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Secretary
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March 2005

APPROVAL OF PROPOSAL FOR CHANGE 32 TO THE ACCESS DISPUTE RESOLUTION RULES

1. The Office of Rail Regulation has today approved the Proposal for Change (the *proposal*) to the Access Dispute Resolution Rules (ADRR), an annex to the Network Code, which was submitted to it by the Class Representative Committee on 22 February 2005.

2. The proposal has been developed by the industry in response to the then Regulator's notice of 2 July 2004, under Condition C8 of the Network Code, in which he proposed modifications to the ADRR. The notice specified that some of the reforms (the *entrenched provisions*) should have effect from 31 March 2005. However, the Regulator acknowledged the request of the industry to have more time to consider the modifications and the C8 notice provided that most of the modifications (the *provisional modifications*) should be subject to a suspense arrangement whereby they would only have effect from 12 May 2005 if the industry failed to submit to ORR by 31 March 2005 *alternative modifications*. The C8 notice specified criteria with which any alternative modifications must comply, including provision for questions of law to be properly identified and disposed of according to rules and procedures which

- (i) are fair;
- (ii) permit the proper application of rules of law; and
- (iii) allow any person who is a party to the dispute to be represented and/or assisted by such persons as they may choose.

3. In considering the proposal, ORR has reviewed the consultation responses received and considered by the Class Representative Committee (CRC) at its meeting on 4 February 2005. Whilst the proposal represents a departure from the previous Regulator's proposals, ORR has approved it because:

- (a) it is satisfied that the proposal is consistent with a balance of its general duties under section 4 of the Railways Act 1993, including for example, protecting the interests of users of railway services, promoting efficiency and economy and imposing minimum restrictions on operators of railway services; and
- (b) it considers that they:
 - (i) contain the entrenched provisions with minor modifications to reflect changes to the defined terms which are used in the ADRR. These entrenched provisions provide for determinations to follow relevant precedents; to be in writing and to contain full reasons. They also give parties the right to receive a copy of the determination of their appeal; and provide for the publication of certain documents relating to the business of the Access Disputes Committee;
 - (ii) provide for questions of law to be properly identified and disposed of by an independent, legally qualified Disputes Chairman who would have the power to engage legal advisers (or other expert advisers) to help in the hearing of disputes where required, and who would also be responsible for ensuring that determinations were legally rigorous by his direct or indirect involvement in all cases which are referred to the panel for determination;
 - (iii) provide rules and procedures which permit the proper and fair application of rules of law and which are designed to improve the quality and standard of cases which are referred to the panels by a party to the dispute and the determinations of the panels;
 - (iv) also contain specific provisions relating to the role and functions of the Committee Chairman and more detailed arrangements in respect of the content of Panel determinations which are designed to achieve improved standards;
 - (v) allow any person who is a party to the dispute to be represented and/or assisted by such persons as they may choose;
 - (vi) will improve the overall efficiency and cost-effectiveness of the ADRR, by ensuring that dispute parties prepare and present their disputes for determination in a more timely and complete manner; and
 - (vii) taken as a whole, comply with the criteria contained in the C8 notice of modifications, as outlined in paragraph 2 above.

4. The industry has taken a different approach to the reform of the ADRR to that which was proposed by the former Regulator. ORR therefore also intends to monitor the

determinations which are produced by the dispute panels over the coming months to see whether the new rules are producing the anticipated quality improvement in determinations in practice.

5. A copy of this letter, the approval notice and the proposal for change will be placed on the ORR website. A copy of the approval notice will also go on the ORR's public register.

MICHAEL BESWICK

March 2005

NOTICE OF APPROVAL OF CHANGE: ACCESS DISPUTE RESOLUTION RULES

1. This notice is given under Condition C7.1.3 of the Network Code. Terms defined in the Network Code have the same meaning in this notice. References in this notice to Conditions are references to Conditions of the Network Code.
2. The Class Representative Committee ("CRC") submitted a Proposal for Change under Condition C7.1.1 on 22 February 2005. CRC at the same time submitted a written memorandum explaining the reasons for the proposed change and details of the result of the consultation process as required by Condition C7.1.1.
3. The Secretary to the CRC has informed me that the Proposal for Change was unanimously approved, as materially modified by the CRC, at its meeting on 4 February 2005.
4. ORR now gives notice to CRC that it approves Proposal for Change 32 for the purpose of Condition C7.1.3.
5. A copy of the Proposal for Change is attached to this notice.

**MICHAEL BESWICK
DIRECTOR, RAIL POLICY**