[address] [address]

Strategic Rail Authority
55 Victoria Street
London
SW1H 0EU

From: [Depot Facility Owner]
[address]

Words and expressions defined in the [name of depot] Depot Access Conditions have the same meanings in this notice.

This notice is given pursuant to Condition C9.

Mandatory change: [Set out reasonable detail of the proposed change].

[If the proposed change will require a closure application under section 41 Railways Act 1993 then give details of the proposed application].

Supporting information: [Give such information in relation to the mandatory change as is reasonably necessary to enable the consultee to evaluate the effect which the change in question or the process of its implementation will have or be likely to have on their customers and/or business].

You may make representations on this mandatory change at any time up to [30] days from the date of this notice.

.....
Signed for and on behalf of
[Depot Facility Owner]

[On the copies sent to Railtrack and Users]

We acknowledge receipt of the notice of which this is a copy.

.....
Signed for and on behalf of
[Addressee]

Other Issues

Depot Register

Under Part I, the DFO is obliged to maintain a register relating to the depot. The DFO must cause to be entered in the Depot Register in relation to any Conditions Change Proposal under Part B or Proposal for Change or Railtrack Change Proposal under Part C, the provisions of such proposal; any representations and/or objections made in respect of that proposal; the result of any decisions made by those entitled to vote in respect of or consent to such proposals; and the results of any decisions made by the Regulator in respect of that proposal. In short, the DFO should place on the Depot Register the documentary history of any Conditions Change Proposal, Proposal for Change or Railtrack Change Proposal.

Public Register

Section 72(5) of the 1993 Act requires a facility owner to send a copy of any amendment to an access agreement to the Regulator not later than 14 days after the date on which the amendment is made.

In putting that information on his Public Register, the Regulator is required to have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of an individual where publication of that matter would or might, in the opinion of the Regulator, seriously and prejudicially affect the interests of that individual. Thus, information which is genuinely confidential should be capable of remaining off the Public Register.

Closure

Sections 37 to 50 of the 1993 Act regulate the closure of railway facilities and services. Section 41 in particular regulates proposals to close railway facilities which are used in connection with passenger facilities and therefore applies in the case of any proposal to close the whole or any part of a depot. The closure provisions of the 1993 Act are discussed in more detail below, suffice it to say here that approval of a Conditions Change Proposal under Part B or of a Proposal for Change or Railtrack Change Proposal under Part C does not in any way dispense with the need for compliance with the closure provisions of the 1993 Act.

Franchise Agreement

A number of provisions in the standard form Franchise Agreement may also be relevant. The following comments are based on the current operative version of the Franchise Agreement, but readers should be aware that the SRA has revised its Template Franchise Agreement for use in the current re-franchising process so the position of second generation franchises may be different. In order of appearance in the Franchise Agreement, relevant provisions include:

- Clause 10.1 obliges the franchise operator not to cease to operate, or to cease to secure the operation of, or propose to terminate the use of any depot, or part of a depot, where such cessation or proposal might result in a closure. The application of the closure provisions of the 1993 Act have been separately discussed above.

- Clause 10.2 requires that the franchise operator shall not terminate or agree to terminate, or take or omit to take any other action which might result in the termination of any Depot Lease; or assign all or part of its interests under any Depot Lease; or sub-let the whole or substantially the whole of the property comprised in any Depot Lease, except to the extent that the Strategic Rail Authority may otherwise agree from time to time, such agreement not to be unreasonably withheld if the franchise operator has made arrangements, reasonably satisfactory to the Strategic Rail Authority, for the continued operation as a depot of the property comprised in the relevant Depot Lease for the remainder of that franchise operator's Franchise Term.
- Clause 12.4 sets out a mechanism to prevent a franchise operator from varying, or agreeing to a variation of, the terms of any Depot Lease without the Strategic Rail Authority's consent. However, the mechanism does not apply to the extent that the franchise operator is required to make the variation by virtue of any relevant depot access conditions. Thus, if the change is imposed through the Part B or Part C procedure, clause 12.4 will not apply. This clause has been amended in the revised Template Franchise Agreement and is now more restrictive in that the Part B and C exemption has been deleted and the remaining drafting now covers entering into new leases as well as amendments to existing ones.
- Clause 12.5 requires that the franchise operator shall not sub-let any part of the property comprised in any Depot Lease to any of its affiliates except on terms such that the sub-letting is terminable without compensation immediately upon the termination of the franchise operator's franchise agreement, and that any such sub-letting does not have the benefit of security of tenure.
- Clause 15.16 is a broad provision requiring the franchise operator to maintain the extent, standard and quality of facilities or assets used, whether directly or indirectly, in the provision of the various services provided by that franchise operator under its franchise agreement, at the level appertaining to such facilities or assets so used at the Franchise Commencement Date. This "steady state" obligation may potentially be compromised by a proposed change. This clause has been deleted in the revised Template Franchise Agreement.
- Clause 25.1 obliges the franchise operator to maintain and manage the business of providing the Franchise Services on the basis that, to the extent possible and practicable, such business will be transferred, in the manner contemplated under the franchise agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator. Some proposals for change could be seen as cutting across this going concern obligation.
- Clause 25.4 obliges the franchise operator not to take any action or steps which is or are designed, directly or indirectly, to prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator. Again, some proposals for change could be seen as an attempt to frustrate such a transfer.

- Clause 27.2 states that the franchise operator shall not, without the prior consent of the Strategic Rail Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract where such variation first takes effect in the last 12 months of the Franchise Period, or where all or part of such variation first takes effect after the end of the Franchise Period. The definition of Key Contracts includes all Depot Leases and any Depot Access Agreement to which the franchise operator is a party as the beneficiary rather than as the facility owner. Thus, in the last 12 months of the franchise, almost all Conditions Change Proposals, Proposals for Change and Railtrack Change Proposals are likely to require the prior consent of the Strategic Rail Authority. In the revised Template Franchise Agreement this clause has been extended to apply at all times to any Key Contract that the SRA expressly specifies by notice.

The practical effect of all these clauses is that it is essential to discuss all proposed changes with the Strategic Rail Authority and, where appropriate, obtain their prior consent.

General Approvals

Introduction

The Regulator has issued a number of General Approvals which apply to Depot Access Agreements. Those relating to light maintenance depots in England & Wales are summarised below, first in a list format and then in the form of a "Look-Up" table. Approvals having a like effect have also been issued for light maintenance depots in Scotland. These are listed beneath the relevant England and Wales General Approval to which they are equivalent.

The approvals granted by these General Approvals are for the purposes of section 22 of the Railways Act 1993 (as amended by the Transport Act 2000) only and nothing contained in a General Approval relieves any party from the need to comply with the requirements set out in Part B or Part C of the National Depot Access Conditions in relation to a modification to the depot access documentation or a change to the depot.

Some of the approvals granted are on a qualified basis. This is indicated in the Look-Up table but for complete details reference should be made to the text of the relevant General Approval. If in doubt professional advice should be obtained.

The Regulator has also issued a General Consent which covers much of the same ground as the General Approvals. This is summarised in a separate section.

General Approvals

Light Maintenance Depot Access General Approval (No. 1) 1995 (No. 3)

Approval for the alteration of any address, telephone number, facsimile number or person to whom, or for whose attention any notice contemplated by the light maintenance depot access agreement is to be sent.

Light Maintenance Depot Access General Approval (Applicable Systems Interfaces) 1996 (No. 14)

Qualified approval given for the alteration of the Systems Interfaces set out or referred to in Schedule 4.

Light Maintenance Depot Access General Approval (Scotland) (Applicable Systems Interfaces) 1999 (No. 7)

Light Maintenance Depot Access General Approval (Diagram Timings) 1996 (No. 16)

Qualified approval for the alteration of a Diagram set out or referred to in Appendix 1 to Schedule 5, 6, 7, 8, 10 or 12.

Light Maintenance Depot Access General Approval (Scotland) (Diagram Timings) 1999 (No. 6)

Light Maintenance Depot Access General Approval (Minimum and Maximum Level of Services) 1996 (No.17)

Qualified approval for any amendment which provides for:

- the reduction of a Minimum Level of Service; or
 - the alteration of a Maximum Level of Service,
- set out or referred to in Appendix 1 to Schedule 5, 6, 7, 8, 10 or 12.

Light Maintenance Depot Access General Approval (Scotland) (Minimum and Maximum Level of Services) 1999 (No. 4)

Light Maintenance Depot Access General Approval (Charges and Key Performance Indicators) 1996 (No. 26)

Qualified approval for the alteration of:

- a charge set out in Appendix 2 to Schedule 5, 6, 7, 8, 10, 11 or 12 or Appendix 1 to Schedule 9;
- the number of minutes and rates or amounts of payments set out in Schedule 13 or 14;
- the performance criteria, rate or amounts of liquidated damages and incentive payments set out in Schedule 15 or 16; or
- the Notifiable Condition set out in Schedule 18.

Light Maintenance Depot Access General Approval (Scotland) (Charges and Key Performance Indicators) 1999 (No. 5)

Light Maintenance Depot Access General Approval (Depot Access Conditions) 1999 (No. 10)

Qualified approval for the alteration of the Depot Access Conditions in relation to:

- the following provisions in Annex 1:
 - a Default Interest Rate set out in paragraph 2;
 - the location of the Depot Register set out in paragraph 3;
 - the Plan set out in Appendix 1;
 - the Statement of Condition set out in Appendix 2;
 - the description, presence at the depot, quantity, responsibility for maintenance or a responsibility for repair of depot equipment as set out in Appendix 3;
 - the allocation of responsibility set out in Appendix 4; or
 - the description, quantity, relevant threshold sum, maintenance specification, base utilisation level or outputs specification as set out in Appendix 5;
- a percentage figure set out in paragraph 6, 10, 11, 12, 14, 15, 16, 17, 18, 19 or 20 of Annex 5;
- an amount set out in paragraph 7, 8 or 20 of Annex 5;
- the number of permits set out in paragraph 13 of Annex 5;
- the number of years set out in paragraph 21 of Annex 5;
- the number of minutes, a rate or an amount set out in Annex 6;
- the following provisions set out in Annex 7:
 - a Minimum Level of Service;
 - a Maximum Level of Service;

- a Diagram;
- a Running Maintenance Programme; or
- a Specification; or
- a time set out in Annex 8.

Light Maintenance Depot Access General Approval (Scotland) (Depot Access Conditions) 1999 (No. 9)

Light Maintenance Depot Access General Approval (Off-depot Services) 1999 (No. 11)

Approval for the alteration of the details set out or referred to in Appendix 1 to Schedule 11.

Light Maintenance Depot Access General Approval (Scotland) (Off-depot Services) 1999 (No. 3)

Light Maintenance Depot Access General Approval (Administrative Details) 1999 (No. 12)

Approval for the alteration of:

- the details for Formal Notices or Operating Notices set out in Schedule 2;
- the limit of authority set out in paragraph 4 of Appendix 1 to Schedule 5, paragraph 3 of Appendix 1 to Schedule 7 or 10, or Appendix 2 to Schedule 9;
- the details of components for warranty set out in paragraph 6 of Appendix 1 to Schedule 5;
- the performance information set out in paragraph 5 of Appendix 1 to Schedule 5;
- the tasks set out in paragraph 5 of Appendix 2 to Schedule 5 or paragraph 3 of Appendix 1 to Schedule 9;
- the daily record as set out in paragraph 4 of Appendix 1 to Schedule 6;
- any other amounts set out in paragraphs (1) to (6) of Schedule 17.

Qualified approval for the alteration of the alpha numeric reference to:

- a Running Maintenance Programme set out in Column 2 of Schedule 3;
- a Vehicle Repair set out in paragraph 1 of Appendix 2 to Schedule 5;
- a Train Presentation Specification set out or referred to in Appendix 3 to Schedule 5, 6, 8, 9 or 11 or Appendix 4 to Schedule 7 or 10;
- a Washing Specification set out or referred to in Appendix 3 to Schedule 7;
- a Cleaning Specification set out or referred to in Appendix 3 to Schedule 10; or
- a Diagram set out or referred to in Appendix 1 to Schedule 5, 6, 7, 8, 10 or 12.

Light Maintenance Depot Access General Approval (Scotland) (Administrative Details) 1999 (No. 8)

Light Maintenance Depot Access General Approval (Specifications) 1999 (No. 13)

Qualified approval for the alteration of:

- a Running Maintenance Programme set out or referred to in Column 2 of Schedule 3;
- a Train Presentation Specification set out or referred to in Appendix 3 to Schedule 5, 6, 8, 9 or 11 or Appendix 4 to Schedule 7 or 10;
- a Washing Specification set out or referred to in Appendix 3 to Schedule 7;

- a Stabling Specification set out or referred to in paragraphs 3 to 6 of Appendix 1 to Schedule 8;
- a Cleaning Specification set out or referred to in Appendix 3 to Schedule 10;
- an Identified Route set out or referred to in paragraph 3 of Appendix 1 to Schedule 12.

Light Maintenance Depot Access General Approval (Scotland) (Specifications) 1999 (No. 2)

Light Maintenance Depot Access General Approval (Short Term Changes) 1999 (No. 14)

Qualified approval for amendments which provide for the provision on a short term basis of stabling, light maintenance or ancillary services to a beneficiary who was not previously entitled to those services.

Light Maintenance Depot Access General Approval (Scotland) (Short Term Changes) 1999 (No. 1)

Depot Access Agreement			
Clause, Schedule etc	Amendment(s) covered by General Approval	Qualified approval?	General Approval
Schedule 2, paras. 1 and 2	Details of any address, telephone number, facsimile number or person to be sent a notice	No	1995 No. 3 1999 No. 12
Schedule 3, column 2	A Running Maintenance Programme ¹	Yes	1999 No. 13
Schedule 3, column 2	The alpha numeric reference to a Running Maintenance Programme	Yes	1999 No. 12
Schedule 4	The Systems Interfaces	Yes	1996 No. 14
Schedule 5	The provision of short term light maintenance or ancillary services not currently provided	Yes	1999 No. 14
Appendix 1	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service A Maximum Level of Service	No Yes	1996 No. 17
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, para. 4	The limit of authority	No	1999 No. 12
para. 5	The performance information	No	1999 No. 12
para. 6	The details of components for warranty	No	1999 No. 12
Appendix 2, para. 1	The alpha numeric reference to a Vehicle Repair	Yes	1999 No. 12
Appendix 2	A charge	Yes	1996 No. 26
para. 5	The tasks	No	1999 No. 12

Clause, Schedule etc	Amendment(s) covered by General Approval	Qualified approval?	General Approval
Appendix 3	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 3	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 6	The provision of short term Fuelling, Fuel Point Exams or ancillary services not currently provided	Yes	1999 No. 14
Appendix 1	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service A Maximum Level of Service	No Yes	1996 No. 17
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, para. 4	The daily record	No	1999 No. 12
Appendix 2	A charge	Yes	1996 No. 26
Appendix 3	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 3	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 7	The provision of short term Washing or ancillary services not currently provided	Yes	1999 No. 14
Appendix 1	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service A Maximum Level of Service	No Yes	1996 No. 17
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, para. 3	The limit of authority	No	1999 No. 12
Appendix 2	A charge	Yes	1996 No. 26
Appendix 3	The alpha numeric reference to a Washing Specification	Yes	1999 No. 12
Appendix 3	A Washing Specification ¹	Yes	1999 No. 13
Appendix 4	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 4	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 8	The provision of short term Stabling or ancillary services not currently provided	Yes	1999 No. 14
Appendix 1	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service A Maximum Level of Service	No Yes	1996 No. 17
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, paras. 3, 4, 5 and 6	A Stabling Specification ¹	Yes	1999 No. 13
Appendix 2	A charge	Yes	1996 No. 26
Appendix 3	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 3	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 9, Appendix 1	The limit of authority	No	1999 No. 12

Clause, Schedule etc	Amendment(s) covered by General Approval	Qualified approval?	General Approval
Appendix 1	A charge	Yes	1996 No. 26
Appendix 1 para. 3	The tasks	No	1999 No. 12
Appendix 2	The limit of authority	No	1999 No. 12
Appendix 3	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 3	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 10	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service	No	1996 No. 17
	A Maximum Level of Service	Yes	
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, para. 3	The limit of authority	No	1999 No. 12
Appendix 2	A charge	Yes	1996 No. 26
Appendix 3	The alpha numeric reference to a Cleaning Specification	Yes	1999 No. 12
Appendix 3	A Cleaning Specification ¹	Yes	1999 No. 13
Appendix 4	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 4	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 11, Appendix 1	Details ²	No	1999 No. 11
Appendix 2	A charge	Yes	1996 No. 26
Appendix 3	The alpha numeric reference to a Train Presentation Specification	Yes	1999 No. 12
Appendix 3	A Train Presentation Specification ¹	Yes	1999 No. 13
Schedule 12	A Diagram ¹	Yes	1996 No. 16
Appendix 1	A Minimum Level of Service	No	1996 No. 17
	A Maximum Level of Service	Yes	
Appendix 1	The alpha numeric reference to a Diagram	Yes	1999 No. 12
Appendix 1, para. 3	An Identified Route ¹	Yes	1999 No. 13
Appendix 2	A charge	Yes	1996 No. 26
Schedule 13	A number of minutes, the rates or amounts of payments	Yes	1996 No. 26
Schedule 14	A number of minutes, the rates or amounts of payments	Yes	1996 No. 26
Schedule 15	The performance criteria, rate or amounts of liquidated damages and incentive payments	Yes	1996 No. 26
Schedule 16	The performance criteria, rate or amounts of liquidated damages and incentive payments	Yes	1996 No. 26
Schedule 17, paras. (1) to (6)	Any of the amounts	No	1999 No. 12
Schedule 18	The Notifiable Condition	No	1996 No. 26

Depot Access Annexes			
Clause, Schedule etc	Amendment(s) covered by General Approval	Qualified approval?	General Approval ref.
Annex 1, para. 2	The Default Interest Rate	Yes	1999 No. 10
para. 3	The location of the Depot Register	Yes	1999 No. 10
Appendix 1	The Plan	Yes	1999 No. 10
Appendix 2	The Statement of Condition	Yes	1999 No. 10
Appendix 3	The description, presence at the depot, quantity, responsibility for maintenance or a responsibility for repair of depot equipment	Yes	1999 No. 10
Appendix 4	The allocation of responsibility	Yes	1999 No. 10
Appendix 5	The description, quantity, relevant threshold sum, maintenance specification, base utilisation level or output specification	Yes	1999 No. 10
Annex 5, paras. 6, 10, 11, 12, 14 to 20	A percentage figure	Yes	1999 No. 10
paras. 7, 8 or 20	An amount	Yes	1999 No. 10
para. 13	The number of permits	Yes	1999 No. 10
para. 21	The number of years	Yes	1999 No. 10
Annex 6	The number of minutes, rate or an amount	Yes	1999 No. 10
Annex 7	A Minimum Level of Service A Maximum Level of Service A Diagram ¹ A Running Maintenance Programme ¹ or A Specification	Yes	1999 No. 10
Annex 8	A time	Yes	1999 No. 10

1 These matters are also covered on a qualified basis by the General Consent.

2 This matter is also covered on a non-qualified basis by the General Consent.

General Consents

Light Maintenance Depot Access General Consent 1999 (No. 2)

Qualified approval for the alteration of:

- a Running Maintenance Programme referred to in Column 2 of Schedule 3;
- a Diagram referred to in Appendix 1 to Schedule 5, 6, 7, 8, 10 or 12;
- a Train Presentation Specification referred to in Appendix 3 to Schedule 5, 6, 8, 9 or 11 or Appendix 4 of Schedule 7 or 10;
- a Washing Specification referred to in Appendix 3 to Schedule 7;
- a Stabling Specification referred to in paragraphs 3 to 6 of Appendix 1 to Schedule 8;
- a Cleaning Specification referred to in Appendix 3 to Schedule 10;
- a Services Specification referred to in paragraph 2 of Appendix 1 to Schedule 11;
- a Running Maintenance Programme referred to in Annex 7; or
- a Diagram referred to in Annex 7.

Approval for the alteration of an Identified Route referred to in paragraph 3 of Appendix 1 to Schedule 12.

Light Maintenance Depot Access General Consent (Scotland) 1999 (No. 1)

Depot Access Agreement			
Clause, Schedule etc	Amendment(s) covered by General Consent	Qualified approval?	General Consent
Schedule 3, column 2	A Running Maintenance Programme	Yes	1999 No. 2
Schedule 5, Appendix 1	A Diagram	Yes	1999 No. 2
Appendix 3	A Train Presentation Specification	Yes	1999 No. 2
Schedule 6, Appendix 1	A Diagram	Yes	1999 No. 2
Appendix 3	A Train Presentation Specification	Yes	1999 No. 2
Schedule 7, Appendix 1	A Diagram	Yes	1999 No. 2
Appendix 3	A Washing Specification	Yes	1999 No. 2
Appendix 4	A Train Presentation Specification	Yes	1999 No. 2
Schedule 8, Appendix 1	A Diagram	Yes	1999 No. 2
Appendix 1, paras. 3 to 6	A Stabling Specification	Yes	1999 No. 2
Appendix 3	A Train Presentation Specification	Yes	1999 No. 2

Clause, Schedule etc	Amendment(s) covered by General Consent	Qualified approval?	General Consent
Schedule 9, Appendix 3	A Train Presentation Specification	Yes	1999 No. 2
Schedule 10, Appendix 1	A Diagram	Yes	1999 No. 2
Schedule 11 Appendix 1 para. 2	A Services Specification	Yes	1999 No. 2
Appendix 3	A Train Presentation Specification	Yes	1999 No. 2
Schedule 12, Appendix 1	A Diagram	Yes	1996 No. 2
Appendix 1, para. 3	An Identified Route	No	1999 No. 2

Depot Access Annexes			
Clause, Schedule etc	Amendment(s) covered by General Consent	Qualified approval?	General Consent
Annex 7	A Diagram A Running Maintenance Programme	Yes	1999 No. 2

Closure

Introduction

Sections 37-50 of the Railways Act 1993 regulate proposals to discontinue franchised passenger services, or to close operational passenger networks or railway facilities used in connection with passenger services. Before the amendments implemented by the Transport Act 2000, responsibility for examining closure proposals lay with the Regulator from whom there was a right of appeal to the Secretary of State. The 2000 Act transferred the Regulator's responsibility to the Strategic Rail Authority and also made some important changes to the text of sections 37-50, but the fundamental principles established in the 1993 Act remain, so settled practice relating to the closure procedures as they applied under the Regulator continues to be of relevance.

This note approaches the closure provisions of the 1993 Act (as amended by the 2000 Act) in a question and answer format. Given the recent transfer of responsibility from the Regulator to the Strategic Rail Authority, the note concentrates on the provisions of the legislation rather than on the detail of application procedures: in due course the Strategic Rail Authority will no doubt establish their own procedures in their role as successor to the Regulator.

Who does what?

The Strategic Rail Authority considers all closure proposals and forms an initial opinion as to whether or not any proposed closure should be permitted to take effect. Where the Authority is of the opinion that a closure proposal should be permitted, it must publish details of that proposal so that interested parties may lodge details of their objections with the Secretary of State. The Secretary of State must send copies of every objection he receives to the appropriate Rail Passengers' Committee which has a statutory duty to consider whether or not the proposed closure will cause any hardship, and if so, to identify means of alleviating that hardship. The Rail Passengers' Committee sends a report of its conclusions to the Secretary of State who ultimately decides whether or not a proposed closure should be permitted.

What is covered by the closure provisions?

The closure provisions apply to proposals to discontinue non-franchised or franchised passenger services and proposals to close operational passenger networks or railway facilities used in connection with passenger services, including those operated on behalf of the Authority. The remainder of this note concentrates on the provisions which apply to proposals to close railway facilities used in connection with passenger services.

Precisely when do the closure provisions apply?

Section 41 of the 1993 Act is the principal section dealing with proposals to close railway facilities used in connection with passenger services. In this context a railway facility means a station or a light maintenance depot (or any part) and the section applies to any proposal to close either the whole or any part of the relevant facility provided that at sometime within the preceding five years it has been used in connection with the provision of services for the carriage of passengers by railway. Thus, if the facility in question (or the part proposed to be closed) has been out of use for more than five years it may be closed without the need to comply with the closure provisions in the 1993 Act.

In determining whether the relevant facility (or part) has been used in connection with the provision of passenger services within the five year period certain services are disregarded, namely, passenger services which involve travel through the Channel Tunnel, or which are designated as "experimental passenger services" within the meaning of section 48 of the 1993 Act (or its predecessor section 56 of the Transport Act 1962) or which are provided otherwise than as regular scheduled services. It is also possible, though highly unusual, for a station or light maintenance depot to be designated as exempt from the closure provisions by an order under section 49(5) of the 1993 Act.

What is the process for considering closures?

Section 41 effectively provides two separate procedures, the "minor closure procedure" and the "full closure procedure", so the first decision for the operator is to consider whether an approach to the Strategic Rail Authority for a certificate of minor closure is appropriate. If not the operator must give notice of its proposal to the Authority and the full procedure will then apply.

What is a "minor closure"?

In relation to a station, a minor closure means the discontinuance of the operation of a part of the station which is not necessary for the use of the station for the purpose of, or in connection with, the provision of services for the carriage of passengers by railway. In the case of a light maintenance depot a minor closure means any such discontinuance as would not jeopardise the provision of any services for the carriage of passengers by railway. If the Authority accepts that the proposal qualifies as a minor closure it will issue a letter to that effect. Otherwise the full closure procedure must be applied.

How does the full closure procedure work in outline?

The process starts with the operator giving notice of its proposal to the Authority, which then forms an opinion as to whether or not the proposed closure should be permitted to take effect. If the Authority thinks that the proposed closure should not be permitted to take effect, the Authority is then under a duty to secure the continued operation of the relevant facility (or part) after the date on which the operator proposes that its closure should take effect. If the Authority is of the opinion that the proposed closure should be permitted to take effect, the Authority must begin a consultation exercise which ultimately results in the Secretary of State making the final decision on the closure question.

What is the Authority's role in the process?

The operator must give notice of its proposal to the Authority not less than three months before the date on which it proposes the closure should take effect. The notice must be accompanied by a statement of the operator's reasons for the proposal, a statement of the date on which the operator proposes that the closure will take effect and details of the operator's view as to any alternative facilities which are available for the provision of services corresponding to those provided by the facility to be closed.

If the Authority believes the proposed closure should be permitted, it must publish details of the proposal on two successive weeks in a local newspaper, in two national newspapers and in such other manner as appears to the Authority to be appropriate. The notice must give particulars of the proposal and the date on which it will take effect, particulars of any

alternative facilities which appear to the Authority to be available for the provision of services corresponding to those provided by the facility to be closed, the addresses of the premises at which a statement of the reasons for the proposed closure can be inspected or from which a copy of that statement can be obtained (and the amount of any fee payable for copies) and a statement of the address at which objections to the proposed closure may be lodged with the Secretary of State within such period (being not less than six weeks from the date of the last publication of the notice in a local newspaper) as may be specified for the purpose in the notice.

What is the role of the Secretary of State?

At the same time as it publishes details of the closure proposal the Authority must send a copy of the notice, a copy of the statement of reasons and a copy of its recommendations with respect to the conditions (if any) to be attached to any consent to the closure to the Secretary of State, to the Mayor of London if the whole or any part of the area affected by the closure is in Greater London, and to every Rail Passengers' Committee whose area includes any part of the area affected by the proposed closure. A copy of the notice must also be sent to every person who is the operator of a station within the area affected, requiring that person to publish that notice at its station.

The Secretary of State must forward to the relevant Rail Passengers' Committee a copy of any objection to the proposed closure which is lodged with him. In due course, the Secretary of State receives a report from the Rail Passengers' Committee. It is then for the Secretary of State to decide whether the proposed closure should be allowed to take effect.

What is the role of the Rail Passengers' Committee?

The Rail Passengers' Committee must consider whether or not the proposed closure will cause any hardship, identify any reasonable means of alleviating any such hardship and send a report of its conclusions to the Secretary of State. In determining what means of alleviating hardship are reasonable, the Rail Passengers' Committee must balance the cost to the Authority of employing those means against the benefit of any alleviation thereby secured and must conclude that the expenditure involved represents good value for money.

To facilitate the discharge of its functions a Rail Passengers' Committee may, after consultation with the Secretary of State, hold public hearings and in conducting any such hearing must take into account such matters as may be notified to it by the Secretary of State.

The Rail Passengers' Committee must report to the Secretary of State within twelve weeks (or such longer period as the Secretary of State may allow) following the end of the period within which objections to the proposed closure may be lodged with the Secretary of State.

The Rail Passengers' Committee must also send a copy of its report to the Rail Passengers' Council and may publish its report in any manner which it considers appropriate.

How does the Secretary of State make his decision?

Before deciding whether or not to allow the proposed closure, and if so whether to impose any and, if so, what conditions, the Secretary of State considers the reasons for the proposed closure set out in the copy statement sent to him by the Authority, any objections to the

proposed closure which have been lodged with him and the content of the report received from the Rail Passengers' Committee.

The Secretary of State may allow the proposed closure to take effect on such conditions as he sees fit. When the Secretary of State has made a decision with respect to the proposed closure he must send a copy to the Regulator, the Strategic Rail Authority, the relevant Rail Passengers' Committee(s) and the relevant operator of the station or light maintenance depot in question. A copy of his decision must also be sent to every person who is the operator of a station within the area affected requiring that person to publish the decision at that station.

Extract from the Passenger Rail Industry Overview - June 1996

The following is extracted from the "Passenger Rail Industry Overview" published in June 1996 by the Office of Passenger Rail Franchising, now the Strategic Rail Authority, whose permission to reproduce it here is gratefully acknowledged. Given its publication date it should, obviously, be approached with care. Nonetheless it remains a good general introduction to the structure adopted for regulated depot access and to the contents of the template documents developed at that time.

4.6 Access to Depots

Introduction

Railtrack is the freeholder of most depots which are leased to the TOCs. They, in turn, may grant access to other passenger and non-passenger train operators wishing to obtain services at the depot ("Users") under depot access agreements. In some limited circumstances TOCs may obtain services at non-passenger depots, for example, for fuelling. The agreements under which these services are provided will be regulated access agreements if they include Light Maintenance Services.

The Regulator has exempted certain depots from the regulated access regime until 31 October 1996. This exemption applies to those depots which have not yet had formal approval from the Regulator for their depot access agreements. The Regulator may revoke the facility exemption where a private sector operator applies for access to an exempted depot.

Where a DFO has granted a User access to its depot, this does not mean that such User can then carry out its own Light Maintenance Services at the depot. Such services will normally be provided by the DFO. In certain exceptional circumstances a DFO may, subject to the Regulator's approval, sub-contract a User to perform Light Maintenance Services on the User's vehicles.

Franchise operators will be acquired by franchisees with all of their depot access agreements already in place. The initial depot access agreements will cover substantially all of the various services which the DFO will provide to Users at the depots which it operates. The initial depot access agreements will provide for both Light Maintenance Services (the provision of which is regulated) and other services such as wheel re-profiling and interior cleaning (which are unregulated). These services collectively, together with Stabling and certain related services which are also dealt with under the initial depot access agreements, are referred to as "Depot Services".

The Regulator has agreed to consider for approval depot access agreements which combine the provision of both regulated and unregulated services. Incorporating unregulated services into a depot access agreement which has been approved by the Regulator provides those services with a degree of protection. Other than in certain limited circumstances, the Regulator is thereby prevented from giving directions to a DFO requiring it to enter into another regulated access agreement which results in the DFO breaching its obligations (including the provision of services which otherwise would have been unregulated) in a

regulated access agreement. However, the Regulator may require the DFO to stop providing certain services which have been increased by agreement in the preceding three years if the result of the increase would be to leave insufficient capacity to provide Light Maintenance Services to a new User, unless the existing User has satisfied the Regulator that this was not the purpose of the original increase.

Subject to complying with the notice provisions in a depot access agreement, a DFO and any User may terminate the existing arrangement and replace it with new agreements. Such new agreements will be regulated access agreements if they provide for services which include Light Maintenance Services.

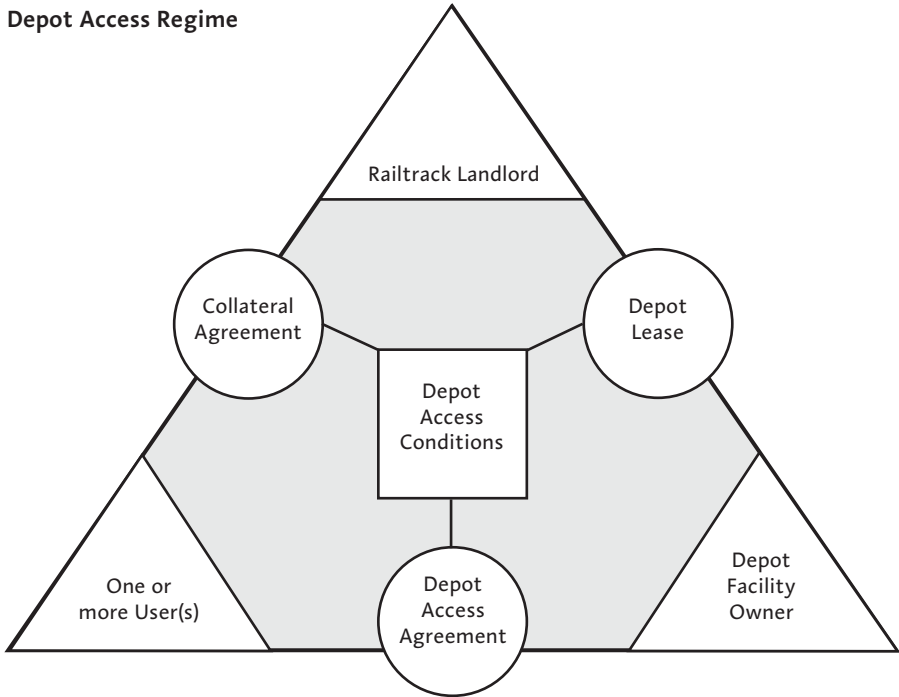
Each depot access agreement grants access to a depot to a particular User and includes by reference a set of rules known as the "Depot Access Conditions". The Depot Access Conditions are in two parts: the conditions themselves, which are described as the "National Depot Access Conditions", which will apply to all light maintenance depots owned by Railtrack; and the "Annexes", which are specific to the depot in question. They set out certain rights and obligations of each of Railtrack (as landlord of the depot), the DFO (as tenant) and the Users. Non-TOC Users will also include the Depot Access Conditions in their depot access agreements although certain parts of the Depot Access Conditions may be inapplicable to such Users. Certain features of the Depot Access Conditions which are generally common to each depot are discussed below.

Generally, the DFO is responsible for operating the depot, for routine maintenance and certain repairs to both the depot and its equipment, for providing Depot Services to Users and for maintaining its own trains. Railtrack is responsible for repairs to the structure of the depot and certain equipment and some maintenance and for other typical landlord's obligations such as buildings insurance. By virtue of the collateral agreement, Railtrack's repair, renewal and maintenance responsibilities are also owed directly to Users, as well as to the DFO. Railtrack is obliged, under a provision in the depot lease, to enter into a collateral agreement with each User. The collateral agreement also incorporates the Depot Access Conditions.

At Depots where there are no Users there is no collateral agreement, only a depot lease to the DFO. All depot leases also incorporate the Depot Access Conditions.

Each DFO will also enter into a connection agreement with Railtrack (except in those circumstances where its depot connects only to another depot and not to the Railtrack network, in which case it will enter into a connection agreement with the relevant DFO) which will place an obligation on both parties not to sever or impede the connection between the depot and the Railtrack network (or other depot) except in the circumstances provided for in the agreement. Each party agrees to indemnify the other in respect of any expenses incurred (above certain thresholds and up to specified limits) as a result of any breach of that obligation. Recovery may be made under the indemnity for direct costs, but there is no recovery for revenue loss. The connection agreements, together with any amendments to them, will be subject to the approval of the Regulator.

Depot Access Regime



Structure of Depot Charges

The DFO pays rent to Railtrack under the depot lease.

Users pay all of their charges for access to the depot to the DFO. The depot access charges are the aggregate of:

- (i) a charge in return for an agreed minimum level of Depot Services ("Minimum Charge");
- (ii) a charge in return for any Depot Services which are in excess of the agreed minimum level but which do not exceed an agreed maximum level ("Variable Charges"); and
- (iii) a charge in return for Depot Services of a type for which no minimum level has been specified ("Contingent Charges").

Depot Access Agreements

The depot access agreement is a bilateral contract between the DFO and a User. It sets out each of the Depot Services which the DFO has agreed to provide to the User together with, where applicable, the levels of those services and the prices to be charged for them. It incorporates the Depot Access Conditions, which set out most of the respective rights and

obligations of the DFO and the User. At depots used by more than one User there will be a separate depot access agreement between each User and the DFO. The description of the depot access agreement and the Depot Access Conditions in this Document is of the template forms of these documents. The actual agreements or Conditions applicable to each TOC may vary in a number of respects from this description.

The depot access agreement contains a number of conditions precedent which must be fulfilled before it becomes fully effective.

Any changes to the depot access agreement, including changes to the level of Depot Services to be provided, must be approved by the Regulator, or come within a general approval given by the Regulator under section 22 of the Act. The Regulator has consulted with industry parties on the form of general approvals and consents to be given by him and is currently considering the responses he has received. These general approvals and consents will enable the parties to make specified amendments to depot access agreements more efficiently and quickly. The depot access agreement may be terminated by either party on six months' notice, although such notice may not be served earlier than 12 months after a franchise agreement entered into by either the DFO or the relevant User becomes effective, whichever is the sooner. Unless terminated, the depot access agreement will continue in force indefinitely.

There are two contract review mechanisms. The first provides that during the first 12 months of the agreement the parties will conduct regular reviews of the operation of the agreement, in consultation with the Franchising Director. If either party's passenger rail services are franchised during this period, the duration of the applicable period for this review mechanism will be extended to a date which is 12 months from the date on which such a franchise commences.

The second contract review mechanism allows the Regulator to modify the depot access agreement as a consequence of any amendments he may require to be made to the Depot Access Conditions. Such modification must not have effect earlier than 60 days after the Regulator has given notice of it or later than 180 days after the depot access agreement becomes effective.

The depot access agreement specifies circumstances in which it may be suspended or terminated by either party. Suspension of rights must generally be proportionate to the breach complained of. Suspension and termination notices must each provide a reasonable grace period to provide the party in default an opportunity to rectify the default before suspension or termination takes effect.

The depot access agreement provides for remedies between the DFO and the User. Where the DFO is in default of its obligations and such default leads to a train being delayed beyond its scheduled departure time, the DFO may be obliged to pay compensation to the User on the basis set out in the depot access agreement. The DFO is similarly entitled to compensation from each User for certain delays where such User is in default of its obligations.

It is intended that compensation payments are made only in respect of delays which are above a specified threshold and up to an agreed limit.

The depot access agreement also provides for performance incentives in respect of matters other than delays. If the DFO or any User fails to meet stated performance criteria the other party is entitled to payment of specified amounts. Railtrack is not a party to this performance regime, so that if the DFO fails to perform within the performance criteria as a result of Railtrack breaching its obligations, the DFO will be liable to the User but will not be entitled to compensation or an indemnity from Railtrack.

The DFO indemnifies each User for any expenses, above certain thresholds and up to specified limits, incurred as a result of a breach of any obligation by the DFO. Each User similarly indemnifies the DFO for any breaches of any obligations owed by such User.

The depot access agreement contains restrictions on the DFO against disposing of any interest in the depot such that it would or might cease to be the facility owner. Also, it may not create any security over its interest in the depot except on terms approved by the Regulator.

Depot Leases

Most existing depot leases are for a term of about seven years. They are due to be replaced on the franchising of the DFO's business by a new lease with, in most cases, similar terms but for a duration equal to the franchise term granted. The exceptions are where the franchise is to be granted for a period of more than seven years. The provisions of longer term leases, to coincide with a longer term franchise, are presently being negotiated with Railtrack. Where such longer term leases are entered into, a number of provisions will be adjusted to reflect the longer term being granted. For depots in England and Wales these new depot leases will not confer security of tenure under Part II of the Landlord and Tenant Act 1954 by agreement between the parties.

Each depot lease incorporates the Depot Access Conditions. Where there is a conflict between the two documents, the Depot Access Conditions prevail. The depot lease may require the obligations of the DFO to be guaranteed.

The rent payable by the DFO under the depot lease has two components:

- a rent for the depot land and buildings; and
- a rent for the plant and equipment at the depot (including track).

Both of these components are payable by four-weekly instalments in arrears and are fixed for the term of the lease, unless part of the depot is closed.

Railtrack's right to distrain for unpaid rent does not arise until after giving notice of the rent arrears in respect of any assets of the DFO which are necessary for the provision of Depot Services.

Where a depot is affected by an advertising contract or other concession which also affects one or more other depots, Railtrack must account to the DFO for the proportion allocated by the contract or concession to the depot or (if the contract or concession does not allocate a proportion) a fair and reasonable proportion, attributable to the depot, of the total income

arising from that agreement.

Railtrack consents in advance to alterations or additions to the depot which are accepted under Part C of the Depot Access Conditions, or which are approved, or deemed to have been approved, in other specified ways.

Railtrack's consent is required for all other alterations and additions (except alterations to a part of the depot which do not affect its structure). Such consent may not be unreasonably withheld or delayed.

The DFO may not transfer the depot lease or deal with it in other ways (including the grant of any security interest over the depot lease) except to the extent that the depot lease provides that it may do so. The depot lease permits assignments and underlettings of the depot as a whole, subject to certain specified conditions, including Railtrack's consent, which may not be unreasonably withheld or delayed. The DFO may also grant access agreements.

Granting of underleases of parts of a depot at market rent may be permitted subject to certain conditions, including Railtrack's consent which may not be unreasonably withheld or delayed.

The DFO may create a security interest over the lease with Railtrack's consent (which may not be unreasonably withheld or delayed) provided it is not in contravention of sections 27(3) and (4) of the Act.

The DFO may terminate the depot lease in two circumstances:

- by giving Railtrack at least 12 months' notice at any time during the first two years of the depot lease term. The two year period will be repeated in the franchise lease. Upon vacating the depot, the DFO must pay to Railtrack an additional sum equal to six months' rent unless it has closed the whole depot under the closure procedure in the Railways Act; or
- by giving Railtrack at least one month's notice at any time during the depot lease term after it has closed the whole depot under the closure procedure in the Railways Act. In this case there is no requirement to make any additional payment to Railtrack upon vacating the depot.

Railtrack may terminate the depot lease if the rent is in arrears for more than 21 days, or if the DFO is in substantial or material breach of its obligations in the depot lease or the DFO or any guarantor of the DFO's obligations in the depot lease becomes insolvent. The depot lease may also be terminated in other circumstances such as the loss by the DFO of its depot licence, track access agreement or franchise agreement. Railtrack's termination rights in these circumstances are subject to certain restrictions imposed on all landlords by common law and by statute. Railtrack has agreed to defer the exercise of this right of termination for up to six months, at the request of the Franchising Director. This provision reflects the terms of the direct agreement between the Franchising Director and Railtrack which is designed to secure (amongst other things) the continuation of services in the event of unexpected termination

of the depot lease. (See section 4.9, "Direct Agreements").

In addition to the options to terminate described above, the depot lease may be terminated by the DFO upon 14 days' notice if the depot is damaged or destroyed by any cause, so as to become wholly or substantially unfit for the use permitted by the Depot Access Conditions or if Railtrack has failed to reinstate the depot by the time the loss of rent insurance has expired. Either party may terminate the depot lease upon 14 days' notice if Railtrack is unable to obtain the necessary consents to reinstate the depot following destruction or damage by an insured risk.

In the event that certain changes are accepted in accordance with Part C of the Depot Access Conditions, there are provisions for the termination of underleases and other arrangements. In those circumstances the depot lease itself may be terminated under Part C of the Depot Access Conditions.

Railtrack may also terminate the depot lease for the purpose of carrying out works necessary for the operation of its railway undertaking where such works are the subject of a "Railtrack Change Proposal" under the Depot Access Conditions or are not capable of forming the subject matter of such a proposal. This right may be exercised only in relation to parts of the depot which have been identified for this purpose in the depot lease. Railtrack must give at least six months' notice of termination unless the works are urgent, when it must give at least 28 days' notice.

In certain circumstances the DFO agrees to surrender its depot lease to Railtrack. The first is the completion of a lease of the depot to a franchisee or its wholly owned subsidiary or a franchise operator. Either party may require a surrender to take place in these circumstances upon three months' notice. The other circumstances are if the DFO ceases to use or operate the depot for more than three months except in circumstances beyond the DFO's control and if the DFO is unable to use or operate the depot for a similar period other than for reasons beyond Railtrack's control. Railtrack may require a surrender in the former case and the DFO may do so in the latter case, in each case upon 20 business days' notice.

If the DFO wishes to close part only of the depot under the closure procedure in the Railways Act it must first consult with Railtrack and have regard to Railtrack's representations. If the closure procedure is successfully completed, it is proposed that the lease provisions will be altered in two ways:

- subject to certain thresholds being met, the land and buildings rent will be adjusted to take account of the closure. This may result in the rent increasing or decreasing, depending on the circumstances at the depot. The plant and equipment rent will be reduced by deducting from it the rent attributable to the plant and equipment which has become redundant by virtue of the closure; and
- Railtrack may remove any plant and equipment which has been redundant but is not obliged to do so. If Railtrack chooses not to do so, then the parties' obligations to repair and maintain such redundant plant and equipment under Part D of the Depot Access Conditions will cease upon the closure taking effect.

Collateral Agreements

The collateral agreement is a bilateral contract between Railtrack and a User and incorporates the Depot Access Conditions. This agreement creates a direct contractual relationship between Railtrack and each User, enabling the User to enforce Railtrack's obligations in the Depot Access Conditions and (where failure to perform would act to the detriment of the User) in the depot lease. It also allows Railtrack to enforce the User's obligations under the Depot Access Conditions and (where failure to perform would act to the detriment of Railtrack) in its depot access agreement. The collateral agreement also contains cross-indemnities between Railtrack and the User, subject to certain exceptions, thresholds and limits. It becomes fully effective at the same time as the depot access agreement.

Depot Access Conditions

The Depot Access Conditions are divided into the following Parts:

Part A	-	Organisation of the Access Conditions and Definitions
Part B	-	Modifications to the Depot Access Conditions
Part C	-	Changes to the Depot
Part D	-	Works, Repairs and Maintenance
Part E	-	Insurance
Part F	-	Access Charging
Part G	-	Existing Agreements and Third Party Rights
Part H	-	Litigation and Disputes
Part I	-	Depot Register
Part J	-	Rights Granted Over Adjacent Property
Part K	-	Rights Reserved by Railtrack
Part L	-	Remedies
Part M	-	Environmental Protection
Part N	-	Other Positive Obligations
Part O	-	Other Negative Obligations
Part P	-	Attribution of Costs
Part Q	-	General
Part R	-	Decision Criteria, Unregulated Contracts and Defeasible Rights
Part S	-	Depot Work Plan

The Annexes to the Depot Access Conditions include factual details relating to the depot, attributions of responsibility and specific descriptions of the areas to which the obligations in Parts A to S relate. They also include the text of the collateral agreement. The Annexes will be customised for each depot.

The following is a summary of certain features of the National Depot Access Conditions.

Modifications to the Depot Access Conditions (Part B)

Part B provides two procedures by which the Depot Access Conditions may be changed. The first is a democratic procedure and the second is a procedure under which the Regulator may himself require changes to be made.

Under the democratic procedure, any of the DFO, any User and Railtrack may propose changes to the Depot Access Conditions ("Conditions Change Proposal"). All such proposals must go through a consultation process with the DFO, each User, Railtrack and the Franchising Director.

The DFO provides a secretariat function in relation to the consultation process, the convening and holding of depot meetings to consider any Conditions Change Proposal and the notification to interested parties of the status of such proposals.

The DFO and Users may vote through changes to the Depot Access Conditions. The percentage of votes required to approve a proposal is specified in the Depot Access Conditions and may vary from depot to depot according to what may be appropriate in the circumstances. This percentage may also be varied by the Regulator in certain circumstances. The number of votes which may be cast by the DFO and each passenger operator is based on the proportion that the number of each operator's train departures from the depot bears to the number of all train departures from the depot during the preceding six accounting periods. Changes to the Depot Access Conditions which are voted through require the Regulator's approval before they become effective.

If a Conditions Change Proposal seeks to alter the levels of services which the DFO provides on its rolling stock at the depot, and the proposal is not approved, the DFO is entitled to refer the matter for expert determination under the Access Dispute Resolution Rules. If either the DFO or any User is dissatisfied with the determination of the expert the matter may be referred to the Regulator on the grounds that the decision of the expert is so unreasonable that no reasonable expert could have made it.

Railtrack does not have a vote on a Conditions Change Proposal. However, if it objects to a change which is likely to have a material and adverse effect on its interest in the depot, or any other land over which the DFO has an interest under the depot lease, that change may be vetoed by Railtrack. If Railtrack exercises its right of veto in relation to a Conditions Change Proposal, the DFO or any User may appeal to the Regulator against the exercise of that veto.

In addition to the voting process described above, the Regulator is given certain rights to require changes to the Depot Access Conditions. These rights take the form of a short term right, which will normally expire within 150 days of the Depot Access Conditions first being incorporated in a document, and a long term right, which will be effective thereafter. The short term right may be exercised by the Regulator if he believes its exercise is necessary or expedient. The long term right may only be exercised if he is satisfied on reasonable grounds that the change is, or is likely to be, reasonably required to promote or achieve the Regulator's long term objectives or to avoid or remedy unfair prejudice to any person where the need to avoid such unfair prejudice outweighs the prejudice which will, or is likely to be, sustained by any other relevant person if the change is made. Any such changes may be made only after due consultation with all affected parties, including any persons whom the Regulator considers should be consulted and with other relevant bodies such as the Franchising Director. A change will have effect not earlier than 30 days from the date on which notice of such change is given by the Regulator in the case of the short term right and not earlier than 180 days from the date of the Regulator's notice in the case of the long term right.

Changes to the Depot (Part C)

Any of the DFO, a User or Railtrack may make a proposal for change to the depot including the services provided at the depot or the creation or amendment of certain agreements affecting the Users' use of the depot. This is intended to enable the depot and the quality or quantity of services at the depot to develop to meet the needs of train operators. The mechanism for proposing changes is, in the case of the DFO, a User and in certain limited circumstances Railtrack, a "Proposal for Change" and in the case of Railtrack a "Railtrack Change Proposal". Generally, Railtrack may only make such a proposal for the redevelopment or reconstruction of the depot. A proposal may take various different forms, depending on the materiality and nature of the change in question and the identity of the person making the proposal.

All Proposals for Change and Railtrack Change Proposals must go through a consultation process with the DFO, each User, Railtrack and the Franchising Director. This is co-ordinated by the DFO. The consultation process allows for relatively quick initial evaluation and response, at no cost to the party proposing the change (the "sponsor"). If the sponsor wishes the consultation group to participate in more detailed evaluation after receiving their initial response to the proposal, then it must cover their costs.

A Proposal for Change or Railtrack Change Proposal requires the unanimous consent of the DFO, each User and Railtrack and must be approved by the Regulator before it becomes effective.

A Proposal for Change or Railtrack Change Proposal will be accepted unless the DFO, a User or Railtrack notifies the DFO within a set period that it objects to it and can establish that the change is likely to have a material and adverse effect on its use or interest in the depot. If this right is exercised in relation to any proposal, any party may displace such veto if it can establish (in proceedings under the Access Dispute Resolution Rules) that implementation of the change in question would not have the material and adverse effect which is claimed.

If a proposal is not accepted, it may still go ahead if Railtrack and/or any of the Users or the DFO provides appropriate financial undertakings to the others.

On acceptance of a Proposal for Change or Railtrack Change Proposal the DFO must submit the proposed amendments to the Regulator for approval. Part C contains provision for an appeal by an aggrieved party against the approval or rejection of a Proposal for Change or Railtrack Change Proposal on the grounds that it is unfairly prejudicial to that person, where such unfair prejudice outweighs the prejudice which any other relevant person would otherwise sustain or would be likely to sustain. Any such appeal is made in accordance with the Access Dispute Resolution Rules. No change may be implemented pending the result of an appeal.

A Railtrack Change Proposal may result in termination of the relevant depot lease in whole or part.

Work, Repairs and Maintenance (Part D)

Part D includes various provisions relating to the carrying out of works, repairs and

maintenance at the depot. The DFO may restrict, or be required by Railtrack to restrict, permission to use the depot, thereby limiting the rights of access of Users, either to carry out certain types of works, or if there is an emergency.

Normally, the DFO must provide reasonable notice of any intended restrictions and must supply details of a reasonable programme for the carrying out of the works. It must also use its reasonable endeavours to consult with each User, and, insofar as it is reasonably practicable, must minimise the extent and period of any restriction and make reasonable alternative arrangements so as to enable each User and its associates to use the depot with the minimum of disruption, difficulty or inconvenience.

Part D also sets out Railtrack's and the DFO's respective maintenance and repair obligations at the depot, both in relation to the depot and to certain equipment. This obligation extends to ensuring that the equipment is used properly. Broadly, the DFO is responsible for routine maintenance and certain repairs and Railtrack is responsible for structural repairs and some maintenance and, in certain circumstances, for renewal. Part D includes self-help remedies for both the DFO and Railtrack in the event that the other fails to comply with its maintenance and repair obligations.

Part D also contains provisions which allocate excess maintenance costs between Railtrack and the DFO. This provides that when the DFO's maintenance costs in any accounting year for certain specified pieces of equipment and elements of the depot exceed certain thresholds, the excess costs above such thresholds will be borne 80 per cent by Railtrack and as to the remainder by the DFO. The items of equipment and elements of the depot which are covered by this regime are those which are specified in the Depot Access Conditions as being "critical" to the operation of the depot.

Part D also provides that Railtrack may charge to the DFO the reasonable cost of maintenance of the permanent way between the depot boundary and the point where the first rail joint occurs. Where a depot has continuous weld track, it has been agreed that the template may be customised for that depot to provide that Railtrack may charge reasonable costs of maintenance of the permanent way between the depot boundary and the point 18 metres inside the depot boundary.

Insurance (Part E)

Part E contains provisions for the insurance of the depot and the application of relevant insurance proceeds.

Railtrack has undertaken the responsibility for effecting property insurance for all depots since 4 February 1996 (the "Effective Date", being the date on which the first franchises commenced operation in the private sector). The DFO is responsible for arranging insurance against third party liability and certain other risks. The costs of Railtrack's insurance policy are payable by the DFO. Railtrack's property insurance policy is subject to an excess for each DFO. This excess is, in general, currently 0.15 per cent. of the DFO's total annual turnover less certain deductions (with a minimum excess of £5,000 and a maximum of £175,000 for each loss). In the event of any damage, the amount of the excess will be payable by the DFO. If an insured risk occurs and affects more than one depot or station operated by a TOC, the

excess will be payable only once in relation to that occurrence.

Railtrack must apply any insurance monies received by it (including money received by the DFO and passed to Railtrack) in the repair of any damage to or reinstatement of, the depot. It must consult with the DFO and each User on any such rebuilding. There is a requirement to rebuild buildings to a modern equivalent standard and not their original form, unless required to do otherwise by Railtrack's landlord (if any) or due to the building being listed. The DFO and Users may elect to rebuild to the original form prior to the Effective Date.

None of the parties bound by the Depot Access Conditions may do anything which would invalidate any relevant policy or increase the premium payable under that policy, unless it has paid the amount of any such increase.

Access Charging (Part F)

The access charges payable by a User consist of the Minimum Charge, the Variable Charges and the Contingent Charges discussed above.

The DFO is obliged to maintain financial records in respect of the Depot Services provided to each User.

Existing Agreements and Third Party Rights (Part G)

Part G deals with the effects of certain types of pre-existing agreements with third parties or existing rights of third parties on the DFO's or a User's use of the depot. Part G contains certain warranties and indemnities given by both Railtrack and the DFO, which are intended to ensure disclosure of any relevant restrictions and to allocate liability for any non-disclosure. Users' permissions to use a depot are subject to any existing agreements identified specifically or generally in the Depot Access Conditions.

By virtue of provisions in Part G, Railtrack and/or the DFO may take certain actions in respect of certain specified agreements (such as implementing or amending them) without the necessity to comply with the procedure by which such changes would otherwise need to be approved under Part C of the Depot Access Conditions.

Litigation and Disputes (Part H)

Part H provides that the DFO, each User and Railtrack will notify each other of any relevant disputes, claims or litigation affecting the depot. These provisions are subject to the provisions regarding claims for environmental liability which are handled separately in accordance with the provisions of Part M of the Depot Access Conditions. The DFO has the authority to carry on litigation affecting the depot on behalf of all Users in certain circumstances and below specified financial thresholds.

Most disputes between any of the DFO, any Users or Railtrack must be referred initially to the Access Dispute Resolution Committee established under the Access Dispute Resolution Rules.

Depot Register (Part I)

Part I provides for the DFO to create and maintain a central register ("Depot Register") of

certain agreements, rights, works and documents (including records of environmental incidents) affecting the depot. The Depot Register serves mainly as a disclosure mechanism for Users, and is also open for inspection by persons whom the Regulator considers should be entitled to gain access to it. It is intended to inform them of all material events or agreements which may have an impact on the depot or its operation.

Given the size of the task of assembling certain parts of the Depot Register, particularly that containing the existing agreements, the Regulator has agreed to a grace period for full compliance expiring on 31 October 1999.

Rights Granted Over Adjacent Property (Part J)

Part J sets out rights granted by Railtrack to the DFO over certain property which belongs to Railtrack and is adjacent to the depot. Where such rights are necessary for the use of a depot by Users, they are granted to Users by the DFO as part of the permission to use the depot.

Rights Reserved by Railtrack (Part K)

Part K sets out all rights which Railtrack may exercise over the depot. The exercise of these rights must, so far as they involve works or disruption to the depot, be approved in accordance with Part C or be carried out in accordance with Part D. Railtrack must ensure its rights under Part K are exercised in such a way as not to prejudice the use of the depot by the DFO or Users.

Remedies (Part L)

Part L provides for remedies between Railtrack and the DFO. Where Railtrack is in default of its obligations and such default leads to a train which is ready to leave the depot being delayed beyond its scheduled departure time, Railtrack may be obliged to compensate the DFO on the basis set out in the Depot Access Conditions.

It is intended that compensation payments are made only in respect of periods of delay above a specified threshold and up to an agreed limit.

Railtrack indemnifies the DFO for any expenses incurred (subject to certain exceptions, above certain thresholds and up to specified limits) as a result of any breach of obligation by Railtrack. The DFO similarly indemnifies Railtrack for any breaches of the DFO's obligations. Recovery may be made for direct costs, but there is no recovery under the indemnities for revenue loss.

There are separate remedies provisions in the depot access agreement and the collateral agreement.

No person is to be held responsible for any failure to carry out its obligations under the depot access agreement, depot lease or collateral agreement if such obligations cannot be carried out as a result of certain events which are beyond the reasonable control of the party in breach of its obligations.

Environmental Protection (Part M)

Part M is concerned with responsibility for certain environmental damage at the depot or for

circumstances likely to give rise to such environmental damage, defined as an "Environmental Condition".

Railtrack indemnifies the DFO against loss resulting from any Environmental Condition unless it can show that the loss arose as a result of a breach by the DFO or any User of its obligations under the depot lease or its depot access agreement (as appropriate) or of any "Legal Requirement", or any act of the DFO or any User which has resulted in a claim by a third party in respect of environmental damage. The DFO indemnifies Railtrack against any loss which Railtrack can demonstrate arose as a result of such defaults by the DFO or any User.

Each User undertakes to ensure that it does nothing to give rise to the DFO being liable to Railtrack and indemnifies the DFO against liability for Environmental Conditions arising from a breach of its obligations.

Each User must promptly notify the DFO, and the DFO must notify Railtrack, of the occurrence of any circumstances likely to give rise to an Environmental Condition. Depending on the circumstances the DFO may be entitled to remedy the Environmental Condition at the expense of Railtrack.

Part M makes provision for which party is responsible for carrying out remedial work and for the conduct of litigation. The DFO is primarily responsible for remedying Environmental Conditions which it has caused. If, in Railtrack's reasonable opinion, urgent action is necessary to prevent, mitigate or remedy any Environmental Condition and it is not practicable for the DFO to take such urgent action, then Railtrack may take reasonable steps itself. The costs of remedial action are allocated in accordance with the indemnities described above.

Other Obligations (Parts N and O)

Parts N and O set out miscellaneous obligations of Railtrack, the DFO and any User.

For example, the DFO has an obligation to provide Depot Services in a workmanlike manner, with reasonable skill and care, and to meet and maintain recognised industry standards. Obligations of the DFO and Users include obligations not to alter or to carry out unauthorised works to the depot, not to use the depot otherwise than for specified purposes and not to permit a breach of the Depot Access Conditions by any other person.

The DFO is not restricted to using the depot for the provision of Depot Services and the maintenance of its own rolling stock. It may also use the depot for Heavy Maintenance and other services of an engineering nature which are compatible with these uses. It may also, with the consent of Railtrack (which may not be unreasonably withheld), use the depot for any other purpose which is not incompatible with these uses or the operation of the network.

Attribution of Costs (Part P)

Part P deals with the attribution of certain costs between Railtrack, the DFO and each User. Any attribution of costs incurred by Railtrack, the DFO or any User in complying with their obligations under the Conditions or imposed by a change in the law is determined on a fair and equitable basis.

Costs relating to Proposals for Change or a Railtrack Change Proposal or costs such as maintenance or repair are covered by the relevant sections of the Depot Access Conditions.

Railtrack and the DFO are both obliged to secure the lowest price reasonably obtainable for any items for which they intend to recoup the costs from another party.

General (Part Q)

Part Q contains general provisions in respect of confidentiality, payments of charges and other legal provisions.

Decision Criteria, Unregulated Contracts and Defeasible Rights (Part R)

Part R provides that when determining its use of capacity of the depot, the DFO should have due regard to the necessity or desirability of certain considerations (the "Decision Criteria"). The Decision Criteria are designed to ensure appropriate priority is given to contracts for the provision of railway services but that due weight is also given to consideration of non-rail agreements.

Any unregulated agreement which is entered into after the Depot Access Conditions first become effective must contain provisions which entitle the DFO not to perform the services under that agreement, to the extent that the DFO determines it is necessary having due regard to the Decision Criteria. An unregulated agreement need not contain such provisions if the facilities of the depot have been increased wholly or mainly for the purpose of performing the unregulated agreement, or if all the Users consent.

Part R also qualifies the rights of Users and the DFO to agree to increase the existing level of services provided. If the result of the increase would be to leave insufficient capacity to provide Light Maintenance Services to a new User the Regulator may require the DFO to stop providing the increased services if that increase in services was sought in the three years before an application by a new User for a regulated access agreement. The Regulator may not make such a requirement if he is satisfied that the increase was made for a purpose other than the exclusion of the new Users.

Depot Work Plan (Part S)

Part S requires the DFO to draw up a Depot Work Plan which specifies the scheduling, method of resourcing and the utilisation of maintenance facilities at the depot.

The Depot Work Plan must show the different categories of Depot Services which are provided to each User, the maintenance services which the DFO provides to itself and services which are provided to other persons which affect the ability of the DFO to provide services at the depot. The DFO must comply with the Depot Work Plan in all material respects in carrying out work at the depot.

In certain circumstances the Depot Work Plan must be revised or confirmed by the DFO. In either case the DFO is obliged to consult with each User and to take into account any representations they may make.

The Depot Work Plan will include an allowance for the DFO's and each User's "Work Arising".

In the case of each User this is defined in the User's depot access agreement and in the case of the DFO, in the Depot Access Conditions. Any User which considers that its allowance for Work Arising is insufficient may challenge the Depot Work Plan. The User may refer the matter to the determination of an expert and such User or the DFO may appeal to the Regulator against the expert's decision.

Any User is also entitled to object to any other aspects of the Depot Work Plan on the basis that its commercial interests are affected materially and adversely. The User may refer the matter to the determination of an expert and such User or the DFO may appeal to the Regulator against the expert's decision.

Sources of Information

The Railways Act 1993 (as amended by the Transport Act 2000)

Template Regulated Depot Access Documents

General Approvals issued by the Rail Regulator

OPRAF Passenger Rail Industry Overview – June 1996

ORR Information Paper No. 2 – Railway Closures

ORR Depot Closures – Advice on closures of Light Maintenance Depots and parts of them

The following ORR Guidance Notes because of the procedural similarities:

ORR Guidance Note No. 1 – Amendments To Station Access Contracts: Overview

ORR Guidance Note No. 2 – Station Access Contractual Change Procedures: Overview

ORR Guidance Note No. 3 – Amendments To Station Access Agreements: Statutory And Regulatory Requirements

ORR Guidance Note No. 4 – Amendments To Station Access Agreements: Procedures For Obtaining Specific Approval From The Regulator

ORR Guidance Note No. 5 – Amendments To Station Access Agreements: Procedure For Submitting Generally Approved Amendments To The Regulator

Contacts

Depot Access Team

Office of the Rail Regulator
1 Waterhouse Square
138 – 142 Holborn
London
EC1N 2TQ

Tel. 020 7282 2000
Fax: 020 7272 2040

Strategic Rail Authority

55 Victoria Street
London
SW1H 0EU

Tel. 020 7654 6000
Fax: 020 7654 6010

Nick Olley

Head of Rail Group Burgess Salmon

Narrow Quay House
Narrow Quay
Bristol
BS1 4AH

Tel. 0117 939 2277
Fax: 0117 902 4400