

## Part F - Vehicle Change

### Explanatory Note

- A. *Part F provides a procedure through which changes to railway vehicles, the use of which is permitted in the access contract and related safety documentation, may be assessed and implemented. Vehicle Change includes any alteration to the physical characteristics of vehicles, including but not limited to, any increase in the length of any trains beyond that permitted by the relevant access contract and supporting operational documentation and any introduction of different vehicles on to the relevant routes which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network.*
- B. *The general principle is that before any Vehicle Change can be implemented:*
- (i) it must be formally proposed under Part F; and*
  - (ii) it must be accepted by Network Rail and those Access Beneficiaries whom it will affect; or*
  - (iii) to the extent that there is any dispute as to whether the change should be implemented, or the terms on which it should be implemented, such dispute must be resolved (whether by agreement or in accordance with the ADRR) in favour of the change being implemented, although any such dispute should not prevent the implementation of the Vehicle Change, if such change is safety related.*
- C. *Condition F1 imposes a general obligation on Network Rail to facilitate Vehicle Change, which includes a number of specific obligations to provide information to Access Beneficiaries and to publish documents generated under Part F on its website. Network Rail is also obliged to publish model terms and conditions which it is prepared to use in connection with the implementation of Vehicle Change proposals.*
- D. *Where an Access Beneficiary wishes to make a Vehicle Change proposal, through either the normal Vehicle Change procedure or the Expedited Procedure, the process is as follows:*
- (i) The Access Beneficiary (the “Sponsor”) gives a notice of proposal to Network Rail, affected Access Beneficiaries and other relevant persons. Such notice may include an election to use the Expedited Procedure but must include sufficient information to allow Network Rail and affected Access Beneficiaries to assess the proposed change. This would include, technical compatibility with the Network, all vehicle characteristics required to assess the proposed change, and proposals as to how Network Rail or*

*affected Access Beneficiaries should be compensated for the costs, losses and expenses which they may incur as a result of the implementation of the proposed change. Network Rail must then evaluate the proposal and be permitted to consult with Access Beneficiaries and other relevant persons about the effects of the proposal.*

- (ii) If the Access Beneficiary elects to use the Expedited Procedure, consultees have 14 days within which to raise initial comments or concerns. A response indicating that a blocking right may apply will be treated as an objection to the use of the Expedited Procedure. All responses should be supported by reasons. If any consultee objects with a valid concern, the Vehicle Change cannot be implemented using the Expedited Procedure but this does not prevent the proposed change continuing to be considered under the normal Vehicle Change procedure. If at any time between implementation of the proposed Vehicle Change, under the Expedited Procedure, and the timescale for implementation under the full Vehicle Change procedure, a consultee raises an objection by declaring a blocking right, then the implementation of the Vehicle Change under the Expedited Procedure must be reversed and, if necessary compensation paid. However, consideration of the proposed change under the normal Vehicle Change procedure would continue unless it is withdrawn by the Sponsor.*
- (iii) Within 30 days of receiving a notice from an Access Beneficiary, Network Rail is required to give a notice setting out the Sponsor's proposal and adding further information on its own account (in particular, where it disagrees with elements of the Sponsor's proposal). The notice includes a deadline for Network Rail to respond to the Sponsor's notice of proposal, which may be adjusted in the light of consultation.*
- (iv) If the deadline for responses is 90 or more days after the date of the notice of proposal, the Sponsor may require Network Rail to submit preliminary responses or estimates of the costs, losses and expenses which it may incur as a result of the implementation of the proposed change.*
- (v) Network Rail is entitled to be reimbursed 75% of its reasonable costs of assessing a Vehicle Change proposal by the Sponsor. The Sponsor may require Network Rail to provide it with estimates of such assessment costs, or to cease incurring such costs.*
- (vi) In responding formally to a Vehicle Change proposal, Network Rail must state whether it, or another Access Beneficiary, objects to the proposal in principle or on the grounds that it contains insufficient information, or whether it, or another operator of railway assets, objects on compensation grounds. The benefits of the change to an Access Party and its chances of recouping its costs or losses from third parties (including passengers) are to be taken into account when determining the amount of any compensation.*

- (vii) *The Sponsor must then either reach agreement with Network Rail and other Access Beneficiaries to the extent that they raise objections to the proposal, refer the matters in dispute in accordance with the ADRR or abandon the proposal. Implementation will then depend on whether the ADRR proceedings result in a determination that the change should be implemented on terms which are acceptable to the Sponsor. If there are no objections to the proposal the Sponsor is entitled to implement it.*
  - (viii) *After a Vehicle Change has become established, the arrangements for its implementation may be varied according to the terms of any contractual variation procedure which forms part of the terms and conditions specified in the notice of proposal and/or is subsequently agreed as a result of the consultation and response process.*
- E. *Condition F2.10 allows Access Beneficiaries to implement a change for safety reasons, ensuring that the Vehicle Change procedure, whilst having to be completed, does not delay such implementation. The Vehicle Change procedure must be undertaken where a Vehicle Change for safety reasons lasts for more than three months.*
- F. *Where a Vehicle Change is required as a result of a Change of Law or a Direction from a Competent Authority, the normal Vehicle Change procedure will be applied. In such cases, each Access Party will be responsible for its own costs and losses.*
- G. *This Explanatory Note does not form part of the Network Code.*

## DEFINITIONS

In this Part F, unless the context otherwise requires:

- “Authorised variation” means a variation to an established Vehicle Change, where:
- (a) the terms and conditions on which the Vehicle Change in question was established contain a variation procedure;
  - (b) that variation procedure has been followed in accordance with its terms; and
  - (c) the result of the operation of that variation procedure is that the established Vehicle Change has been varied;
- “established Vehicle Change” means a change which the Sponsor is entitled by this Part F to carry out, and “establish” and “establishment” of a Vehicle Change shall be construed accordingly;
- “Expedited Procedure” means the procedure set out in Condition F3.4;
- “modification” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
- “relevant response date” means, in relation to a proposal for a Vehicle Change under this Part F, the later of such dates as are reasonably specified by Network Rail under Condition F2.3.1(b)(i) or Condition F2.4.3 as the date on or before which Network Rail is to give notice of its response to that proposal under Condition F3.1, having regard to:
- (a) the size and complexity of the change; and
  - (b) the likely impact of the change on the operation of the Network and Access Beneficiaries,
- and which shall not be:
- (A) less than 60 days; or

(B) unless Network Rail and the Sponsor agree otherwise in writing, more than 90 days,

from the date on which Network Rail's notice under Condition F2.3.1(c) is given;

“Specified Equipment” means, in respect of an Access Agreement, any railway vehicle the use of which is permitted on the track pursuant to that agreement;

“Sponsor” means, in relation to a proposal for a Vehicle Change under Condition F2.1, the Access Beneficiary which has made the proposal;

“variation” means any modification to the terms or conditions (including as to the specification of the works to be done, their timing, the manner of their implementation, the costs to be incurred and their sharing, and the division of risk) on which an established Vehicle Change is to be carried out, and “varied” and any other cognate words shall be construed accordingly;

“variation procedure” means, in relation to an established Vehicle Change, a procedure which:

- (a) forms part of the terms and conditions on which the Vehicle Change is established; and
- (b) provides for the established Vehicle Change itself to be varied after it has been first established; and

“Vehicle Change” means, in relation to an Access Beneficiary:

- (a) any change to Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option) including by way of:
  - (i) any alteration (not being a change within paragraph (b) below) to the physical characteristics of Specified Equipment (or, in

the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option);

- (ii) any increase in the length of any trains beyond that permitted by that Access Beneficiary's Access Agreement; or
  - (iii) the inclusion in Specified Equipment of any railway vehicle which is not so included; or
  - (iv) the inclusion in an access option of any vehicle which is not so included; or
- (b) any material variation to an established Vehicle Change which has yet been implemented, other than authorised variation;

which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network, but excluding any authorized variation.

## **CONDITION F1 - FACILITATION OF VEHICLE CHANGE**

### **1.1 *Obligation to facilitate Vehicle Change***

Network Rail shall take all reasonable steps to facilitate the development, establishment and implementation of any proposal for Vehicle Change.

### **1.2 *Limit of obligation***

Condition F1.1 does not oblige Network Rail to do anything which it is not required to do under its network licence.

### **1.3 *Facilitation***

The obligation of Network Rail under Condition F1.1 includes:

- (a) the provision to an Access Beneficiary of such information concerning the condition, capacity and/or capability of the Network as:

- (i) Network Rail is required at any time to hold or have appropriate access to under its network licence; and
  - (ii) that Access Beneficiary may reasonably request in connection with the development of a proposal for Vehicle Change (whether the proposal is made by that Access Beneficiary or another person);
- (b) the publication on its website (subject to Condition A3 of the Network Code) of:
  - (i) every proposal for Vehicle Change made by an Access Beneficiary under Condition F2.1;
  - (ii) every response to a proposal for Vehicle Change made by Network Rail under Condition F3.1;
  - (iii) every determination of matters which have been referred in accordance with the relevant ADRR under Condition F5.1;
  - (iv) every authorised variation;
  - (v) standard forms, produced after consultation with every other Access Party and approved by the Office of Rail and Road, for the notification under this Part F of proposals for Vehicle Change, and of responses to such proposals, which:
    - (A) may include different forms for different types of Vehicle Change having regard to the size, complexity and value of the change in question; and
    - (B) shall be used by any person notifying or responding to a proposal for Vehicle Change under this Part F, unless it is not reasonably practicable for it to do so; and
  - (vi) model terms, produced after consultation with every other Access Party and approved by the Office of Rail and Road, by way of supplement to the terms of this Part F and on which Network Rail is prepared to contract for or in connection with the implementation of a Vehicle Change which:

- (A) shall provide appropriate and proportionate forms of contract for different types of Vehicle Change having regard to the size, complexity and value of the change;
  - (B) may include variation procedures; and
  - (C) shall, so far as reasonably practicable, form the basis of any terms and conditions relating to the implementation of a Vehicle Change which are proposed by an Access Beneficiary or under Condition F2;
- (c) the provision of a preliminary response to an Access Beneficiary's proposal for Vehicle Change under Condition F2.4;
- (d) such consultation before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as may reasonably be expected to enable that operator to assess the feasibility and affordability of the proposed change; and
- (e) such consultation with the persons specified in Condition F2.1(b) before a notice of a proposal for a Vehicle Change is submitted by an Access Beneficiary as:
  - (i) Network Rail considers reasonably necessary; and
  - (ii) any such person may reasonably request,

to enable the proposal to be developed in an efficient and economical manner; and
- (f) If requested, provision of the names and contact details of each Access Beneficiary which Network Rail considers may be affected by the implementation of the proposed Vehicle Change.

## **CONDITION F2 - INITIATION OF VEHICLE CHANGE PROCEDURE**

### **2.1 *Submission of proposal***

If an Access Beneficiary wishes to make a Vehicle Change, it shall:

- (a) submit to Network Rail and each Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change as advised by Network Rail to the Access Beneficiary under Condition F1.3(f) or which has notified



the Access Beneficiary that it may be so affected, a proposal for such change;

- (b) indicate to Network Rail and each Access Beneficiary referred to under Condition F2.1 (a) whether it wishes to implement the proposed change using the Expedited Procedure;
- (c) provide details to Network Rail of all Access Beneficiaries to which the proposal for change has been submitted under Condition F2.1 (a);
- (d) notify:
  - (i) the Secretary of State;
  - (ii) the Office of Rail and Road; and
  - (iii) each Passenger Transport Executive, Transport for London, the Scottish Ministers, and the Welsh Assembly Government if such bodies may be affected by the implementation of the proposed Vehicle Change;

that it has submitted a proposal for Vehicle Change to Network Rail; and

- (e) permit Network Rail to consult with the persons specified in Condition F2.1(d) to the extent provided for under Condition F2.3 subject to such requirements as to confidentiality as are reasonable.

## **2.2 Content of Sponsor's notice of proposal**

A notice of proposal for Vehicle Change given by a Sponsor under Condition F2.1 shall:

- (a) state:
  - (i) the reasons why it is proposed to make the change;
  - (ii) the nature of the change, including:
    - (A) any material change which the Sponsor proposes to make to the physical characteristics of any vehicle which is already included within the Specified Equipment; and

- (B) a description of any vehicle which is not already included within the Specified Equipment, but which the Sponsor proposes to include within the Specified Equipment;
  - (iii) in the case of any vehicle of the kind referred to in Condition F 2.2(a)(ii)(A):
    - (A) whether it is proposed to operate it on any part of the Network on which it does not already operate; and
    - (B) whether it is proposed to operate it at higher speeds or tonnages or to a larger gauge than it has previously been operated over any part of the Network on which such a vehicle already operates;
  - (iv) in the case of any vehicle of the kind referred to in Condition F2.2(a)(ii)(B), over what parts of the Network, and at what speeds, it proposes to operate such vehicles;
  - (v) the proposed timetable for the implementation of the change, including whether it intends to implement the change using the Expedited Procedure;
  - (vi) the Sponsor's proposals (if any) for the division of the costs of carrying out the change, including any proposals in relation to the calculation or payment of compensation to any Access Party in respect of the change; and
  - (vii) any additional terms and conditions which the Sponsor proposes should apply to the change, including any proposed variation procedure; and
- (b) be prepared to a standard, and in such detail, as is reasonably necessary, having due regard to the level of knowledge and expertise reasonably to be expected of the persons specified in Condition F2.1(b), to enable:
- (i) Network Rail; and
  - (ii) any persons specified in Condition F2.1(b),

to assess the likely effect of the proposed change on its business, its assets and its performance of any obligations or the exercise of any rights or discretions which it has in relation to railway services.

## **2.3 Evaluation of proposal and consultation**

2.3.1 If Network Rail receives a proposal for Vehicle Change under Condition F2.1, it shall:

- (a) evaluate and discuss that proposal with the Sponsor for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on either or both of Network Rail and other operators of trains;
- (b) within 30 days of the date on which the Sponsor's notice under Condition F2.1 was given, give a notice to the persons specified in Conditions F2.1 (a) (with the exception of Network Rail) and (d), with a copy to the Sponsor, inviting them to submit comments on the proposed Vehicle Change by a specified date, which shall not be earlier than 10, or later than 7 days before the relevant response date, stating:
  - (i) the relevant response date and the obligations of Access Parties under Conditions F2 and F3;
  - (ii) Network Rail's estimate of the likely impact of the change on the operation and performance of the Network; and
  - (iii) Network Rail's own proposals as to:
    - (A) the arrangements for, and any proposed terms applicable to, the implementation of the change;
    - (B) the arrangements for determining and paying any compensation in respect of the change;
    - (C) the timetable for implementation of the change;
    - (D) the division of the costs of carrying out the change; and
    - (E) the additional terms and conditions (if any) which should apply to the change, including any variation procedure;
- (c) send the proposal for Vehicle Change to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change if the

Sponsor has not already done so in accordance with Condition F2.1 (a); and

- (d) provide details to the Sponsor of all Access Beneficiaries (if any) to which Network Rail has sent the proposal for Vehicle Change under Condition F2.3.1 (c).

2.3.2 In preparing a notice under Condition F2.3.1, Network Rail:

- (a) shall comply with the standards specified in Condition F2.2(b); and
- (b) in respect of each of the matters specified in Condition F2.3.1(b)(iii):
  - (i) shall have regard to any relevant statements and proposals contained in the Sponsor's notice under Condition F2.1;
  - (ii) shall give reasons for any differences between those statements and proposals and its own proposals under Condition F2.3.1(b)(iii); and
  - (iii) may annex to its notice any proposal contained in the Sponsor's notice under Condition F2.1 with which it agrees, stating its agreement, and, where appropriate, that it has no proposals of its own on the matter concerned.

2.3.3 If an Access Beneficiary receives a proposal for Vehicle Change under Condition F2.1 or Condition F2.3.1 (c), it shall evaluate and discuss the proposal with Network Rail for such period as is reasonable having due regard to the likely impact of the proposed Vehicle Change on that Access Beneficiary.

## **2.4 Preliminary response and estimate**

2.4.1 Except in the circumstances and to the extent specified in Condition F2.4.2, Network Rail shall, when consulted by the Sponsor, take all reasonable steps to comply with any request of the Sponsor to provide the Sponsor, within a reasonable period of time, and at no cost to the Sponsor:

- (a) a preliminary estimate of those costs, losses and expenses referred to in Condition F3.2 which may be incurred by Network Rail; or
- (b) a preliminary written response in respect of a proposed Vehicle Change, which shall:

- (i) be binding on Network Rail, unless Network Rail indicates otherwise; and
- (ii) if it is negative, include reasons.

2.4.2 Network Rail shall not be obliged to comply with a request from the Sponsor under Condition F2.4.1:

- (a) unless:
  - (i) the relevant response date is 90 or more days after the date on which Network Rail's notice under Condition F2.3.1(b) was given; and
  - (ii) the request is made within 7 days of the Sponsor receiving Network Rail's notice under Condition F2.3.1(b); or
- (b) to the extent that Network Rail is unable to comply with such a request, having regard to the information reasonably available to it.

2.4.3 After consultation with the Sponsor Network Rail may notify a later relevant response date to the Sponsor and the persons to whom it gave its notice under Condition F2.3.1(b).

## **2.5 Reimbursement of costs**

Subject to Conditions F2.4 and F3, Network Rail shall be entitled to reimbursement by the Sponsor of 75% of all costs incurred by Network Rail in assessing any Vehicle Change proposed by the Sponsor. Those costs shall be the minimum reasonably necessary for Network Rail to carry out that assessment.

## **2.6 Provision of estimate of costs by Network Rail**

Network Rail shall, upon request from the Sponsor from time to time, provide the Sponsor with written estimates of the costs of assessing a proposal for Vehicle Change submitted by the Sponsor (as referred to in Condition F2.5) including estimated costings of the work to be carried out and shall:

- (a) be entitled to require reasonable assurances of payment in respect of any material work to be carried out for the purposes of that evaluation before commencing such work; and

- (b) upon request from the Sponsor from time to time, provide the Sponsor or its agents with such information as may be reasonably necessary to enable the Sponsor to assess the reasonableness of any estimate.

## **2.7 Accuracy of estimates**

Network Rail shall ensure that any estimates given by it are, so far as reasonably practicable, accurate on the basis of the information reasonably available to it.

## **2.8 Obligation to incur no further costs**

Network Rail shall, if requested by the Sponsor at any time, incur no further costs (except any costs that cannot reasonably be avoided) in respect of any proposal for Vehicle Change made by the Sponsor.

## **2.9 Relationship with Network Change**

If the implementation of a proposed Vehicle Change also requires the implementation of a Network Change, the Sponsor shall follow the procedures and satisfy the requirements of both this Part F and Part G and the requirement for a Network Change shall not preclude the right of the Sponsor to follow the procedure in this Part F for a Vehicle Change or vice versa.

## **2.10 Vehicle Change for safety reasons**

To the extent that a Vehicle Change is required to be made by an Access Beneficiary for safety reasons, the Access Beneficiary shall not be obliged to implement the procedure set out in this Part F in relation to that change until the change has lasted for three months (or such longer period as may be specified in the relevant Access Beneficiary's Access Agreement). Upon expiry of the relevant period, the Access Beneficiary shall promptly commence implementing and thereafter comply with the procedure set out in this Part F as if the relevant Vehicle Change were a Vehicle Change proposed by the Access Beneficiary.

# **CONDITION F3 - RESPONSE TO VEHICLE CHANGE PROPOSAL**

## **3.1 Obligation to give notice of response**

Network Rail shall give notice to the Sponsor, if:

- (a) it considers that one or more of the following conditions has been satisfied:

- (i) the implementation of the change would necessarily result in Network Rail breaching any access contract (other than an access contract to which the Sponsor is a party);
  - (ii) the Sponsor has failed in a material respect to comply with its obligations under Condition F2.2 provided that Network Rail shall first have given the Sponsor a reasonable opportunity to remedy that failure; or
  - (iii) the implementation of that change would result in a material adverse effect on the maintenance or operation of the Network or operation of trains on the Network, which in any such case cannot adequately be compensated under this Condition F3;
- (b) any Access Beneficiary shall have given notice to Network Rail that it considers that any of the conditions specified in paragraph (a) above has been satisfied;
- (c) it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
  - (i) in accordance with compensation terms proposed under Condition F2,
  - (ii) in the absence of any compensation terms proposed under Condition F2, or
  - (iii) on compensation terms other than those proposed under Condition F2; and/or
- (d) any other operator of railway assets shall have given notice to Network Rail that it considers that it should be entitled to compensation from the Sponsor for the consequences of the implementation of the change either
  - (i) in accordance with compensation terms proposed under Condition F2,
  - (ii) in the absence of any compensation terms proposed under Condition F2, or
  - (iii) on compensation terms other than those proposed under Condition F2.

Any notice of the kind referred to in paragraphs (a) or (b) above shall include the reasons for the opinion in question. Any notice of the kind mentioned in paragraphs (c) or (d) above shall include a statement of the amount of compensation required and the means by which the compensation should be paid, including any security or other assurances of payment which the Sponsor should provide. Any such statement shall contain such detail as is reasonable to enable the Sponsor to assess the merits of the statement.

### **3.2 *Amount of compensation***

Subject to Condition F3.3, the amount of the compensation referred to in Condition F3.1 shall be an amount equal to the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by Network Rail or the operator in question as a consequence of the implementation of the proposed change other than any such costs, losses or expenses which are attributable to the Sponsor improving its ability to compete with other operators of railway assets.

### **3.3 *Benefits to be taken into account***

There shall be taken into account in determining the amount of compensation referred to in Condition F3.1:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by Network Rail or any other operator of trains as a result of the proposed Vehicle Change; and
- (b) the ability or likely future ability of Network Rail or any other operator of trains to recoup any costs, losses and expenses from third parties including passengers and customers.

### **3.4 *Rights in relation to implementation of Vehicle Change under the Expedited Procedure***

#### **3.4.1 If**

- (a) the Sponsor has elected under Condition F2.1 (b) to use the Expedited Procedure; and
- (b) within 14 days of the date of the notice in question:
  - (i) the Sponsor's notice under Condition F2.1; or, if later



- (ii) within 14 days of Network Rail sending the Sponsor's proposal to any Access Beneficiary that may be affected by the implementation of the proposed Vehicle Change in accordance with Condition F2.3.1 (c),

an Access Party gives notice to the Sponsor that it considers that any of the conditions specified in Condition F3.1(a) may be satisfied, which notice has not been withdrawn, the proposed Vehicle Change shall not be implemented using the Expedited Procedure.

In any other case and subject to the other provisions of the Network Code and the remainder of this Condition F3.4, the Sponsor shall be entitled for the purposes of the Network Code (but subject to any such other authorisations, approvals, consents and certifications as may be required) to implement the proposed change.

- 3.4.2 The Sponsor shall be liable to pay compensation (if any) to each person specified in Condition F2.1 (b) calculated in accordance with the relevant provisions of Condition F3.
- 3.4.3 If, at any time between the implementation of the change and the relevant response date, an Access Beneficiary gives notice to the Sponsor and Network Rail as appropriate that it considers that any of the conditions specified in Condition F3.1(a) have been satisfied, the Sponsor shall, as soon as reasonably practicable take all action necessary to reverse the implementation of the Vehicle Change.
- 3.4.4 All notices served by an Access Party under Conditions F3.4.1 and F3.4.3 shall specify the reasons why that Access Party believes that any of the conditions specified in Conditions F3.1(a) have been satisfied.
- 3.4.5 If a Vehicle Change is not implemented in accordance with the Expedited Procedure or the implementation of the Vehicle Change is reversed in accordance with Condition F3.4.3, unless the change proposal is withdrawn by the Sponsor, the change proposal shall be treated as a proposal for change where the Sponsor has not elected under Condition F2.1 (b) to use the Expedited Procedure.

## **CONDITION F4 - CHANGES IMPOSED BY COMPETENT AUTHORITIES**

Where an Access Beneficiary is required (other than at the request or instigation of the Access Beneficiary) to implement a Vehicle Change as a result of any Change of Law or any Direction of any Competent Authority other than the Office of Rail and Road exercising any of its functions which do not fall within the definition of 'safety functions' as defined in section 4 of the Act:

- (a) each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions F2.1, F2.2 and F2.3 (other than Conditions F2.2(a)(vi) and F2.3.1(b)(iii)(B) and (D)) in respect of that Vehicle Change;
- (b) Network Rail shall make such alterations (if any) to the Network as are reasonably necessary to accommodate that Vehicle Change and each Access Party shall, except to the extent that the relevant Change of Law or Direction otherwise requires, comply with Conditions G1.1 and G1.2 (other than Condition G1.2(c)(iv)); and
- (c) each Access Party shall bear its own costs and losses arising out of the implementation of the Vehicle Change and the consequences thereof.

## **CONDITION F5 - APPEAL PROCEDURE**

### **5.1 *Right of appeal in accordance with the ADRR***

If any Access Party is dissatisfied as to:

- (a) any matter concerning the operation of the procedure set out in this Part F;
- (b) the contents of any notice given by Network Rail under Condition F3.1 (and, in particular, the amount of any compensation referred to in that Condition); or
- (c) any estimate referred to in Condition F2.6,

it may refer the matter for determination in accordance with the ADRR.

## **CONDITION F6 - ESTABLISHMENT AND IMPLEMENTATION**

## **6.1 Implementation of a proposed Vehicle Change**

6.1.1 With the exception of any Vehicle Change implemented under Conditions F2.10 and F3.4, the Sponsor shall be entitled to implement a proposed Vehicle Change if:

- (a) Network Rail has not given notice under Condition F3.1 by the relevant response date; or
- (b) Network Rail has given notice by the relevant response date under Condition F3.1 (c) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; or
- (c) Network Rail has received notice from an Access Beneficiary under Condition F3.1(d) and either the amount of any compensation referred to in Condition F3.1 has been agreed, or resolved, or the method by which such compensation is to be calculated has been agreed or resolved under Condition F5; and
- (d) there is no other unresolved dispute under this Part F (whether under this Condition F6 or otherwise) as regards the proposed change between the Sponsor and Network Rail or any Access Beneficiary.

6.1.2 The Sponsor may, if it considers it expedient to do so in order to confirm whether or not Condition F6.1.1 has been satisfied, instruct Network Rail to issue a notice to all affected Access Beneficiaries when the Sponsor reasonably believes that it is entitled to implement a proposed Vehicle Change and Network Rail shall then serve such a notice within 7 days of the instruction.

6.1.3 The Sponsor's entitlement to implement a proposed Vehicle Change shall be treated as confirmed 35 days after Network Rail has served a notice in respect of that Vehicle Change in accordance with Condition F6.1.2 unless:

- (a) Network Rail gives notice to the Sponsor within 35 days disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons; or
- (b) Network Rail receives notice from an Access Beneficiary within 21 days of the notice served by Network Rail disputing the Sponsor's entitlement to implement that Vehicle Change under Condition F6.1.1 and giving full particulars of its reasons.

6.1.4 If the Sponsor does not agree with the contents of a notice served by Network Rail or an affected Access Beneficiary in accordance with Condition F6.1.3, the Sponsor may:

- (a) refer the matter for determination in accordance with the ADRR and Condition F5 shall apply; or
- (b) withdraw the proposed Vehicle Change.

## **6.2 When a Vehicle Change may not be Implemented**

6.2.1 The Sponsor shall not be entitled to implement a proposed Vehicle Change unless it is so entitled to do so under Condition F6.1.1.

6.2.2 For the purposes of the Condition F6.1.1, unresolved disputes shall include:

- (a) a notice has been served under Condition F3.1(a) or (b) which has not been withdrawn, resolved under Condition F5 or agreed not to apply; and
- (b) a notice has been served under Condition F3.1(c) or (d) which has not been agreed or resolved as referred to in Condition F6.1.1 (b) or (c) or otherwise agreed, resolved or withdrawn.

