

## **DRAFT**

### **NETWORK CODE: PART I**

#### **Definitions**

In this Part I, unless the context otherwise requires:

“incremental output” means any local output established as part of any review by the Regulator of access charges payable by Train Operators to Railtrack, being (in the case of the review to take effect from 1 April 2001) any local output specified in the document entitled [ ] published by the Regulator on [ ];

“local output” means:

- (i) any measure of capability, quality or performance of, including any improvement to, the Network or its operation by Railtrack; or
- (ii) any measure of performance of any Specified Equipment or its operation by a Train Operator.

#### **1. General**

Not later than [●] Railtrack shall establish a local output statement in respect of:

- (a) each Train Operator; and
- (b) the year beginning [●] and the subsequent 2 years

in accordance with this Condition I.

#### **2. Contents and renewal of local output statements**

Each local output statement shall:

- (a) contain details of each local output (including any incremental output) to apply to the relevant Train Operator including the specification of the output and the timing of its implementation;
- (b) be renewed annually but may contain details of local outputs to be implemented in future years.

### **3. Development of draft local output statements**

#### *3.1 Contents of draft local output statements*

Railtrack shall consult with Train Operators before [●] to establish the local outputs which each Train Operator may wish to have contained in a local output statement and not later than [●] days before [●] Railtrack shall send to each Train Operator a draft of the local output statement applicable to that Train Operator together with:

- (a) details of any local output applicable to any other Train Operator which may, if implemented, affect the first Train Operator or its associates;
- (b) an estimate, in such detail as is reasonable in the circumstances, of the timing and costs of implementation of the local outputs referred to in the draft statement; and
- (c) a statement of whether in Railtrack's opinion the implementation of any local output referred to in the draft statement would require a Network Change in accordance with Part G.

#### *3.2 Consultation on draft local output statements*

As soon as reasonably practicable after the date upon which Railtrack shall have sent the draft local output statement, Railtrack shall consult each Train Operator in relation to the draft statement and any other local output details of which were given to that Train Operator and shall invite the submission to it of representations or objections in respect of them.

#### *3.3 Meeting*

The consultation referred to in Condition I3.2 in respect of any particular proposed local output shall include a meeting between Railtrack and all of the Train Operators whose Services may be affected by the implementation of that local output with a view to establishing the specification, timing and funding of that local output.

#### *3.4 Relationship with consultation process under Part G*

So far as practicable, the Access Parties will ensure that, to the extent any proposed local output, once implemented, would constitute a Network Change within the meaning of Part G, the consultation referred to in Condition I3.2 shall take place concurrently with the relevant consultation pursuant to Part G.

### **4. Establishment of local output statements**

#### *4.1 Obligation to establish*

Subject to the following provisions of this Condition I4, Railtrack shall:

- (a) take into account all representations or objections received from Train Operators under Condition I3.2; and

- (b) not later than [●] days after the date of sending the draft local output statement, establish the local output statement by sending a copy of it to the Train Operator to which it applies.

#### 4.2 *Outputs to be included in local output statements*

Railtrack shall include in the local output statement sent pursuant to Condition I4.1:

- (a) every local output proposed by a Train Operator (as it may have been modified as a result of consultation with other Train Operators under Condition I3), unless Railtrack reasonably considers that:
  - (i) implementation of that output would result in the breach of an access agreement (other than one to which the proposing Train Operator is a party); or
  - (ii) to the extent that the local output is to be funded by a Train Operator or a third party, there is a reasonable likelihood that Railtrack's reasonable costs of implementing the local output will not be met; or
  - (iii) to the extent that the local output is not to be funded by a Train Operator or a third party, Railtrack should not properly meet the costs of implementing the local output itself;
- (b) every incremental output; and
- (c) every other local output which Railtrack wishes or is obliged to implement, whether pursuant to its network licence or otherwise.

#### 4.3 *Notification of non-inclusion of local outputs*

If Railtrack considers that any of Conditions I4.2(a)(i), (ii) and (iii) applies to a particular local output, it shall notify the relevant Train Operator (giving full reasons for its opinion) at the same time as it sends to the Train Operator a copy of the relevant local output statement.

#### 4.4 *Application of funding conditions*

Railtrack may not assert that Conditions I4.2(a)(ii) and (iii) shall apply to a particular local output if the sole reason for that assertion is that the matters specified in Condition I5 have not occurred or been complied with at the time the relevant local output statement is established.

### 5. **Relationship with Part G, Part D and the Regulator's approval**

The provisions of this Condition I shall be without prejudice to:

- (a) the provisions of Part G, if the proposed local output, once implemented, would constitute a Network Change within the meaning of that Part;

- (b) the requirement to comply with Condition D2.4, to the extent that the implementation of the proposed local output would require an amendment to the applicable Rules of the Route and/or the applicable Rules of the Plan; and
- (c) to the extent that the Access Parties wish to amend an access contract as a consequence of the implementation of any local output, the requirement to submit that amendment to the Regulator for approval pursuant to section 22 of the Act.

## 6. Implementation of local output

Subject to:

- (a) the appropriate Access Party or Parties having complied in relation to any particular local output (to the extent that they are applicable) with those matters specified in Condition I5; and
- (b) no reference in relation to that output having been made pursuant to Condition I7,

the Access Parties shall be entitled to have that local output implemented in accordance with its terms, and such entitlement shall be enforceable

- (i) by Railtrack against the Train Operator to the extent the local output in question relates to the Train Operator's Specified Equipment or its operation by the Train Operator; and
- (ii) in any other case, by the Train Operator against Railtrack.

## 7. Appeals

### 7.1 *Right of appeal*

Subject to Condition I7.2 if any Train Operator shall be dissatisfied with a local output statement established by Railtrack pursuant to Condition I4 he shall be entitled to refer the matter for determination to the Access Disputes Resolution Committee and, if he is dissatisfied with that determination, to the Regulator.

### 7.2 *No appeal in connection with incremental outputs*

No reference may be made under Condition I7.1 in connection with any incremental output.

### 7.3 *Information to be sent in relation to the appeal*

If there shall have been a reference pursuant to Condition I7.1:

- (a) Railtrack shall provide the appellant with the name and address of every Train Operator who may be affected by the relevant local outputs within 7 days of the making of the reference; and
- (b) the appellant shall:

- (i) include with it a statement in reasonable detail as to the matter in question and his reasons for making the reference; and
- (ii) within 14 days of making the reference, send a copy of the reference and the statement referred to in sub-paragraph (i) above to Railtrack and every affected Train Operator of which he has notice pursuant to paragraph (a) above.

#### 7.4 *Obligation to provide evidence*

Each of Railtrack, the appellant and any relevant third party shall, as soon as reasonably practicable after the date of the reference, use their respective reasonable endeavours to procure that the appeal body is furnished with sufficient information and evidence so as to enable it properly to consider any matter referred to it.

#### 7.5 *Power of appeal bodies*

In relation to a reference made to it pursuant to Condition I7.1, the appeal body shall, in determining the matter in question, have the power:

- (a) to give directions as the procedure to be following 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 to the extent specified in sub-paragraphs (a) and (b) of paragraph A5.3.5 of the Access Dispute Resolution Rules, directions given by the Access Disputes Resolution Committee pursuant to this Condition I7.5 shall not be inconsistent with paragraphs A3.6.2, A5.1, A5.2 or A5.4 to A5.11 inclusive of those Rules;
- (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;
- (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 appeal body shall determine) which shall be borne by either or both of the parties.

#### 7.6 *Obligation to comply with determinations*

Each party to a dispute which has been the subject of a reference pursuant to Condition I7.1 shall comply with an interim order of the kind referred to in Condition I7.5(c). A determination made following a reference pursuant to Condition I7.1 shall be final and binding on Railtrack and all affected Train Operators, whether or not any of them shall have been required to provide evidence or make submissions pursuant to Condition I7.4 or I7.5.

7.7 *Additional powers and immunities of the Regulator*

Where any reference shall have been made to him pursuant to Condition I7.1, the Regulator shall:

- (a) be entitled to decline to act on the reference if, having consulted the parties concerned and such other affected Train Operators as he shall consider appropriate and considered the determination of the Access Disputes Resolution Committee, he shall determine that the reference should not proceed, including on the grounds that:
  - (i) the matter in question is not of sufficient importance to the industry;
  - (ii) the reference to him is frivolous or vexatious; or
  - (iii) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
- (b) not be liable in damages or otherwise in any act or omission to act on his part (including negligence) in relation to the reference.