

A Guide to the Network Code for devolved transport bodies

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1. Introduction

1.1 Purpose of this Guide

- 1.1.1** Train operators convey passengers and goods around the rail network, which is owned, operated and maintained by Network Rail. Network Rail is also charged with the responsibility to develop and publish the timetable, specify small and medium enhancements to the network infrastructure, and report on industry performance. In order to gain access to the network, all train operators must have 'access rights' by way of a Track Access Agreement (TAA) with Network Rail.
- 1.1.2** The [Network Code](#) is a set of rules which is incorporated by reference into each bilateral TAA between Network Rail and a holder of access rights. The Network Code sets out the generic industry processes that apply equally to all parties whereas TAAs are specific to each train operator (whether a passenger operator or a freight operator).
- 1.1.3** Devolved transport bodies tend not to have track access agreements and therefore, except where expressly provided¹, do not have rights under the Network Code. However, it is recognised that in many cases devolved transport bodies will have strong and legitimate interests in certain activities occurring under the processes contained in the Network Code. This Guide sets out what a devolved transport body can reasonably expect from Access Parties when they make enquiries or comments about processes occurring under the Network Code. The Guide aims to assist devolved transport bodies by:
- providing clarity as to how devolved transport bodies can obtain information about the Network Code, enabling them to understand any implications that processes carried out under the Network Code may create, including;
 - setting out what information relating to the processes under the Network Code is already publicly available;
 - setting out how they can obtain further relevant information which is not publicly available after taking into account any reasonable confidentiality and security considerations;
 - providing clarity on what opportunities exist for them to make their views and aspirations on Network Code processes known to Access Parties.

This Guide does not:

- provide a detailed explanation of each process arising under the Network Code (as such explanation is already provided within the Network Code itself);

¹ Condition A6 of the Network Code states:

- 6.1 Except as provided in this Condition A6, no person who is not an Access Party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this code.
- 6.2 Where in this code a right is given to any person who is not an Access Party, that person shall be entitled to enforce directly such right under the Contracts (Right of Third Parties) Act 1999 but only by way of injunction or other performance order of a court or competent tribunal and not by way of damages or other compensatory award.

- replace or modify existing relationships between devolved transport bodies and any Access Party which may arise from other contractual obligations or current good practice; or
- confer contractual rights or obligations on any party.

1.1.4 This guide is subject to review and revision from time to time. The Network Code is also subject to change. This Guide relates to the Network Code as at 17 October 2007. If there is any inconsistency between the Guide and the Network Code or any TAA, the Network Code and TAA terms take precedence.

1.2 The Network Code

1.2.1 The Network Code is a publicly available document, which can be found on Network Rail's website [here](#). Documentation relating to a number of processes under the Network Code can also be found via these pages. Any comments or queries on the information found on these pages can be emailed to:

- networkcode@networkrail.co.uk

You can also find information relating to the Network Code on other industry websites, including:

- The Office of Rail Regulation – www.rail-reg.gov.uk
- Access Disputes Committee – www.accessdisputesrail.org

Parties having an interest in the Network Code, can use this information to keep themselves informed.

1.3 Who should read this Guide?

1.3.1 This Guide is aimed at those parties which are specifically referred to within the Network Code, and may already have the right to receive documentation during the operation of processes under the Network Code. For the avoidance of doubt these are:

- Passenger Transport Executives
- Transport for London
- The Secretary of State
- Scottish Ministers
- Welsh Assembly Government

1.3.2 The Guide may also prove useful to other parties who have a material interest in the outcome of certain processes under the Network Code (e.g. where they have provided funding). However, these parties do not necessarily have the same rights and opportunities under the Network Code as those listed above.

1.4 Who are Network Code parties?

1.4.1 A Network Code party is usually a signatory to a TAA and is therefore usually also party to the Network Code. These parties are termed "Access Parties" in this Guide. Some parts of the Network Code refer to 'train operators', which means a person who has permission to use track under a TAA. This term is also used throughout this Guide.

1.4.2 The term 'Competent Authority' is also used within this Guide and generally applies to a person or body which has relevant powers over an Access Party. The full definition of a 'Competent Authority' can be found in Part A of the Network Code.

1. 5 Queries and comments

- 1.5.1** This Guide has been developed by certain Access Parties (Network Rail and passenger and freight train operators) in conjunction with the Office of Rail Regulation. They welcome any comments or representations on the Guide. Comments can be emailed to

Networkcode@networkrail.co.uk

Parts of the Network Code relevant to Devolved Transport Bodies

1.5.2 This section of the Guide provides a general overview of sections of the Network Code most likely to be relevant to devolved transport bodies. This section describes the information that is publicly available and sets out when Access Parties are required to involve devolved transport bodies. To assist in navigating around this section hotlinks have been provided below. To view the other sections of the Network Code, please visit the Network Rail website [here](#).

2. The individual sections of the Network Code considered in this section are as follows:

[Part C](#) – [Modifications to the Network Code](#)

[Part D](#) – [Timetable Change](#)

[Part F](#) – [Vehicle Change](#)

[Part G](#) – [Network Change](#)

[Part H](#) – [Operational Disruption](#)

[Part J](#) – [Changes to Access Rights](#)

[Part L](#) – [Performance](#)

2.1 Part C – Modifications to the Network Code

- 2.1.1** Part C of the Network Code contains the process by which the Network Code itself can be amended via the Proposal for Change (PfC) process. All proposals are issued for consultation and the proposal itself and all representations received are considered by the Class Representative Committee (CRC). The CRC is a committee formed under the terms of Part C and is constituted of representatives of the different classes of Access Party (i.e. Network Rail, Franchised Passenger, Non-Franchised Passenger and Non-Passenger).
- 2.1.2** The CRC may make amendments to the proposal, with any material amendments being consulted upon again. If, following consideration of the proposal and associated representations, the CRC determines that a change should be made then it must make a recommendation to the ORR. The Network Code may only be amended if agreed by ORR.
- 2.1.3** Part C also allows ORR, after appropriate consultation, to make its own changes to the Network Code outside of the PfC process. Such proposals would not be considered formally by CRC.

The full text of Part C and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

- 2.1.4** Copies of Proposals for Change and associated documentation (including consultation responses from Access Parties and Class Representative Committee) can be found [here](#).

Opportunity for involvement

- (a) Initiating a Proposal for Change

Modifications to the Network Code may only be proposed and decided by Access Parties, Access Option Holders² (or anyone who proposes to become an Access Party or Access Option Holder) and the ORR.

- (b) Consultation of Proposals for Change

Under the terms of Part C, PfCs are issued to certain third parties (see Clause C5.2 of the Network Code), but all PfC documentation on Network Rail's website can be found [here](#).

The minutes of the relevant CRC meeting will reflect the consideration the CRC gave to each proposal and the representations it received. These minutes are published on Network Rail's website [here](#).

² "Access Option Holder" means any person who may exercise an access option (as defined in section 17(6) of the Act) in respect of a railway facility:

(a) which is not a station or a light maintenance depot; and
(b) in respect of which the facility owner is Network Rail;

- 2.1.5 In view of the availability of information on the PfC processes through the Network Rail website, devolved transport bodies should contact relevant Access Parties in respect of changes which they consider should be proposed or on which they may wish to comment. Access Parties would not ordinarily expect to actively consult devolved transport bodies regarding Part C and CRC processes.

2.2 Part D – Timetable Change

- 2.2.1 Part D of the Network Code relates to the process of developing an annual timetable and sets out how this timetable is developed through its various stages before completion and publication. Network Rail builds the timetable, giving pathways to passenger operators and freight operators according to the access rights specified in their TAAs, whilst also ensuring that it has sufficient time to meet its own maintenance and engineering needs. The process of building the timetable is an extensive iterative process, for which the pre-formal processes and the formal Part D processes are carried out far in advance of the commencement of a 'new' timetable every December. For this reason it is not always possible to give more than indicative pathways and timings until all relevant access rights have been satisfied. The key points in the process include:

- development of a Base Timetable;
- establishment of the Rules of the Route and Rules of the Plan which become, for each timetable, Network Rail's firm rights;
- development of any Possession Strategy Notices;
- preparation of the First Working Timetable; and
- the making of spot bids.

The full text of Part D and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

The Rules of the Route and Rules of the Plan documents can be found [here](#).

The national passenger timetable is available at www.nationalrail.co.uk.

Opportunity for involvement

- 2.2.2 When drafting the base timetable, Network Rail must consult with bidders (current and potential Access Parties) to gain an understanding of their requirements and aspirations for the development of their services, and must then take these requirements and aspirations into account. Relevant bidders in turn are required to:

“hold appropriate consultation for development of services with Passenger Transport Executives, User Representatives and any other parties with the right to be so consulted” (Condition 2A.1.2)

- 2.2.3 Similarly, the consultation process to establish the First Working Timetable requires that relevant bidders must:

“hold appropriate consultation regarding proposals for development of services with Passenger Transport Executives, User Representatives and other parties with the right to be so consulted” (Condition 3.1.1 (a))

- 2.2.4** Any devolved transport body with an interest in influencing the timetable outside of the formal consultation processes specified above should therefore contact the relevant bidder (for example, the local passenger operator) in order to make its comments, queries or suggestions known (see contact details at the end of this document). This bidder will then be in a position to consider those concerns and make any necessary relevant representations to Network Rail as part of the formal timetabling process.

2.3 Part F – Vehicle Change

- 2.3.1** Part F of the Network Code provides the process by which train operators can propose to include new railway vehicles in their TAA or to propose changes to existing railway vehicles already included in their TAA. Network Rail facilitates this process, by consulting all relevant Access Parties on behalf of the party that wishes to make the change. A change may also be imposed upon a train operator by a Competent Authority, and, like any other changes, Network Rail is responsible for consulting on such changes with other Access Parties, although all Access Parties affected must comply with the direction given by the Competent Authority.

The full text of Part F and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

- 2.3.2** Summaries of Vehicle Change notices and consultation responses from industry parties are available [here](#). Note that the appendices associated with Vehicle Changes are not available on the website. These can be requested via networkcode@networkrail.co.uk, and this be provided where a legitimate requirement is demonstrated and subject to confidentiality safeguards (see section "What to do if you require more information").
- 2.3.3** Copies of the [standard forms](#) can be found via these pages. These forms are used by Access Parties for the proposal of, or response to, Vehicle Changes.
- 2.3.4** Model terms and conditions for Vehicle Change are currently being developed and will be available via these pages when agreed.
- 2.3.5** All Access Parties must comply with Railway Group Standards, and therefore these may affect a Vehicle Change. These documents can be found via www.rgsonline.co.uk.

Opportunity for involvement

- (a) Proposing a Vehicle Change

A Vehicle Change may only be proposed by a train operator, and as such devolved transport bodies wishing to propose a change to a vehicle, should contact the train operator it considers best placed to take forward its suggestion.

- (b) Consultation of Vehicle Change proposals

- i) Formal notification under the terms of Part F

Network Rail facilitates the consultation of all Vehicle Changes and in doing so is required under the terms of Part F to, where necessary or requested, conduct prior consultation with or (where such prior consultation is not necessary) send a notice to all affected train operators and the following organisations:

- The Secretary of State;

- the Office of Rail Regulation;
- each Passenger Transport Executive that may be affected;
- Transport for London if affected;
- the Scottish Ministers if affected.
- Welsh Assembly Government.

These parties may submit comments within the specific timescales relevant to that Vehicle Change. These timescales may vary depending upon the complexity of the Vehicle Change.

2.3.6 In view of the availability of information on Vehicle Change through the Network Rail website and the provisions of Part F, devolved transport bodies should contact relevant Access Parties in respect of changes which they consider should be proposed or on which they may wish to comment. Access Parties are not otherwise generally expected to institute active consultation with devolved transport bodies regarding Part F processes.

2.4 Part G - Network Change

- 2.4.1** Part G of the Network Code provides the process by which Network Rail or train operators can propose changes to the network. Network Rail facilitates this process, meaning that it consults all Access Parties on behalf of the party (either itself or a train operator) that wishes to make the change. A change may also be imposed by a Competent Authority, and Network Rail is responsible for consulting on such changes with other Access Parties, although all parties must comply with the direction given by the Competent Authority.

The full text of Part G and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

- 2.4.2** Documents relating to current Network Changes are available [here](#). This includes letters which summarise the changes being made, consultation responses and notices establishing Network Changes. Note that the appendices associated with Network Changes are not available on the website. These can be requested via networkcode@networkrail.co.uk, and these will be provided if a legitimate requirement is demonstrated and subject to confidentiality safeguards (see section "What to do if more information is required").
- 2.4.3** Copies of the [standard forms](#) can be found via these pages. These forms are used by Access Parties for the proposal of, or response to, Network Changes.
- 2.4.4** Finally, model terms and conditions for Network Change are available under the [Contractual Framework](#) page of the [Investment in the Network](#) section of Network Rail's website. These are used by Network Rail where a third party wishes to contract with Network Rail to modify the network.

Opportunity for involvement

- (a) Proposing a Network Change

A Network Change may be proposed by either Network Rail or a train operator, and as such should a devolved transport body wish to propose a change to the network, it should contact the Access Party it considers best placed to take forward its suggestion.

That Access Party will advise if it considers that it should take forward the proposed change. If, however, it does not consider that it is best placed or is not willing to do this it will provide either its reasons and/or suggest an alternative Access Party to contact.

Where Network Rail takes forward a Network Change on behalf of a devolved transport body it will do so in accordance with Section 13 of its [Code of Practice](#) which sets out its commitments to prospective customers. A suite of template agreements is available under the [Contractual Framework](#) page of the [Investment in the Network](#) section of Network Rail's website. The Code of Practice sets out how Network Rail will deal with customers and funders of enhancements schemes (investments in the network) in relation to:

- infrastructure, station or light maintenance depots to be undertaken by Network Rail; and
 - infrastructure, station or light maintenance depots to be undertaken by others.
- (b) Consultation of Network Change proposals

i) Formal notification under the terms of Part G

Network Rail facilitates the consultation of all Network Changes and in doing so is required under the terms of Part G to, where necessary or requested, conduct prior consultation with or (where such prior consultation is not necessary), send a notice to affected train operators and the following organisations:

- the Secretary of State;
- the Office of Rail Regulation;
- each Passenger Transport Executive that may be affected;
- Transport for London if affected; and
- the Scottish Ministers if affected.
- Welsh Assembly Government.

These parties may submit comments within the specific timescales relevant to that Network Change. Note that depending upon the complexity of the Network Change these timescales may vary.

2.4.5 In view of the availability of information on Network Change through the Network Rail website and the provisions of Part G, devolved transport bodies should contact relevant Access Parties in respect of changes which they consider should be proposed or on which they may wish to comment. Access Parties are not otherwise generally expected to institute active consultation with devolved transport bodies regarding Part G processes.

2.5 Part H - Operational Disruption

2.5.1 Part H of the Network Code sets out the mechanism for the establishment of a Railway Operational Code (ROC). The objective of the ROC is to sustain and where necessary restore expeditiously the operation of train services on the network in accordance with the timetable. The ROC comprises of a number of different sections which set out the principles of how Access Parties will work together to meet the ROC objective. The following ROC Sections have been established thus far:

- Introductory and General
- Train Regulation Policies
- Emergency Timetabling
- Adverse Weather and Seasonal Disruption
- Control Arrangements
- Track Blockages and Failed Trains

2.5.2 Where applicable, all Access Parties are obliged to comply with the principles and guidance set out within the ROC.

2.5.3 Each ROC Section must be reviewed six months after establishment and on an annual basis to ensure that it is working effectively. Access Parties may propose changes to ROC Sections at any time.

2.5.4 The full text of Part H and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

Each draft and established ROC Section is available [here](#). Also under this page are the guidance documents for each ROC Section.

The ORR ROC Criteria are available [here](#).

Opportunity for involvement

(a) Consultation of ROC Section content

All Access Parties must be consulted on all draft ROC Sections. The following organisations must be notified and consulted if requested:

- (b) the Secretary of State;
- (c) the Office of Rail Regulation;
- (d) each Passenger Transport Executive that may be affected;
- (e) Transport for London if affected; and
- (f) the Scottish Ministers if affected.
- (g) Welsh Assembly Government

These parties may submit comments within the specific timescales relevant to that ROC Section.

- 2.5.5** In view of the availability of information on the ROC through the Network Rail website and the provisions of Part H, devolved transport bodies should contact relevant Access Parties in respect of changes which they consider should be proposed or on which they may wish to comment. Access Parties are not otherwise generally expected to institute active consultation with devolved transport bodies regarding the ROC.

2.6 Part J – Changes to Access Rights

- 2.6.1** Part J of the Network Code provides a number of mechanisms by which an Access Party's track access rights can be changed.

The full text of Part J and explanatory text giving an overview of this section can be found [here](#).

Publicly available information

Documentation relating to instances where the Part J processes have been used can be found [here](#). Also available via this link are the relevant criteria which relate to this process.

Opportunity for involvement

- 2.6.2** The Changes to Access Rights process relates to the adjustment of the terms of the bilateral TAA between Network Rail and an Access Party with regard to services in respect of which that Access Party has rights. There may be potential for these adjustments to affect devolved transport bodies and the appropriate level of liaison is likely to require case by case consideration.

2.7 Part L - Performance

2.7.1 Part L of the Network Code relates to performance. The full text of Part L can be found [here](#). The Part L process is one by which Network Rail and train operators agree measures related to performance either via a Local Output Commitment or a Joint Performance Improvement Plan (JPIP). All franchised passenger operators operate under the JPIP process.

Publicly available information

2.7.2 Although not directly relating to the processes under Part L, the following information is available:

- Public Performance Measure (PPM) Moving Annual Average (MAA) by train operator per period is available on ORR's website [here](#).
- Network Rail's [Business Plan](#) contains information on its plans for each of the routes on the network.

Opportunity for involvement

2.7.3 The Part L performance processes allow train operators and Network Rail to agree steps to improve performance. A devolved transport body with a concern regarding local performance should contact the relevant Access Party it considers to be best placed to take forward its concerns.

3. Devolved Transport Bodies Requiring more information

This section outlines good practice for Access Parties dealing with requests for more information.

3.1 Making a request for information

Where a devolved transport body considers that further information may exist which would assist it in understanding and assessing the implications of a Network Code process, it can request that information from the relevant Access Party. Its request should:

- be in writing (which may be transmitted by email) ; and
- outline why you want to view the information requested.

3.2 Access Party responses

An Access Party, on receipt of such a request, will consider the following points in determining whether information should be provided:

- a) is it best placed to deal with the request (and if not, which Access Party is likely to be better placed to deal with it);
- b) whether (and which) other Access Parties should be made aware of the request, and should be involved in providing a response;
- c) whether the information requested is readily available, at no (or negligible) cost to the Access Party concerned (and if not, what costs may reasonably be charged for the provision of information);
- d) whether it is appropriate for the information requested to be provided (see restriction of information below); and
- e) if the information can be provided, whether it is appropriate that a confidentiality agreement is required, so that the information in question is not passed on or published without express authorisation.

3.3 Handling of information provided

If information is provided in respect of a Network Code process by an Access Party, the recipient will be required (subject to its own legal commitment) to:

- a) respect the potentially sensitive nature of the information;
- b) comply with any requests to enter into confidentiality agreements where relevant;
- c) not pass that information on to any other person or organisation without prior consent; and
- d) not publish that information without prior consent.

3.4 Restriction of information by Access Parties

Access Parties may consider it inappropriate to provide information in the following circumstances:

- a) where publication or provision is likely to materially compromise or otherwise prejudice the commercial interests of any Access Party or its affiliates, or may reasonably be expected to seriously and prejudicially affect the interests of any person;
- b) in order to protect financial forecasts not yet published in the Network Rail Business Plan;
- c) where there is an unreasonable cost (financial, available resource or otherwise) of providing the information;
- d) where the information is in draft format and has not yet been made available to other Access Parties;
- e) where an Access Party is under an obligation to protect the information requested;
- f) where disclosure of the information is in breach of the intellectual property rights of a third party;
- g) in order to protect privacy, including the personal details of employees or contractors;
- h) where the disclosure of specific drawings, plans or information is likely to pose a security risk; and
- i) where the information is for the purpose of giving or getting legal advice or is relevant to current or prospective litigation.

Dialogue will often be needed between the parties to help establish develop requests for information in a way which can be appropriately met.

4. Consultation with devolved transport bodies

4.1 Undertaking consultation

In instances where a devolved transport body is identified and consulted under the Network Code, the Access Party will aim to:

- a) undertake consultation on an informal basis where practical and relevant prior to the commencement of the formal processes under the Network Code;
- b) conduct any consultation in a reasonable period of time to allow the devolved transport body to give due consideration to the issues and provide a response within the timescales in the Network Code;
- c) provide information on a basis consistent with what that party is supplied or required to supply under the Network Code;
- d) give due consideration to any comments, queries or suggestions made, where appropriate within the contractual and commercial context in which an Access Party is operating; and
- e) give an appropriate and proportionate level of feedback regarding the impact of the devolved transport body's comments, queries or suggestions on the process.

4.2 Devolved transport body participation

In order to ensure that any consultation entered into is productive, it is noted that:

- a) all Access Parties are subject to the timescales set out in the Network Code, and as such it is important that the timescales for comment are followed and
- b) all Access Parties have contractual and commercial commitments and constraints that may mean that they are unable to take views and aspirations into account.