



OFFICE *of the*
RAIL REGULATOR

**THE PERIODIC REVIEW OF
RAILTRACK'S ACCESS CHARGES:**

**PROVISIONAL CONCLUSIONS ON
STATION CHARGES AND CONSULTATION
ON THE STATION ACCESS REGIME**

The periodic review of Railtrack's access charges:

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Regulator's foreword

1. Stations provide the passenger's first point of contact with the railway. Hence they are key to general perceptions of the quality of passenger rail service. Without developments here there is little chance that the public will appreciate an improving railway.
2. The existing arrangements for operating, maintaining and renewing stations are more complex than for Railtrack's network assets. The demands on them are also different. I am therefore revisiting these arrangements to ensure that they meet the current and future needs of the railway industry, in particular those associated with franchise replacement and other significant investment programmes.
3. This consultation document addresses the charges paid by operators for access to stations and the incentives for all parties to execute their obligations. It also considers the scope for simplification of the contractual arrangements. I intend to publish my final conclusions on the periodic review in September and expect other changes to the station access conditions to be introduced before the end of the year. Together these changes will provide the framework for the station improvements required for a modern railway.

TOM WINSOR
Rail Regulator

2 June 2000

The periodic review of Railtrack's access charges:

1. Introduction

- 1.1 This document sets out the Regulator's provisional conclusions in respect of the station charges for the next price control period. It covers the charging arrangements at stations and the regime for incentivising good performance in respect of maintenance and repair. It also sets out provisional views on the development and improvement of the station access regime, drawing on work conducted for the Regulator by Lambert Smith Hampton.
- 1.2 Finally the document addresses issues of implementation. The provisional conclusions in respect of charging arrangements for stations will be implemented, subject to views expressed in response to this document, in accordance with the review provisions set out in the Station Access Conditions. Other issues discussed in this document will require amendments to the Station Access Conditions themselves, again subject to views and comments of consultees.
- 1.3 The Regulator is therefore seeking views on the provisional conclusions and other questions raised in this document. The questions for consultation are summarised in Annex A and consultation responses should be sent to:

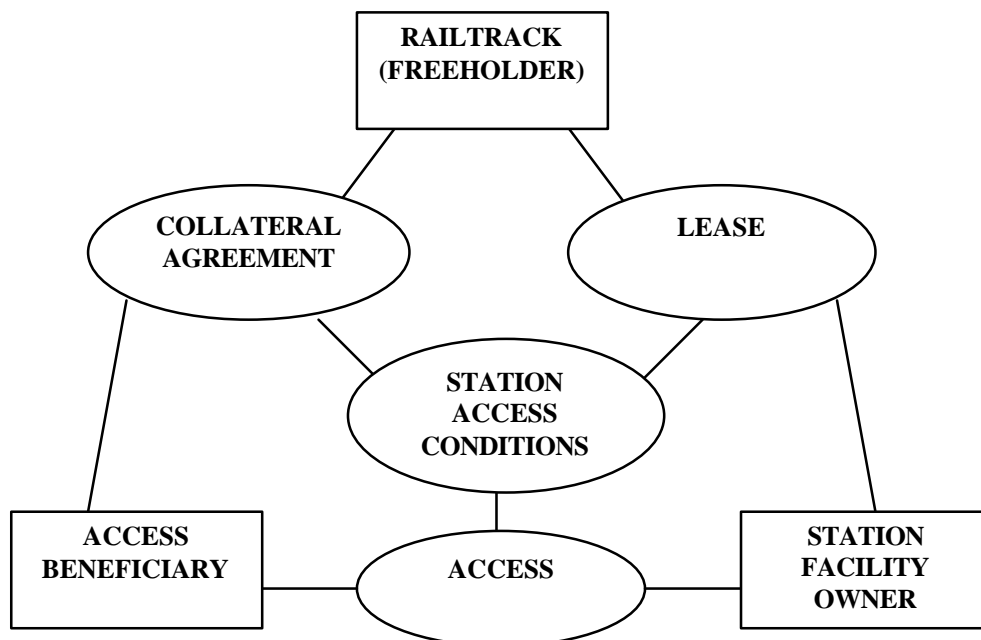
David Chapman
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by 30 June 2000. Respondents should indicate clearly if they wish all or part of their responses to remain confidential to the ORR. Otherwise they may be published in the ORR library and on its website (www.rail-reg.gov.uk) and they may be quoted from by the Regulator. Where a response is made in confidence, it should be accompanied by a statement which can be published, placed in the ORR library and on its website and quoted from by the Regulator, summarising the submission but excluding the confidential information. The Regulator may also publish the names of respondents in future documents or on the ORR's website, unless a consultee clearly indicates that they wish their name to be withheld.

Background

- 1.4 The station access regime is a complex set of documentation designed to give effect to the contractual rights and obligations of Station Facility Owners (typically Railtrack or train operators) and beneficiaries (other train operators calling at a station). Almost all stations are currently owned by Railtrack. The majority of these are leased to train operators (and are known as franchised stations). The exceptions are mainly London and regional terminal stations operated by Railtrack itself.
- 1.5 At franchised stations, in order to ensure that each party is able to exert its rights against the relevant party, a “triangular” structure of contracts was established at the time of privatisation. A station is leased by Railtrack to the Station Facility Owner (SFO), who in turn grants access to other train operator beneficiaries. A collateral agreement completes the “triangle” enabling a beneficiary to enforce its rights against Railtrack where an SFO fails to do so. The Station Access Conditions govern the relationship between the parties at the station and are incorporated into the access agreement, the lease and the collateral agreement. This contractual structure is illustrated in Figure 1.1 and was designed so that each party is able to exercise its own rights and obligations.

Figure 1.1: Contractual Structure



1.6 The Station Access Conditions comprise:

- standard provisions (the National Station Access Conditions 1996)¹ which were based on a template for all franchised stations covering common rights and obligations (e.g. station change procedures and charging arrangements); and
- “station specific annexes” covering issues particular to the station (e.g. the plan, the range of assets and services available at the station, responsibility for repair and maintenance, and a statement of condition).

1.7 There is a separate set of Station Access Conditions (Railtrack Independent Station Access Conditions) for stations where Railtrack is both the owner and operator, and where a simpler bilateral contractual structure exists.

1.8 The initial station access documentation was put in place in some haste to meet the timescales of the first round of rail franchising. The emphasis at the time was to ensure that all possible situations had been addressed.

1.9 It is therefore timely to review the operation of the station access regime and to consider possible improvements. In December 1998, the Regulator appointed the transport consultancy division of Lambert Smith Hampton (LSH), working with Hollingworth Bissell and Schofield Rail, to assist and to advise in this review. LSH has significant experience of the day-to-day problems encountered by TOCs in operating the station access arrangements, and as such is well placed to advise the Regulator on such matters. LSH undertook a detailed survey covering Railtrack and train operators, and held structured interviews with industry parties and other relevant organisations. LSH’s report to ORR² is published at the same time as this document, and is available from the ORR library and the ORR website. The methodology employed by LSH, details of those consulted and an analysis of the survey results are included in LSH’s report.

1.10 Several other documents published by the Regulator during the last few months are particularly relevant to this review. Where relevant, responses made to these documents have been reviewed and informed this document. The non-confidential

¹ Separate sets of conditions apply in England and Wales, and in Scotland.

² *Review of the Regulated Station Access Regime*, Lambert Smith Hampton, London, February 2000

responses are available from the ORR library and will shortly be available on its website. These documents are:

- the December 1999 provisional conclusions on Railtrack's revenue requirements. Chapter 11 of that document raised issues concerning the future of station access charging including the basis and structure of Long Term Charges (LTCs). The document also sought views on the effectiveness of the station performance regimes;
- LSH's conclusions on the station performance regimes which were also published in December 1999;
- the April 2000 provisional conclusions on the incentive framework. The Regulator emphasised in Chapter 11 of that document the importance of developing a robust long-term framework for enhancement, building on the work presented in Chapter 13 of his December 1999 periodic review document; and
- finally, in January 2000 the Regulator published a consultation document seeking views on the development of model clauses for track access agreements³. Whilst this document was concerned with track access agreements, a number of the issues raised are directly relevant for the development of the stations access regime. The Regulator's emerging conclusions on key issues were published in April 2000⁴.

1.11 This document presents the Regulator's provisional conclusions and current thinking on several of these issues as follows:

- provisional conclusions on station charging (Chapter 3);
- provisional conclusions on station performance regimes (Chapter 5);
- provisional conclusions on the arrangements for enhancements at stations (Chapter 6);

³ *Model Clauses for Track Access Agreements: A Consultation Document*, Office of the Rail Regulator, London, January 2000.

⁴ *Model Clauses for Track Access Agreements: Emerging Conclusions on Key Issues – A Second Consultation Document*, Office of the Rail Regulator, London, April 2000.

- current thinking on the arrangements for repair and maintenance at stations (Chapter 4);
- current thinking on model clauses for station access agreements and changes to the Station Access Conditions (Chapter 7); and
- implementation issues for station access charges as part of the periodic review and for changes to the Station Access Conditions (Chapter 8).

1.12 This document does not cover the access regime for depots. The Regulator is, however, considering the revenue which Railtrack derives from depot access as part of his single till calculations for the periodic review. The Regulator also intends to commence a review of the depot access regime later in the year.

The periodic review of Railtrack's access charges:

2. Structure of the station access regime

Contractual structure

- 2.1 The present structure of the station access regime was devised prior to rail privatisation. It was intended to define the rights and obligations, and to protect the interests, of the various parties involved in the provision of rail services at stations. The resulting documentation was somewhat complex. However, complex arrangements do not mean that the access agreements have to be difficult to understand.
- 2.2 The current “triangular” relationship (see Figure 1.1 above) between Railtrack as freeholder, the SFO as leaseholder, and the station access beneficiaries has proved robust in broad terms. However, it was devised in the light of the particular approach chosen for privatisation (i.e. short franchises, multiple-operator routes, and Railtrack taking the central role of network operator and investor). That structure is evolving, and will continue to evolve in the context of the current franchise replacement programme.
- 2.3 The triangular structure is not set in stone. For example, if passenger train operators are awarded longer franchises, they may wish to have more of a direct interest in the stations associated with that franchise. This could involve proposals for different ownership and contractual structures.
- 2.4 Alternatively, train operators and Railtrack may wish to retain the current contractual structure at stations whilst adjusting the share of responsibility for repair and maintenance. This is discussed further in Chapter 4 below.
- 2.5 Other train operators may prefer Railtrack to take over operation of certain stations, with the train operator simply taking the role of access beneficiary. Indeed, Railtrack has sought to take the initiative on this. It is also possible for third parties to enter the stations sector as freeholders or facility owners in their own right.
- 2.6 This chapter sets out some options for simplification of the contractual regime, before presenting the criteria which the Regulator would apply when considering variations from the current template.

Collateral agreements

- 2.7 Railtrack and individual users at a station enter into collateral agreements by which they are bound to:
- deliver their obligations as set out in the Station Access Conditions; and
 - perform their obligations under the relevant agreements where failure would be detrimental to the other party.
- 2.8 This enables the user to enforce on Railtrack those terms of the Station Access Conditions under which Railtrack owes it an obligation, without the involvement of the SFO.
- 2.9 Such collateral agreements may no longer be necessary. This is because the Contracts (Rights of Third Parties) Act 1999 allows a contract to contain rights for an identified third party to enforce the terms of the contract. However, the Act only applies to agreements entered into after 11 May 2000. For new agreements, the provisions within the access conditions and the station leases (where applicable) would need to be investigated to ensure that the rights for the relevant third parties would be enforceable to the same extent without the collateral agreement.

Master agreements

- 2.10 The access agreements themselves could be simplified by adopting the contractual structure currently used by freight train operators. Under this structure, freight train operators hold a master station access agreement covering access to all the stations of a particular SFO, and linking in to all the relevant station access condition annexes. This simplified structure would reduce the number of individual agreements for each train operator (though it would still be necessary to establish station specific annexes).

The structure of station access documentation

- 2.11 LSH proposed that the various elements of the station access documentation should be rearranged. LSH suggested a revised document structure of “National” Station Access Conditions, “station particulars” specific to each station (largely replacing the current station specific annexes), and revised station registers. The table in section 5.1.4.1 of the LSH report sets out where LSH believe the current elements of the station access documentation should sit in the new structure.

- 2.12 The Regulator is not yet convinced that this proposal would simplify the station documentation. However, the changes would mean the preparation and introduction of new documentation for each station. The Regulator is therefore concerned that the resource implications of such changes may be out of proportion to the benefits.
- 2.13 The Regulator would welcome comments from consultees on the LSH proposals for regrouping of the station access documentation and the associated costs.

Key questions on the structure of the regime

- 2.14 The Regulator would like to hear views from Railtrack, train operators and others on these and other ways in which the current station regime structure might evolve in the light of developments in the industry (e.g. franchise renegotiations). In particular he would welcome views on the following questions:
- Do the train operators need alterations to the structure to allow them to deliver their aspirations for franchise replacement? If so, what changes do they need and why?;
 - Do consultees consider that collateral agreements are still necessary in the light of the Contracts (Rights of Third Parties) Act 1999?
 - Do consultees agree that station access documentation could be simplified by the use of master agreements, instead of individual agreements for each station?

Criteria for the approval of variations to the template

- 2.15 If the Regulator is asked to approve a different allocation of responsibilities or contractual structure he would wish to ensure that:
- the scheme does not undermine network integrity or safety;
 - the needs of access beneficiaries, passengers and other users or potential users are adequately protected;
 - the structure of charges is cost reflective and provides appropriate incentives for good performance from all parties; and

- the scheme does not require unnecessary development of new control and monitoring systems.

2.16 Consultees are invited to comment on whether these are the appropriate criteria for considering different contractual structures. Are there other criteria which the Regulator ought to apply?

Station register

2.17 Under Part I of the Station Access Conditions, SFOs must establish and maintain station registers, for use by current and prospective access beneficiaries (as well as the Regulator and the Shadow Strategic Rail Authority (SSRA)). The registers contain similar detailed information about individual stations as is contained in the station specific annexes. They include details of existing agreements affecting a station, works taking place or agreed to take place, the condition of the station and other relevant information. Details of existing agreements had to be fully up to date by 1 November 1999.

2.18 In the survey conducted by LSH as part of their review of the station access regime, information was sought about the completion and use of station registers. Of twenty SFOs who responded to the questionnaire, 12 had not established all of their station registers. However, no one had ever asked to see any of the registers which the respondents were supposed to have established.

2.19 LSH has recommended a slightly amended role for station registers. It proposes that certain elements of the station annexes, including the inventory and details of existing agreements, should be transferred to the station register. Other information currently included in the register would no longer be required. Station operators would then have a specified period to bring station registers up to date and would have to certify that they had done so. LSH states that this would avoid the need for formal amendment of the Station Access Conditions every time an item on the inventory is changed. Station operators would, of course, have to keep the station register up to date. Again, the Regulator notes the potential cost of such changes and would welcome comments from consultees on the following questions:

- What role do respondents think station registers play? Is any use made of them, for example, by third parties such as PTEs or local authorities (bearing in mind that they do not explicitly have rights of access to them)? Is their limited use a result of their incompleteness or lack of awareness on the part of

potential users? What could be done about this? Who else should have access to them?

- Should station registers (and the Station Access Conditions) be amended as proposed by LSH? Are there clear benefits that would outweigh the implementation costs? What should be the penalty for non-compliance with the requirement to keep station registers up-to-date?

Freight access to stations

- 2.20 Some stations are described as “single user” (i.e. where a station is leased to a train operator but there are currently no other passenger access beneficiaries). Almost invariably, there will be an access agreement for access by freight train services. This therefore requires regulatory scrutiny of the agreement itself, the Station Access Conditions and the station specific annexes under section 18 of the Railways Act 1993. At some stations, freight usage is significant, for example for postal services. At many, however, access is needed purely for train crew purposes, and the access charge is consequently minimal or insignificant. At some stations, freight operators also require access for charter services.
- 2.21 The Regulator has a duty in section 4 of the Railways Act 1993 to impose on railway operators the minimum restrictions consistent with the performance of his functions. It is difficult to see how the application of the full station access documentation for limited use of stations by non-passenger operators is consistent with the Regulator’s section 4 duties. ORR has, for example, developed a short two page contract for “one off” access to a station, such as a station stop for a single charter train.
- 2.22 The Regulator is therefore considering whether a simpler contractual arrangement, providing the necessary protections appropriate to the nature of usage of the station, might apply to freight operators and some charter arrangements. The Regulator considers that a simple standard form contract between each freight train operator and SFO covering access to all of the SFO stations may be sufficient, without incorporating the full provisions of the Station Access Conditions. The contract could include a provision enabling the freight train operator to opt into certain parts of the Station Access Conditions at a particular station if the parties consider that to be appropriate. Alternatively it could include provisions requiring the train operator to be consulted on major changes to the station which could materially affect its access rights. Key elements of the Station Access Conditions, such as the LTC, would need to be incorporated.

- 2.23 The Regulator would like to hear the views, in particular from freight operators, on whether they agree that a simpler contractual arrangement, such as that suggested above, would be sufficient for their purposes. If so, what are the minimum terms that such a contract should contain?

Independent Railtrack stations

- 2.24 A number of train operators have expressed general concern to the Regulator about the operation of stations by Railtrack. The concern is that Railtrack has an undue focus on the commercial exploitation of stations. Operators argue that this is at the expense of the primary function of stations (i.e. providing passengers with access to trains). Whilst sensible and appropriate retail development of stations for the use of passengers is to be welcomed, the Regulator would be concerned if this meant that use of the station for its primary purpose was being inhibited.
- 2.25 The Regulator is also aware that Railtrack is considering expanding its current retail operation at independent stations to other franchised stations. Railtrack believes there are significant economies of scale and business opportunities to be exploited through such expansion. Railtrack has stated that it does not intend to take operational control of more stations unless that is what operators desire.
- 2.26 However, Railtrack is not required to grant station leases and the original leases were set to expire at the same time as the initial franchises. Hence if a franchise is replaced as a result of the current franchise replacement process the lease may expire in the early years of the new franchise. If the lease were not renewed, Railtrack would then become the SFO in respect of such stations.
- 2.27 Under the Railways Act 1993, the Regulator cannot direct the owner of a railway facility to enter into a lease. He can, however, direct a facility owner to enter into an access agreement. If a train operator fails to obtain renewal of a station lease from Railtrack, it will require a station access agreement approved by the Regulator. Train operators will clearly want to ensure that the terms of that station access agreement are sufficient to protect their commercial interests. Where a train operator is unable to agree appropriate terms, it can seek a direction from the Regulator under section 17 of the Railways Act 1993, requiring Railtrack to enter into an access agreement on such terms as he directs.

2.28 In the light of the above, the Regulator is considering whether the Independent Railtrack Station Access Conditions⁵ contain sufficient rights and protections for train operators and their passengers at any stations where Railtrack is the SFO. He would welcome views on whether, and if so how, these Station Access Conditions might be strengthened to better protect the interests of users and passengers.

⁵ *The Railtrack Independent Station Access Conditions 1996 Edition.*

The periodic review of Railtrack's access charges:

3. *Station charges*

- 3.1 The December 1999 periodic review document consulted on the arrangements for station access charging. This Chapter builds on that document and the responses to it, and presents the Regulator's provisional conclusions on the structure of station access charges. It also discusses the methodology for determining the appropriate level of the LTC for each station. The absolute levels of charges will be discussed further in the July draft conclusions on the periodic review.
- 3.2 In addition to the issues which were discussed in the December 1999 periodic review document, this Chapter considers issues relating to Total Variable Charges (and the estimation of Qualifying Expenditure (QX)) and to charges at stations where Railtrack is the SFO.

The structure of station charges

- 3.3 The Regulator presently proposes to retain the fixed station specific charge and to include an allowance for property income from the station in the estimation of the charge. This will, in the Regulator's view, retain the required simplicity and ensure that the charges are not higher than necessary to cover maintenance and renewal work when there are other sources of station income. There was almost unanimous support for this approach from respondents to the December 1999 periodic review document.
- 3.4 The Regulator does not propose to smooth individual station charges by sharing property receipts from groups of stations. This would reduce transparency and the Regulator is not currently of the opinion that the additional complexity would bring significant benefits. However, he is working with Railtrack to understand any implications of the proposed approach.
- 3.5 Railtrack has proposed a wider review of the methodology for setting LTCs, based on the station condition score for each station, rather than the station category as proposed in the December 1999 document. This would have the benefit of removing the potential distortions arising from the assessment of the Modern Equivalent Asset Values (MEAVs) for all stations in 1995 (which was supported by many TOCs who responded to the December 1999 periodic review document). It would, however, be relatively complex to introduce.

- 3.6 Currently the Regulator considers that the simplicity of the approach which he outlined in the December document remains attractive. He has therefore asked Railtrack to determine, using a weighting based on the number of platforms, lifts and escalators at each station within each station category, an appropriate LTC for each station. Railtrack is currently using the station categorisation at 1 April 2000. The Regulator would not expect that changes to the categorisation during the control period would effect the LTC.
- 3.7 Railtrack has already undertaken this work for one operator (Central Trains, which is the SFO for a wide mix of station types and approximately 10% of the stations on the network) but has been asked to roll the analysis out over the rest of the network. Several respondents to the Regulator's December 1999 periodic review document expressed concern at the widely different LTCs between zones for stations with similar characteristics, hence the importance of broadening this analysis before a final decision is reached.
- 3.8 Consultees views on this approach would be welcomed.

Operating costs

- 3.9 As well as recovering the LTC from users of the station, the station facility owner is entitled to charge for its operation. The Total Variable Charges are based on the Qualifying Expenditure (QX) set out in the Annexes to the National and Railtrack Independent Station Access Conditions. Users of the station are entitled to full information on the process used for estimating the QX which includes:
- maintenance and renewal costs as incurred by the SFO in carrying out its maintenance and renewal duties;
 - a management fee and overhead costs;
 - insurance costs;
 - professional advice costs;
 - taxes paid by the SFO in respect of the station.

Management fees

3.10 The Regulator must approve the management fee⁶. However, the Regulator has not received regular submissions from all SFOs. The Regulator would like to understand from consultees:

- why he has not been asked to approve management fees;
- why station users have not enforced their rights under the Station Access Conditions; and
- whether changes to those conditions are required either to remove the obligation or to provide users of stations with more specific rights to Regulatory review.

3.11 One option would be for the Regulator's approval right to be replaced with a right for operators or SFOs to appeal to the Regulator in case of dispute. This has attractions given the limited use made of the Regulator's approval process to date. The Regulator would welcome comments from consultees on this concept.

Fixed or emerging costs

3.12 Operating charges may be levied either on the basis of emerging costs or on an estimate developed at the beginning of each financial year. The options therefore allow users of the station to elect for certainty of their costs or for more cost reflective charges. In addition, arrangements have been introduced at most Railtrack independent stations which allow the parties to agree a fixed fee for several years and for Railtrack to receive a risk premium for this. However, there is no provision in the National Station Access Conditions 1996 (for franchised stations) which provides for fixed charges for more than one year.

3.13 Where charges are determined on a yearly basis, there is little incentive for an SFO to improve its efficiency, except where the SFO is also a user of the station. Setting charges for a longer period could give a stronger incentive and greater certainty for

⁶ In the National Station Access Conditions the Regulator was required to approve the management fee for the initial access agreement for each station. His initial approval was given for a single year, and thereafter the approvals have been required each year. Similarly for Railtrack Independent Stations, the Regulator was required to approve the management fee before the Station Access Conditions became effective and that approval was granted only for a single year. Subsequent approvals have also been for a single year.

access beneficiaries. The Regulator would therefore welcome views on whether the National Station Access Conditions should include a provision for enabling operating charges to be fixed for longer than one year.

Railtrack independent stations

Profit element

- 3.14 An annual premium of 3.5% of the QX has been approved as a profit element for Railtrack. The Regulator would wish to understand the risks Railtrack is bearing in running the particular station before determining an appropriate management fee in the future.
- 3.15 If such premia continue to be paid, the Regulator would also need to consider whether this should be reflected in his estimation of Railtrack's income for the Single Till analysis as part of the periodic review. This would mean that all operators would benefit from a small reduction in their charges. An alternative would be to require users of the Railtrack independent stations to pay the specified QX.

Qualifying expenditure

- 3.16 As noted above, access charges at all stations are based on the asset value of the station with an allowance for expected property income divided between all access beneficiaries. Railtrack has proposed that a new approach should be adopted for its independent stations. In its proposal, property income at independent stations would not be used to reduce the long term charges, but instead to offset all QX. Railtrack proposes that expected differences between the property income and QX expenditure should then be included in the single till estimation and out performance dealt with through the Property Allowance Scheme. It suggests that this will give the following benefits:
- Railtrack would focus on providing the appropriate level of service at each Railtrack independent station, using TOC requirements as a minimum standard and providing higher levels of service, where it deems appropriate, using property income;
 - Railtrack is in the best position to take account of the service requirements of all users of these stations, including those who are not travelling; and

- resources of both parties would be released from the annual re-negotiation of QX charges.
- 3.17 Operators on the other hand have argued strongly that Railtrack's criteria for service standards neither achieve an appropriate balance between the needs of all users nor accommodate travellers appropriately.
- 3.18 The Regulator's current view is that Railtrack's proposals do not improve on the existing situation in that:
- Railtrack would still need to consult all TOCs using the station to establish their minimum requirements, and hence the reduction in negotiating time would not be significant; and
 - balancing traveller and non-traveller requirements is important, but TOCs are also able to take this into account and do so at stations which they manage.
- 3.19 In addition, the Regulator believes that if non-travellers (e.g. businesses renting property within the station) require additional facilities at stations these should only be provided if it is commercially appropriate for Railtrack to do so. If these users are willing to pay for the new services they should do so and Railtrack should provide the additional services through its additional property revenues. Station access charges should therefore not be affected.
- 3.20 Consultees views on Railtrack's proposals for using property revenues to cover operating expenditure at Railtrack independent stations would be welcomed.

The periodic review of Railtrack's access charges:

4. Repair and maintenance responsibilities

- 4.1 This chapter considers the potential for clarification and/or re-distribution of station repair and maintenance responsibilities. This issue may be of particular importance as operators seek to negotiate replacement franchises with the SSRA.
- 4.2 The second section of this chapter discusses station facility standards and self help remedies. Finally LSH's other proposals in relation to repair and maintenance are presented.

Allocation of responsibilities between the parties

- 4.3 The current division of repair and maintenance responsibilities (set out in the Appendices 4 and 5 of Annex 1 to the National Station Access Conditions 1996) has caused difficulties for some train operators. The Regulator's view is that clarification and some adjustment of repair and maintenance responsibilities is now appropriate.
- 4.4 Experience has shown that the current split of responsibility is unhelpful (with different parties responsible for maintenance and renewal for example). In some cases, responsibility is placed exclusively with the SFO. In others, full responsibility is placed with Railtrack. A possible revision to the relevant appendices has been developed by Railtrack and is attached in Annex B of this document. Broadly, Railtrack has sought to place the responsibility for maintenance, repair and renewal of a particular item with the same party. The proposal also introduces clear responsibilities for regular testing of equipment, and distinguishes between repair and renewal but is not completely explicit in this area. The proposal would require amendments to the Station Access Conditions.
- 4.5 Railtrack's proposal assumes the same division of responsibilities at all stations, regardless of size. This consistency may aid interpretation and application. However, LSH concluded that some circumstances would make a different division of responsibilities appropriate and proposed that the responsibilities should be divided in different ways for the following categories of station:
- a simple halt – the station operator would be responsible for all work excluding major structural elements such as footbridges over the track;

- complex stations – current split of responsibilities would be retained, but with the station operator taking more responsibility for passenger interface assets such as customer information systems; and
- sub-surface stations – Railtrack would take the majority of the responsibility, except light maintenance and cleaning.

- 4.6 An alternative might be to split responsibilities according to station category.
- 4.7 LSH also proposed that the split could be customised to deal with local circumstances or aspirations of one of the access parties, for example in connection with a longer franchise arrangement.
- 4.8 Adjustment of repair and maintenance responsibilities may result in changes in the distribution of the cost of maintenance and renewal work at stations. The Regulator would expect such changes to be reflected in the LTC (and therefore the lease charges paid by station operators to Railtrack and the charges paid to the SFO by beneficiaries).
- 4.9 The Regulator would welcome comments from consultees on the following questions:
- Is the allocation of responsibility proposed by Railtrack the most appropriate? In particular, are any of the proposed amendments to the current split of responsibility inappropriate, and, if so, specifically which amendments and why?
 - Is it necessary or appropriate to reflect the size or category of station in the division of repair and maintenance responsibilities and, if so, which option is more appropriate? Alternatively, is some other form of categorisation appropriate?
 - In determining the appropriate default allocation of responsibility the Regulator is considering current responsibilities and risks, the relative benefits to passengers, the efficiency of any arrangements, and the potential for development. Are there other criteria which he should consider?
- 4.10 Railtrack and train operators may wish to “customise” the standard repair and maintenance arrangements to meet their aspirations as a result of longer franchises. Such customisation would require regulatory approval under the Station Access

Conditions change procedure. The Regulator is willing to consider such proposals for customisation on their merits, but would want to ensure that the interests and rights of access beneficiaries, passengers and other users are appropriately protected. He would expect that the:

- scheme would not undermine network integrity or safety;
- benefits of the scheme should at least equate to those of the standard allocation, focusing on the outputs to be achieved and value for money;
- charging arrangements reflected the responsibilities of the parties; and
- scheme would provide a clear allocation of responsibilities.

4.11 In order that the Regulator could review proposals put before him he would encourage parties to bring forward their ideas at an early stage for discussion and consideration of the regulatory issues.

4.12 The Regulator would welcome views on these proposed criteria for the approval of alternative allocations of repair and maintenance responsibility, and whether there are any other factors he should take into account.

The standard of repair to be achieved

4.13 The standard of maintenance and repair to be achieved by Railtrack under the National Station Access Conditions is set out in Condition D4.1. Those of the SFO are set out in Condition D4.2. There are similar obligations on Railtrack under Condition 22 of the Railtrack Independent Station Access Conditions. The obligations include the requirement that “renewal shall be undertaken...where it is reasonably necessary and the most economic method of repair”. Condition 7 of Railtrack’s Network Licence requires Railtrack, among other things, to maintain and renew and enhance assets (including franchised station assets) in accordance with best practice and in a timely, economic and efficient manner to satisfy the reasonable requirements of train operators and funders. The Regulator considers that the standard required under the Station Access Conditions should be the same as that under Condition 7 of Railtrack’s network licence.

4.14 The Regulator is also considering whether there should be more general standards of conduct and behaviour for all parties under the Station Access Conditions, and would

welcome views of consultees on this issue. For example, as part of his work on model clauses for track access agreements the Regulator is minded to establish a model clause requiring facility owners and train operators to show a degree of skill expected of a skilled and experienced owner or operator. For stations, such a condition might be along the following lines:

“In carrying out its obligations under these Station Access Conditions, including the specific annexes, each party shall act with due efficiency and economy, in a timely manner, including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced freeholder, facility owner or access beneficiary.”

4.15 The Regulator would welcome comments on this approach.

Station facilities standards

4.16 LSH comments that there are currently no accepted cross-industry standards for stations. It is concerned that this can give rise to problems where a station is used by train operators with widely differing requirements. LSH encouraged acceptance of all stations into defined categories based on the range of facilities present (following Railtrack's proposals in “Developing Modern Facilities at Stations”).

4.17 The Regulator agrees with the principle that stations should be divided into a number of categories for the purpose of monitoring defined outputs and targeted improvements. He considers that it may be appropriate for the station categories developed by Railtrack to be incorporated into the Station Access Conditions to define the service standards for each category of station and to make these enforceable by the access parties when renewal takes place.

4.18 The Regulator would welcome views of consultees on Railtrack's proposed station categories and their use in defining service standards in the Station Access Conditions.

“Self help” remedies

4.19 The Regulator is aware that little use has been made of the existing “self help” remedies in Part D4 and Part L2 of the National Station Access Conditions and condition 68 of the Railtrack Independent Station Access Conditions. These self help remedies provide that, where Railtrack or the SFO has failed to carry out work or

provide services as required under their contractual obligations, a station access beneficiary may, after giving notice and waiting a “reasonable” period, undertake the work or procure the services themselves. The beneficiary may reclaim the cost from Railtrack or the SFO (as appropriate) or, in the case of services, deduct the relevant amount from the daily access charge.

- 4.20 The Regulator considers that these provisions should be simplified and strengthened. The provisions need to make it clear that access charge rebates or compensation can be claimed for all reasonable costs associated with undertaking and procuring both works and services (currently only services are specified). The provisions should also be reciprocal, so that where an SFO has failed to carry out its obligations to Railtrack, Railtrack may undertake the necessary work and charge the SFO the associated reasonable costs.
- 4.21 Consultees views are requested on the Regulator’s proposals to simplify, strengthen and make reciprocal the self help remedies in the Station Access Conditions.

Other issues

- 4.22 LSH made several other recommendations in connection with repair and maintenance. The Regulator would welcome the views of consultees on these proposals which are that:
- major renewal work should be subject to the station change procedure;
 - there should be a co-ordinated (rather than unified) fault recording system, based on efficient and effective links between different local systems;
 - new output base service delivery contracts should be established on a “back-to-back” basis with the SFO’s obligations to its beneficiaries; and
 - there should be an obligation under the Station Access Conditions that the station condition statement is updated following the completion of station repair or enhancement works.

The periodic review of Railtrack's access charges:

5. *Performance regimes*

5.1 Chapter 11 of the December 1999 periodic review document outlined LSH's initial (April 1999) report on the operation of station performance regimes. The report considered the:

- effectiveness of the abatement regimes;
- use of the regimes;
- interaction of the regimes with third party contracts and franchise obligations; and
- potential scope of the regimes.

5.2 The Regulator's provisional conclusions in respect of these regimes were that they:

- were limited in scope;
- lacked clarity in terms of the definition of rights; and
- were ineffective, in part because the value of the abatements was low and did not correspond with the impact of the failure or cost of repairs of the failed amenity or service.

5.3 Most respondents to the consultation agreed that the regimes were too complicated and provided insufficient compensation for failure. In addition, there was support for a "symmetrical" regime of incentives and penalties, although some respondents argued against bonuses on the basis that this would reward a standard of performance already paid for through station access charges.

5.4 Currently, at franchised stations equipment and service failures which will result in the abatement of daily charges are defined, and a percentage abatement of charges is set for each type of failure. The total abatement available to any particular station user for any particular day is capped at the level of that users daily charge. This system of abatements appears to be ineffective because:

- it is complex;
- the financial incentives are insufficient to warrant train operators allocating sufficient resources to its effective operation; and
- the list of included assets (in Annex 6 of the National Station Access Conditions) is incomplete or unclear (e.g. station lighting is currently excluded from the regime).

5.5 The Regulator urged Railtrack and operators to develop their own proposals for change to the regimes in his December 1999 periodic review document. When such arrangements are submitted to him for approval the Regulator expects to consider the following criteria:

- the regime should be easy to understand and simple to administer;
- the default definition of failure should be related to outputs (i.e. capability of the asset);
- failure should be easily measurable and the asset should be systematically monitored;
- the regime should provide specified levels of compensation for specified failures;
- compensation levels should reflect the impact of the particular failure on the train operator's business and the wider impact on passengers and should also provide an effective incentive to remedy equipment or service failure; and
- the regime should not change the value of Railtrack's expected cash-flows.

5.6 The Regulator would welcome views from consultees on whether these are the appropriate criteria for him to apply and whether there are additional criteria which he should take into account.

6. Facilitating enhancement

- 6.1 Stations present a major marketing opportunity for the rail network. They are the only element of the infrastructure which is directly experienced by the passenger and hence operators view the station environment as particularly important. In addition, as travel patterns and population distributions change and as new services are introduced, new station locations may be required to give passengers convenient access to the network.
- 6.2 As well as being a marketing opportunity in encouraging use of the railway, stations are also important areas for generating non-fare revenue (e.g. from property concessions and car parks).
- 6.3 Given this background, operators often see station development and enhancement as key to the value of their franchise. At the same time, Railtrack considers its station portfolio as an important generator of income (although any unexpected income is shared under the Property Allowance Scheme). Several of the proposals received by the SSRA in the re-franchising process have included new or refurbished stations. It is important therefore, that the regulatory approach to investment at stations is clear to all parties – to ensure efficient project development and financing.
- 6.4 The following issues are considered in more detail in this chapter:
- a tariff for small-scale enhancements;
 - third party enhancements; and
 - amendments to the change provisions in the Station Access Conditions and revisions to the Regulator’s 1997 “Fair Deal “ document.

Tariff for minor enhancements

- 6.5 In the December 1999 periodic review document the Regulator proposed that one option for facilitating enhancement of stations would be for Railtrack to offer a standard rate for minor enhancements at stations. This would reduce the complexity and time involved in the development of station change proposals. There was a varied response to this proposal. Some respondents were in favour of reducing the transaction cost of negotiating a new enhancement through the tariff approach. Others noted that the tariff might not provide the most efficient price for a specific project

and could also require so many different components to reflect varying circumstances that it would be too complex for ease of use. In the light of these arguments the Regulator does not propose to require Railtrack to publish such tariffs.

Third party enhancement

6.6 Some SFOs have already undertaken station enhancements through third party contractors rather than Railtrack. This is possible because neither the lease nor the Station Access Conditions specifically requires the SFO to use Railtrack as contractor. Hence SFOs can tender the work competitively.

6.7 The Regulator believes that, in order for the most efficient cost to be achieved for these station improvement projects, such competition should be allowed to continue. However since only a few SFOs have made significant use of third party contractors, he would be interested to hear from consultees about:

- their views, specifically in relation to the use of the Contracts (Rights of Third Parties) Act 1999, on the process for enhancing stations as set out in the Station Access Conditions; and
- whether they believe that improvements could be made to increase transparency and reduce the transaction costs involved in the process (this issue is considered further later in this chapter).

6.8 In the April 2000 periodic review document the Regulator noted operators strong interest in playing a greater role in the development and finance of station enhancements. This could include purchase of existing stations from Railtrack or the creation of special purpose vehicles to project manage and finance enhancements. The Regulator set out some of the key principles for dealing with SPVs in relation to track enhancement and to new connections. He also noted that there was greater scope for third parties to undertake station development. In fact, completely new stations have already been developed by third parties (e.g. Prestwick International Airport Station was developed on land for which Railtrack owns the freehold, but PIK Ltd. has leased the land and owns the station and platform buildings, and provides access to ScotRail under a regulated station access agreement).

- 6.9 The key issues for third party development of stations are the:
- relationship with Railtrack and any track changes required for the construction of the station; and
 - ownership of, access to, and charges for the new station.
- 6.10 The construction of new stations is likely to require access to and across, and potentially alteration of, the track. This will necessitate similar relationships between the third party and Railtrack as those for new connections, which were discussed in the April 2000 periodic review document.
- 6.11 Just as for the development of new track capacity, the Regulator understands that operators wish to play a greater role in the development of stations to ensure that they are developed on time, to specification and for a fixed price. Operators may also however, wish to play a greater role in the ongoing maintenance of a newly developed station. In this case, the Regulator considers that it may not be appropriate for Railtrack to have the opportunity to match any proposals made by a third party. In any case, Railtrack would be required to provide the parties with information they require to develop and cost the enhancement.
- 6.12 In some cases Railtrack will own the freehold to the land on which the station is to be built. In these, Railtrack may be required, in the interests of efficient development of the railway, to enter into a long-term contractual arrangement with the relevant party.
- 6.13 Either the third party or its major customer could be the facility owner for the purposes of the Railways Act. For the major customer to be designated as the facility owner it would require a lease of the station from the third party. The facility owner would then be required to provide access to the station to all operators seeking rights under the terms of the Station Access Conditions.
- 6.14 The LTC for the station would be determined by the cost of its development. The way in which these charges are controlled would need to take account of the extent of competition for the development and financing of the project. For example, in some cases it would be appropriate for charges to remain fixed beyond the periodic review cycle.

6.15 The Regulator is currently of the opinion that his proposed policy statement on enhancements should cover the enhancement of stations and would welcome comments from consultees on the arrangements he has proposed.

Station change

6.16 The LSH report identifies a number of serious concerns relating to the operation of the station change procedures under Parts B and C of the Station Access Conditions, including:

- the procedures are too cumbersome, complex and confusing;
- they act as an impediment to station change;
- there is some evidence that third parties have been deterred from undertaking improvement schemes;
- the timescales for consultation are considered to be too long, and the process is much the same regardless of the materiality of the issue; and
- the processes for obtaining other kinds of consents, such as minor closure certificates or planning consents, do not dovetail well with the station change procedure.

6.17 LSH recommend that new “streamlined” and unified change processes should replace the current station change procedures, as follows:

- no procedure – where minor or temporary changes which do not affect common station amenities are being undertaken (much as now);
- minor change procedure – where minor changes of a beneficial nature are being undertaken; or
- major change procedure – for changes which have a significant impact on the operation of the station.

6.18 LSH has presented some examples of works which could be covered by the different change procedures but not given a general description for each. The examples it gives are:

- no procedure – letting of commercial premises which do not affect common station amenities; letting of commercial advertising space; provision of summer flower displays;
- minor change procedure – installation of help points; upgrading of toilets; minor change to access; and
- major change procedure – commercial development; platform extensions; significant reduction on concourse area; closure or replacement of ticket offices and travel centres.

6.19 These proposals are set out in more detail in section 5.3.5 of the LSH report and respondents are encouraged to examine these details before commenting.

6.20 The minor change procedure would operate as a notification and objection process, and therefore would not require the proposer to obtain individual consents from all the parties. The major change procedure would work in stages:

- first, agreement “in outline” in advance of development of a proposal;
- second, an interim proposal to enable other consents, such as planning consents, to be actively sought; and
- finally a full proposal, which would have to be completed before works could start.

6.21 Currently there is no explicit link between the network change procedure and that of station change. Since many major projects involve both network and station change, the Regulator is considering developing a specific link between the two regimes. He would welcome comments on whether this could be made to work in practice and whether or not it would provide any significant benefits.

6.22 Consultees views are sought on whether the LSH proposals would be an appropriate simplification of the regime. Consultees views are also sought on the following questions.

- What kinds of changes should fall under each change process and how should these be defined, bearing in mind the need to strike a balance between the

speed and simplicity of the process and the importance of protecting the rights of those likely to be affected by any particular change?

- Would it be appropriate to permit more changes to take place without going through the contractual consultation process? If so, what kind of changes should be permitted, and how can the interests of access parties and their customers be protected?
- Would it be appropriate to include a financial threshold, such that any change below the threshold (of, say, £50,000) would be excluded from the change procedure? If so, is this an appropriate financial threshold?
- Would a binding arbitration process allowing all operators benefiting from an enhancement to contribute to its cost be appropriate? If so, are the proposed arrangements satisfactory?

6.23 The Regulator proposes to produce operational guidelines on how to carry out station change later in the year. These will highlight key requirements and timescales.

Involvement of other interested parties

6.24 Another issue raised in connection with station change is that of involvement of other interested parties (e.g. PTEs and developers). Currently third parties are unable to promote station changes. LSH recommend the introduction of specific obligations in the franchise agreement on Railtrack and train operators to consult specified third parties on change proposals and to advise station tenants of proposals affecting their operation. An alternative might be to give them third party rights under the Station Access Conditions.

6.25 Developers have argued that the station change procedure is bureaucratic and slow, and that this disadvantages the railway over other development opportunities in competing for development finance. Whilst the Regulator recognises that the station access regime has certain procedural requirements, he does not consider that the process is unduly burdensome when compared with other procedures which developers must generally go through when undertaking development work (such as obtaining planning permission and other similar consents). In addition he considers that, if the simplifications proposed by LSH and this consultation document are implemented, the procedural requirements would be minimised whilst still being consistent with the protection of the interests of operators and their customers.

6.26 The Regulator would welcome consultees comments on his proposal to give other interested parties the right to introduce station change proposals.

Revision of “A Fair Deal”

6.27 In the light of the new arrangements and policies proposed above, the Regulator intends to revise his published guidance on changes to LTCs (“A Fair Deal”, ORR, November 1998). He would expect to publish this revised guidance by the end of the year 2000.

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7. *Other issues*

Development of model clauses

- 7.1 The Regulator has been developing model clauses for track access agreements and has recently published his emerging conclusions on key issues⁷. The Regulator has also stated his intention to develop model clauses for station access agreements in due course.
- 7.2 In the station access regime, the Station Access Conditions – rather than the station access agreements – are central to the definition of the rights acquired under the station lease and access agreements. They govern the terms of the relationship between the station freeholder, the facility owner and the access beneficiaries. It is therefore appropriate that the Regulator focuses initially on implementing much needed improvements to the Station Access Conditions, before giving consideration as to the form and content of model clauses for station access agreements which he expects to do in the autumn 2000.
- 7.3 In developing such model clauses, the Regulator will want to carry over the relevant conclusions of his work on model clauses for track access agreements.

Compliance issues and guidance notes

- 7.4 LSH considered ORR and SSRA concerns about compliance with the current stations regime. Particular concerns focussed on procedural matters, such as the failure to follow the change procedures, inaccurate completion of paperwork and agreements, and non-submission of documents for ORR's public register.
- 7.5 LSH recommended that the Regulator continues to provide detailed guidance notes covering current or emerging issues, and that the ORR and SSRA work to clarify each organisation's role in the station access regime.
- 7.6 ORR and SSRA agree that guidance should be available on the requirements of regulatory procedures, such as the process for approving new or amended access rights and will provide such guidance. However, it is the responsibility of regulated

⁷ *Model Clauses for Track Access Agreements: Emerging Conclusions on Key Issues – A second Consultation Document*, Office of the Rail Regulator, London, April 2000.

companies to ensure that they comply with their contractual and regulatory obligations. With a simplified regime, the Regulator does not believe there can be any excuse for not fully complying with procedural or documentation requirements. These requirements were put in place for the protection of contracting parties and, ultimately, their customers. In this area, as in others, the Regulator will be looking to industry parties to put in place the necessary compliance management and monitoring arrangements to ensure that they are fully meeting their respective obligations.

7.7 Currently, disputes under the Station Access Conditions are dealt with under the Access Dispute Resolution Rules, although very few formal disputes have been tabled. The Regulator would welcome comments on the following questions:

- Do station access parties think that the existing remedies under the Station Access Conditions have been fully effective in dealing with contractual disputes? If not, why not?
- How could the remedies be made more effective?
- Should any alternative remedies be available?

Link to code of practice for passengers with disabilities

7.8 The Regulator is currently revising his code of practice for disabled travellers. This is an important document because it sets the standards and parameters for the provision of facilities and services to disabled passengers. Compliance with the code is a licence obligation for all passenger train operators and station operators (including Railtrack). Companies must also now be aware of their obligations under the Disability Discrimination Act 1995.

7.9 There is no specific licence obligation in respect of accessibility or the Regulator's code in Railtrack's network licence. However, under Condition 7 of its network licence, Railtrack is required, amongst other things, to maintain, renew and enhance the network (including franchised station assets) in accordance with best practice and in a timely, economic and efficient manner to satisfy the reasonable requirements of train operators and funders. In this context, train operators reasonable requirements would need to be consistent with the Regulator's code and, where relevant, their obligations under the Disability Discrimination Act 1995.

- 7.10 The Station Access Conditions place certain obligations on Railtrack in respect of the maintenance and repair of station equipment and station elements (as specified in the station annexes). The definition of repair includes an obligation on Railtrack to undertake any work required “so that the Station is safe for operation and/or use in compliance with the requirements of any Statute”. This provision would appear to require Railtrack to comply with the provisions of the Disability Discrimination Act 1995 when undertaking repairs. Whilst compliance with the Regulator’s code is not a requirement under the Disability Discrimination Act 1995, adherence to the code should provide evidence that a company has taken “reasonable” steps to adapt its services to the needs of disabled people.
- 7.11 The Regulator would welcome comments on whether explicit obligations on the access parties in relation to accessibility requirements should be introduced in the Station Access Conditions. Alternatively, should there be explicit obligations on Railtrack in its network licence to comply with the Regulator’s code, or is it sufficient to rely on Condition 7?

Industry committee

- 7.12 LSH noted that there is no current industry forum dealing solely with station access matters and that such a forum might provide an opportunity for evolution of the access regime (although, as noted above, disputes under the station access regime can be referred for resolution under the Access Dispute Resolution Rules). LSH propose the establishment of an industry committee, to provide guidance on the operation of the station access regime, to identify emerging issues, and to promulgate best practice and provide training.
- 7.13 The Regulator agrees that there may be a place for such a forum but recognises that it would require industry commitment and resources to make it work. Its success would therefore be dependent on whether the industry believed that a standing committee would add value and provide a useful forum for debate. Its remit would need to be scrutinised by the Regulator both in respect of his role in relation to the Station Access Conditions, and in respect of his powers under the Competition Act 1998.
- 7.14 The Regulator would like to hear from consultees on:
- whether they see a role for a standing committee to pool ideas and provide guidance about the operation of the station access regime;

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- if so, who should organise the committee, and how should it be established and paid for; and
- whether they would be prepared to participate.

8. Implementation & next steps

8.1 Chapter 13 of the April 2000 periodic review document set out the timetable for finalising and implementing the periodic review. It is appropriate that the changes to Station Access Conditions are introduced to the same timetable under provisions F11.5 of the National Station Access Conditions and 42.5 of the Railtrack Independent Station Access Conditions. The key dates in those procedures are:

- 31 July 2000: by which time the Regulator is required to serve a review notice on the parties;
- 15 October 2000: if Railtrack and the Relevant Operators have failed to submit proposed amendments to the Station Access Conditions to the Regulator for his approval before this date he may issue a termination notice terminating the agreement with effect not less than 150 days after the notice; and
- 31 December 2000: by which the Regulator may issue a termination notice if he has not approved the proposed amendments.

8.2 The Regulator may extend these dates by up to 90 days if he is satisfied that the information available to him is insufficient in any material respect or that his conclusions on these matters are likely to be incomplete or unsatisfactory in any material respect.

8.3 For the reasons explained in the April 2000 periodic review document, the Regulator believes that there are strong grounds for an extension to that timetable. In particular, this will allow Railtrack, SFOs, and access beneficiaries to comment on his draft final conclusions before he issues his formal review notice. In his view, the conclusions could be incomplete or unsatisfactory in a material respect if that opportunity is not given. However, he does not believe that there is sufficient time for him to publish draft conclusions and to consult on these before the 31 July 2000.

8.4 Hence the Regulator intends to publish draft conclusions on the periodic review before the end of July 2000. This will include a draft review notice for all stations. He would then propose to give interested parties three to four weeks to make final representations and allow a further three to four weeks in which to consider these representations and publish final conclusions. His present view is that the review

notice should be issued no later than 11 September 2000. This would represent an extension of up to 42 out of the 90 days which are allowed under the access agreements.

- 8.5 The Regulator does not, however, consider that it would be desirable or necessary for him to extend the other dates referred to above by the same period. In particular, he does not consider that it would be desirable to extend the period of uncertainty associated with the periodic review or to delay its implementation beyond 1 April 2001 (although this might be necessary in the event of a Competition Commission reference). Moreover, his present view is that the time which the parties require to submit proposed amendments to the Regulator following the issue of the review notice could be reduced significantly. The main reasons for this are that the Regulator would expect the parties to begin preparing their proposed modifications following publication of the draft conclusions and that the changes to the draft conclusions are most likely to be to the level not structure of charges.
- 8.6 The Regulator's present view is that (assuming final conclusions are published by 11 September 2000) the date by which the parties are expected to submit proposed amendments for approval should be extended from 15 October to 31 October 2000. If the parties fail to submit proposed amendments to the Regulator by this date, this would still enable (but not require) him to issue a termination notice which has effect before the end of March 2001 (since the notice cannot have effect less than 150 days after serving the notice). During this time, the train operator could lodge an immediate section 17 application and there should be sufficient time for that to be considered and directions issued so that a replacement access agreement could come into effect by 1 April 2001. If a section 17 application were made within the specified time, he would expect to provide in the termination notice that the notice would not take effect until directions had been issued in relation to the section 17 application and the train operator had a reasonable period in which to enter into the new access agreement. If this went beyond 1 April 2001, he would expect to provide for the new charging arrangements to be back-dated to this date.
- 8.7 In light of responses to this consultation document, the Regulator will decide whether to issue the appropriate notices and the dates to be included in them in sufficient time to enable the parties to plan accordingly. As noted above, the proposed dates would not preclude further notices extending all or any of the dates up to the full 90 days if developing circumstances so require.

Competition Commission reference

- 8.8 Unlike other regulated utilities, the charges payable to Railtrack for access to track and stations are set out in bilateral access agreements rather than in Railtrack's network licence. Because of this, Railtrack has no right of appeal to the Competition Commission in relation to the Regulator's conclusions on the periodic review. Currently Railtrack's only right of legal challenge to the Regulator's review notice would be likely to be by way of application for judicial review.
- 8.9 The Regulator has, however, given his strong support to an amendment to the periodic review process which would afford Railtrack a full right of appeal to the Competition Commission on the same basis as in other utilities. He believes that this would enhance the integrity of the periodic review process and reduce the perception of regulatory risk. Accordingly, the Regulator has supported the inclusion of a provision in the Transport Bill for such an appeal process to be introduced. Amendments to the Bill were approved in the House of Commons on 10 May 2000 to implement this and the Regulator is reviewing how he would expect the process to operate.
- 8.10 However, given the likely timing of the Transport Bill, it may not be possible for the Regulator to make a reference to the Competition Commission in the current calendar year (if Railtrack were to object to his proposals). Moreover, the Commission would be likely to require at least six months for such an inquiry and the Regulator would then need to publish the Commission's report and consider how its conclusions should be implemented. Should these circumstances arise, the final conclusions from the review may not be implemented until after April 2001. The Regulator would therefore need to consider appropriate transitional arrangements and these would need to be provided for in the Competition Commission's conclusions.

Other changes to the Station Access Conditions

- 8.11 A key question for the Regulator, the SSRA, and for industry parties is whether the changes to the stations regime proposed above can be implemented effectively, and whether the costs of implementation are commensurate with the benefit to be derived from the changes.
- 8.12 LSH estimated the likely cost of implementation of its proposals at around £2,000 per station. Clearly this will be dependent on exactly what changes are to be carried out, and on the extent to which documentation changes are developed and specified by the Regulator or by other parties (e.g. in the form of templates or model clauses).

- 8.13 The Regulator has a unilateral change power in Condition B6 of the National Station Access Conditions. This power could be used to ensure that new Station Access Conditions are effected at an appropriate date. It would then be for the parties to ensure that they implement the necessary documentation requirements associated with the changes (for example, revisions to station registers). The Regulator is presently minded to exercise this unilateral change power in respect of the common changes to be introduced to the Station Access Conditions, provided there is overall consensus about the changes to be made. He currently expects to exercise this power before the end of 2000 to ensure that the benefits can be realised.
- 8.14 The contracting parties may need to negotiate and bring forward amendments reflecting changes to the station specific elements of their agreements. Where this is the case, the Regulator will want to ensure that the timescale for agreeing these station specific matters is clear and that there is a default position in the event of a failure to agree. He is also considering issuing a general approval for the relevant changes to the Station Access Conditions.
- 8.15 Consultees are invited to comment on the revised timetable including the following questions:
- If the Regulator extends the date for publication of the review notice, would it be necessary to extend the date by which the contracting parties are required to submit revised agreement to the Regulator for approval?
 - What transitional arrangements would be required (if any) if the charges are referred to the Competition Commission?
 - Should the Regulator use his unilateral change powers under the Station Access Conditions and if so how long should parties have to propose amendments to their regimes?

Annex A: Consultation questions

1. The Regulator would welcome comments from consultees on the LSH proposals for regrouping of the station access documentation and the associated costs.
2. The Regulator would like to hear views from Railtrack, train operators and others on these and other ways in which the current station regime structure might evolve in the light of developments in the industry (e.g. franchise renegotiations). In particular he would welcome views on the following questions:
 - Do the train operators need alterations to the structure to allow them to deliver their aspirations for franchise replacement? If so, what changes do they need and why?;
 - Do consultees consider that collateral agreements are still necessary in the light of the Contracts (Rights of Third Parties) Act 1999?
 - Do consultees agree that station access documentation could be simplified by the use of master agreements, instead of individual agreements for each station?
3. Consultees are invited to comment on whether these are the appropriate criteria for considering different contractual structures. Are there other criteria which the Regulator ought to apply?
4. The Regulator notes the potential cost of such changes and would welcome comments from consultees on the following questions.
 - What role do respondents think station registers play? Is any use made of them, for example, by third parties such as PTEs or local authorities (bearing in mind that they do not explicitly have rights of access to them)? Is their limited use a result of their incompleteness or lack of awareness on the part of potential users? What could be done about this? Who else should have access to them?

- Should station registers (and the Station Access Conditions) be amended as proposed by LSH? Are there clear benefits that would outweigh the implementation costs?
 - What should be the penalty for non-compliance with the requirement to keep station registers up-to-date?
5. The Regulator would like to hear the views, in particular from freight operators, on whether they agree that a simpler contractual arrangement such as that suggested in the document, would be sufficient for their purposes. If so, what are the minimum terms that such a contract should contain?
 6. The Regulator would welcome views on whether, and if so how, the Railtrack Independent Station Access Conditions might be strengthened to better protect the interests of users and passengers.
 7. Consultees views on the proposed approach to resetting of Station Long Term Charges would be welcomed.
 8. The Regulator would welcome comments from consultees on the concept of the operators having a right of appeal to the Regulator in relation to the station management fees.
 9. The Regulator would therefore welcome views on whether the National Station Access Conditions should include a provision for enabling operating charges to be fixed for longer than one year.
 10. Consultees views on Railtrack's proposals for using property revenues to cover operating expenditure at Railtrack independent stations would be welcomed.
 11. The Regulator would welcome comments from consultees on the following questions:
 - Is the allocation of responsibility proposed by Railtrack the most appropriate? In particular, are any of the proposed amendments to the current split of responsibility inappropriate, and, if so, specifically which amendments and why?
 - Is it necessary or appropriate to reflect the size or category of station in the division of repair and maintenance responsibilities and, if so, which option is

more appropriate? Alternatively, is some other form of categorisation appropriate?

- In determining the appropriate default allocation of responsibility the Regulator is considering current responsibilities and risks, the relative benefits to passengers, the efficiency of any arrangements, and the potential for development. Are there other criteria which he should consider?
12. The Regulator would welcome views on these proposed criteria for the approval of alternative allocations of repair and maintenance responsibility, and whether there are any other factors he should take into account.
 13. The Regulator would welcome comments on the proposed model clause for achieving a common standard of repair.
 14. The Regulator would welcome views of consultees on Railtrack's proposed station categories and their use in defining service standards in the Station Access Conditions.
 15. Consultees views are requested on the Regulator's proposals to simplify, strengthen and make reciprocal the self help remedies in the Station Access Conditions.
 16. The Regulator would welcome the views of consultees on these proposals which are that:
 - major renewal work should be subject to the station change procedure;
 - there should be a co-ordinated (rather than unified) fault recording system, based on efficient and effective links between different local systems;
 - new output base service delivery contracts should be established on a "back-to-back" basis with the SFO's obligations to its beneficiaries; and
 - there should be an obligation under the Station Access Conditions that the station condition statement is updated following the completion of station repair or enhancement works.

17. The Regulator is currently of the opinion that his proposed policy statement on enhancements should cover the enhancement of stations and would welcome comments from consultees on the arrangements he has proposed.
18. The Regulator would welcome comments on whether a link between the network and station change procedures could be made to work in practice and whether or not it would provide any significant benefits.
19. Consultees views are sought on whether the LSH proposals would be an appropriate simplification of the station change regime. Consultees views are also sought on the following questions.
 - What kinds of changes should fall under each change process and how should these be defined, bearing in mind the need to strike a balance between the speed and simplicity of the process and the importance of protecting the rights of those likely to be affected by any particular change?
 - Would it be appropriate to permit more changes to take place without going through the contractual consultation process? If so, what kind of changes should be permitted, and how can the interests of access parties and their customers be protected?
 - Would it be appropriate to include a financial threshold, such that any change below the threshold (of, say, £50,000) would be excluded from the change procedure? If so, is this an appropriate financial threshold?
 - Would a binding arbitration process allowing all operators benefiting from an enhancement to contribute to its cost be appropriate? If so, are the proposed arrangements satisfactory?
20. The Regulator would welcome consultees comments on his proposal to give other interested parties the right to introduce station change proposals.
21. The Regulator would welcome comments on the following questions:
 - Do station access parties think that the existing remedies under the Station Access Conditions have been fully effective in dealing with contractual disputes? If not, why not?

- How could the remedies be made more effective?
 - Should any alternative remedies be available?
22. The Regulator would welcome comments on whether explicit obligations on the access parties in relation to accessibility requirements should be introduced in the Station Access Conditions. Alternatively, should there be explicit obligations on Railtrack in its network licence to comply with the Regulator's code, or is it sufficient to rely on Condition 7?
23. The Regulator would like to hear from consultees on:
- whether they see a role for a standing committee to pool ideas and provide guidance about the operation of the station access regime;
 - if so, who should organise the committee, and how should it be established and paid for; and
 - whether they would be prepared to participate.
24. Consultees are invited to comment on the revised timetable including the following questions:
- If the Regulator extends the date for publication of the review notice, would it be necessary to extend the date by which the contracting parties are required to submit revised agreement to the Regulator for approval?
 - What transitional arrangements would be required (if any) if the charges are referred to the Competition Commission?
 - Should the Regulator use his unilateral change powers under the Station Access Conditions and if so how long should parties have to propose amendments to their regimes?

The periodic review of Railtrack's access charges:

Annex B: Railtrack's proposed allocation of maintenance and repair responsibilities

<u>Description</u> [additional wording in italics deletions shown struck through]	<u>Proposed Responsibility for Maintenance and Frequency</u>	<u>Proposed Responsibility for Testing and Frequency</u>	<u>Proposed Responsibility for Repair</u>	<u>Proposed Responsibility for Renewal</u>
EQUIPMENT INVENTORY				
(1) Traction supply equipment	Railtrack	N/A	Railtrack	Railtrack
(2) Signalling equipment	Railtrack	Railtrack	Railtrack	Railtrack
(3) Gas, water and electricity utility supply equipment and transmission media <i>below ground (other than those owned by utility company)</i>	Railtrack	Railtrack	Railtrack	Railtrack
(4) <i>HV & LV Sub-stations Meter rooms and mains switch gear housing (other than those owned by REC)</i>	SFO (except where operational equipment supplied – Railtrack Frequency - as recmd by equip. manuf.	Railtrack Frequency - 5 Years	Railtrack	Railtrack
(5) Boilers, heating systems, <i>flues and roof mounted tanks/ equipment (and associated roof penetrations)</i>	SFO Frequency - As recmd by equip. manuf.	SFO - ? years	SFO	SFO
(6) Station Facility Owner's temporary buildings	SFO	SFO	SFO	SFO
(7) Sprinkler <i>(including any roof mounted tanks or equipment).</i>	SFO	SFO Frequency - annually	SFO	SFO

(8a) <i>Fire Alarm Systems</i>	SFO	SFO Frequency - at intervals reqd by Fire Certificate	SFO	SFO
(8b) <i>Security CCTV Systems</i>	SFO	SFO Frequency - annually ?	SFO	SFO
(9) <i>Air Conditioning Plant and Equipment (including any roof mounted plant or equipment).</i>	SFO	SFO Frequency - annually ?	SFO	SFO
(10) <i>Retail Telecomms Systems. This means the systems identified in (a) below, including (but not limited to) items mentioned in (b) below but excluding items mentioned in (c) below;</i>				
(a) <i>public address systems information display systems (including LED, LCD, or flap-type (Solari boards) and monitoring monitor based systems) excluding transmission wiring</i>	Railtrack	Railtrack	Railtrack	Railtrack
<i>Station clock systems</i>	Railtrack	Railtrack	Railtrack	Railtrack
<i>closed circuit TV for crowd control</i>	Railtrack	Railtrack	Railtrack	Railtrack
(b) <i>customer terminal/ premises equipment associated with such systems e.g. processors, displays, speakers and amplifiers local cabling and wiring, including any local data/ analogue communications devices associated with the Station</i>	Railtrack	Railtrack	Railtrack	Railtrack
(c) <i>Circuits connecting retail telecomms systems to remote locations (using intermediate and/or trunk telecomms cabling) or providing connections to other applications (for example, a form of information generator)</i>	Railtrack	Railtrack	Railtrack	Railtrack

(11)	External lighting including platforms	SFO	SFO Frequency- 5 yearly	SFO - to include relamping and cleaning	Railtrack
(12)	<i>All above and below ground rainwater and soil drainage, including main outfall, petrol interceptors, cess pits & septic tanks (excluding track drainage)</i>	SFO - - incl to keep free flowing	SFO - where required i.e petrol interceptor outfall Frequency - annually	SFO - incl. minor repairs i.e. repoint benching, replace loose covers etc.	Railtrack - All renewals requiring excavation or replacement of complete pipe & gutter lengths
(13)	Gas fired appliances including supplies above ground	SFO	SFO	SFO - to include replacement of minor components	SFO
(14)	Electrical installations including circuit wiring and controls <u>excluding</u> fixed appliances	SFO	SFO Frequency - 5 yearly Results to be passed to RT	SFO - incl. Minor mechanical damage	Railtrack
(15)	Electrical power fittings and fixed appliances (including supply sockets and light fittings)	SFO	SFO Frequency - 5 yearly Results to be passed to RT	SFO	SFO
(16)	Driver only operation equipment	Railtrack	Railtrack	Railtrack	Railtrack
(17)	Central Heating Systems	Delete			Delete
(18)	All Sanitary installations and fittings	SFO			SFO
(19)	Sanitary fittings where not visible	Delete			Delete
(20)	All Hot and cold water supply plumbing installations including tanks except where excavation required for renewal	SFO	SFO Frequency - annually	SFO	SFO (except Railtrack where excavation required)
(21)	H&C water & soil waste plumbing installations not accessible or visible	Delete			Delete
(22)	Flues	Delete			Delete
(23)	Fixed seats	SFO			SFO
(24)	Train despatch equipment	Railtrack [via IMC]	Railtrack	Railtrack	Raltrack
(25)	Fixed and moveable fire appliances	SFO	SFO Frequency - as required by fire certificate	SFO	SFO

(26)	<i>Drainage and Pumping installations</i>	SFO	SFO Frequency - annually	SFO - to include replacement of minor components	Railtrack
(27)	Traffic management system controlling vehicular entry to any station or any car park	Delete			Delete
(28)	Lift installations	Railtrack	Railtrack Frequency - 6 months	Railtrack	Railtrack
(29)	Escalator installations	Railtrack	Railtrack Frequency - 6 months	Railtrack	Railtrack
(30)	Glasden ticket units	SFO	SFO Frequency - 5 yearly (if incl elect equip)	SFO	SFO
(31)	<i>Platform revenue protection turnstiles and barriers</i>	SFO	SFO Frequency - 5 yearly (if incl elect equip)	SFO	SFO
(32)	Cycle racking	SFO	N/A	SFO	SFO
(33)	Waiting room furniture	SFO	N/A	SFO	SFO
(34)	Left luggage units	SFO	N/A	SFO	SFO
(35)	Customer service telephones & equipment & <i>Help Points</i>	SFO	SFO	SFO	SFO
(New)	<i>Mechanical sliding door systems</i>	SFO	SFO Frequency - 5 yearly	SFO - to include replacement of sensors	Railtrack
(New)	<i>Ticket windows and ancillary equipment</i>	SFO	SFO Frequency - 5 yearly (if incl elect equip)	SFO	SFO
ELEMENTS INVENTORY					
A	<u>Substructures</u>				
(1)	Foundations	N/A	N/A	N/A	Railtrack
(2)	Basements	N/A	N/A	Railtrack	Railtrack
(3)	Basement tanking/waterproofing	N/A	N/A	Railtrack	Railtrack
(4)	Arches & subways	N/A	N/A	Railtrack	Railtrack
(5)	Structural slabs at ground level or below	N/A	N/A	Railtrack	Railtrack
(6)	Retaining walls	N/A	N/A	Railtrack	Railtrack
B	<u>Superstructure</u>				
(8)	Damp proof course	N/A	N/A	Railtrack	Railtrack
(9)	Frames, beams & columns (excluding finishes)	N/A	N/A	Railtrack	Railtrack
(10)	Structural slabs (above ground floor)	N/A	N/A	Railtrack	Railtrack

(11)	Floors (excluding finishes)	N/A	N/A	Railtrack	Railtrack
(12)	External staircases (excluding finishes)	Railtrack	N/A	Railtrack	Railtrack
	<u>Roofs <i>including Canopies</i></u>				
(14)	Roof <i>and canopy supports and Structure</i>	Railtrack	N/A	Railtrack	Railtrack
(15)	Decking, coverings insulation	Railtrack	N/A	Railtrack	Railtrack
(16)	Roof access ladders, walkways & guard-rails	Railtrack	N/A	Railtrack	Railtrack
(17)	Rooflights	Railtrack	N/A	Railtrack	Railtrack
(18)	Roof drainage	Delete			Delete
(19)	Parapets	Railtrack	N/A	Railtrack	Railtrack
(20)	Chimneys above roof level	Railtrack	N/A	Railtrack	Railtrack
(21)	Station roof <i>and canopy glazing</i>	Railtrack	N/A	Railtrack	Railtrack
(22)	Tankroom <i>enclosures</i>	Railtrack	N/A	Railtrack	Railtrack
(23)	Canopies, supports & glazing	Delete			Delete
(24)	Roof access ladders, walkways & handrails	Railtrack	N/A	Railtrack	Railtrack
(25)		Delete			Delete
	<u>Walls & cladding</u>				
(26)	External & load bearing walls (excluding finishes)	N/A	N/A	Railtrack	Railtrack
(27)	External cladding	SFO	N/A	Railtrack	Railtrack (except where vandalism) SFO (where vandalism)
(28)	Internal load bearing walls (excluding finishes)	N/A	N/A	Railtrack	Railtrack
(29)	Internal non-load-bearing walls (excluding finishes)	SFO	N/A	SFO	SFO
(30)	Partitions	SFO	N/A	SFO	SFO
(31a)	Windows internal	SFO	N/A	SFO	SFO
(31b)	Windows external (excluding glass)	SFO -incl ironmongery repair & renewal	N/A	Railtrack	Railtrack
(32)	External doors (except mechanical sliding doors)	SFO -incl ironmongery repair & renewal	N/A	Railtrack	Railtrack

	<u>Finishes & surfaces</u>				
(34a)	All Internal coatings/finishes including paint <i>and fire resistant coatings</i>	SFO	N/A	SFO	SFO
(34b)	All External coatings/finishes including paint & fire resistant coatings	Railtrack	N/A	Railtrack	Railtrack
(35)	All Floor finishes within buildings (including terrazzo)	SFO	N/A	SFO	SFO
(36)	Terrazo finishes (except platform)	Delete			Delete
(37)	Finishes to frames beams & columns (other than 37A)	Delete			Delete
(37A)	Fire resistant coatings/finishes	Delete			Delete
(38)	Staircase finishes (<i>including wearing /non-slip surfaces, nosings and handrail finishes</i>)	SFO	N/A	SFO	SFO
(39)	Train shed roof finishes	Railtrack	N/A	Railtrack	Railtrack
(40)	Canopy finishes	Delete			Delete
(41)	Ceiling finishes	Delete			Delete
(42)	Internal joinery (skirtings architraves)	SFO	N/A	SFO	SFO
(43)	All vertical building glazing	SFO	N/A	SFO	SFO
	<u>Platforms & external structures</u>				
(44)	Platform structure including supporting & retaining walls	Railtrack	N/A	Railtrack	Railtrack
(45)	Platform copers	Railtrack	N/A	Railtrack	Railtrack
(46)	Platform wearing surfaces (including terrazzo)	Railtrack	N/A	Railtrack	Railtrack
(47)	Platform terrazzo surfaces	Delete			Delete
(48)	Footbridge structures	Railtrack	N/A	Railtrack	Railtrack
(49a)	External and all open foot bridge finishes (excluding non slip wearing surfaces, nosings, handrails etc.)	Railtrack	N/A	Railtrack	Railtrack
(49b)	Fully enclosed Footbridge and subway internal finishes (including non slip wearing surfaces, nosings, handrails etc. to all footbridges)	SFO	N/A	SFO	SFO
(50)	Fixed ramps	Railtrack	N/A	Railtrack	Railtrack
(51)	Loading docks	Railtrack	N/A	Railtrack	Railtrack
(52)	Waiting shelters	SFO	N/A	SFO -include replacing isolated panels or elements	Railtrack

(53) Fencing	SFO	N/A	SFO -include replacing isolated panels or elements	Railtrack
(54) Retaining walls	Railtrack	N/A	Railtrack	Railtrack
Other				
(55) Road, pavement & forecourt surfaces & substructures	SFO	N/A	SFO -include filling isolated potholes	Railtrack
(56) Car park surfaces & substructures	SFO	N/A	SFO -include filling isolated potholes	Railtrack
(57) Car park equipment including ticket machines, signs, road markings and barriers	SFO	N/A	SFO	SFO
(58) Main drainage outfall	Delete			Delete
(59)	Delete			Delete
(60) All signage(<i>including supports and fixings</i>)	SFO	N/A	SFO	SFO
(61)	Delete			Delete
(62) Landscaping & planting	SFO	N/A	SFO	SFO
<i>(New) Longitudinal platform barriers and gates for high speed running</i>	SFO	N/A	SFO	Railtrack