



OFFICE *of the*
RAIL REGULATOR

ACHIEVING T-12
CONSULTATION ON PROPOSED LICENCE
MODIFICATIONS

Contents

Regulator’s foreword	1
Background	3
General approach	5
Modification of condition 8 of Railtrack’s network licence	1
Modification of franchised passenger train operator licences	3
General approach on enforcement	5
Timing	9
Annex A: Notice under section 12(2) of the Railways Act 1993	11
Annex B: Text of proposed licence modifications	13
Condition [9]: Timetabling	13
Railtrack network licence.....	14
Condition 8: Timetabling	14

Regulator's foreword

1. At the time of its privatisation, the rail industry committed itself to ensuring that a robust and stable timetable was available to train operators at least twelve weeks in advance of each day of railway operation (the "T-12" commitment, originally part of the Informed Traveller initiative). This was intended to allow the timely provision of timetable information to passengers. Despite significant efforts by much of the industry to achieve this commitment, delivery was patchy with major difficulties arising in certain areas in respect of planning for the 1998 Christmas and New Year Bank Holidays. As a result, the Regulator wrote to the Chief Executive of Railtrack and to the Managing Directors of all train operating companies seeking an explanation for the failure to deliver. Having considered the responses he received, he published a consultation document setting out a proposal to introduce licence modifications to create enforceable obligations to deliver T-12¹. Responses to this consultation demonstrated overwhelming support for the principle of licence modifications and, as a result, the Regulator has worked up draft licence modifications to give effect to his proposals.
2. The Regulator has now received from Railtrack PLC and each franchised passenger train operator (other than Island Line) and Heathrow Express² agreement to the proposed licence modifications, and has therefore provisionally concluded that it would be appropriate to make the modifications. Before doing so, however, he is required under section 12 of the Railways Act 1993 to give notice that he proposes to make the modifications and setting out their effect; to give his reasons; and to invite representations within a period of not less than 28 days. This document includes a copy of that statutory notice at Annex A and the full text of the proposed modifications at Annex B.
3. The Regulator therefore invites comments on the proposed modifications by Friday 14 May 1999. They should be sent to:

¹ *Achieving T-12: A Consultation Document About Delivering Timetable Information to Passengers*, Office of the Rail Regulator, London, January 1999

² The Regulator is not seeking licence modifications from Island Line because of the different and self-contained nature of its train operations. Similarly, London Underground Ltd (LUL) is largely self-contained and has an existing licence condition relating to co-operation. Eurostar's train operations are covered by an International Licence which is not subject to the Railways Act 1993 and cannot be modified by the Rail Regulator

David Chapman Esq
Manager, Railtrack Regulation
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London EC1N 2TQ

Background

1. The Informed Traveller commitment to deliver T-12 made at the time of privatisation would, if fully implemented, provide a significant enhancement to the information services provided by the industry to current and potential passengers, with the early provision of timetable information and the ability to plan journeys well in advance of travel. It is therefore an important commitment, and one to which the Regulator attaches great importance.
2. However, delivery of the commitment has required major changes to be made to industry engineering and timetable planning processes. It has also had significant implications for industry train planning resources.
3. Despite these challenges, the industry put in place the necessary contractual procedures in Railtrack's Track Access Conditions³ to ensure national delivery of T-12 from the Summer 1998 Passenger Timetable. During that Summer period, it appeared that the industry was reasonably close to achieving full compliance with T-12. However, with the introduction of greater engineering work within the Winter 1998 Timetable, processes and resources became stretched. In particular, there were significant problems in relation to the amount of additional engineering planning for the Christmas and New Year Bank Holidays which resulted in the material failure of T-12 for this period. In certain cases, timetables were not finalised until as little as two to three weeks in advance.
4. The failure by the rail industry to meet its public commitment to T-12 was very disappointing. When it became apparent that the failure of T-12 on some routes over the Christmas period was having a significant impact on the ability of passengers to book trains and finalise their travel arrangements, the Regulator wrote to all passenger train operators and to Railtrack (on 12 November 1998) seeking information about compliance with T-12, the reasons for the failure, and views as to how procedures and enforcement processes might be tightened up.
5. The responses to the Regulator's letters revealed that the rail industry remained committed to the delivery of the national target of T-12, but that certain underlying

³ The Track Access Conditions, contained in every access agreement under which train operators use Railtrack's network, set out a range of procedures for the timetabling, operation and development of the network

problems continued to make full national delivery difficult. This situation was heightened for the Christmas and New Year Bank Holidays by the additional weight of engineering planning required. Although some train operators were fully compliant with T-12, the disruption to the planning process caused by other operators not meeting T-12 planning timescales resulted in long delays in finalising the timetable for significant areas of the country.

6. The key issues raised by respondents were:
 - (a) the assertion that Railtrack has not consistently planned its possession requirements in line with T-12 timescales and requirements;
 - (b) the absence or lateness of bids from a number of key train operators;
 - (c) concerns that certain Railtrack zones were not adequately resourced;
 - (d) concerns about the adequacy of resourcing in certain train operators; the inadequacy of the current computer systems to support the T-12 process;
 - (e) a widespread view that the short-term planning process in the Track Access Conditions did not contain or support an effective contractual dispute resolution procedure for resolving problems within the necessary timescales.
7. The Regulator continues to believe strongly that T-12 is an important national standard which is of considerable benefit to the travelling public. Whilst he recognises that not all passenger rail businesses are themselves dependent on such advance information, he considers that all train companies should adhere to a national standard in order to avoid uncertainty and confusion amongst passengers who wish to plan their journeys in advance. The Regulator has also noted the views of those train companies which considered 12 weeks to be too short a planning and publicity timescale.
8. The Regulator was therefore pleased to note the overwhelming support for the principle of T-12 as a national standard representing a reasonable compromise between the needs and aspirations of different kinds of rail businesses. He was also pleased to see unanimous agreement from Railtrack and all franchised passenger train operators that, in the light of ongoing problems with delivery, T-12 should be made an enforceable licence commitment. There was very strong support for his approach from the Central Rail Users Consultative Committee and the regional Rail Users Consultative Committees.

General approach

1. The Regulator is proposing to modify the operating licences of Railtrack and each franchised passenger train operator to create enforceable obligations to deliver T-12. The proposed licence modifications would amend the existing licence conditions covering timetabling in both Railtrack's Network Licence and passenger train operators' licences. They do not seek to duplicate or enforce the procedures set out in Part D3.8 of the Track Access Conditions; those are matters for the contracting parties to enforce through the formal dispute resolution mechanism. However, persistent failure to comply with contractual processes may be viewed as evidence of unwillingness to meet the high level commitment or to put the necessary processes and resources in place.

Modification of condition 8 of Railtrack's network licence

1. The existing Condition 8 of Railtrack's Network Licence requires Railtrack to publish, or procure the publication of, a national timetable of railway passenger services, and to provide access to timetable information to passenger and station licence holders and Telephone Enquiry Bureaux (TEBs).
2. The modification will, in effect, supplement the existing information obligation to ensure information about changes to the national timetable is made available by Railtrack. The modification also recognises that, if Railtrack is to deliver this information at T-12, it will have to:
 - (a) plan the maintenance, renewal and enhancement of the network in a timely and efficient manner;
 - (b) carry out the necessary consultation; and
 - (c) resolve disputes quickly.
3. The requirement to carry out consultation may, for the most part, be fulfilled by the existing procedures in the Track Access Conditions, in relation to the development of the Rules of the Route. Conversely, failure to follow those procedures may indicate to the Regulator that Railtrack is not complying with the licence requirement for consultation. But strict adherence to the procedures may not be sufficient to comply with the licence obligation in all instances. For example, there are likely to be circumstances where, as a result of the amount of infrastructure activity being undertaken, earlier consultation may be necessary or expedient for effective short-term planning.
4. The proposed modification also contains a requirement to notify the Regulator of non-compliance in the circumstances specified in paragraph 4(b) of the condition. This reporting requirement is targeted at those whose failure to act properly is likely to result in a delay in the delivery of T-12, while accepting that unintended delay or the actions of third parties may occur.
5. The Regulator does not have power directly to enforce compliance with the detail of the planning process in Condition D3.8 of the Track Access Conditions. Nor is he

expecting to take action on every occasion when a contractual deadline is missed, or to set up an onerous monitoring regime. However, where failure to meet planning requirements becomes persistent conduct or where a particular omission is deliberate and, in either case, has a major impact on the ability to deliver an efficient timetable at T-12, and thus has an adverse impact on the ability of passengers to plan their journeys, then the Regulator would expect to be notified so that he can consider whether any further action is necessary.

6. The Regulator would, however, encourage Railtrack, where it is satisfied that it will be to the overall benefit of passengers, to take a more robust line under its powers under the Track Access Conditions to make timetabling decisions in the absence of a bid from a train operator, especially where other train operators have bid on time, to enable T-12 to be delivered. The Regulator also notes that it would be open for Railtrack to seek to amend the Track Access Conditions, through the processes in Part C of the Conditions, if it believed this power needed strengthening.
7. It should be noted that the requirement on Railtrack to notify non-compliance is not restricted to passenger train operators, but covers all train operators. In the event of serious non-compliance by freight operators, the Regulator would want to consider what further action he should take.

Modification of franchised passenger train operator licences

1. The existing passenger train operator licence timetabling condition requires operators to supply Railtrack with the information needed to comply with its timetabling licence obligations. The proposed modification, like the Railtrack one, codifies the key actions train operators will have to undertake to assist Railtrack in delivering timetable information at T-12:
 - (a) participate constructively in consultation; and
 - (b) resolve disputes quickly.
2. As with the Railtrack condition, there is an obligation to notify material non-compliances which the train operator considers are wilful or persistent, and the comments made above in respect of how the Regulator expects Railtrack to approach this obligation apply equally to train operators. Individual train operators are not expected to be aware of the cause of non-compliance. Where he is notified of non-compliance, the Regulator will need to explore whether, and to what extent, Railtrack's behaviour has resulted from the behaviour of other operators.
3. The proposed modification for passenger train operators also recognises that, while it is important to ensure that Railtrack and train operators play their appropriate part in the procedures for delivering T-12, the full benefit to passengers will only be delivered if timetable information is supplemented by relevant retailing information (such as reservations and fares information, and information on restrictions applying to particular train services) and made publicly available. Passenger train operators will therefore have to disseminate this additional information to other licence holders and TEBs within three weeks of obtaining the relevant timetable information from Railtrack. Information would also have to be available to other parties who normally have access to it (e.g. travel agents etc). The proposed modification describes these other parties as "timetable information providers".

General approach on enforcement

1. It is the Regulator's responsibility to take action in the event of failure to meet licence obligations. He would only expect to take action where there was, or was likely to be, a material adverse effect on the delivery of T-12. However, he would be concerned where there was evidence of wilful or persistent failure to deliver on the key obligations, or where particular omissions by particular companies might put the delivery of T-12 in jeopardy in a particular locality, either for that operator or for others affected by the omission.
2. The Regulator's public interest concern is in the output from the process referred to in the proposed licence conditions. In general, it is for individual licence holders to decide how they will fulfil their obligations. However, in any case where there is non-compliance, the Regulator will wish to ascertain whether it has resulted from the licence holder's failure to commit adequate resources to fulfilling its obligations. If this is a relevant factor, the Regulator will consider whether it is appropriate to include provisions as to resourcing in any enforcement action he takes.
3. The purpose of the timetabling obligations is to enable passengers to be provided with information in a timely and reliable manner. It is therefore important that these obligations should seek to achieve this objective, rather than impose absolute obligations which may produce perverse results. The Railtrack obligation is therefore qualified to provide some flexibility to ensure the best interests of passengers are served in the short-term planning process. Where delays in meeting T-12 arise specifically as a result of delays on the part of train operators, and it is clear that it would meet the interests of passengers better to delay the circulation of the timetable, Railtrack will not be in breach of its licence obligation if it finalises the timetable later than T-12. In considering whether this is in the best interests of passengers, the Regulator would expect Railtrack to have regard, in particular, to the approximate number of passengers likely to be affected, the likely impact on other train operators using the routes (including freight operators), and the maintenance of planned connections.
4. Before taking this course of action, Railtrack must be absolutely clear that its actions are in the best interests of passengers; and train operators would remain potentially in breach of their obligations under paragraph 2(a) of the new train operator condition if they have not participated constructively in any consultation carried out by Railtrack.

5. The Regulator recognises that, as a result of pre-existing arrangements, owners or builders of rail infrastructure other than Railtrack PLC may not be bound by T-12 planning timescales. Where this is the case, the Regulator has sought assurances that, so far as possible, infrastructure works which affect the national rail network will be planned in a way which is consistent with T-12. However, there may be occasions where this is not possible. Late notice possessions resulting from such work will not put train operators directly in breach of their obligations, but there may be a knock-on effect on the efficacy of the short-term planning process. Where such problems are entirely and demonstrably due to late possessions where the owner or builder is not bound by T-12 timescales, the Regulator would not expect to take enforcement action against train operators. But the Regulator would expect Railtrack and train operators to work together to seek solutions.

6. There may also be circumstances when Railtrack needs to take or amend possessions where the timescales necessary to meet T-12 cannot be achieved. Under the proposed licence condition, Railtrack will not be in breach if this is for emergency engineering works, or as a result of severe weather conditions. Nor will train operators be in breach since their obligations to disseminate additional information only apply once timetable information is available from Railtrack. For this purpose, the term "emergency" is regarded as going beyond (but, of course, including) work required for urgent safety reasons. An emergency might, for example, cover circumstances where urgent work was needed to maintain an appropriate level of service to customers, eg to repair a bank slip or to deal with the longer term effects of adverse weather such as flooded ballast. In cases where Railtrack might have anticipated a particular problem, repeated instances in similar circumstances of this type of failure to deliver T-12 might incur action under either the new proposed licence condition, or Condition 7 (Stewardship of the Network). But the Regulator is clear that urgent works needed for the purpose of maintaining service standards for passengers are not ruled out, although Railtrack will need to ensure that emergency situations are not created through poor planning or ineffective stewardship to avoid being potentially in breach of its other licence obligations. The Regulator would expect Railtrack and train operators to have the necessary resources in place to deal with such normal fluctuations and to ensure that emergency changes to possessions do not have a "knock-on" effect disrupting the normal short-term planning process. However, where Railtrack was making repeated late changes to possessions as a result of poor planning, the Regulator would not expect to take action against train operators who, solely as a result of the additional workload caused, were unable to effectively maintain their own planning processes.

7. It should also be noted that it is not the Regulator's intention to require special or temporary fares to be available at T-9 where there is a clear commercial rationale for releasing them at a later date. However, ORR considers that this kind of commercial flexibility is covered by the "so far as reasonably practicable" qualification in paragraph 3 of the train operators' condition. The purpose of the provision is to enable passengers to make informed decisions on travel arrangements in a timely manner. The Regulator accepts that, on occasions, there may be valid commercial reasons for announcing a special or temporary fare or varying a restriction after T-9 in the light of particular circumstances applying to that service, even if the possibility of that fare or variation has been considered earlier. Where there is such a justification, the Regulator would normally expect that this would enable the operator to demonstrate that it was not reasonably practicable to publish the information by T-9. However, if it appeared that a train operator was engaging in a practice of repeatedly publishing temporary fares in order to avoid the obligation so far as reasonably practicable to make fares available by T-9, then the Regulator would need to consider whether enforcement or other regulatory action was appropriate.
8. In enforcing the proposed licence conditions, the Regulator would have regard to the explanation of his intentions as to how the conditions should operate which are set out in this document. In particular, he would expect to focus any necessary enforcement order on the factors which caused licence holders to breach their obligations. Nevertheless, the Regulator cannot ensure that licence holders supply all the necessary information at the right times to deliver T-12. Breach of an enforcement order is therefore likely to result in the levying of fines until the conditions of the order are met.

Timing

1. The Regulator expects train operators to achieve the T-12 objectives now, and believes that operators are close to doing so. However, in some cases the Office of the Rail Regulator (ORR) recognises that it may take some time to reach full compliance. The Regulator wants to ensure that full national compliance is achieved from the Winter 1999 timetable onwards. That means bringing licence modifications into force promptly to ensure that planning processes are accelerated at a sufficient rate to secure full compliance by October 1999. Provided that where Railtrack and train operators are not currently meeting T-12 deadlines, they take the necessary steps to achieve full compliance by the Winter 1999 timetable, the Regulator does not at present anticipate taking enforcement action. However, if at any stage after the new conditions are brought into force it becomes clear that full compliance is unlikely to be delivered with the Winter 1999 timetable, he may consider taking action sooner. Where companies are already meeting T-12, the Regulator expects delivery to be maintained.

Annex A: Notice under section 12(2) of the Railways Act 1993

1. The text of the statutory notice published today is as follows:
2. The Rail Regulator ("the Regulator"), pursuant to section 12(2) of the Railways Act 1993 (c.43) ("the Act") hereby gives notice as follows:
 - (1) In respect of the network licence of Railtrack PLC ("the network licence") and the passenger licences which have been issued to each of the franchise operators (other than Island Line Limited) and Heathrow Express Limited ("the passenger licences") all under section 8 of the Act he proposes to make the following modifications:
 - (i) by amending Condition 8 (Timetabling) of the network licence; and
 - (ii) by amending the Condition entitled "Timetabling" in each of the passenger licences (being Condition 9 in the template form of licence for passenger operators).
 - (2) The amendments to the network licence require Railtrack PLC to plan to enable temporary changes to the timetable for repair, maintenance and enhancement works to be specified and resulting timetable change procedures to be completed by 12 weeks before the change takes effect; to provide access to information about the changes to specified persons; to comply with certain procedures in carrying out these obligations and as to circumstances in which delay in compliance does not breach the obligation.
 - (3) The amendments to the passenger licences require the licence holder to comply with certain procedures in carrying out its obligations in relation to Railtrack PLC's performance of the obligations referred to in paragraph (2) and to make specified information available to passengers within a specified period.
 - (4) The reason why the Regulator proposes to make the modifications is to establish clear obligations on each licence holder in respect of the process to make changes to the national timetable arising from engineering works so that normally the revised timetable will be available 12 weeks before it applies and

associated information (such as fares) will be available within the following three weeks.

- (5) A copy of the draft proposed modifications can be obtained (free of charge) from the address below or by telephone (0171-282 2001); fax (0171-282 2045); e-mail: orr@dial.pipex.com.
- (6) Any representations or objections to the proposed modifications may be made in writing on or before 14 May 1999 to the Regulator at the Office of the Rail Regulator, 1 Waterhouse Square, 138-142 Holborn, London EC1N 2TQ, ref: D Chapman.

MICHAEL BESWICK
Director, Network Regulation
duly authorised by the Rail Regulator

Annex B: Text of proposed licence modifications

Draft modification (in italics)

Condition [9]: Timetabling

1. The licence holder shall provide Railtrack PLC with such information about licensed activities as may be reasonably necessary for Railtrack PLC to fulfil any obligation on it under *the Timetable Condition*:
2. *The licence holder shall, in relation to the Timetable Condition:*
 - (a) *participate constructively in any consultation carried out by Railtrack PLC;*
 - (b) *notify the Rail Regulator of any material non-compliance by Railtrack PLC with its contractual or licence obligations in relation to the procedures referred to in paragraph 3 of the Timetable Condition which the licence holder considers is wilful or persistent; and*
 - (c) *use reasonable endeavours to resolve promptly any disputes arising under such procedures so as to prevent or minimise the risk of delay in providing access to the information in accordance with that paragraph 3.*
3. *The licence holder shall as soon as reasonably practicable and in any case not more than three weeks after receiving access to information under paragraph 3(b) of the Timetable Condition:*
 - (a) *provide to the persons referred to in sub-paragraphs 2(i), (ii) and (iii) of the Timetable Condition; and*
 - (b) *provide reasonable access to all timetable information providers on request appropriate information to enable each on request to provide passengers or prospective passengers affected by such changes to the national timetable with all relevant information to plan their journeys including, so far as reasonably practicable, the fare or fares and any restrictions applicable to each service affected.*
4. *In this Condition:*

"Timetable Condition" means Condition 8 (Timetabling) of the network Licence of Railtrack PLC (other than paragraph 5 of that Condition); and

"timetable information providers" means travel agents and other persons (including its own employees) or organisations to whom the licence holder normally provides information in respect of the national timetable (in either case a significant part of whose business is to communicate it to users and potential users of that information).

Railtrack network licence

Draft modification (in italics)

Condition 8: Timetabling

1. The licence holder shall, except in so far as the Regulator may otherwise consent, publish or procure the publication of a national timetable of railway passenger services.
2. The licence holder shall grant to:
 - (i) holders of passenger licences;
 - (ii) holders of station licences, and
 - (iii) any such persons operating telephone enquiry bureaux relating to the operation of railway passenger services on the licence holder's network as may be designated or approved under a scheme approved by the Regulator and the Franchising Director,

access to such information held by the licence holder relating to planned movements of trains on the licence holder's network as they may reasonably require for the proper carrying on of their respective operations, on such terms (including the prices charged, means of access and confidentiality) as may be agreed or (in the absence of agreement) as the Regulator may require.
3. *Subject to paragraph 5, the licence holder shall:*

- (a) *plan its renewal maintenance and enhancement of the network in a timely and efficient manner to enable it to specify its requirements for temporary changes to the national timetable (except in respect of changes arising from emergencies or severe weather conditions) so that the procedures to revise the national timetable in respect of such changes can be completed not less than 12 weeks prior to the date of any such change ; and*
 - (b) *provide access to information in accordance with paragraph 2 in relation to all such changes to the national timetable not less than 12 weeks prior to the date such changes are to have effect.*
4. *The licence holder shall:*
- (a) *consult with train operators in carrying out such planning;*
 - (b) *notify the Rail Regulator if the licence holder considers that any non-compliance by a train operator with its contractual or licence obligations in relation to the procedures referred to in paragraph 3 is wilful or persistent and is likely to prevent it complying with paragraph 3(b); and*
 - (c) *use reasonable endeavours to resolve promptly any disputes arising under such procedures so as to prevent or minimise the risk of delay in providing access to the information in accordance with paragraph 3.*
5. *The licence holder shall not be in breach of its obligation under paragraph 3 to the extent that any delay in determining particular changes which are reasonable and appropriate occurs:*
- (a) *wholly in consequence of a train operator's delay or failure to provide information reasonably required by the licence holder to determine such changes provided always that the licence holder shall have taken all reasonable steps to obtain that information; and*
 - (b) *the licence holder is and continues to be reasonably satisfied that, having regard to the interest of passengers in having timely and accurate information in respect of such changes, the delay will better satisfy those interests.*