System Operator

Great British Railways' Access and Use Policy

Discussion paper

Annex 4 – Transition

System Operator

NetworkRail

Contents

1 Overview

This annex considers how the new policy concepts outlined so far can be put in place as part of a smooth transitionary process once the legislation passes. This obviously means having an Access and Use Policy ready to adopt, but it also means updates to access contracts and incorporated agreements to ensure clauses fit with the new industry model, for instance in relation to the ORR's changing role under the Railways Act.

We also propose moving early to establish a capacity plan for GBR to provide a basis for the new system, backed up with a schedule of future capacity plan changes to provide notice of future planning activity. In line with the Government's policy, industry parties will keep the access rights set out in Network Rail's access contracts during the transition to the GBR framework, providing continuity and stability to operators and funders.

1.1 Starting the new legal regime

To help us with staging, we are using 'Access Day' to refer to the official date when GBR assumes powers and duties in respect of access-related functions across GBR's rail network. It will be important to create a clear process for handing over responsibilities, to allow co-ordination between the different public and private bodies.

Practical implications

- Legal transition point: Access Day marks the moment when GBR becomes the statutory decision-maker for access allocation, charges and contracts, replacing the ORR in this role.
- Operational shift: GBR will begin making decisions using its new processes, probably in multiple stages.
- Contractual operability: Access contracts and other Network Rail agreements will be updated to reflect GBR's role at the same time as legal transition, ensuring they remain enforceable and aligned with the new industry framework.
- Organisational readiness: GBR will need an organisational structure, incentives and capability to operate effectively from Access Day, with information and support offered to third parties, mapped processes and transitional arrangements in place to avoid disruption.

Products for Access Day

This discussion paper deals largely with GBR's future AUP, but other plans, legal changes and information also need development alongside GBR's policies. This will be part of our ongoing engagement with industry partners. There are four key access products we propose the GBR Board should adopt to go live on Access Day:

- GBR's Access and Use Policy, defining GBR's procedures and criteria
- A baseline capacity plan, showing how capacity is currently allocated
- A capacity planning schedule, setting out when allocations will be reviewed and updated

- Access contracts between GBR and other parties, providing contractual confidence and adjusted, where necessary, to fit the new model

Other public bodies will also need products ready for Access Day—most notably the ORR intend to have a policy for hearing access appeals. Governments and mayoral authorities may wish to have plans or strategies in place to input to GBR's work on capacity allocation as early as possible. Adjacent infrastructure managers (IMs) may also wish to update or amend their contracts and codes, or their agreements with GBR.

1.2 Indicative timeline

We want to work with industry parties on the GBR products for Access Day. Key milestones are presented in an indicative timeline below, and it will be important to agree a firm schedule as soon as possible.

Pre-Access Day (2026)

- Railways Bill receives Royal Assent: This establishes the legal foundation for the Secretary of State to appoint an organisation as an integrated rail body.
- Establishment: An integrated rail body is established with specific powers to undertake necessary preparations for Access Day, including consultation.
- Network Rail publish drafts of the AUP, baseline capacity plan and planning schedule for formal consultation.
- Process mapping and contract review: Network Rail engage with contract holders to assess and adapt existing contracts to ensure they are fit for purpose ahead of Access Day, with action from ORR where appropriate.
- Final AUP, baseline capacity plan and planning schedule are approved by the GBR Board. Adopted versions are likely to be published ahead of Access Day to allow familiarisation.
- Contractual amendments: Network Rail works with the ORR and existing contract holders to agree changes to current contracts that will apply from Access Day and prepares new GBR agreements for those requesting new access rights.

Access Day (Expected 2027)

- AUP comes into force: GBR begins operating under the new legislative requirements and Access and Use Policy, applying updated contract conditions and processes.
- Baseline Capacity Plan is used to underpin GBR decisions on capacity allocation
- Capacity Plan Schedule is adopted by GBR, and work formally commences on the first scheduled pieces of planning work
- Contractual amendments come into force: agreed amendments that have been prepared with existing contract holders will come into effect.
- GBR assumes decision-making authority, taking over responsibility from ORR for access decision and, from April 2029, for setting new charging and performance regimes.

There also need to be steps taken ahead of Access Day to make sure the processes and notices that are already underway or that look to the future are managed smoothly. This includes activities such as the preparation of the Network Statement which provides information relevant to upcoming timetable periods, the formal milestones and process for timetable development, and the process for access rights applications. It is important these continue to work for the industry, with transitional cut-off points established to support a smooth handover of responsibilities without disrupting rail users and industry partners.

These transitional arrangements are explored in more detail in section 3, which considers how GBR will ensure operational stability while preparing to assume decision-making authority.

Discussion point:

What else is there to consider beyond these headline milestones as we develop a detailed plan for a smooth transition?

1.3 A baseline capacity plan

A baseline capacity plan will be prepared for GBR to adopt covering the whole network, ready for the move to the new legislative requirements. This recognises that GBR won't replan the whole network immediately, so existing capacity allocations need to be recorded and represented. The baseline plan, along with contracts, will ensure that existing Schedule 5 access rights held by third parties and DfTO operators are carried forward into the new framework in an effective way, honouring government's commitment and giving commercial certainty.

Subject to further discussions, we think a baseline capacity plan could create initial capacity designations for uses such as freight or passenger, based on the existing services being operated, and taking account of the quantum access rights already allocated and formalised in existing access contracts held by industry parties and DfTO operators prior to Access Day.

In developing this baseline capacity plan, we would have to consider how to represent potential designations such as international freight capacity and strategic freight capacity, where there may be opportunity to make allocation more robust and more effective.

1.4 The schedule for capacity plans

Proactive, forward-looking planning for how to use the railway is at the heart of the new model for GBR. This means GBR should produce transparent information for industry parties and funders about when usage will be reviewed in the form of updated capacity plans based on new goals and an assessment of options.

A schedule will be needed from an early date so that external parties can plan their involvement, are able to request updates to the baseline capacity plan, and understand the scope for smaller changes to capacity commitments that can be made within the change control process. Drawing up a schedule will need to consider the resources of all industry partners and the scale and pace of change that the industry can accommodate.

Where the production of a new capacity plan is on the schedule, any new applications for ad hoc capacity commitments in the relevant geographies would normally be given end dates that terminate before the new plan goes live, to ensure GBR does not pre-judge or preclude the allocation decisions made through that work. However, this should not be automatic where there is major investment or value from a longer commitment.

2 Transitioning contracts

By Access Day, the station, depot and track access contracts held by Network Rail will need to be appropriately updated to ensure a workable industry model.

Work will be started to agree the changes required. The intention is to identify clauses that need to be updated or changed, consult on their replacement and – where appropriate - share these with ORR so they can consider a general approval.

More work needs to be done to create a full description of amendments or changes. Key areas where we anticipate change are set out below. The focus is on ensuring the new roles of ORR and GBR in contracts are in line with the law and the contracts are fit for purpose in the new industry model. Terminology from legislation and GBR policies must also be aligned with commercial documents. Any updates must of course respect the requirement that existing Schedule 5 access rights continue to work for contract holders.

Indicative areas of contract change

1. Reallocation of decision-making authority: Remove references to ORR as the primary decision-maker for access rights and charges and ensure GBR can take this role. Clarify ORR's oversight or appeals functions, and ensure charges and performance regimes can be updated following due process through funding periods.
2. Update legal definitions and terminology: Align contract language with the new Bill and AUP, including updated definitions for access rights, infrastructure, and operational responsibilities.
3. Revise amendment clauses: Remove provisions that rely on ORR's statutory powers to amend contracts, and establish new mechanisms for amendments to contracts and conditions under the new industry model.
4. Reflect organisational changes: Replace references to Network Rail where functions are transferred to GBR and ensure processes fit with the new duties of GBR. Clarify the roles of GBR and ORR post-transition, especially where ORR retains oversight or appeal functions. Reflect GBR's dual roles as both infrastructure manager and train operator, e.g. to ensure GBR train service proposals are treated transparently alongside the proposals of other operators.
5. Ensure existing Schedule 5 access rights are built into the new system appropriately.
6. Incorporate transitional arrangements: Add clauses that define how processes underway on Access Day such as timetable planning and access requests will be handled during the transition.

Specify the effective date of GBR's authority and how decisions made before and after this date are treated.

2.1 Changes to the Network Code and other access conditions

As part of the transition to GBR, we are considering how to transition the existing Network Code and station and depot access conditions. The Network Code provides the industry-wide framework that governs operational processes such as timetabling, access rights, and engineering work. Station and depot access conditions play a similar role for those access contracts. These agreements are closely tied to Network Rail's role and vertically separated structures and were not designed to fit the integrated responsibilities and governance model of GBR.

As with other contractual updates, revisions to the Code or access conditions would aim to align contractual provisions with the new AUP, simplify language, and better support whole-system decision-making to deliver overall value from the railway. This is also an opportunity to modernise processes and ensure contractual and procedural arrangements are fit for purpose for all parties.

In particular, we think the Network Code will need a new Part C change mechanism to establish a new process for changing contract conditions, with similar changes to station and deport access conditions. We'll need to replace voting systems based on current industry representation with something that is broadly in line with adjacent infrastructure managers and will be subject to the ORR's new appeal function to ensure fairness and governance of change.

This transition will be shaped through ongoing engagement with the industry to ensure the revised framework and change mechanism reflect the needs of the sector. Options and alternatives will be explored collaboratively to identify the most workable and balanced approach for all parties.

2.2 Charges and performance regimes

The existing charging regime and performance mechanisms for Control Period 7 (CP7) will remain in place as planned until 2029 in order to ensure continuity with the process familiar to the industry today. The development of the access charging framework and the performance regime for Control Period 8 (2029-2034) will be undertaken with the industry in a consultative process led by GBR, following the high-level principles and approaches set out in the final AUP.

3 Managing activities in progress on Access Day

During the transitional period, live activities will require careful management to ensure continuity and clarity. We're currently mapping key industry processes to determine where new terms and procedures can be adopted immediately. The aim is to ensure continuity and clarity during the transition, while enabling GBR to operate effectively from the outset. Initial propositions are set out below, for discussion and testing with the industry.

Processes in review

- **Network statement:** The process for preparing, consulting on, and publishing the Network Statement will be aligned with GBR's framework. We expect the December 2027 version will be published under existing arrangements, while the December 2028 version may be deferred depending on the timing of Access Day. Once the AUP is in place, the Network Statement will be unnecessary because the information will be provided in the AUP and connected documents.
- **Working Timetable development:** The December 2027 Working Timetable will be developed in advance of Access Day using current processes. We expect any timetable production process that starts before access day will continue as set out under existing contractual terms, while those that start after will be conducted under GBR's new contractual terms.
- **Working Timetable variations:** Processes for varying timetables will continue uninterrupted until Access Day. Short-Term Planning, Very Short-Term Planning, and Engineering Access processes which begin prior to Access Day will continue without disruption. This may require some review or co-ordination.
- **Access rights applications:** Access applications should be submitted to GBR not ORR after Access Day. This will require a revised process and new application forms. In order to avoid a pause in decision making we may also want to allow applications to be submitted to GBR ahead of Access Day, in cases where there is insufficient time before Access Day for the regulator to complete its processes and reach a decision. Such arrangements would need to differentiate between straight-forward and contentious access rights requests, with the channel for applications transferring from ORR to GBR at the right time. Currently ORR allow six weeks for processing 'easy' applications and a longer period for 'contentious' applications.
- **International paths:** We anticipate that the D-48 notification process will be maintained for the December 2027 timetable, ensuring consistency in international coordination. A similar process will be required for the long term.

The review will need to be completed with the sector so that GBR can begin making decisions under its new model where feasible, while maintaining seamless operations for activities underway at the point of transition. Providing greater clarity will help create a stable and predictable environment for operators and stakeholders during the transition.

Discussion point:

How can activities in progress at the point of Access Day be most smoothly managed, for example through a specific transitionary period or an agreed pause?

4 Alignment with adjacent infrastructure managers

Adjacent infrastructure managers will remain subject to the Access and Management Regulations (AMRs), which continue to apply across their rail networks. They retain their legal obligations under the AMRs, and we recognise the importance of ensuring GBR's decisions do not compromise their ability to meet those requirements.

To support this, we will assess the operational, legal, and commercial impacts of GBR's access decisions on adjacent infrastructure managers, and explore safeguards to ensure decision making does not impact their operations—ensuring a coherent service can be provided to freight and passenger operators working across networks. Bespoke arrangements will also need migrating.

We recognise that Network Rail provides services to adjacent infrastructure managers, such as for timetable production, access charging, and delay attribution. We expect this to continue under GBR, and that GBR will be cognisant of the rules that apply to adjacent infrastructure managers when delivering these services.

Public law principles provide protection from discrimination. Agreements can also provide an additional level of certainty. For example:

- **A contractual arrangement:** This could take the form of a bilateral arrangement that clarifies roles and responsibilities between GBR and other infrastructure managers, though these may be complex to negotiate and implement consistently. Conversely, a multi-party agreement could be implemented, similar to the supplemental agreement used for strategic freight sites, which could specify how particular regulations apply to specific locations or operational contexts.
- **A formal Memorandum of Understanding:** This is another option, which would support structured collaboration and information sharing between GBR and neighbouring infrastructure managers.

As part of the transition, we need to engage with infrastructure managers to understand where alignment is needed and co-develop practical measures that support a coherent, fair, and legally compliant access regime across networks. Collaborative governance will be also explored to define areas of shared responsibility, align schedules like maintenance windows or infrastructure upgrades, or set out escalation procedures.

Discussion point:

What's the most effective way to align GBR's new processes with adjacent infrastructure managers, for Access Day and thereafter?