

## SCHEDULES

### SCHEDULE 4

Section 4

#### REVIEWS BY ORR OF ACCESS CHARGES AND LICENCE CONDITIONS

##### *Introductory*

- 1 Schedule 4A to the 1993 Act (review of access charges by ORR) is amended as follows.

##### *Conduct of access charges reviews*

- 2 For paragraph 1 (meaning of access charges review) substitute—

##### *“Application of Schedule*

- 1 This Schedule applies where an access agreement provides, or is treated as providing, for the Office of Rail Regulation to undertake reviews of the terms of that agreement as to—
- (a) the amounts payable under the agreement by one of the parties to the other; and
  - (b) the times at which, and the manner in which, those amounts are payable.

##### *Scope of review*

- 1A (1) Where the Office of Rail Regulation undertakes such a review, it must, at the same time, review the conditions of every linked licence both—
- (a) in relation to the matters mentioned in paragraph 1(a) and (b); and
  - (b) in relation to the matters about which that Office is provided with information under paragraph 1D.
- (2) A review by that Office of both—
- (a) the terms of an access agreement as to the matters mentioned in paragraph 1(a) and (b), and
  - (b) the conditions of a linked licence,
- is referred to in this Schedule as an access charges review.
- (3) An access charges review must include a consideration of—
- (a) the time at which the next access charges review is to be undertaken in relation to both the access agreement in question and every linked licence; and
  - (b) the circumstances in which it would be appropriate to undertake such a review before that time.

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- (4) In this Schedule “linked licence”, in relation to an access agreement, means a licence of which the holder is—
- (a) the facility owner, or installation owner, who is a party to the agreement; or
  - (b) a person other than that owner who has an estate or interest in the railway facility or network installation to which the agreement relates or who has a right over it.

*Response to request to carry out review*

- 1B       Where—
- (a) the Secretary of State or the Scottish Ministers suggest to the Office of Rail Regulation that an access charges review should be carried out in any case, but
  - (b) that Office decides not to carry out the suggested review,
- that Office must provide the Secretary of State or Scottish Ministers with its reasons for that decision.

*Notice of access charges review*

- 1C       (1) Before beginning an access charges review, the Office of Rail Regulation must give notice of its proposal to undertake the review to each of the following—
- (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Treasury;
  - (d) the parties to the access agreement in question; and
  - (e) such other persons as that Office considers appropriate.
- (2) No notice is required to be given under sub-paragraph (1) to the Secretary of State or the Scottish Ministers—
- (a) in the case of the Secretary of State, if the facility or installation to which the relevant agreement relates is situated wholly in Scotland; or
  - (b) in the case of the Scottish Ministers, if the facility or installation to which the relevant agreement relates is situated wholly in England and Wales.
- (3) A notice under this paragraph must set out—
- (a) the period to which the Office of Rail Regulation expects the review to relate (“the review period”);
  - (b) the date by which the Secretary of State, the Scottish Ministers or (as the case may be) each of them needs to provide the information that has to be provided under paragraph 1D; and
  - (c) any conditions which that Office requires to be satisfied in the period ending with that date if it is to proceed with the review.
- (4) The period set out under sub-paragraph (3)(a) must be the one which—

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- (a) begins with the time as from which the Office of Rail Regulation expects that any changes resulting from the review would fall to be implemented; and
  - (b) ends with the time as from which it thinks it likely (in the absence of special circumstances making an earlier review appropriate) that any changes resulting from the next access charges review in relation to the same agreement and licence would fall to be implemented.
- (5) The date set out under sub-paragraph (3)(b) must be not less than the following period after the date of the notice—
- (a) in a case which the Office of Rail Regulation is satisfied is a case of urgency, four weeks; and
  - (b) in any other case, three months.
- (6) Before setting out a date under sub-paragraph (3)(b) that is less than three months after the date of the notice, the Office of Rail Regulation must consult each of the persons to whom the notice is to be given.

*Duty to notify ORR about desired outputs and finances*

- 1D (1) Where a notice under paragraph 1C is given to the Secretary of State, he must provide the Office of Rail Regulation with—
- (a) information about what he wants to be achieved by railway activities in Great Britain as a whole during the review period; and
  - (b) such information as it is reasonable for him to provide about the public financial resources that are or are likely to become available to be applied during the review period for purposes that contribute (directly or indirectly) towards the achievement of what he wants.
- (2) Where a notice under paragraph 1C is given to the Scottish Ministers (whether instead of or as well as to the Secretary of State), they must provide the Office of Rail Regulation with—
- (a) information about what they want to be achieved by Scottish railway activities during the review period; and
  - (b) such information as it is reasonable for them to provide about the public financial resources that are or are likely to become available to be applied during that period for purposes that contribute (directly or indirectly) towards the achievement of what they want.
- (3) The information that may be provided as falling within sub-paragraph (1)(a) or (2)(a) includes objectives and standards to be achieved in the course of carrying on railway activities.
- (4) Those objectives and standards may include, in particular, objectives and standards with respect to any of the following matters—
- (a) the capacity (in terms of types and numbers of trains) of networks;
  - (b) the frequency of railway passenger services;
  - (c) journey times;

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- (d) reliability of railway services (both in terms of punctuality and otherwise);
  - (e) the taking of measures to prevent or mitigate overcrowding;
  - (f) levels and types of fares;
  - (g) the quality of information provided to passengers;
  - (h) the accessibility of railway services to people with disabilities;
  - (i) the carrying out of major projects to improve railway services;
  - (j) the protection of persons from dangers arising from the operation of railways.
- (5) In a case where information is also required to be provided by the Scottish Ministers, the information that is required to be provided by the Secretary of State does not include—
- (a) any information about what he wants to be achieved by Scottish railway activities not relating to cross-border services; or
  - (b) information about any public financial resources so far as they appear to him to be available, or to be likely to become available, to be applied for purposes relating only to such activities.
- (6) An obligation of the Secretary of State or the Scottish Ministers to provide information under this paragraph—
- (a) must be discharged before the date set out in the notice given under paragraph 1C or, if a later date is fixed under subparagraph (7), by that later date; but
  - (b) may be discharged by a notification that refers that Office to information previously provided under this paragraph.
- (7) The Office of Rail Regulation may at any time, by notice to each of the persons to whom the notice under paragraph 1C was given, fix a later date for the provision of information under this paragraph.
- (8) Neither—
- (a) the Secretary of State, nor
  - (b) the Scottish Ministers,
- are required to provide information for the purposes of a review at any time after a decision has been made by the Office of Rail Regulation not to proceed with the review because of an actual or expected failure of the conditions set out under paragraph 1C(3)(c) to be satisfied.
- (9) In this paragraph “railway activities” means activities consisting in, or involving, any of the following—
- (a) providing railway services;
  - (b) making available railway facilities;
  - (c) making use of such facilities;
  - (d) using railway assets;
  - (e) allowing others to use such assets.
- (10) In this paragraph “Scottish railway activities” means activities which are railway activities by reference only to—
- (a) railway services which begin and end in Scotland;

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- (b) railway services in relation to which financial assistance is provided by the Scottish Ministers and which (without falling within paragraph (a)) begin or end in Scotland;
  - (c) railway facilities that are situated in Scotland; or
  - (d) railway assets so situated.
- (11) In this paragraph “public financial resources” means any of the following—
- (a) money charged on and payable out of the Consolidated Fund;
  - (b) money provided by Parliament;
  - (c) money payable out of the Scottish Consolidated Fund.

*Suggestions about future reviews*

- 1E Where the Secretary of State or the Scottish Ministers provide the Office of Rail Regulation with information under paragraph 1D, he or they may also, at the same time, make a suggestion to that Office setting out his or their opinion about—
- (a) when the next access charges review should be undertaken in relation to both the access agreement in question and every linked licence; and
  - (b) the circumstances in which it would be appropriate to undertake such a review before that time.

*Revision of outputs and financial information*

- 1F (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that—
- (a) the information that has been provided to it by the Secretary of State or the Scottish Ministers under paragraph 1D, or
  - (b) the information, taking it all together, that has been so provided by the Secretary of State and the Scottish Ministers,
- shows that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of what he or they, or both of them, want to be achieved, that Office must so notify the Secretary of State or the Scottish Ministers or (as the case may be) each of them.
- (2) The Office of Rail Regulation must send a copy of every notification under sub-paragraph (1) to the Treasury.
- (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
- (a) may revise any information provided to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
  - (b) if the information or such a suggestion is revised, must notify the revisions to that Office.
- (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying

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the Secretary of State or Scottish Ministers in accordance with sub-paragraph (1).

- (5) Where the Office of Rail Regulation has already given a notification under this paragraph with respect to any information, it is required to give a further notification under this paragraph with respect to that information, or any revision of it, only if—
- (a) a revision has been made in response to its previous notification; and
  - (b) it has not previously given a notification in respect of an earlier revision of the information.

*Notification of likely adverse effect on interests of certain providers of railway services*

- 1G (1) If, at any time in the course of an access charges review, it appears to the Office of Rail Regulation that it is likely that the implementation of the review will adversely affect the interests of persons providing railway passenger services or of persons providing services for the carriage of goods by railway, that Office must so notify—
- (a) the Secretary of State, in the case of a review notice of which was given to him under paragraph 1C; and
  - (b) the Scottish Ministers, in the case of a review notice of which was given to them under that paragraph.
- (2) Where the Office of Rail Regulation gives a notification under sub-paragraph (1) in respect of a review relating to an access agreement to which a facility owner is a party, the notification must include—
- (a) its assessment of the measures that the facility owner is likely to be required to take, as a consequence of the implementation of the review, in order to meet obligations of his arising under the access agreement in question or under any other access agreement to which he is a party; and
  - (b) its estimate of the cost to the facility owner of taking those measures.
- (3) On being notified under sub-paragraph (1), the Secretary of State or the Scottish Ministers or (as the case may be) each of them—
- (a) may revise any information provided under paragraph 1D to the Office of Rail Regulation, together with any suggestion made under paragraph 1E; and
  - (b) if the information or such a suggestion is revised, must notify the revisions to that Office.
- (4) Any notification under sub-paragraph (3) must be given within whatever period is specified by the Office of Rail Regulation when notifying the Secretary of State or the Scottish Ministers in accordance with sub-paragraph (1).
- (5) Where the Office of Rail Regulation has already given a notification under this paragraph, it is required to give a further notification under this paragraph only if—

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- (a) information provided to it has been revised in response to its notification; and
- (b) it has not previously given a notification in respect of an earlier revision of that information.

*Duty to have regard to information about desired outputs and finances etc.*

- 1H (1) The Office of Rail Regulation must conduct an access charges review in the manner that it considers is most likely to secure that the implementation of the review will make the best and most practicable contribution to the achievement of—
- (a) what the Secretary of State wants to be achieved by railway activities in Great Britain as a whole; and
  - (b) what the Scottish Ministers want to be achieved by Scottish railway activities.
- (2) Where in the case of an access charges review the Office of Rail Regulation considers (notwithstanding any notification or revision under paragraph 1F or 1G) that the public financial resources that are or are likely to become available will be inadequate to secure the achievement of, as the case may be—
- (a) everything that the Secretary of State wants to be achieved,
  - (b) everything that the Scottish Ministers want to be achieved, or
  - (c) everything that both the Secretary of State and the Scottish Ministers want to be achieved,
- it is to be for that Office to determine, for the purposes of the review, how much of what is wanted should be achieved using (but only for the purposes for which they may be applied) all the public financial resources that it considers are or are likely to be available.
- (3) In conducting an access charges review the Office of Rail Regulation must have regard to the consequences of compliance by a facility owner who is a party to the access agreement in question with any terms—
- (a) of that agreement, or
  - (b) of any other access agreement to which that facility owner is a party,
- that it considers are relevant to a matter notified under paragraph 1G (including, in particular, a term requiring the facility owner to pay compensation or to take mitigatory measures).
- (4) In considering the matters mentioned in paragraph 1A(3), the Office of Rail Regulation must have regard to any suggestion made under paragraph 1E, and to any revision of that suggestion.
- (5) For the purposes of this paragraph—
- (a) expressions used in this paragraph and in paragraph 1D have the same meanings in this paragraph as in that;
  - (b) what the Secretary of State or the Scottish Ministers want must be determined in every case in accordance with the information provided in that case under paragraph 1D, and with any revisions notified under paragraph 1F(3)(b) or 1G(3)(b); and

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- (c) the Office of Rail Regulation must have regard to the financial information so provided and revised whenever considering what is likely to make the best and most practicable contribution to the achievement of what the Secretary of State or the Scottish Ministers want.”

*Repeal of paragraph 3*

- 3 Paragraph 3 (which provides for consideration of when the next review should be undertaken) shall cease to have effect.

*Implementation notice*

- 4 (1) In paragraph 4 (review notice), after sub-paragraph (2) insert—
  - “(2A) Before giving a review notice specifying modifications of a linked licence that are proposed for purposes connected with securing—
    - (a) what the Secretary of State has informed the Office of Rail Regulation he wants to be achieved by any railway activities, or
    - (b) what the Scottish Ministers have informed that Office they want to be achieved by any such activities,
 that Office must consult the Secretary of State or (as the case may be) those Ministers.”
- (2) In sub-paragraph (4) of that paragraph, before paragraph (a) insert—
  - “(za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
  - (zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;
  - (zc) the Treasury;”.

*Termination notice*

- 5 In paragraph 6(3) (service of termination notice), before paragraph (a) insert—
  - “(za) if the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
  - (zb) if the Scottish Ministers were given notice of the review under that paragraph, those Ministers;”.

*New review notice following objections*

- 6 In paragraph 8 (new review notices and references to Competition Competition), after sub-paragraph (4) insert—
  - “(4A) Paragraph 1H applies to the making of any determination by the Office of Rail Regulation of what should be included in a new review notice to be given under this paragraph as it applies to the conduct of an access charges review.”



*Information to be provided to Competition Commission in connection with reference*

- 7 (1) In paragraph 9 (reference to Competition Commission), after sub-paragraph (6) insert—
- “(6A) A reference to the Competition Commission under this paragraph must be accompanied by—
- (a) any information which in the case in question was provided to the Office of Rail Regulation by the Secretary of State or the Scottish Ministers under paragraph 1D;
  - (b) any information to which he or they referred in discharging the obligation imposed by that paragraph;
  - (c) any suggestion which in that case was made under paragraph 1E; and
  - (d) any revision of anything falling within paragraph (a) to (c) which has been notified to that Office under paragraph 1F or 1G.”
- (2) In sub-paragraph (7) of that paragraph, after the words “Competition Commission”, in the second place where they occur, insert “(in addition to the information and revisions mentioned in sub-paragraph (6A))”.
- (3) In sub-paragraph (8) of that paragraph, for “sub-paragraph” substitute “sub-paragraphs (6A) and”.
- (4) In sub-paragraph (9) of that paragraph (matters to be taken into account in assessing public interest), at the end insert “and to the information, suggestions and revisions mentioned in sub-paragraph (6A)”.

*Noticed of proposed relevant changes following Competition Commission report*

- 8 (1) In paragraph 12 (changes following report), after sub-paragraph (4) insert—
- “(4A) Where (after considering any representations and objections which are duly made and not withdrawn) the Office of Rail Regulation proposes to make relevant changes under this paragraph, it must give a notice to the relevant authorities which—
- (a) sets out everything that would have to be included in a notice under sub-paragraph (5) with respect to the proposed changes;
  - (b) specifies a period within which the Secretary of State, the Scottish Ministers or each of them has the opportunity of revising, in the light of those proposals, any information provided under paragraph 1D.
- (4B) If in consequence of any revision of that information that is notified to the Office of Rail Regulation within the period specified in that notice, that Office decides to modify its proposals, it must—
- (a) give a new notice with respect to the modified proposals under sub-paragraph (3); and
  - (b) comply again with sub-paragraph (4A) and this sub-paragraph before giving notice of the modified proposals to the Competition Commission.
- (4C) The relevant authorities for the purposes of sub-paragraph (4A) are each of the following—

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- (a) where the Secretary of State was given notice of the review under paragraph 1C, the Secretary of State;
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, those Ministers; and
  - (c) in each of those cases, the Treasury.”
- (2) In sub-paragraph (5) of that paragraph, after “withdrawn” insert “and any revisions of information provided under paragraph 1D that were notified within the period specified under sub-paragraph (4A)”.
- (3) After that sub-paragraph insert—
- “(5A) A notice must not be given under sub-paragraph (5) before the end of the period specified in the most recent notice given in the case in question under sub-paragraph (4A) as the period during which the Secretary of State, the Scottish Ministers or each of them has the opportunity of revising information provided under paragraph 1D.”
- (4) In sub-paragraph (6) of that paragraph (information to accompany notice sent to Competition Commission), at the end insert “and a copy of any revisions of information provided under paragraph 1D that have been notified within the period specified in the notice under sub-paragraph (4A)”.
- (5) In sub-paragraph (10) of that paragraph, for the words from “to the Authority” onwards substitute—
- “(a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State; and
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers.”

*Notice of decisions by Competition Commission*

- 9 For the last sub-paragraph of paragraph 14 (notice of relevant changes made by Competition Commission) substitute—

- “(6) As soon as practicable after making relevant changes under this paragraph, the Competition Commission must send a copy of those relevant changes—
- (a) where the Secretary of State was given notice of the review under paragraph 1C, to the Secretary of State;
  - (b) where the Scottish Ministers were given notice of the review under that paragraph, to those Ministers; and
  - (c) in each of those cases, to the Office of Rail Regulation.”

*Information to be provided to Competition Commission with proposal for relevant changes*

- 10 (1) In sub-paragraph (3) of paragraph 15 (information to be provided to Competition Commission for purpose of their functions under paragraphs 13 and 14), after the words “Competition Commission”, in the second place where they occur, insert “(in addition to the information provided in accordance with paragraph 12(5) and (6))”.
- (2) In sub-paragraph (4) of that paragraph, for “any information” substitute—
- “(a) every revision of which they have been given notice under paragraph 12(6) of information provided under paragraph 1D; and

(b) all information”.

*Commencement of Schedule*

11 (1) Subject to sub-paragraph (2), this Schedule does not apply in relation to any review in relation to which the Office of Rail Regulation has given a review notice under paragraph 4 of Schedule 4A to the 1993 Act before the commencement of this Schedule.

(2) Where—

- (a) the Office of Rail Regulation gave a review notice before the commencement of this Schedule in any case, and
- (b) that Office, following the making of objections in that case (whether before or after that commencement), is considering whether to give a new review notice under paragraph 8 of Schedule 4A to the 1993 Act or to make a reference to the Competition Commission under paragraph 9 of that Schedule,

that Office, according to what it thinks fit, may either undertake a new access charges review in accordance with that Schedule as amended by this Schedule or proceed immediately to issue the new review notice or to make the reference to that Commission.