

EXCLUSION OF COMMERCIALY SENSITIVE MATERIAL IN DEPOT ACCESS AGREEMENTS FROM THE PUBLIC REGISTER

1. This note sets out the Regulator's policy on the exclusion of commercially sensitive information from **passenger and freight** depot access agreements to be placed on the public register.

Background

2. The Railways Act 1993 ("the Act") requires the Regulator to maintain a register available for public inspection. In relation to access agreements and access contracts, the register must contain:

- (a) every direction to enter into an access contract;
- (b) every access agreement;
- (c) every amendment to an access agreement; and
- (d) every document issued or made by the Regulator under an access agreement.

3. In entering any provision on the register, the Regulator is required to have regard to the need to exclude, so far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Regulator, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the Regulator, seriously and prejudicially affect the interests of the body.

4. The Regulator must use his judgement in interpreting these provisions, in a manner consistent with his duties under the Act.

5. In considering access agreements, the Regulator has adopted a policy of wide consultation with other train operators, SRA, PTEs and, in some circumstances, local authorities.

The Regulator's proposals for depot access agreements

6. The Regulator has considered the possible interpretations of the provisions of the Act and the representations made to him by various parties. In forming a view of the type of information to be excluded from the register, he has been mindful of his duties under section 4 of the Act and of the need for the register to contain information that will be of use to those consulting it.

7. In placing access agreements and related documents on the register, the Regulator will consider excluding:

- (a) details of financial arrangements, including those relating to performance incentives, compensation costs or other payments made under change proposals, and access charges which are or may in future be subject to negotiation; and

- (b) matters which may have a material impact on commercial negotiations with third parties.
8. In particular, the Regulator will exclude the following from depot access agreements:
- (a) the limit of authority figures in paragraph 4 of Appendix 1 to Schedule 5; paragraph 3 of Appendix 1 to Schedule 7; paragraph 1 of Appendix 2 to Schedule 9; and paragraph 3 of Appendix 1 to Schedule 10;
 - (b) the charges and unit costs in Appendix 2 to Schedules 5, 6, 7 and 8; in Appendix 1 to Schedule 9; and in Appendix 2 to Schedules 10, 11 and 12;
 - (c) the numbers of minutes and rates of payment in Schedules 13 and 14;
 - (d) the rate of liquidated damages and incentive payments in Part 1 and Part 2 of Schedules 15 and 16; and
 - (e) the amounts in Schedule 17.
9. Any requests for any other deletions from access agreements, or from Section 22 amending agreements (or documents) submitted for the Public Register should be made on an individual basis, and justified, using the criteria set out in paragraph 7 above.
10. The Regulator will exercise his discretion in considering excluding any other information.

OFFICE OF THE RAIL REGULATOR

APRIL 1998