

Part L – Performance

CONDITION LA

DEFINITIONS

In this Condition LA of Part L, unless the context otherwise requires:

“Class Representative”	is as defined in Part C;
“Condition Precedent (Franchised)”	has the meaning ascribed to it in Condition LA1.2;
“Franchised Passenger Class”	is as defined in Part C;
“franchised passenger train operator”	means a member of the Franchised Passenger Class;
“individual Joint Performance Process” or “individual JPP”	has the meaning ascribed to it in Condition LA3;
“Joint Performance Improvement Plan” or “JPIP”	has the meaning ascribed to it in Condition LA4;
“JPIP Party”	means any of the TAC Parties between whom a JPIP has from time to time been agreed in accordance with this Part L;
“Joint Performance Review ” or “JPR”	means a meeting held pursuant to Condition LA3.2 or LA3.5;
“Non-Franchised Passenger Class”	is as defined in Part C;
“Non-Passenger Class”	is as defined in Part C;
“Performance Objectives”	has the meaning ascribed to it in Condition LA2;
“Remedial Plan”	means a plan agreed pursuant to Condition LA5.1.
“Reporting Period”	means

- (a) each consecutive period of 28 days commencing on 1 April in each year, provided that the length of the first and last such period in any year may be varied by up to 7 days upon notice by Network Rail; or
- (b) as between any TAC Parties, such alternative period as may be agreed between them.

CONDITION LA1 – RELATIONSHIP WITH PART L

LA1.1 Replacement of Part L

This Condition LA1 (including its related definitions) has effect from its incorporation into the Network Code and:

- (a) the remainder of Condition LA shall have effect to the extent and in the circumstances set out below; and
- (b) Part L shall cease to have effect to the extent and in the circumstances set out below.

LA1.2 Condition LA and franchised passenger train operators

As from the occurrence of the Condition Precedent (Franchised), the remainder of Condition LA shall have effect in relation to all franchised passenger train operators. The Condition Precedent (Franchised) shall be the receipt by Network Rail of notice in writing stating that Condition LA shall have effect and given by:

- (a) members of the Franchised Passenger Class (the identity of such members being determined as at the date of the notice) representing not less than 90% in number of such members; or
- (b) the Class Representatives for the Franchised Passenger Class.

LA1.3 Condition LA and other operators

In relation to Train Operators other than franchised passenger train operators, the remainder of Condition LA shall have effect in relation to any such Train Operator upon the later of the following:

- (a) Conditions L1 to L11 inclusive ceasing to have effect in relation to that Train Operator by virtue of Condition LA1.5; and
- (b) Receipt by Network Rail of notice in writing from that Train Operator stating that Condition LA shall have effect.

If at any time the remainder of Condition LA has effect in relation to Train Operators who then consist of all members of the Non-Franchised Passenger Class or the Non-Passenger Class, then it shall also have effect in relation to all future members of the relevant Class, whether or not paragraphs (a) and (b) above apply to such future members. Network Rail shall then forthwith publish notice on its website, confirming when this applies to all such future members.

LA1.4 Part L and franchised passenger train operators

As from the occurrence of the Condition Precedent (Franchised), Conditions L1 to L11 inclusive shall cease to have effect in relation to all franchised passenger train operators and:

- (a) Network Rail shall have no further obligations for the benefit of franchised passenger train operators in respect of the provision or achievement of a Local Output Commitment;
- (b) this shall be without prejudice to any accrued liability, including as to appeal proceedings, in respect of any Local Output Commitment as at the later of:
 - (i) the occurrence of the Condition Precedent (Franchised); and
 - (ii) 1 April 2006.

LA1.5 Part L and other operators

In relation to Train Operators other than franchised passenger train operators, Conditions L1 to L11 inclusive shall cease to have effect in relation to any such Train Operator upon receipt by Network Rail of notice in writing from that Train Operator stating that those Conditions shall cease to have effect.

If at any time Conditions L1 to L11 inclusive no longer have effect in relation to Train Operators who then consist of all members of the Non-Franchised Passenger Class or the Non-Passenger Class, then they shall also have no effect in relation to all future members of the relevant Class,

whether or not such notice shall be given by such future members. Network Rail shall then forthwith publish notice on its website, confirming when this applies to all such future members.

LA1.6 Part L and other operators – transitional arrangements

Upon Conditions L1 to L11 inclusive ceasing to have effect on any Train Operator other than a franchised passenger train operator, as provided in Condition LA1.5:

- (a) Network Rail shall have no further obligations for the benefit of that Train Operator in respect of the provision or achievement of a Local Output Commitment;
- (b) this shall be without prejudice to any accrued liability, including as to appeal proceedings, in respect of any Local Output Commitment applying to that Train Operator as at the date upon which such Conditions cease to have effect.

LA1.7 Interpretation

References in this Condition LA1 to Conditions L1 to L11 inclusive shall include their related definitions, although references to “Local Output Commitment” shall be interpreted as though its definition had continued to exist, notwithstanding that Conditions L1 to L11 shall have ceased to have effect.

CONDITION LA2 – OBJECTIVES

LA2.1 Performance Objectives

The objectives of this Condition LA (the “**Performance Objectives**”) are to

- (a) provide for the improvement, on a continuous basis, of performance both as between the TAC Parties and of the rail industry as a whole, through a process for liaison and cooperation in performance improvement to be applied between those parties, and
- (b) provide a process of reporting to the Office of Rail and Road and (in the case of franchised passenger train operators) the appropriate franchising authority on the performance of trains and the Network on a cooperative basis as between the TAC Parties and on a consistent basis as between different Train Operators (while having regard to the differing nature of their operations).

LA2.2 Achievement of Performance Objectives

Each TAC Party shall participate in the performance reporting, planning, monitoring and reviewing procedures set out in this Condition LA in order to achieve the Performance Objectives.

LA2.3 Limits

This Condition LA shall require participation as set out in Condition LA2.2, but

- (a) does not provide a cause of action in relation to the failure either to agree or to achieve any performance targets or levels or improvement plans;
- (b) other than as regards such participation and without limiting obligations arising under any franchise agreement to which it is a party or under a licence with respect to a railway asset of which that person is a holder or otherwise, shall not require any person to whom it applies to do or omit to do anything; and
- (c) shall neither relieve any person of any responsibility it may have in relation to its operations, acts or omissions nor transfer any such responsibility to any other person.

CONDITION LA3 – INDIVIDUAL JOINT PERFORMANCE PROCESS

LA3.1 Process for Liaison and Cooperation

The TAC Parties shall establish an individual JPP for regular liaison and cooperation between themselves with a view to fulfilling the Performance Objectives. The individual JPP shall be consistent with the ability to enable performance reporting at national level and to compare performance as between different Train Operators, while facilitating the parties' ability to accommodate needs at local level. It may be documented within the JPIP.

LA3.2 Frequency of Meeting

The individual JPP shall include at least a Joint Performance Review between the TAC Parties each Reporting Period during the term of each relevant Access Agreement between them. It may also provide for more frequent review meetings and less frequent planning or strategic meetings. Notwithstanding the process, either TAC Party may require a Joint Performance Review to be held at any time by giving at least 14 days'

written notice to the other with a proposed agenda of items to be considered.

LA3.3 Attendance at Meetings

The individual JPP shall provide for meetings to involve suitably senior representatives from all parties, attending on a consistent basis so far as reasonably practicable, so as to facilitate the participation referred to in LA2.2 achieving the Performance Objectives in an efficient and effective manner.

LA3.4 The Reporting Period Joint Performance Review

The individual JPP shall provide for the Joint Performance Review held each Reporting Period to address at least:

- (a) presentation by Network Rail of performance data in respect of the previous Reporting Period relevant to the TAC Parties;
- (b) an analysis of that performance data;
- (c) a comparison against any applicable JPIP, including an assessment of reasons for any shortfalls or improved achievement in comparison with any relevant JPIP performance targets and any relevant JPIP action plans;
- (d) consideration of actions which may be planned, tested, implemented or revised, taking into account past and current performance, the performance experience of other Train Operators and any future circumstances reasonably anticipated. Actions may be planned to be taken individually, jointly or jointly with other third parties.

LA3.5 Joint Meetings

The individual JPP may provide for JPRs to be held either in whole or in part between Network Rail and two or more Train Operators where those Train Operators are all reasonably likely to be materially affected by the matters to be addressed.

LA3.6 Documentation of the Process and Amendments

The individual JPP between the TAC Parties shall be agreed by them by the latest of (a) three months after the Network Code is amended to include this Condition, (b) in relation to any Train Operator who gives

notice under Condition LA1.5, one month after the giving of such notice and (c) one month after the date of the relevant Access Agreement between the TAC Parties, and shall be documented in writing signed by the TAC Parties. Once agreed, either party may at any time propose amendments to the process which are consistent with the requirements of this Condition LA and the parties shall then apply their reasonable endeavours to agree whether and if so what amendments should be made.

LA3.7 Notice to the Office of Rail and Road and the appropriate franchising authority

If the individual JPP is not agreed by the time specified in Condition LA3.6 or if any proposed amendment to the process is not resolved within three months of its first being raised in writing, either TAC Party may give notice to the Office of Rail and Road and (where a relevant Train Operator is a franchised passenger rail operator) the appropriate franchising authority as provided in Condition LA5.2.

CONDITION LA4 - JOINT PERFORMANCE IMPROVEMENT PLAN

LA4.1 Parties to a JPIP

Except to the extent that it is agreed otherwise under Condition LA7.1, Network Rail and each Train Operator shall agree a JPIP which covers all the parts of the Network over which that Train Operator has rights of access. This does not preclude a JPIP being agreed between Network Rail and more than one Train Operator.

LA4.2 Period

Each JPIP shall specify the period to which it relates. It is anticipated that elements of a JPIP may relate to differing periods, reflecting the short, medium or long term nature of the plans concerned.

LA4.3 Contents of a JPIP

A JPIP shall contain such matters as are agreed between the JPIP Parties as being designed to achieve the Performance Objectives for the period covered by that JPIP, including:

- (a) performance metrics to be used for reporting on performance, the information to be provided by each party to the other for the purpose of such reporting, the format for regular reporting of

- performance and any more detailed process required to support the compilation, review and agreement of such reports;
- (b) performance targets in respect of the JPIP Party or Parties, which may include,
 - (i) stretch targets,
 - (ii) performance levels at which a Remedial Plan will be established;
 - (iii) performance levels at which a shortfall in performance shall be notified to the Office of Rail and Road and (where the relevant JPIP Party is a franchised passenger train operator) the appropriate franchising authority; and
 - (c) specific actions planned to be taken by one or both of the JPIP Parties (either together or separately and whether or not involving third parties) which are designed to help improve performance generally or to help achieve any stretch performance targets in the JPIP or (where these targets have been met) to maintain performance at least at these levels and to achieve further performance improvements which are reasonably practicable.

LA4.4 Review of JPIP

The JPIP Parties shall maintain the JPIP under regular ongoing review as part of the JPIP and shall make such amendments as are agreed as being designed to maintain or improve the achievement of the Performance Objectives.

LA4.5 Compatibility of JPIPs

Without prejudice to the Performance Objectives in relation to improvement of the rail industry as a whole, each JPIP Party shall endeavour to ensure, so far as is reasonable, that:

- (a) no JPIP contains actions, targets or performance levels that are incompatible with actions, targets or performance levels included in other JPIPs, or which are known, or could reasonably be expected to be known, by it to conflict with any other obligations of that JPIP Party; and
- (b) a JPIP shall not be inconsistent with the continued development of performance arrangements where the JPIP spans, or ends upon, the end of a franchise.

LA4.6 Information for the Office of Rail and Road

Network Rail shall, except to the extent that the Office of Rail and Road may otherwise request, provide the Office of Rail and Road with copies (which may be in electronic format) of all JPIPs and any modifications of them made from time to time.

CONDITION LA5 - REMEDIAL PLANS AND FAILURE TO AGREE

LA5.1 Remedial Plan

If at any time:

- (a) one or more of the performance targets (other than any which is described as a stretch performance target) contained in a JPIP is not achieved; or
- (b) in the opinion of either JPIP Party, acting reasonably, any performance target (other than any which is described as a stretch performance target) contained in a JPIP will not be achieved within the time periods set out in that JPIP; or
- (c) if the JPIP specifies that a Remedial Plan is required at a particular level of performance and that level has been reached,

then the JPIP Parties shall use all reasonable endeavours to agree specific actions for inclusion in the JPIP which are designed to restore the level of

performance as soon as reasonably practicable (with the timescales for the restoration being specified) to at least the level of that performance target or Remedial Plan trigger point as specified to be achieved by that time (a “**Remedial Plan**”).

LA5.2 Notice to the Office of Rail and Road and the appropriate franchising authority

5.2.1 If:

- (a) the TAC Parties are unable to agree a JPIP or any amendment to a JPIP proposed by either of them; or
- (b) the TAC Parties are unable to agree regarding the reasons for any particular shortfall in performance or the actions which either or both should be taking to address that shortfall in performance; or
- (c) the JPIP Parties are unable to agree a Remedial Plan where one is required by this Condition; or
- (d) a Remedial Plan is considered by either party to it to be unlikely to be effective, or has not proved to be effective in each case in achieving the required level of performance and the JPIP Parties have been unable to agree further amendments to the Remedial Plan to take account of that actual or anticipated failure; or
- (e) where the JPIP Plan sets levels at which a shortfall in performance is to be notified to the Office of Rail and Road and/or the appropriate franchising authority, and those levels have been reached,

then either party may give notice to the Office of Rail and Road and (where a relevant Train Operator is a franchised passenger rail operator) the appropriate franchising authority setting out the circumstances that have led to the relevant shortfall in performance and/or lack of agreement. The party intending to give notice shall, before doing so, notify the other party or parties of its intention to do so and provide details of its concerns on which that notice is to be based. The relevant parties shall, within 14 days of that notification (or within such other period as may be agreed) consider those

concerns at a JPR or other meeting at which each will ensure that a suitably senior representative is present. The parties may, in considering those concerns, agree means of resolution, but are not bound to do so. Subject to this, following such meeting (or in its absence, if the failure to hold one within the relevant period is not attributable to the party intending to give notice), the notice may be given.

- 5.2.2 Any notice to the Office of Rail and Road and the appropriate franchising authority given pursuant to Condition LA5.2.1 shall be accompanied by such supporting evidence as the JPIP Party giving the notice considers appropriate. Any such notice shall be copied at the same time together with the accompanying supporting information by the party serving that notice to the other TAC Party.

CONDITION LA6 - PERFORMANCE REPORTING

LA6.1 Each TAC Party shall provide to the other information in its possession or under its control reasonably required by the other for the purposes of any Joint Performance Review or the agreement of any JPIP to which that TAC Party is a party.

LA6.2 The parties to each JPIP shall keep under regular review the terms of that JPIP relating to the regular reporting and review of performance, recognising that there are efficiencies and other benefits to be secured through the adoption of common formats and processes of such reporting across the Network and that these are expected to evolve over time. Accordingly and without prejudice to any arrangements in a JPIP which are specific to monitoring initiatives or aspects of performance particular to that JPIP, a JPIP Party shall not unreasonably withhold its consent to proposals for change to the JPIP insofar as they relate to changes to such common formats and processes of reporting in circumstances where such changes have been agreed between Network Rail and a majority of other Train Operators in the same Class (as defined in Part C of the Network Code).

CONDITION LA7 – APPLICATION

LA7.1 Limited Application

Where the nature of the access rights enjoyed by a Train Operator is such that the Performance Objectives would not be usefully served by the full application of this Condition LA, Network Rail and that Train Operator may agree the extent to which this Condition LA shall be applied as regards that Train Operator.

LA7.2 Revision of Limited Application

If either party is subsequently of the opinion that the circumstances have become such that the Performance Objectives would be usefully served by the full application, or a different application, of Condition LA, then that party may by notice to the other require the review of that agreement or revoke it.

DEFINITIONS

In this Part L, unless the context otherwise requires:

- “Appeal” in relation to a Local Output Commitment, means the exercise by a Train Operator of a right under this Part L to make a reference in that respect in accordance with the ADRR
- “Class” has the meaning ascribed to it in Part C of this Network Code;
- “Class A Local Output” means, in relation to a Relevant Year, a level of operational performance relating to:
- (a) delays to or cancellations of train services; or
 - (b) such other matter relating to operational performance in respect of which an Access Agreement provides for one party to be entitled to receive from the other:
 - (i) compensation based on a tariff (including, in the case of a breach of contract, whether by way of liquidated damages or otherwise); or
 - (ii) a variation in the amount of compensation due depending on the quality, timeliness or any other aspect of the performance of an obligation;
- “Class B Local Output” means, in relation to a Relevant Year, a level of capability or quality of the Network or any other matter which is not the subject of a Class A Local Output;
- “Established” in relation to a Local Output Commitment, means the Local Output Commitment has come into effect for the benefit of the Train Operator in question, whether:
- (a) following the LOC Statement in that respect having been given to the Train Operator and either no Appeal having been lodged or, if such an Appeal has been lodged, it has not been proceeded with; or
 - (b) following the final determination of an Appeal in that respect,

and subject always to:

- (i) adjustment under Condition L7;
- (ii) suspension under Condition L8; and
- (iii) variation under Condition L9,

and “Establish” and “Establishment” shall be construed accordingly;

“Excess Aggregate Local Outputs” in the case of either Class A or Class B Local Outputs for a Relevant Year, means a Local Output Commitment the achievement of which would, when taken together with all other Local Output Commitments for that Relevant Year, either:

- (a) make it impossible for Network Rail to achieve one or more other Local Output Commitments; or
- (b) commit Network Rail to a level of operational performance, capability or quality of the Network, or any other matter, materially beyond the targets and other requirements of Network Rail established by the Office of Rail and Road in the most recent access charges review;

“Expiry” in relation to a Local Output Commitment, means either:

- (a) the end of the obligations in question as determined or effected in accordance with the relevant LOC Statement; or
- (b) the Establishment of a Local Output Commitment which, in terms of the LOC Statement in which it is contained, replaces or supersedes the earlier Local Output Commitment;

“Local Output” means a Class A Local Output and/or a Class B Local Output;

“Local Output Commitment” has the meaning ascribed to it in Condition L2;

“LOC Statement” in relation to a Train Operator, means the statement of Network Rail’s Local Output Commitment to that Train Operator, given by Network Rail and as Established under this Part L;

“LOC Suspension Notice” means a notice given under Condition L8;

“Mandatory Variation Notice”	means a notice given under Condition L9.3;
“Office of Rail and Road’s	means a document or documents published by LOC Criteria” the Office of Rail and Road from time to time specifying the matters to which the Office of Rail and Road will expect to have regard and the relative weight which it will expect to place on such matters when considering any reference made to it under Condition L7;
“Performance Plan”	means a statement by Network Rail, forming part of a LOC Statement, of its plans for the carrying out of such maintenance, repair, renewal, enhancement or other modification of such parts of the Network as will enable it to discharge its Local Output Commitments in respect of a Train Operator;
“Reasonable Grounds”	means, in relation to a Local Output, that Network Rail is or will be unable to achieve that Local Output (in whole or in part) as a result of not having obtained a Relevant Consent or being unable to comply with a Relevant Rule and Procedure having acted, in relation to the obtaining of the Relevant Consent or the compliance with the Relevant Rule and Procedure, with due efficiency and economy and in a timely manner, including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network owner and operator;
“Relevant ADRR Forum”	means Forum as defined in the ADRR;
“Relevant Consents”	means all consents, permissions, approvals, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, which are required (or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained of or from any competent authority or third party) in connection with the achievement of any Local Output;
“Relevant Rules and Procedures”	means all applicable Railway Group Standards, the Health and Safety at Work etc. Act 1974, the Disability Discrimination Act 1995, the Channel Tunnel Rail Link Act 1996, the Transport and Works Act 1992, the Railways Act 1993, the Transport Act 2000, this Network Code, any relevant regulations or directives made by the

European Union, all laws, by-laws, codes, common law, instruments, licences, regulations, requirements, rules, safety cases and other rules or procedures which concern the giving of any Relevant Consent or are otherwise relevant to the achievement of a Local Output; and

“Relevant Year” means each 12 month period beginning 1 April.

CONDITION L1 - EFFECT OF PART L

1.1 General

This Part L shall have effect:

- (a) in relation to members of such Class or Classes as are specified by the Office of Rail and Road in a notice given to the parties and published on its website;
- (b) from such date or dates or the happening of such event or events as are specified; and
- (c) subject, where relevant, to the transitional provisions in Condition L11.

1.2 Procedural

In relation to a notice under Condition L1.1:

- (a) it may specify different dates or events for different Classes;
- (b) more than one notice may be given; but
- (c) none may have retrospective effect.

CONDITION L2 - LOCAL OUTPUT COMMITMENTS

A Local Output Commitment is an obligation, Established under this Part L, owed by Network Rail to a Train Operator, and concerning:

- (a) operational performance; or
- (b) the capability or quality of the Network or other matters,

as more particularly defined in this Part L as, respectively, Class A Local Outputs and Class B Local Outputs, and as specified in the relevant LOC Statement.

CONDITION L3 - OBLIGATION TO ACHIEVE LOCAL OUTPUTS

Network Rail shall achieve each Local Output Commitment specified in a LOC Statement.

CONDITION L4 - CONTENT OF LOC STATEMENT

Each LOC Statement shall specify:

- (a) the Relevant Year to which it relates;
- (b) details of the Local Outputs which are to be achieved for the benefit of the relevant Train Operator in that Relevant Year and in the next two following Relevant Years; and
- (c) where relevant, the dates on which those Local Outputs are to be achieved in the Relevant Years.

CONDITION L5 - DURATION OF LOCAL OUTPUT COMMITMENT

5.1 *Effective period*

A Local Output Commitment has effect from its Establishment until its Expiry.

5.2 *Preservation of accrued rights*

The variation, replacement or super session of a Local Output Commitment shall not affect any accrued rights of the Train Operator in relation to any failure by Network Rail to achieve the relevant Local Outputs while the Local Output Commitment was effective.

CONDITION L6 - ESTABLISHMENT OF LOCAL OUTPUTS AND PERFORMANCE PLANS

6.1 *Draft LOC Statement*

Not later than the 30 November before the start of each Relevant Year, Network Rail shall send to each Train Operator a draft of the LOC Statement in respect of that Train Operator, containing:

- (a) details of the Local Outputs which Network Rail proposes should be included in a Local Output Commitment:
 - (i) in respect of that Train Operator; and
 - (ii) in respect of any other Train Operator which Network Rail reasonably considers may, if included in a Local Output

Commitment, affect the first-mentioned Train Operator;

- (b) its proposed Performance Plans in those respects;
- (c) its best estimate of the timing of the carrying out of the works contemplated by the Performance Plans;
- (d) its best estimate of the date of achievement of the Local Outputs in question; and
- (e) a statement as to whether, in Network Rail's reasonable opinion, such works or the achievement of the Local Outputs in question are likely to constitute a Network Change under Part G.

6.2 Adequacy of Performance Plans

Each Performance Plan shall be prepared in sufficient detail so as to enable the Train Operator to assess its adequacy and its likely effect on its Services.

6.3 Consultation on draft LOC Statement

As soon as reasonably practicable after the date on which Network Rail sent the draft LOC Statement to the relevant Train Operator, Network Rail shall:

- (a) consult that Train Operator in relation to the Local Outputs and Performance Plans specified in the draft LOC Statement, and shall invite the submission to it of representations or objections in respect of them;
- (b) schedule and attend a meeting between Network Rail and all of the Train Operators whose Services may be affected by the implementation of any such Local Output and Performance Plan with a view to establishing the specification of that Local Output and the timing of any works to be done to achieve it and the time at which it will come into effect; and
- (c) consult that Train Operator in relation to any representation which the Train Operator has made or may wish to make in relation to funding arrangements relevant to the Local Outputs,

and Network Rail shall conclude such consultation and meeting by the 15 January before the start of the Relevant Year.

6.4 Response on consultation

Each Train Operator consulted under Condition L6.3 shall:

- (a) consider the matters on which Network Rail has consulted it; and

- (b) give notice to Network Rail of any representations or objections it wishes to make in relation to the consultation no later than the date for concluding the consultation specified in Condition L6.3.

6.5 Decision and Establishment

Following consideration of all representations and objections received under Condition L6.4, Network Rail shall:

- (a) decide on the Local Outputs which will make up the Local Output Commitments in question, and the associated Performance Plans; and
- (b) send to the relevant Train Operator, each other Train Operator which Network Rail reasonably considers may be affected and the Office of Rail and Road, a LOC Statement in that respect,

and thereby Establish the Local Output Commitments in question.

6.6 Timing

Network Rail shall send the LOC Statement in question to the persons entitled to receive it not later than the 28 February before the start of the Relevant Year to which it relates.

6.7 Non-provision of LOC at election of Train Operator

Network Rail may give notice to any Train Operator requiring it to elect, by notice to Network Rail, if it wishes not to receive a LOC Statement relating to one or more Relevant Years. The Train Operator shall elect accordingly and such decision shall have effect in relation to the Relevant Years specified by the Train Operator.

6.8 Saving

The obligations in this Condition L6 are without prejudice to Conditions L7 (Appeals), L8 (LOC Suspension Notices) and L9 (Variations to Local Output Commitments) and Parts D and G of this Network Code.

CONDITION L7 - APPEALS

7.1 Right of appeal in accordance with the ADRR

Subject to Condition L7.2, if any Train Operator is dissatisfied as to:

- (a) any matter concerning or in connection with the Establishment of a Local Output Commitment made in respect of it; or
- (b) any variation of such a Local Output Commitment issued under Condition L9.2,

the Train Operator may refer the matter for determination in accordance with the ADRR (as supplemented or varied by this Condition L7).

7.2 Time limits for appeal

A Train Operator's right of appeal under Condition L7.1 shall lapse if that Train Operator has not referred the relevant matter in accordance with the ADRR:

- (a) in the case of a new Local Output Commitment, by the 31 March before the start of the Relevant Year or, if later, within 31 days of receiving a LOC Statement sent under Condition L6.5(b); and
- (b) in the case of a variation under Condition L9.2, within 28 days of receiving notification under Condition L9.2(a).

7.3 Information to be sent in relation to the appeal

Without prejudice to Condition L7.4 or 7.5, if there has been a reference under Condition L7.1:

- (a) Network Rail shall provide the Train Operator and the Secretary with the name and address of every other Train Operator who Network Rail reasonably considers may be affected by the Local Output Commitment within 7 days of the making of the reference; and
- (b) the TAC Party making the reference shall:
 - (i) include with its reference a statement in reasonable detail as to the matter in question and its reasons for making the reference; and
 - (ii) within 14 days of making the reference, send a copy of the reference and the statement specified in Condition L7.3(b)(i) to the other party to the dispute and, where Network Rail has made the

reference, to every other affected Train Operator or, where a Train Operator has made the reference, to every other affected Train Operator of which it has notice under Condition L7.3(a) and to the Office of Rail and Road.

7.4 Obligation to provide evidence

Without prejudice to Condition L7.5, each of Network Rail, the relevant Train Operator and every other affected Train Operator shall, as soon as reasonably practicable after the date of any reference under Condition L7.1, use their respective reasonable endeavours to procure that the Secretary is furnished with sufficient information and evidence so that any matter referred under Condition L7.1 may be properly considered. All information and evidence provided under this Condition L7.4 shall be copied to the Office of Rail and Road.

7.5 Power of Relevant ADRR Forum

In relation to a reference made under Condition L7.1, the parties shall request the Relevant ADRR Forum to have regard to the need to issue the LOC Statement as soon as reasonably practicable and the Relevant ADRR Forum shall, in determining the matter in question, have the power:

- (a) to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written or oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other; except that directions given by the Relevant ADRR Forum under this Condition L7.5 shall not be inconsistent with the ADRR;
- (b) to require any other affected Train Operator to make submissions or provide evidence, whether orally or in writing or both;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter; and/or
- (d) to make such orders as it thinks fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the Relevant ADRR Forum determines) which shall be borne by either or both of the parties.

7.6 Criteria for appeal

Any matter referred under Condition L7.1 shall be determined by reference to the Office of Rail and Road's LOC Criteria.

7.7 Obligation to comply with determinations

7.7.1 Each party to a dispute which has been the subject of a reference under Condition L7.1 shall comply with an interim order of the kind referred to in Condition L7.5(c).

7.7.2 A determination made following a reference under Condition L7.1 shall be final and binding on:

- (a) Network Rail;
- (b) the relevant Train Operator; and
- (c) all other affected Train Operators, whether or not any of them has been required to provide evidence or make submissions under Conditions L7.4 or L7.5.

7.8 Issue of adjusted LOC Statement

When any appeal brought under this Condition L7 has been finally concluded, Network Rail shall promptly issue a further LOC Statement to the relevant Train Operator (with a copy to the Office of Rail and Road) containing the revised Local Output Commitment applicable to that Train Operator, as adjusted by the outcome of such appeal.

CONDITION L8 - LOC SUSPENSION NOTICES

8.1 When a LOC Suspension Notice may be given

The Office of Rail and Road may give a LOC Suspension Notice in relation to any Local Output Commitment, any variation under Condition L9.1 or L9.2 or any revision issued under Condition L7.8, if:

- (a) it has consulted with Network Rail, the relevant Train Operator and the Secretary of State on the Local Output Commitment, the variation or the revision; and
- (b) it reasonably believes that allowing the Local Output Commitment, the variation or the revision to become effective is likely to result in Network Rail committing to Excess Aggregate Local Outputs.

8.2 Content of LOC Suspension Notice

A LOC Suspension Notice shall state that the Local Output Commitment or the variation or the revision in question shall not become effective, to the extent (including as to time) specified in the LOC Suspension Notice, unless and until:

- (a) the Office of Rail and Road issues a further notice confirming that the Local Output Commitment, variation or revision may become effective; and/or
- (b) any Local Output is reduced to a level specified by the Office of Rail and Road in the LOC Suspension Notice; and/or
- (c) Network Rail takes the steps specified in the LOC Suspension Notice to Establish the Local Output Commitment on revised terms.

8.3 Timing of LOC Suspension Notice

A LOC Suspension Notice may only be given:

- (a) in relation to a Local Output Commitment, on or before 30 April in the Relevant Year to which it relates; and
- (b) in relation to a revision or a variation to a Local Output Commitment, within 42 days of the Office of Rail and Road receiving notification under Condition L7.8, L9.1(a) or L9.2(a).

8.4 Effect of LOC Suspension Notice

If the Office of Rail and Road gives a LOC Suspension Notice, the Local Output Commitment, the variation or the revision to which the notice relates shall not become effective until the requirements of the LOC Suspension Notice are complied with.

8.5 Mandatory variations

The power of the Office of Rail and Road to give a LOC Suspension Notice is in addition to its power to require mandatory variations to a Local Output Commitment under Condition L9.3.

CONDITION L9 - VARIATIONS TO LOCAL OUTPUT COMMITMENTS

9.1 Variations by agreement

If Network Rail and the Train Operator agree a variation to a Local Output Commitment:

- (a) Network Rail shall notify the Office of Rail and Road of the proposed variation; and
- (b) the variation shall become effective on the date agreed for its implementation (which shall not be less than 45 days from the date of such notice) subject to the issue of a LOC Suspension Notice, in which event the variation shall come into effect under Condition L8.

9.2 Variations on Reasonable Grounds

If Network Rail proposes a variation to a Local Output Commitment relying on Reasonable Grounds:

- (a) Network Rail shall notify the Train Operator (with a copy to the Office of Rail and Road) of the proposed variation, the timing for implementing the variation (which shall not be less than 30 days from the date of such notice) and specify the Reasonable Grounds relied on; and
- (b) the variation shall become effective on the date proposed for its implementation, subject to the Train Operator bringing an Appeal in relation to the variation under Condition L7 within 28 days of receiving notification under Condition L9.2(a), in which event the variation shall come into effect upon the final determination of the reference, subject to any adjustments under Condition L7.8.

9.3 Mandatory variation to Local Output Commitments

If:

- (a) any proposed Local Output Commitment or variations to Local Output Commitments have been the subject of an Appeal by a Train Operator or Network Rail under Condition L7; or
- (b) relevant changes (as that term is defined in paragraph 4(2) of Schedule 4A to the Act) to access agreements have come into operation by virtue of Schedule 4A to the Act,

the Office of Rail and Road may give a Mandatory Variation Notice to Network Rail and to any Train Operator:

- (i) requiring any Local Output Commitment which is in effect between Network Rail and that Train Operator to be varied to the extent required

to ensure that Network Rail does not commit to Excess Aggregate Local Outputs; and

- (ii) specifying the process and timing for varying the relevant Local Output Commitment,

and the relevant Local Output Commitment shall be varied in accordance with the Mandatory Variation Notice.

9.4 Issue of varied Local Output Commitment

When any LOC Suspension Notice containing a variation is given under Condition L8 or any Mandatory Variation Notice is given under this Condition L9, Network Rail shall promptly issue a further statement to the relevant Train Operator (with a copy to the Office of Rail and Road) containing the revised Local Output Commitment applicable to that Train Operator, as varied by the terms of the relevant notice.

CONDITION L10 - PROCEDURES FOR ISSUING LOCAL OUTPUT COMMITMENTS AND PERFORMANCE PLANS

10.1 Timing

The Office of Rail and Road may vary the dates and other timing requirements provided for in this Part L:

- (a) if and to the extent that the Priority Date established under Part D has been varied in order to comply with a Community obligation (as defined in the European Communities Act 1972); and/or
- (b) if it is satisfied on reasonable grounds that it is necessary or expedient to make such variations to promote or achieve the objectives specified in section 4 of the Act.

10.2 Procedure

A variation under Condition L10.1 may only be made by notice given by the Office of Rail and Road to Network Rail and each affected Train Operator.

10.3 Requirement for prior consultation

A notice given by the Office of Rail and Road under Condition L10.2 shall not have effect unless:

- (a) the Office of Rail and Road has first consulted Network Rail and each affected Train Operator in relation to the proposed notice in question;
- (b) in the consultations referred to in Condition L10.3(a), the Office of Rail and Road has made available to Network Rail and each affected Train

- Operator such drafts of the proposed notice as it considers are necessary so as properly to inform them of its contents;
- (c) the Office of Rail and Road has given Network Rail and each affected Train Operator the opportunity to make representations in relation to the proposed notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the notice to be given; and
 - (d) the Office of Rail and Road has notified Network Rail and each affected Train Operator as to its conclusions in relation to the notice in question (including by providing to each such person a copy of the text of the proposed notice) and its reasons for those conclusions.

CONDITION L11 - TRANSITIONAL PROVISIONS

11.1 General

If Part L is brought into effect in respect of any Class or Classes for Relevant Year 2004 then it shall have effect in respect of Relevant Year 2004 subject to the adaptations in these transitional provisions.

11.2 Definitions

In this Condition L11:

- (a) “2004 LOC Statement Issue Date” means, in relation to any Class, the date falling 20 Working Days after the date on which the Office of Rail and Road brings Part L into effect for that Class;
- (b) “Relevant Year 2004” means the period beginning 121 days after the 2004 LOC Statement Issue Date and concluding on 31 March 2005; and
- (c) other words or expressions defined in Part L shall have the same meanings in this Condition L11 as they have in the remainder of Part L.

11.3 Relevant Year 2004

In respect of Relevant Year 2004 the LOC Statement shall specify:

- (a) that the LOC Statement relates to Relevant Year 2004;
- (b) details of the Local Outputs which are to be achieved for the benefit of the relevant Train Operator in Relevant Year 2004 and in the next following Relevant Year; and
- (c) where relevant, the dates on which those Local Outputs are to be achieved in Relevant Year 2004 and the next following Relevant Year.

11.4 Changes to dates in Part L in respect of Relevant Year 2004

In respect of Local Output Commitments to be Established in Relevant Year 2004:

- (a) the date in Condition L6.1 shall be the 2004 LOC Statement Issue Date instead of 30 November;
- (b) the date in Condition L6.3 shall be 46 days after the 2004 LOC Statement Issue Date instead of 15 January;
- (c) the date in Condition L6.6 shall be 89 days after the 2004 LOC Statement Issue Date instead of 28 February;
- (d) the date in Condition L7.2(a) shall be 120 days after the 2004 LOC Statement Issue Date instead of 31 March; and
- (e) the date in Condition L8.3(a) shall be 150 days after the 2004 LOC Statement Issue Date instead of 30 April.

