

Part C - Modifications to the Network Code

Explanatory Note

- A. *Part C provides for a democratic process by which the Network Code and the ADRR may be changed. Class protection is provided for each of four interest groups (or Classes), namely Network Rail, franchised passenger Train Operators, non-franchised passenger Train Operators and non-passenger Train Operators (collectively referred to as "Train Operators"). The latter three classes may include Access Option Holders. The second and last of these groups are subdivided into Bands reflecting the relative size and nature of those groups and their respective members.*
- B. *An Access Beneficiary can only be a member of one class, which is determined by the type of railway services in respect of which it pays the greatest part of its Track Charges.*
- C. *Each of the Classes (and, where appropriate, Bands) is given the right, annually, to elect Class Representatives to a Class Representative Committee. The Committee is charged with responsibility for considering and, if it thinks fit, approving proposals for changing the Network Code.*
- D. *The Class Representative Committee is to establish rules of procedure which are to be followed for all Committee Meetings. Objections to any of the rules of procedure may be made by the Office of Rail and Road and, in specific circumstances, by any Class Member or any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option.*
- E. *Any Class Member, any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option or the Office of Rail and Road is entitled to make a Proposal for Change for consideration by the Class Representative Committee. Proposals must be made in writing to Network Rail.*
- F. *There are eight members of the Committee. Each of these may, as part of the democratic process, vote on proposals for changing the Network Code. Normally six must vote in favour for a Proposal for Change to the Network Code to be carried.*

- G. *On the satisfaction of certain criteria, Network Rail and any two of the Class Representatives of the Franchised Passenger Class have an ability to veto a proposal to change the Network Code. This right of veto is subject to an additional appeal procedure.*
- H. *Any Class Member, any person who proposes in good faith to enter into an Access Agreement or become the holder of an access option, the Office of Rail and Road, the Secretary of State or any Class Representative is entitled to propose a modification to any Proposal for Change for consideration by the Class Representative Committee. The number of votes required for any such modification to be incorporated into the relevant Proposal for Change depends on whether or not the modification is a material modification.*
- I. *Network Rail is to provide the secretariat function for the convening and holding of Class Meetings, election of Class Representatives, the convening and holding of Committee Meetings and the consideration of proposals to change the Network Code. As part of this function, Network Rail will maintain and update, as appropriate, a website containing various information relating to Committee Meetings and Proposals for Change.*
- J. *The Office of Rail and Road is given certain rights to determine complaints made regarding a failure to comply with any part of the procedure relating to a Proposal for Change.*
- K. *In addition to the democratic process described above, the Office of Rail and Road is given certain rights to require changes to the Network Code. Any such changes are to be made only after due consultation with all affected parties and with other relevant statutory bodies.*
- L. *The ADRR may be changed in accordance with the same procedures.*
- M. *This Explanatory Note does not form part of the Network Code.*

DEFINITIONS

In this Part C, except where the context otherwise requires:

“Alternate Representative” means an alternate of a Class Representative as described in Condition C3.2.5;

“Annual Class Meeting” means, in respect of any Class, an annual meeting of members of that Class called by Network Rail at any time during the final quarter of each calendar year;

“Band” means:

- (a) in relation to the Non-Passenger Class, either one of the two bands of members of that Class who are Train Operators consisting respectively of those Train Operators whose annual Track Charges relating to the provision of services for the carriage of goods by railway amount as nearly as practicable to the first 75% and the final 25% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time; and
- (b) in relation to the Franchised Passenger Class, any one of the three bands of members of that Class who are Train Operators consisting respectively of those Train Operators whose annual Track Charges relating to the provision of Franchised Services amount as nearly as practicable to the first 40%, the next 40% and the final 20% of the aggregate relevant annual Track Charges payable by all of the members, listed at the relevant time on the basis of descending value of the relevant annual Track Charges payable by them at that time,

provided that in relation to [3](#):

- (i) an Access Option Holder (other than a Freight Customer Access Option Holder) who is not also a

Train Operator already falling within paragraph (a) or (b) above, they will be assigned, as a member of either the Non-Passenger Class or Franchised Passenger Class, to the respective Non-Passenger Class band or Franchised Passenger Class band in accordance with paragraph (a) or (b) above based on their forecast annual Track Charges for the rights in the Access Option that have not been exercised within a track Access Agreement; and

- (ii) a Freight Customer Access Option Holder who is not also a Train Operator already falling within paragraph (a) or (b) above, will be assigned, as a member of the Non-Passenger Class, to the Non-Passenger Class band representing the final 25% of the relevant annual Track Charges referred to in paragraph (a) above.

The allocation of an Access Option Holder to a band will not displace any Train Operator already assigned to that band or who would otherwise be assigned to that band;

“Band Meeting”	means, in respect of any Band, a meeting of members of that Band called in accordance with Condition C1.4.1;
“Class”	means any one of Network Rail, the Franchised Passenger Class, the Non-Franchised Passenger Class and the Non-Passenger Class;
“Class Meeting”	means an Annual Class Meeting or an Extraordinary Class Meeting;
“Class Member”	means a member of a Class;
“Class Representative”	means a person who is appointed by a Class or Band to serve on the Class Representative Committee;
“Class Representative Committee”	means the committee of Class Representatives constituted in accordance with Condition C2;
“Committee Meeting”	means a meeting of the Class Representative Committee;

“Consultation Period”	means the period for consultation described in Condition C5.2(b);
“Extraordinary Class Meeting”	means, in respect of any Class, a meeting of that Class other than an Annual Class Meeting;
“Franchised Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed provision of Franchised Services, as a class;
“Non-Franchised Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed provision of railway passenger services (other than Franchised Services), as a class;
“Non-Passenger Class”	means all Access Beneficiaries whose Access Agreements are, at least in part, in respect of the provision or proposed provision of services for the carriage of goods by railway, as a class;
“Proposal for Change”	means any proposal (other than a notice issued by the Office of Rail and Road under Condition C8) to change this code (including this Part C) or the Access Dispute Resolution Rules, together with any modification of that proposal as referred to in Condition C5.4;
“Representation Period”	means, in respect of any Class Representative, the period for which that representative has been or is to be appointed, being the period commencing on the date on which the appointment is made and ending on the date of the next following Annual Class Meeting of that Class; and
“Track Charges”	means, in respect of an Access Agreement, the charges which it is reasonably foreseeable will be levied by Network Rail for and in connection with the permission to use the Network pursuant to that agreement for the period in question.

CONDITION C1 - CLASS MEETINGS

1.1 *Annual Class Meetings*

1.1.1 *Timing*

Members of a particular Class may, at any Class Meeting, fix the date, time or venue of the next succeeding Annual Class Meeting of that Class. If the members fail so to fix such date, time or venue, Network Rail shall do so having consulted with each member prior to convening that Annual Class Meeting as to its date, time and venue and having had due regard to its views.

1.1.2 *Notices of meetings*

Network Rail shall, in respect of each Class (other than Network Rail), call an Annual Class Meeting by giving to all members of that Class not less than 42 days' notice:

- (a) specifying the date, venue and time of the meeting (which shall be those, if any, which have been fixed pursuant to Condition C1.1.1);
- (b) setting out the names and addresses of all members of the Class and the Bands within which they fall, as determined at the date of the notice; and
- (c) calling for nominations for the posts of Class Representatives of that Class, such nominations to be notified to Network Rail no later than 35 days prior to the meeting.

1.1.3 *Notification of business of meeting*

Network Rail shall, in respect of an Annual Class Meeting called in accordance with Condition C1.1.2, notify to each Class Member at least 28 days before the date fixed for that meeting, the details of:

- (a) all nominations received by it for the posts of Class Representative of that Class specifying, if relevant, the Band to which each nomination relates; and
- (b) the business of the meeting, being:
 - (i) the appointment of Class Representatives; and

- (ii) any matters notified to Network Rail by any member of that Class for discussion at that meeting.

1.2 Extraordinary Class Meetings of Franchised Passenger Class and Non-Passenger Class

1.2.1 Notices of requisitioned meetings

Network Rail shall, in respect of any Class (other than Network Rail and the Non-Franchised Passenger Class), within a period of 14 days following receipt of notice in writing from:

- (a) members of that Class (the identity of such members being determined as at the date of the notice) representing more than 10% in number of members of that Class;
- (b) members of a Band of that Class (the identity of such members being determined as at the date of the notice) representing more than 20% in number of members of that Band; or
- (c) a Class Representative of that Class

requisitioning an Extraordinary Class Meeting and specifying the matters to be discussed at that meeting, call an Extraordinary Class Meeting by giving not less than 28 days, and not more than 42 days, notice:

- (d) specifying the date, venue and time of the meeting (Network Rail having first consulted with each Class Member as to such date, venue and time);
- (e) specifying the matters notified to Network Rail by any member of that Class or Class Representative for discussion at that meeting; and
- (f) giving the names and addresses of the members of that Class.

1.2.2 Waiver of notice periods

The periods of notice referred to in Condition C1.2.1 may be waived either prospectively or retrospectively with the consent in writing of all members of the Class for which the Extraordinary Class Meeting has been called.

1.3 Extraordinary Class Meetings of Non-Franchised Passenger Class

1.3.1 Notices of requisitioned meetings

Network Rail shall, in respect of the Non-Franchised Passenger Class, within the period of 14 days following receipt of notice in writing from:

- (a) members of that Class (the identity of such members being determined as at the date of the notice) representing more than 10% in number of members of that Class; or
- (b) the Class Representative appointed by that Class

requisitioning a Class Meeting, for the purpose of either:

- (i) appointing a Class Representative of that Class to fill a casual vacancy or of removing the Class Representative and appointing a replacement; or
- (ii) discussing such other matters as shall be specified in the notice

call a Class Meeting by giving notice of not less than 28 days, and not more than 42 days,

- (c) specifying the date, venue and time of the meeting (Network Rail having first consulted with each Class Member as to such date, venue and time);
- (d) specifying the business of the meeting being:
 - (i) the proposed appointment of the Class Representative of that Class to fill a casual vacancy or the proposed removal of that Class Representative and the proposed appointment of a replacement; and
 - (ii) any matters notified to Network Rail by any member of that Class or Class Representative for discussion at that meeting;
- (e) in the case of the business specified in Condition C1.3.1(d)(i), calling for nominations for the post of Class Representative of that Class no later than 21 days prior to the meeting; and
- (f) giving the names and addresses of the members of that Class.

1.3.2 *Notification of nominations*

Network Rail shall, in respect of a Class Meeting called in accordance with Condition C1.3.1 for the purpose of the business specified in Condition C1.3.1(d)(i), on giving a further notice at least 14 days before the date fixed for that meeting, notify to each member details of all nominations received by it for the post of Class Representative of that Class.

1.3.3 *Waiver of notice periods*

The periods of notice referred to in Conditions C1.3.1 and C1.3.2 may be waived either prospectively or retrospectively with the consent in writing of all members of the Class for which the Class Meeting has been called.

1.4 ***Band Meetings***

1.4.1 *Notices of requisitioned meetings*

Network Rail shall, in respect of any Band of any Class, within the period of 14 days following receipt of notice in writing from:

- (a) members of that Band (the identity of such members being determined as at the date of the notice) representing more than 20% in number of members of that Band; or
- (b) the Class Representative appointed by that Band

requisitioning a Band Meeting for the purpose either of appointing a Class Representative of that Band to fill a casual vacancy or of removing that Class Representative and appointing a replacement, call a Band Meeting by giving notice of not less than 28 days, and not more than 42 days:

- (c) specifying the date, venue and time of the meeting;
- (d) specifying the business of the meeting (being the proposed appointment of the Class Representative of that Band to fill a casual vacancy or the proposed removal of that Class Representative and the proposed appointment of a replacement);
- (e) calling for nominations for the post of Class Representative of that Band no later than 21 days prior to the meeting; and
- (f) giving the names and addresses of the members of that Band.

1.4.2 *Notification of nominations*

Network Rail shall, in respect of a Band Meeting called in accordance with Condition C1.4.1, on giving a further notice at least 14 days before the date fixed for that meeting, notify each member of the Band of details of all nominations received by it for the post of Class Representative of that Band.

1.4.3 *Waiver of notice periods*

The periods of notice referred to in Conditions C1.4.1 and C1.4.2 may be waived either prospectively or retrospectively with the consent in writing of all members of the relevant Band.

1.5 *Conduct of Class and Band Meetings*

1.5.1 *Business*

No Class Meeting shall take a vote on any matters other than the appointment or removal of a Class Representative.

1.5.2 *Quorum*

No business shall be transacted at any Class Meeting unless a quorum of members of that Class is present (whether in person or by proxy) at the Class Meeting. The quorum for any Class Meeting shall be one third in number of the members of that Class present (whether in person or by proxy).

1.5.3 *Adjournment without a quorum*

If, within half an hour from the time appointed for the beginning of a Class Meeting, a quorum is not present, that meeting shall be adjourned to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the members of the Class present (whether in person or by proxy) shall constitute a quorum.

1.5.4 *Chairman*

Those members of the Class present at the Class Meeting shall elect the chairman of that meeting. The chairman shall have no casting vote.

1.5.5 *Proxies*

A Class Member, where it is entitled to attend and vote at a Class Meeting, shall be entitled to appoint another person (whether a member of that Class or not) as its proxy to attend, speak and vote in its place. The instrument appointing the proxy shall be in writing, executed by or on behalf of the Class Member and shall be available for inspection at the relevant meeting.

1.5.6 *Votes*

Each Class Member shall have one vote at any Class Meeting at which it is entitled to vote.

1.5.7 *Secretariat and minutes*

Network Rail shall attend each Class Meeting, take accurate minutes of each meeting and distribute such minutes to members of the relevant Class within the period of 14 days following that Class Meeting. Such minutes shall be discussed and, if thought fit, approved (with or without modification) at the next Class Meeting.

1.5.8 *Application*

The provisions of this Condition C1.5 shall apply mutatis mutandis to Bands and Band Meetings as they apply to Classes and Class Meetings.

1.5.9 *Affiliates*

Affiliates of one another within a single Band (and, if there is only one Band in a Class, within a single Class) shall be treated as the same person for the purpose of any election.

1.6 *Membership of a Class where eligible to be a member of more than one*

1.6.1 If any Train Operator shall be eligible to be a member of more than one Class, it shall be a member of the Class corresponding to the type of railway services in respect of which the greatest part of its Track Charges will be payable for the period in question or, in respect of an Access Option Holder, it shall be a member of the Class corresponding to the type of railway services that will be operated when the option is exercised. No Access Beneficiary shall be a member of more than one Class.

- 1.6.2 Where an Access Option Holder other than a Freight Customer Access Option Holder exercises its rights under its access option, it shall only be eligible to be a Class Member in respect of any unexercised rights that remain within its access option.
- 1.6.3 Where a Freight Customer Access Option Holder exercises its rights under its access option, it shall be and remain eligible to be a Class Member of the relevant Class notwithstanding the exercise of such rights.

1.7 Election of Class/Band Representatives

- 1.7.1 Nominations in accordance with Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e) for each Class, or each Band of a Class, may be made only by members of that Class, or that Band, respectively.
- 1.7.2 Nominees for election as a representative of a Class or Band shall, at the time of the election, be employees or officers of a company that is a member of that Class or Band respectively.
- 1.7.3 A Class Member may vote only in the election for a representative of a Class, or of a Band, of which he is a member.
- 1.7.4 If no nominations are received in accordance with the timescales specified in Condition C1.1.2(c), C1.3.1(e) or C1.4.1(e), a written nomination signed by an officer or employee of a Class Member may be presented in writing to the chairman of the relevant Class Meeting or Band Meeting.
- 1.7.5 If no nominations are received in accordance with Condition C1.1.2(c), C1.3.1(e), C1.4.1(e) or C1.7.4, the Managing Director of the company which pays the highest annual Track Charges in the Class or the relevant Band shall be deemed to be elected.
- 1.7.6 If an elected representative ceases to be an employee of the Class Member which employed him at the time of his election, he may, providing he is an employee of an Access Party, continue as representative.
- 1.7.7 *Filling casual vacancies*

A unanimous decision in writing, executed on behalf of every member of the relevant Class or Band to appoint a specified person as the Class Representative of that Class or Band to fill a casual vacancy shall be as valid

and effective as if it had been passed at a Class Meeting of that Class or Band Meeting of that Band (as the case may be), provided that:

- (a) the identity of such members shall be determined as at the date of that decision;
- (b) the decision in writing may consist of several versions in the same form; and
- (c) the specified person shall be treated as elected Class Representative upon receiving notice to this effect, together with a copy of the decision, from Network Rail as the secretary of the Class Representative Committee.

CONDITION C2 - CLASS REPRESENTATIVE COMMITTEE

2.1 *Composition of Committee*

The Class Representative Committee shall comprise two Class Representatives appointed by Network Rail, one Class Representative appointed by the members of the Non-Franchised Passenger Class and one Class Representative appointed by the members of each of the Bands of both the Franchised Passenger Class and the Non-Passenger Class.

2.2 *Elections of Class Representatives*

Class Representatives shall be elected by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant Class Meeting.

2.3 *Voting etc.*

Each Class Member shall:

- (a) in respect of the Class and (if relevant) Band of which it is a member, be entitled to participate in each election conducted pursuant to Condition C2.2; and
- (b) at each Annual Class Meeting, use its reasonable endeavours to procure that each Class and (if relevant) Band of which it is a member shall elect its Class Representative or Representatives for the Representation Period commencing on the date of that meeting.

2.4 Duration of appointment

A Class Representative shall, subject to earlier termination of office in accordance with Condition C2.5, be treated as having ceased to hold office (unless re-elected) with effect from the end of its Representation Period.

2.5 Loss of office

A Class Representative:

- (a) may be removed from office prior to expiry of his Representation Period and a replacement Class Representative elected in his place by a majority in number of members of the relevant Class or Band (as the case may be) present (whether in person or by proxy) and voting at the relevant meeting called for the express purpose of such removal and substitute appointment; and
- (b) shall be treated as having resigned from office if he dies or becomes of unsound mind.

2.6 Notification of elections

Network Rail shall, as soon as reasonably practicable following the election of a new Class Representative, notify all Class Members of that election.

2.7 Undertakings

Each Class Representative shall, as a condition of his being a Class Representative, be required to undertake, in favour of Network Rail, to comply with the provisions of this Part C insofar as they relate to the conduct of Class Representatives. Each Class Member shall, if a Class Representative is its employee or officer, use all reasonable endeavours to procure that that Class Representative abides by any such undertaking.

2.8 Obligation to remove Class Representatives

Each Class Member shall, in conjunction with other members of the Class and (if relevant) Band of which it is a member, use all reasonable endeavours to procure the removal of any Class Representative who fails materially to comply with the undertaking entered into pursuant to Condition C2.7.

CONDITION C3 - COMMITTEE MEETINGS

3.1 *Committee Meetings*

3.1.1 *Network Rail to call meetings*

Network Rail shall:

- (i) within 14 days following receipt of notice in writing from any Class Representative requisitioning a Committee Meeting and specifying the business to be carried out at that meeting; and
- (ii) in respect of any Proposal for Change, within the period of 7 days following the end of the Consultation Period relating to that proposal, as referred to in Condition C5.3

call a Committee Meeting by giving not less than 7 days, and not more than 28 days, notice specifying:

- (a) the date, venue and time of that meeting; and
- (b) the business of the meeting (which, in a case within paragraph (ii) above, shall include the relevant Proposal for Change).

3.1.2 *Waiver of notice periods*

The period of notice for calling a Committee Meeting notified in accordance with Condition C3.1.1 may be waived prospectively or retrospectively with the consent in writing of all Class Representatives.

3.1.3 *Attendance at Committee Meetings*

Those entitled to attend and speak, but not vote, at a Committee Meeting are:

- (a) Class Members; and
- (b) Potential Access Parties;

and their professional advisers.

3.1.4 *Attendance through communications media*

Those entitled to attend and speak at a Committee Meeting and the Office of Rail and Road may participate in a Committee Meeting

by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Any person participating in a meeting in this manner shall be deemed to be present in person at such meeting.

3.2 Conduct of Class Representative Committee Meetings

3.2.1 Regulation of business

Subject as provided in this Part C, Class Representatives shall establish and from time to time revise rules of procedure to be followed by the Class Representative Committee. The Class Representative Committee shall adhere to such rules of procedure for all Committee Meetings provided that:

- (a) any resolution in respect of such rules of procedure shall only be approved if at least 5 Class Representatives present, and entitled to vote, at a Committee Meeting shall have voted in favour of that resolution; and
- (b) the failure of a Class Representative timeously to cast its vote or intimate its abstention in respect of a resolution shall be treated as a vote in favour of that resolution.

The rules of procedure will not address voting passmarks and the procedure in Condition C5.4 relating to modifications of any Proposal for Change.

3.2.2 Quorum

No business shall be transacted at any Committee Meeting:

- (a) for so long as there is a vacancy in the post of Class Representative following an event of the kind described in Condition C2.5(b); and
- (b) unless a quorum of Class Representatives is present at that Committee Meeting.

The quorum shall be 5 Class Representatives present of which at least one shall be a Class Representative of the Franchised Passenger Class, at least one shall be a Class Representative of the Non-Passenger Class and at least one shall be a Class Representative of Network Rail. If any Class shall fail to be represented by its Class Representative at more than one successive

Committee Meeting, the quorum for that meeting shall be adjusted so as to exclude the Class Representative of that Class.

3.2.3 *Adjournment without a quorum*

If, within half an hour from the time appointed for a Committee Meeting, a quorum is not present, the Committee Meeting shall be adjourned to the same day in the next week at the same time and place (or such other time and place as the chairman of the meeting may determine) and if, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the Class Representatives present shall constitute a quorum.

3.2.4 *Chairman*

The Class Representatives present at the Committee Meeting next following the election of Class Representatives pursuant to Condition C2.2 shall elect the chairman of the Class Representative Committee who, unless he dies, resigns or is removed from office for any reason, shall hold office until the first Committee Meeting following the next election of Class Representatives next following the expiry of 12 months from his election as chairman. The chairman may be removed from office, and a vacancy in the office of chairman filled, upon a positive resolution of the Class Representative Committee passed by at least 6 Class Representatives. Any chairman elected to fill a vacancy arising from the termination of the term of office of an incumbent chairman for a reason other than the passage of time shall hold office until the first Committee Meeting following the next election of Class Representatives. The chairman shall have no casting vote.

3.2.5 *Rights to appoint and remove Alternates*

Each Class Representative (other than an Alternate Representative) may:

- (a) appoint any other Class Representative or any other person who is willing to act to be an Alternate Representative; and
- (b) remove that Alternate Representative from office.

3.2.6 *Notice of appointment or removal*

The appointment or removal of an Alternate Representative shall be by notice given to Network Rail as the secretary of the Class Representative Committee (with all references to Network Rail in this Condition C3.2.6 being construed

accordingly), not later than 2 days before a Committee Meeting and signed by the Class Representative making or revoking the appointment provided that:

- (a) if the appointment or removal of an Alternate Representative is communicated to Network Rail later than, or in a form or manner otherwise than, as so required, then Network Rail shall have discretion to accept the communication as effective for the purposes of the Committee Meeting following that communication; and
- (b) if such communication is accepted as effective, Network Rail shall state this at the start of the relevant Committee meeting.

3.2.7 *Rights of Alternates*

An Alternate Representative shall be entitled:

- (a) to receive notice of all Committee Meetings which his appointer is entitled to attend;
- (b) to attend and vote at any such Committee Meeting at which the Class Representative which appointed him is not personally present; and
- (c) generally to perform all the functions of the Class Representative which appointed him as a Class Representative in his absence.

Save as otherwise provided in Conditions C3.2.5-C3.2.8, an Alternate Representative shall be deemed for all purposes to be a Class Representative.

3.2.8 *Loss of office of Alternates*

An Alternate Representative shall cease to be an Alternate Representative if the Class Representative which appointed him ceases to be a Class Representative.

3.2.9 *Written decisions*

A unanimous decision in writing, executed by or on behalf of every Class Representative, shall be as valid and effective as if it had been passed at a Committee Meeting and may consist of several versions in the same form.

3.2.10 *Objection to rules of procedure*

- 3.2.10.1 The Office of Rail and RoadOffice of Rail and Road shall be entitled, at any time, to give a notice of objection, with reasons, to any rules of procedure established pursuant to Condition C3.2.1.
- 3.2.10.2 Any Class Member or any person referred to in Condition C3.1.3(b) shall be entitled, at any time, to give a notice of objection to any rules of procedure established pursuant to Condition C3.2.1 on the basis that the operation of any such rule will have a material and adverse effect on its interests and such notice shall be accompanied by such relevant information in support of such objection as it shall be reasonable to expect the objector to be able to provide.
- 3.2.10.3 If the Office of Rail and RoadOffice of Rail and Road objects to any rule of procedure under Condition C3.2.10.1, the Office of Rail and RoadOffice of Rail and Road may either:
- (a) instruct the Class Representative Committee to revise the relevant rules of procedure to address the Office of Rail and RoadOffice of Rail and Road's objection, in which case the Class Representative Committee shall proceed to make such revisions pursuant to Condition C3.2.1; or
 - (b) instruct a specific change to the rules of procedure in which case the Class Representative Committee shall revise the relevant rule of procedure in accordance with the Office of Rail and RoadOffice of Rail and Road's instructions and Conditions C3.2.1(a) and (b) will not apply in respect of such change.
- 3.2.10.4 If any Class Member or any person referred to in Condition C3.1.3(b) objects to any rule of procedure under Condition C3.2.10.2 the Class Representative Committee will consider such objection and decide whether the rules of procedure should be revised to address such objection.
- 3.2.10.5 If:
- (a) the Class Representative Committee does not revise the rules of procedure to deal with the objection; or

- (b) any Class Member or any person referred to in Condition C3.1.3(b) does not consider that any revision made to the rules of procedure addresses its objection,

the Class Member or any person referred to in Condition C3.1.3(b) may refer that matter to the Office of Rail and Road for final determination. Any such determination by the Office of Rail and Road shall be final and binding on all parties and the Office of Rail and Road may instruct the Class Representative Committee accordingly pursuant to Condition 3.2.10.3(a) or (b).

CONDITION C4 - ADMINISTRATION OF CHANGE PROCEDURE

4.1 *Network Rail as secretariat*

4.1.1 Network Rail shall be the secretariat of, and shall provide all administrative and other services reasonably necessary for, Committee Meetings, Class Meetings and Band Meetings, including in relation to the convening of meetings, the service of notices of meetings and preparing and circulating minutes of all meetings.

4.1.2 In its capacity as secretariat, Network Rail will establish, maintain and update, as necessary, a website, which shall be accessible via a prominent link on the Network Rail website, containing:

- (a) the current version of each of the Network Code and the ADRR, including all documents or other instruments which the Network Code expressly states are incorporated into it;
- (b) all previous versions of each of the Network Code and the ADRR (including all documents or other instruments which the Network Code expressly states are incorporated into it) since 1 January 1996 (together with a statement of the dates between which each respective version was in force);
- (c) the current composition of the Class Representative Committee;
- (d) the current rules of procedure to be followed for all Committee Meetings;
- (e) the minutes of the most recent Committee Meeting;
- (f) the date, place and time of the next Committee Meeting;

- (g) a fully searchable archive containing the minutes of all Committee Meetings which have taken place since 1 January 1996;
- (h) a fully searchable archive containing details of all Proposals for Change since 1 January 1996, including:
 - (i) any proposed modification to any Proposal for Change; and
 - (ii) any representations made in respect of any Proposal for Change; and
- (i) any written material prepared by or on behalf of Network Rail and submitted to the Class Representative Committee.

4.1.3 Network Rail shall publish on its website as soon as reasonably practicable after its receipt all information under C4.1.2 (h) (i) and (ii) .

4.1.4 Network Rail shall provide copies of the whole or any part of any of the documents contained on the website to any person upon request and Network Rail shall be entitled to charge for the provision of such copies. Such charge shall not exceed an amount which, in the opinion of the Office of Rail and Road, is reasonable.

4.2 *Notification of Class Representatives and constituents*

Network Rail shall provide a list of the names and addresses of the members of any Class or Band and the names and addresses of all Class Representatives promptly to any Class Member who requests it.

4.3 *Information in relation to Proposals for Change*

Network Rail shall keep each sponsor of a Proposal for Change advised at reasonable and regular intervals of the progress being made by the Class Representative Committee in its consideration of that proposal.

4.4 *Costs*

Network Rail shall bear all the costs of administering the procedures referred to in Condition C4.1 and supplying information in accordance with Condition C4.2 and providing advice in accordance with Condition C4.3.

CONDITION C5 - RECEIPT AND NOTIFICATION OF PROPOSALS FOR CHANGE

5.1 Entitlement to make Proposal for Change

Any Class Member, any person referred to in Condition C3.1.3(b) or the Office of Rail and Road shall be entitled to make a Proposal for Change for consideration and, if thought fit, approval by the Class Representative Committee. Any such proposal shall be sent to Network Rail and shall:

- (a) be in writing;
- (b) specify the wording of the proposed change and the date or series of dates on which it is proposed that it come into effect, if other than the period of 14 days after any approval notified by the Office of Rail and Road pursuant to Condition C7.1.3; and
- (c) be supported by an explanation in reasonable detail of the reasons for the proposed change.

A Proposal for Change may be made in respect of:

- (a) an established part of the Network Code; and/or
- (b) a part for which amendments have been approved or directed by the Office of Rail and Road under Condition C7 or Condition C8 but which have not taken effect and, in relation to a change being made under Condition C8, no appeal has been received within the timeframe for appeals under Condition C8.3.1. In such a case the Proposal for Change should take account of any such approved or directed amendment. If such a Proposal for Change would affect any such approved or directed amendment, it can only take effect in relation to that part after the amendment on which it is based takes effect.

5.2 Notice of Proposal for Change

Network Rail shall, within 7 days following receipt of a Proposal for Change from any Class Member, any person referred to in Condition C3.1.3(b), or the Office of Rail and Road or, if later, within 7 days following receipt of any clarification that Network Rail may reasonably request from the sponsor of that proposal:

- (a) give notice of that proposal to each Class Member, each person who, in the opinion of Network Rail, shall be likely to become a Class Member, the Office of Rail and Road and the Secretary of State, unless any such person has notified Network Rail that it does not wish to receive notice of a Proposal for Change; and
- (b) invite the submission to Network Rail of written representations in respect of that proposal within such period as is reasonable in all the circumstances (the “Consultation Period”), being a period of not less than 30 days from the date of notification under paragraph (a) above.

5.3 Calling of meeting to consider Proposal for Change

Network Rail shall, within the period of 7 days following the end of the Consultation Period:

- (a) call a Committee Meeting in accordance with Condition C3.1.1(ii); and
- (b) supply the Proposal for Change to each Class Representative together with copies of all representations received pursuant to Condition C5.2(b), including any proposed modifications to the Proposal for Change.

5.4 Modification of Proposal for Change

5.4.1 A modification to any Proposal for Change may be proposed:

- (a) by Network Rail or any of the persons referred to in Condition C5.2(a) during the Consultation Period; or
- (b) by any of the Class Representatives at the Committee Meeting called in respect of such Proposal for Change.

5.4.2 The Class Representative Committee shall consider any modifications, whether material or otherwise, which are proposed to a Proposal for Change.

5.4.3 If the proposed modification to any Proposal for Change is a material modification then:

- (a) if all the Class Representatives present, and entitled to vote, at the Committee Meeting called in respect of such Proposal for Change, shall have voted in favour of the proposed modification, or that proposed modification shall have been approved in accordance with Condition

C3.2.9, no further consultation shall be carried out in respect of such Proposal for Change and the Class Representative Committee shall consider the Proposal for Change, as modified, pursuant to Condition C6.1; or

- (b) if paragraph (a) above does not apply, the Class Representative Committee shall request Network Rail to carry out a further consultation in respect of such Proposal for Change and Condition C6.4 shall apply.

5.4.4 If the proposed modification to any Proposal for Change:

- (a) is not a material modification; and
- (b) 6 or more Class Representatives present, and entitled to vote, at the Committee Meeting called in respect of such Proposal for Change shall have voted in favour of the proposed modification,

then no further consultation shall be carried out in respect of such Proposal for Change and the Class Representative Committee shall consider the Proposal for Change, as modified, pursuant to Condition C6.1.

5.4.5 For the purposes of Condition C5.4, the failure of a Class Representative timeously to cast its vote or intimate its abstention shall be treated as a vote in favour of the proposed modification.

5.4.6 If Condition C5.4.4(a) is satisfied and Condition 5.4.4(b) is not satisfied, the proposed modification shall be disregarded and the Proposal for Change to which it relates shall be considered without taking the modification into account.

5.4.7 If the Class Representatives cannot agree unanimously whether or not a proposed modification is material then, for the purposes of this Condition C5.4, the modification will be treated as though it is a material modification.

5.5 Clarification

The sponsor of a Proposal for Change shall promptly comply with all reasonable written requests of Network Rail for further clarification of the proposal.

5.6 Relationship with Condition C8

This Condition C5 shall not require that any modification to which Condition C8 applies shall first have been proposed by the Office of Rail and Road under this Condition C5.

CONDITION C6 - CONSIDERATION BY CLASS REPRESENTATIVE COMMITTEE

6.1 Voting passmark

The Class Representative Committee shall consider and, if thought fit, approve each Proposal for Change. A Proposal for Change shall have been approved only if:

- (a) 6 or more Class Representatives present, and entitled to vote, at a Committee Meeting shall have voted in favour of that proposal or that proposal shall have been approved in accordance with Condition C3.2.9, provided that the failure of a Class Representative timeously to cast its vote or intimate its abstention shall be treated as a vote in favour of the proposal; and
- (b) where the implementation of the Proposal for Change is likely to have a material and adverse effect on the interests of Network Rail or the members of the Franchised Passenger Class or a significant proportion of them, no relevant group shall have notified the Class Representative Committee of its objection to the proposal within 30 days after the vote referred to in paragraph (a) of this Condition C6.1. In this Condition C6, “relevant group” has the meaning ascribed to it in Condition C6.5.8.

6.2 Rights of attendance

A sponsor of a Proposal for Change and any other person referred to in Condition C3.1.3 shall be entitled to attend any Committee Meeting at which the Proposal for Change is to be considered.

6.3 Attendance by Office of Rail and Road

The Office of Rail and Road shall be entitled to attend or be represented at any Committee Meeting.

6.4 Further consultation

Network Rail shall, as soon as reasonably practicable following a request by the Class Representative Committee to carry out further consultation in respect of any Proposal for Change, carry out that further consultation.

6.5 Appeal procedure

6.5.1 If a relevant group shall have exercised its veto, any Class Representative shall be entitled to give a notice of appeal against it.

6.5.2 A notice of appeal shall:

- (a) be given to the Office of Rail and Road, the relevant group and every other Class Representative not later than 35 days after the exercise of the veto;
- (b) contain the reasons why the Class Representative in question considers that the veto should not have effect; and
- (c) request the Office of Rail and Road to determine the matter.

6.5.3 No notice of appeal may be given unless:

- (a) the Class Representative shall be satisfied that the relevant group is entitled to exercise its veto; or
- (b) the entitlement of the relevant group to exercise its veto shall have been established pursuant to the ADRR following a reference for such determination made by the group claiming the veto,

and evidence satisfactory to the Office of Rail and Road shall have been provided to it to that effect.

6.5.4 Without prejudice to Condition C6.5.5, the relevant group and the other Class Representatives shall use their respective reasonable endeavours to procure that the Office of Rail and Road is furnished with sufficient information to dispose of the appeal as soon as reasonably practicable after the date of the notice of appeal.

6.5.5 In relation to any such appeal, the Office of Rail and Road shall, in determining it, have the power:

- (a) to give directions as to the procedure to be followed in the appeal, including in relation to the making of any written and oral submissions and the extent to which any evidence or other submissions made by one party to the appeal shall be disclosed to the other;
- (b) to make any interim order as to the conduct or the positions of the parties pending final determination of the appeal;
- (c) to determine whether the veto shall have effect; and
- (d) to make such orders as it shall think fit in relation to the proportions of the costs of the appeal which shall be borne by any of the parties.

6.5.6 Where any party shall have given a notice of appeal, the Office of Rail and Road shall:

- (a) be entitled to decline to determine the appeal if, having consulted the parties concerned, it shall determine that the appeal should not proceed, including on the grounds that:
 - (i) the matter in question is not of sufficient importance to the industry;
 - (ii) the reference to it is frivolous or vexatious; or
 - (iii) the conduct of the party making the reference ought properly to preclude its being proceeded with; and
- (b) not be liable in damages or otherwise for any act or omission to act on its part (including negligence) in relation to the appeal.

6.5.7 The determination of the Office of Rail and Road shall be final and binding on all parties to Access Agreements.

6.5.8 In this Condition C6.5:

“the exercise of a veto” means the giving by a relevant group of a notice of objection as provided for in Condition C6.1(b), and cognate terms and expressions shall be construed accordingly;

“notice of appeal” means a notice given pursuant to Condition C6.5.2; and

“relevant group”

means either of:

- (a) Network Rail; or
- (b) any two of the Class Representatives of the Franchised Passenger Class.

CONDITION C7 - CONSEQUENCES OF CLASS REPRESENTATIVE COMMITTEE RECOMMENDATION

7.1 *Decision to Approve*

7.1.1 Network Rail shall, as soon as reasonably practicable following a decision by the Class Representative Committee to approve a Proposal for Change (or following a determination of the Office of Rail and Road that a veto should not have effect following an appeal pursuant to Condition C6.5), submit the proposal to the Office of Rail and Road, together with a written memorandum:

- (a) explaining the reasons for the proposed change;
- (b) containing details of the results of the consultation process (including copies of any representations made pursuant to Condition C5.2(b) which shall have been neither accepted nor withdrawn);
- (c) stating the reasons for any dissent from that decision by any Class Representative; and
- (d) stating the date or series of dates upon which it is considered that the proposal is to take effect, the first date being no earlier than 14 days after the date on which the Office of Rail and Road approves the proposal pursuant to Condition C7.1.3.

7.1.2 Class Members shall use their respective reasonable endeavours to provide any further information required in relation to the consideration of a Proposal for Change by the Office of Rail and Road.

7.1.3 The Office of Rail and Road may notify Network Rail as soon as reasonably practicable of its approval or rejection of a Proposal for Change submitted to it pursuant to Condition C7.1.1.

7.1.4 No Proposal for Change shall have effect unless the Office of Rail and Road gives notice to Network Rail in writing that it approves the proposal pursuant to Condition C7.1.3.

7.2 Decision to Reject

Network Rail shall, as soon as reasonably practicable following a decision of the Class Representative Committee to reject a Proposal for Change, notify the sponsor of that proposal of that decision.

7.3 Procedural Irregularities

7.3.1 If before the effective date or dates of any change (as determined under Condition C9.1.3 and approved by the Office of Rail and Road under Condition C9.1.4) a complaint is made to the Office of Rail and Road concerning a failure to comply with any part of the procedure relating to the relevant Proposal for Change, Condition C7.3.2 shall apply.

7.3.2 The Office of Rail and Road shall consider the nature of the complaint and determine either that:

- (a) the change should become effective on the date determined under Condition C9.1.3 subject to Condition C9.1.4; or
- (b) the change should not become effective on the date determined under Condition C9.1.3 and shall be treated as a new Proposal for Change.

7.3.3 A change in respect of which a complaint has been made under Condition C7.3.1 shall not become effective unless and until the Office of Rail and Road makes a determination under Condition C7.3.2(a).

7.3.4 If a complaint is made to the Office of Rail and Road concerning a failure to comply with any part of the procedure relating to a Proposal for Change after the effective date or dates of any change, such change will remain in full force and effect as though no complaint had been made.

7.4 Arrangements for implementation of a Change

The Committee may determine whether a change made in accordance with this Part C (other than Condition C8) shall have effect on a single date or a series of dates and Network Rail shall give notice of such determination to all relevant parties at the same time as it provides notification pursuant to Condition C7.1.1.

CONDITION C8 - MODIFICATION BY THE OFFICE OF RAIL AND ROAD

- 8.1 The Network Code and the ADRR shall have effect with the modifications specified in any notice given by the Office of Rail and Road for the purposes of this Condition C8, provided that the Office of Rail and Road shall be satisfied as to the need for the modification as provided in Condition C8.2, the procedural requirements of Condition C8.4 shall have been satisfied, and the modification shall not have effect until the date provided for in Condition C8.5.
- 8.2 A notice given by the Office of Rail and Road under Condition C8.1 shall have effect if it is satisfied on reasonable grounds that either or both of the following conditions has been satisfied:
- (a) the modification in question is or is likely to be reasonably required in order to promote or achieve the objectives specified in section 4 of the Act; and
 - (b) the interests of any relevant person or persons would be unfairly prejudiced if the modification in question were not made, and the need to avoid or remedy such unfair prejudice outweighs or is likely to outweigh any prejudice which will or is likely to be sustained by any other relevant person or persons if the modification is made, having due regard to the need to enable relevant persons to plan the future of their businesses with a reasonable degree of assurance.
- 8.3.1 A modification specified in a modification notice shall not have effect if its effect would, if made, be:
- (a) to prevent to a material extent the Train Operator or Access Option Holder exercising, or receiving the benefit of, a protected right; or
 - (b) materially to increase any protected obligation of the Train Operator or Access Option Holder

provided that no person shall be entitled to challenge or otherwise call into question the effectiveness of any such modification unless he shall have given notice to the Office of Rail and Road not more than 45 days after the date of the modification notice stating that the modification in question would, if made, have on him any such effect and such notice shall be accompanied by such relevant information in support of such statement as it shall be reasonable to expect him to be able to provide.

8.3.2 Any challenge or other procedure of the kind referred to in Condition C8.3.1 shall, unless the affected operator and the Office of Rail and Road shall otherwise agree, be determined by an arbitrator in accordance with the ADRR within 180 days of the date upon which the affected operator shall have given notice to the Office of Rail and Road as provided for in that Condition.

8.3.3 In this Condition C8.3:

“affected operator”	means a person who shall have given to the Office of Rail and Road a notice of the kind referred to in Condition C8.3.1;
“modification notice”	means a notice given by the Office of Rail and Road pursuant to Condition C8.1;
“protected obligation”	means any obligation specified as such in a relevant agreement;
“protected right”	means any right specified as such in a relevant agreement; and
“relevant agreement”	means an Access Agreement to which the Train Operator or Access Option Holder (as the case may be) is a party and which Network Rail shall have been directed to enter into by the Office of Rail and Road in the exercise of its power under section 17 or 18 of the Act.

8.4 The procedural requirements which require to have been followed for the purposes of Condition C8.1 are:

- (a) in its consideration of the matters referred to in Condition C8.2, the Office of Rail and Road shall have consulted the Secretary of State, Network Rail and the Class Representative Committee, together with all Class Members and any other persons which the Office of Rail and Road shall consider ought properly to be consulted, in relation to the modification which it proposes to make;
- (b) in the consultations referred to in paragraph (a) above, the Office of Rail and Road shall have made available to each person so consulted such drafts of the proposed modification as it shall consider are necessary so

as properly to inform such persons of the detail of the proposed modification;

- (c) the Office of Rail and Road shall have given each person so consulted the opportunity to make representations in relation to the proposed modification and shall have taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the modification to be made;
- (d) the Office of Rail and Road shall have notified each person consulted pursuant to paragraph (a) above as to its conclusions in relation to the modification in question (including by providing to each such person a copy of the text of the proposed modification) and its reasons for those conclusions; and
- (e) in effecting the notifications required by paragraph (d) above, the Office of Rail and Road shall have treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Office of Rail and Road or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

8.5 A notice under Condition C8.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect earlier than 180 days after the date upon which it shall have been given.

8.6 In Condition C8.2, “relevant person” means a Class Member and any other person who, in the opinion of the Office of Rail and Road, shall be likely to be a Class Member.

8.7 As soon as reasonably practicable after Network Rail shall have received any written material from the Office of Rail and Road pursuant to Condition C8.4, Network Rail shall send a copy to each Class Member.

8.8 A notice under Condition C8.1 shall not have effect in relation to any proposed modification of Conditions C8.1 to C8.7 (inclusive) or this Condition C8.8.

CONDITION C9 - NOTIFICATION OF CHANGE

9.1 *Notification and effective date*

9.1.1 Notification to parties

If the Office of Rail and Road approves the proposed change in accordance with Condition C7.1.3 Network Rail shall ensure that all Class Members and the relevant franchising authority shall be notified of the change and its effective date.

9.1.2 Effective date of Change

Without prejudice to Condition C8, a notice under C9.1.1 shall specify the effective date(s) of the proposed change which shall be:

- (a) the date or series of dates determined pursuant to Condition C7.4; or
- (b) unless otherwise determined 14 days from the date of notification made pursuant to Condition C9.1.1.

9.2 *Provision of revised texts*

Network Rail shall, as soon as reasonably practicable following issue of a notice under Condition C8.1 or following approval of a Proposal for Change by the Office of Rail and Road pursuant to Condition C7.1.3, supply to all Class Members a revised version of this code or the ADRR (whichever is appropriate) incorporating the change.