NetworkRail

System Operator

# Great British Railways' Access and Use Policy

## Discussion paper

## Annex 2 – Access conditions



# Contents

# 1 Overview

This annex expands on how proposed policy concepts impact access contracts and conditions. It focuses on the areas where change is needed to reflect GBR's new role as an integrated rail body to keep everything working smoothly. It also introduces opportunities to improve how contracts support strategic alignment and efficiency.

GBR will take ownership of contracts and standard commercial conditions that grant users access to the railway and manage the interactions of those multiple users on shared infrastructure. We understand long-term contractual stability and consistency are paramount for railway undertakings and other third parties to plan and operate their businesses. Much of what's in place today works well and we're proposing to keep most of the existing terms established by the ORR where they continue to serve access beneficiaries effectively. We propose four main changes:

1. Replacing access rights with capacity commitments, to enable comparison between contracted access and GBR's own use of capacity.
2. Simplifying the number of agreements needed to access the rail system, to reduce the administrative work and costs of all parties.
3. Updating the Network Code and other access conditions to reflect the new capacity planning process.
4. Replacing the change mechanism for the Network Code and other access conditions to reflect the industry's new operating model.

# 2 Access rights

The ORR's model contracts set the standard commercial terms for access rights. They are important enablers of certainty, confidence, and competition – the value they create in supporting long-term planning, protecting service patterns, and opening the market to innovation needs to be preserved in the future model.

With GBR taking on the role of integrated operator, it won't have contracted access rights, so a comparable mechanism is needed for GBR to allocate capacity to its own services in a way that is transparent and open to challenge. To do this, we propose replacing access rights with capacity commitments, held either contractually by third parties or internally by GBR for its own services. These will perform the same essential functions – providing certainty, protecting services, enabling investment – while creating transparency about GBR's uses, as well as offering other opportunities.

**Opportunities for more functionality**

We see three key opportunities to improve how capacity is protected and allocated under GBR:

- Better protection and management of freight capacity – today, even where strategic freight needs are identified, there's no mechanism to proactively safeguard that capacity from being eroded by other uses. We think that could be changed by a new mechanism.

- A more effective way to tie future capacity to investment – the current access option model doesn't work well for private or public funders, so we want to replace it with a more reliable and transparent mechanism that gives confidence capacity will be available to drive investment.
- A clearer, more strategic view of capacity across the network – access rights today are buried in individual contracts, making it hard to plan or prioritise at a network level. We want to fix that while ensuring they are still contractual and enforceable.

## 2.1 Capacity commitments

Capacity commitments would become the core tool GBR uses to manage access to the network. For third parties, they would closely resemble today's Schedule 5 access rights – providing longer-term assurance of access beyond a single timetable period and defined at a higher level of flexibility than specific timetable slots. That structure would continue, assuring stakeholders that the principles they rely on today would remain in place. While the specific labels of quantum, firm and contingent rights and access options may not carry forward in their current form, the functionality they give absolutely will in the mechanism we propose. The key difference is that capacity commitments could also be held by GBR itself.

**Expressing capacity commitments**

There's an opportunity to improve how capacity is recorded. Commitments could be expressed in a consistent format and contain more information where appropriate. Passenger and freight rights are currently expressed in different ways, and each have advantages and disadvantages. We want to take the best of each to form a common currency. A consistent format could include at least the following elements:

- Default train path(s), including assumed characteristics (e.g. origin/destination, route, calling pattern, interval, journey time/timing load, maximum load and length, route availability, traction type)
- Service type (e.g. passenger or freight)
- Beneficiary, where applicable
- Start dates and duration
- Flex limits – the extent to which default train path characteristics may be varied

These commitments could vary in detail, reflecting the different priority and flexibility given today to firm rights, contingent rights, and access options. They would be contracted to non-GBR parties as well as recorded comparably for GBR's services.

Commitments could also be conditional or offered with some caveats. For example, GBR may offer capacity commitments to another user that would prevent GBR running its own services until it delivers capital work to increase infrastructure capability. The policy could define the types of conditions that can be placed on a commitment or leave it unspecified for greater flexibility over time within the controls of the statutory duties.

A consistent expression of capacity would make it easier to identify both unused and underused capacity. It would also make it easier to hold all capacity allocations in one central register, improving visibility across the network and help analysis that assures GBR is managing usage actively.

**Discussion point:**

**To what level of detail should the AUP define commitments, for example, who should be able to get a capacity commitment, and on what grounds?**

## 2.2 Capacity designations

Capacity designations would align only to a type of service, not be allocated or contracted to specific users. Our intention is to increase the ease of rail investment with a smoother mechanism than today's access options.

They would be expressed in a similar way as capacity commitments, but without recording a beneficiary. Instead, the focus would be the service type – such as freight, passenger, or potentially more specific categories like Mayoral Strategic Authority services or services to airports. This would allow GBR to allocate capacity for long-term outcomes, independent of whether there is an operator for those services, or who it is at any given time. This is designed to protect value rather than block change, so must be open to challenge.

Take as an example the current changing market share of intermodal freight traffic between Thames Gateway and Felixstowe. Aggregated demand is likely to continue for a long time and while competition between the ports may shift how much traffic each one handles, some of that traffic will always use the same part of the rail network. This is likely to mean the capacity planning process described in Annex 1 results in specific capacity designations for freight on that shared section as a minimum.

There are different ways this designation could be defined: it could be made to a general freight service, or be tied to a more specific intermodal traffic. For greater certainty, the designation could even be contracted as a capacity commitment to secure a planned investment or assigned to a specific operator.

We've discussed various options for the level of detail at which the AUP should specify service types. Broader categories would allow more flexibility in granting a capacity commitment, whereas greater specificity would better protect certain future markets, such as international or airport rail services. There's a choice to make about whether the AUP fixes the service types that can be used, and if so, whether those are broad, specific or mixed.

**Discussion point:**

**To what extent should the AUP define the categories of service types used for capacity designations?**

## 2.3 Validity and change

We understand the value that continuity of access rights brings operators in managing their businesses and serving customers, especially in today's entirely reactive context for capacity allocation. Duration and validity are important factors affecting investment too. As elsewhere in policy, there's a balance to strike between the ability to preserve that stability and to enable changes that achieve better value for the public and the economy.

We think this could be achieved by introducing a minimum core period, such as five years, with the freedom to offer longer core durations if justified by strategic outcomes. This would be a major opportunity to support long-term planning, reduce churn in access negotiations, and enable more stable investment decisions in infrastructure, rolling stock, or service innovation.

Introducing a transparent and proactive planning process will give more structure and strategic direction to capacity decisions, more certainty of upcoming change through the published schedule, and more weight to strategically designated future use – all of which will contribute to business stability. Our proposal rests on a presumption that after the minimum core period, capacity commitments would usually continue to be valid or able to be extended until a new capacity plan is developed to supersede the existing one. This duration would be visible and predictable in the published planning schedule. Once complete, a replacement capacity plan could further extend existing commitments if they offer the best value, or decide to replace them with another use once they expire. If longer-term commitments are needed to deliver the plan's critical success factors, GBR would be able to commit to a longer minimum term.

**Extending or terminating capacity commitments**

Upon application and assessment, commitments could be extendable for a fixed term after the core time-limited period. For example, a commitment with a five-year core term could be extended for another five or more years if current capacity plans and the planning schedule expect no material change to the network capability and no change forecast in that timeframe that would be overly constrained by that extended commitment. An important factor in this assessment would be the value that continuity of service brings. We believe this approach would offer a similar level of certainty to today's access regime – especially if the number of possible extensions were unlimited – but give GBR reasonable flexibility to respond to changes in infrastructure delivery and market trends.

Alternatively, commitments could roll forward automatically and indefinitely, until one party gives notice to terminate. A notice period would likely be needed to give some business stability. However, the longer the notice period is, the more likely GBR could act prematurely – for example, terminating based on an expected need to reconsider best use but that later analysis during capacity planning proves to be unnecessary. The AUP could equally allow both these options of expiring and rolling capacity commitments.

Importantly, under the framework of capacity designations, capacity would remain allocated to a type of service even if the commitment to a specific party expires or is terminated. This means the evaluated best use of capacity wouldn't be lost if operators change, rather continue to be secured for the same high-level purpose and available to be contracted to a new user. We think this continuity is an important benefit of the proposed model, offering both strategic alignment and operational flexibility.

**Changing commitments and designations**

Freight operators currently benefit from a contract mechanism that allows them to run services for up to twelve months without formally varying the contract schedule to record specific rights. We think this needs to be preserved, because it provides short-term operational flexibility and reduces administrative overheads. It might also merit extending this mechanism to other user groups, especially if applying a model of enduring access contracts with specific, time-bound capacity commitments. However, this might not be necessary if the responsive process for GBR to assess and agree new commitments is sufficiently agile to meet these users' needs.

The "use it or lose it" principle – where train operators must actively use the access rights they've been granted or risk losing them if they remain unused over time – will continue to be a useful approach to avoid tying up scarce network capacity in dormant or speculative rights. So will the freight transfer mechanism, where the rights for a service can be shifted from one operator to another if the end user chooses to switch the operator it uses. We need to change the Network Code so that those principles will still apply to GBR – we cover this in Annex 4.

The AUP could also define some permitted reasons to use capacity for a different service type to which it has been designated in a capacity plan. An example might be using a designated strategic freight path for a passenger charter train. The permitted reasons, circumstances and process for doing this would need detailing in the policy, such as how temporary the use could be.

**Discussion points:**

**Which mechanism for extension and expiry is most valuable to balance flexibility and stability for all access beneficiaries?**

**Is having a mechanism for short-term variations to capacity commitments valuable beyond existing contracted clauses?**

**What controls would be needed to reallocate unused capacity fairly to a different service type?**

# 3 Access contracts

Access contracts are based on model contracts owned by the ORR, and we don't think they will need substantial change to be effective in the new industry model. Updates to existing contracts necessary to make them operable under the Railways Bill are discussed in Annex 4. This section contains some early areas of simplification that could improve contract administration across the industry.

## 3.1 Contract expiry

Most access contracts currently have fixed end dates, requiring periodic renegotiation or reapplication that can create uncertainty when planning long-term investments or service continuity. This administrative burden could be avoided by adopting an approach where the core contract is enduring –

allowing for any circumstances where this isn't desirable to both parties. Rights for either party to terminate would be included. Expiry would then usually only relate to each specific capacity commitment, to allow for reallocation of capacity arising from the capacity planning process.

**Discussion point:**

**Is there any reason to maintain the fixed end dates of access contracts?**

## 3.2 Combining contracts

We're interested in the potential to simplify the number and type of agreements operators need to access the network. Access to track and facilities are currently codified in separate agreements, but there is scope to bring these together wherever they're operated by GBR. They already share common definitions on areas like safety and regulatory compliance, and references to common processes like escalation and dispute resolution. With both interdependency and significant alignment between them, vertical integration creates the opportunity to simplify both the process and contractual framework by combining track and station access into one agreement.

This wouldn't affect existing contracts and over time could reduce administrative burden across the industry. Freight and non-GBR passenger operators currently have to have station and depot access agreements for each facility with the relevant DfT-franchised operator – we think there's scope to consolidate these into just one GBR contract. Current contract holders might transfer to that new model when their access contract expires, or potentially another milestone. Doing so could join-up and speed up decisions over the full impact of access decisions to the railway, remove the duplication and time taken to enter into agreements, and improve clarity about obligations. Some depot access contracts could also be combined.

Different asset ownership will still limit how simple contracting can be made for a third party, for example where services cross between GBR and non-GBR infrastructure.

**Discussion point:**

**Would consolidating track, station and depot access contracts be more efficient for operators? Are there any risks or issues with having just one type of consolidated access contract?**

# 4 Codes and conditions

The Network Code, the Station Access Conditions and Depot Access Conditions bring together the set of rules common across all contracted parties. They are core tools for coordinating the multiple users of the railway – all users are governed by the same rules so that changes can be integrated, for example to the timetable, infrastructure and rolling stock. Having these common conditions in one place will continue to be useful under GBR, so that changing those mechanisms can be done once rather than across many individual contracts.

In adopting these as a GBR Code, some elements will need updating to reflect the changes made by the Railways Bill and, at a more detailed level, the Access and Use Policy that GBR adopts. Today's contractual mechanisms were designed for a vertically separated railway and will need refocusing to reflect the nature and balance of relationships once the public ownership programme replaces the franchise contracts in place today. Many contractual protections will become internalised in GBR, requiring organisational alignment and performance with different incentive conditions. Commercial change mechanisms should become more targeted on the specific relationships with the access customers who will remain external from GBR.

## 4.1 Timetable development

Part D of the Network Code covers the procedures for coordinating how all parties plan and change the timetable. It will need revising to reflect the processes determined in the Access and Use Policy, including areas like:

- Updating the objective to reflect the new statutory duties of GBR.
- Reflecting new freedom to depart from fixed December and May timetable change dates, without damaging international coordination.
- Removing Event Steering Groups, the role of capacity planning steering groups instead embedded in the Access and Use Policy.
- Removing International Freight Capacity Notices and Strategic Capacity Statement, these capacity allocations dealt with instead via capacity designations.
- Considering how to integrate the timetable risk register with upstream capacity planning risk management.
- Revising the concept of the Prior Working Timetable issued to bidders as the base for variations so that it reflects any relevant Capacity plans: shifting to prospective rather than backward-looking information.
- Opportunity to eliminate the advance notice of timetable change stage and/or initial consultation period, if adequately captured through capacity planning.

There is no suggestion to change the timeline or deadlines for developing a new timetable.

## 4.2 Contract disputes

Our engagement on the contract dispute mechanism to date has made clear that all parties feel it is useful for the industry to have a single mechanism for hearing disputes. There is no appetite to change the arrangements under which contractual disputes are heard, including timetable disputes such as issues related to engineering access.

However, there will need to be administrative changes, part of managing transition (see Annex 4). More discussion will be needed, but it may be appropriate to retain the Access Disputes Committee as the administrator of contractual dispute resolution services. Under this approach, the current voting

mechanism – based on classes of industry parties that won't exist in the future – will need to be reconsidered.

# 5 Managing change

GBR will need to be able to change its model contracts and conditions, and to a lesser extent, the Access and Use Policy itself. The mechanisms to do this are critical parts of GBR delivering its statutory duties as a directing mind for the industry. The Bill requires GBR to consult the ORR, the Scottish Ministers, the Welsh Ministers and other persons it considers appropriate before issuing, revising or replacing the AUP.

A change process must be simple and agile for GBR to make changes that drive forward greater customer focus, efficiency and value. It must also be fair and transparent for users to manage their own businesses. Getting this process right will enable GBR to quickly unlock many of the simplifications identified with industry partners over recent years – processes like Network, Station, and Depot Change are clear improvement targets for huge customer benefit.

We've heard from other Infrastructure Managers that it can be difficult to keep in step with changes to the Network Code, but that they can't practically deviate from Network Rail's timetable planning and change processes because alignment across networks is so important to operators who need consistency to do business. So, we also need a change mechanism that increases the visibility for and in some cases involvement of other infrastructure managers.

## 5.1 Changing contract conditions

The processes for changing the Network Code or station and depot access conditions differ, but all involve a system of voting based on industry representation, apportioning votes across franchise and non-franchise passenger operators, freight operators, and Network Rail. This composition is becoming increasingly unbalanced as the industry progressively moves franchise operators into public ownership.

Our core proposal moves away from voting to a GBR decision. The requirements for GBR to meet when making a decision to change commercial terms will need to be reflected in the Code and Conditions and needs further discussion. Change mechanisms need to enable changes that support public value in line with GBR's overall duties, with suitable evidence to justify the change and creating appropriate protections for stakeholders and alignment with other Infrastructure Managers. We see four elements to this:

- **Engagement:** Effective engagement before any change is fixed could be a consultative process with affected parties or a formal representative industry group and should focus on both the public value and customer impact of change. How GBR responds to feedback also needs considering.
- **Cost impacts and compensation:** Understanding the direct costs and wider loss of value would help inform making the right whole-system change. Compensation for contracted parties might be necessary if a change were to materially affect their business. Provisions for compensation are complicated and demand careful design to make sure they are fair and timely and provide business confidence for all parties.

- **Wider impact assessment:** Changes could impact customers, or the economic and social benefits of the railway. Assessing those impacts would check the consequences of change and allow mitigation, appropriate to the scale of change.
- **Integration with other Infrastructure Managers:** How to change conditions but maintain consistency across networks is important to factor into a change process.

## 5.2 Changing the Access and Use Policy

We see the AUP as a stable framework that ensures long-term consistency in access decisions. It's designed to remain relevant even as government strategies or KPIs evolve, by setting principles, processes, and criteria that can be applied across contexts over time. The importance of the AUP for stability and transparency means that there must be rigour when it does need to change.

We think that follows the same principles set out for contract conditions described above. DfT will also include a legislative requirement for GBR to consult industry on any proposed changes. ORR will be a statutory consultee as part of this process, which will support its appeal function.

**Discussion point:**

**Are there other components that would make a change mechanism fair and proportionate?**