

## Part M – Appeals

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## 1 Introduction

### 1.1 Overview

1.1.1 Part M provides the process by which a party dissatisfied with either a decision of a Timetabling Panel in relation to a dispute arising under Part D or a decision reached by Access Disputes Adjudication in relation to a dispute arising under Part J, can appeal the matter to the Office of Rail and Road for determination:

### 1.2 Interpretation

1.2.1 In this Part M:

- (a) the singular shall include the plural and vice versa;
- (b) the headings are for convenience only and shall not affect interpretation; and
- (c) capitalised words have the meanings shown below:

1.2.2 In this Part M, capitalised words have the meanings shown below:

|                 |   |
|-----------------|---|
| “Appellant”     | means any Dispute Party seeking to challenge a determination made in accordance with the ADRR by appeal to the Office of Rail and Road;         |
| “Dispute Party” | means any person who fulfilled the definition of “Dispute party” set out in the ADRR;   |
| “Respondent”    | means, in relation to any determination which is challenged under this Part M, any other dispute party which is affected by such determination. |

## **2 Notice of Appeal**

### **2.1 Requirements**

2.1.1 Any appeal made under this Part M must:

- (a) comply with the requirements of Condition M3; and
- (b) be served on the Office of Rail and Road and the Respondent(s):
  - (i) within five Working Days of receipt of the decision to which objection is made;
  - (ii) where the period referred to in Condition M2.1(b)(i) includes Christmas Day, within ten Working Days of that decision.

2.1.2 The Office of Rail and Road may extend the timeframe referred to in Condition M2.1(b) if it considers it appropriate to do so.

## **3 Content of a Notice of Appeal**

### **3.1 Content of a Notice of Appeal**

3.1.1 A notice of appeal must:

- (a) identify the determination which the Appellant wishes to challenge;
- (b) detail why the Appellant believes that the determination is:
  - (i) wrong; or
  - (ii) unjust because of a serious procedural or other irregularity; and
- (c) insofar as reasonably practicable, attach any evidence on which the Appellant wishes to rely in support of the appeal.

## **4 Right of The Office of Rail and Road to Refuse to Hear an Appeal**

### **4.1 Grounds of decision**

4.1.1 Within 10 Working Days of service of a notice of appeal pursuant to Condition M2, the Office of Rail and Road may decide that the appeal should not proceed to it, including on the grounds that:

- (a) the matter in question is not of sufficient importance to the industry;
- (b) the reference is frivolous or vexatious;
- (c) the conduct of the party making the reference ought properly to preclude its being proceeded with; or
- (d) it is appropriate or convenient for the matter instead to be disposed of by the High Court (in Scotland, by the Court of Session).

### **4.2 Consequences of decision**

4.2.1 If the Office of Rail and Road decides that the reference to appeal should not proceed, it shall immediately notify the Appellant and each Respondent of its decision, and:

- (a) in the case of decision on any of the grounds specified in Condition M4.1(a), (b) or (c), the decision in accordance with the ADRR shall stand; and
- (b) in the case of a decision on the ground specified in Condition M4.1(d), either party to the appeal shall be entitled to apply to the High Court (in Scotland, the Court of Session) for any appropriate relief.

## **5 Respondent's Notice**

### **5.1 Requirements**

5.1.1 Within 10 Working Days of service of a notice of appeal a Respondent may serve on the Appellant, any other Respondent and the Office of Rail and Road a notice:

- (a) stating that he opposes the appeal; and
- (b) insofar as reasonably practicable, attaching any evidence on which the Respondent wishes to rely in opposing the appeal.

- 5.1.2 In the event that a Respondent seeks more time to serve such a notice the Office of Rail and Road may, upon the Respondent providing the Office of Rail and Road with evidence which satisfies it that an extension of the timeframe for service of the notice is appropriate, grant such longer period for service of the notice as it considers necessary:

## **6 Expedited Process**

### **6.1 Appellant or Respondent Request to Expedite**

- 6.1.1 Where a party to the appeal believes that the appeal should be dealt with on an expedited basis, it should make representations to the Office of Rail and Road, copied to the other party, explaining why it believes this to be the case and its proposed timetable for the appeal. Where the Appellant makes such representations, it should do so as part of its Notice of Appeal. Where the Respondent makes such representations, it should do so within two Working Days of receipt of the Notice of Appeal.
- 6.1.2 On receipt of representations in accordance with Condition M6.1.1, the Office of Rail and Road shall give the other party to the appeal an opportunity to make any representations in response.
- 6.1.3 Having received any representations in accordance with Conditions M6.1.1 and 6.1.2, where the Office of Rail and Road believes it is in the interests of justice to do so, it shall order that the appeal is heard on whatever expedited timeframe it considers appropriate.

### **6.2 Power of ORR to order Expedited Process**

- 6.2.1 Even where a party to the appeal does not request that the appeal be dealt with on an expedited basis in accordance with Condition M6.1, the Office of Rail and Road may, where it believes it is in the interests of justice to do so, order that an appeal is heard on whatever expedited timeframe it considers appropriate.

## **7 Matters to be Considered on Appeal**

### **7.1 Scope**

- 7.1.1 Every appeal will be limited to a review of the decision of the lower tribunal unless the Office of Rail and Road considers that

in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

## **7.2 Grounds**

7.2.1 At any hearing of the appeal, a party may not rely on a matter not contained in the appeal notice or Respondent's notice unless the Office of Rail and Road gives permission.

## **8 Powers of the Office of Rail and Road**

### **8.1 ORR's Powers**

8.1.1 The Office of Rail and Road 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 time limits within which anything must be done, the making of any written and oral submissions, and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to any other;
- (b) to appoint any person to act as a legal or technical assessor who it considers has suitable knowledge and experience to assist the Office of Rail and Road;
- (c) to make any interim order as to the conduct or the positions of the parties pending final determination of the matter by the Office of Rail and Road; and
- (d) to make such orders as it shall think fit in relation to the proportions of the costs of the proceedings in question (assessed in such manner as the Office of Rail and Road shall determine) which shall be borne by each party.

## **9 Immunity of the Office of Rail and Road**

### **9.1 Immunity of Office of Rail and Road**

9.1.1 The Office of Rail and Road shall not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the conduct of any reference to appeal.

## **10 Obligation to Comply with Determination of Appeal**

### **10.1 Obligation to Comply with Determination of Appeal**

10.1.1 All Appellants and Respondents shall:

- (a) subject to and pending the final determination of any reference to the Office of Rail and Road, comply with:
  - (i) any determination made in accordance with the ADRR in relation to any dispute referred; and/or
  - (ii) any interim order of the Office of Rail and Road; and
- (b) comply with any final determination of the Office of Rail and Road.

## **11 Effective Date of Office of Rail and Road's Decision**

### **11.1 Effective Date of Office of Rail and Road's Decision**

11.1.1 If, in relation to any particular dispute, any interim order or final determination of the Office of Rail and Road is made during any period of operation of the Working Timetable to which the dispute relates, the Office of Rail and Road may, if it is of the opinion that in the circumstances of the case the balance of material convenience to all affected persons (taking into account any material prejudice that may thereby result) favours such a course, stipulate that such order or determination shall take effect at a specified time during such period of operation.