# Schedule 8 performance regime

**01 April 2024**

# Contents

# Introduction

1. This module explains our policy on the contractual regime for train performance. This relates to the operational performance of Network Rail's network and the train operators' services, in terms of the punctuality and reliability of rail services.

2. Access contracts should contain incentives that promote efficient and effective performance, include provision for cost recovery and payment of appropriate compensation, and therefore facilitate better services for rail customers.

3. In the 2023 periodic review (PR23) we set the regulatory framework for control period 7 (CP7), which runs from 1 April 2024 to 31 March 2029. Our conclusions are set out in our PR23 final determination policy position on Schedules 4 and 8. This document reflects the regulatory framework implemented through the track access contract as part of PR23, which included the performance regime in Schedule 8.

## Schedule 8 performance regime – overview

4. The Schedule 8 performance regime compensates train operators for unplanned service disruption caused by Network Rail and other train operators. There are separate model performance regimes in the passenger (public service operator and open access operator), freight and charter model contracts, reflecting the differing nature of the services operated. All model contracts are accessible through ORR's website.

5. In this module we set out our policy on the performance regime as follows:

   (a) principles;

   (b) the performance regime in model passenger contracts (for public service operators and open access operators);

   (c) the performance regime in the model freight contract; and

   (d) the performance regime in the model charter contract.

6. Detailed guidance on completing Schedule 8 of each of the model passenger contract and model freight contract is set out in other guidance modules.

# Principles

7. The performance regime in Schedule 8 of track access contracts has three broad functions:

   (a) reduce train operators' exposure to losses that arise from delay and cancellations that they cannot control, by compensating them for losses incurred as a result of delay – this reduces their level of risk from operating and investing in the industry;

   (b) provide Network Rail with financial incentives to improve performance on the railway; and

   (c) provide train operators with financial incentives to limit the delay they cause.

8. The key principles of the performance regime in each track access contract are to:

   (a) provide adequate and continuous incentives for both parties to improve performance, both in terms of punctuality and reliability;

   (b) make reasonable provision for compensation for the expected revenue loss to passenger operators and a mix of revenue loss and costs for freight operators;

   (c) give an appropriate balance of risk and reward for each party;

   (d) avoid perverse incentives that could affect the way Network Rail regulates the operation of the network and, in particular, to ensure that the performance regime does not encourage Network Rail to discriminate unduly between users of the network; and

   (e) avoid undue constraints on the network or acting as a barrier to new entrants.

# Schedule 8 of the model passenger contracts

## Recalibration

9. The key features of the model Schedule 8 regime for passenger train operators (in public service operator and open access operator model contracts) are described further below. The parameters in this regime were recalibrated as part of PR23 in a process led by ORR.

## Benchmarks

10. The Schedule 8 performance regime in the model passenger contract is a benchmarked regime. There are separate benchmarks for Network Rail and train operators, which are set at the level of service groups (collections of train services) and described in terms of average lateness over a 28 day rail period.

11. If, over a 28 day period, Network Rail or a train operator performs overall at its benchmark, it will make no payments through the regime. However, if Network Rail or a train operator's actual performance is worse than its benchmark, then they make payments to the other party. Conversely, Network Rail and train operators receive bonus payments from the other party when their actual performance is better than their benchmark.

12. The purpose of benchmarks is to minimise expected money flows within the Schedule 8 regime. The benchmarks should be set such that, at expected levels of performance, overall Schedule 8 payments would be zero.

13. As explained above, the Network Rail and train operator benchmarks for each service group were recalibrated during PR23. The passenger operator and Network Rail benchmarks were based on historical average performance. The Network Rail benchmarks were also adjusted to take into account Network Rail's performance trajectories set for each Network Rail region in the PR23 final determination supporting document on outcomes (Annex B). These trajectories were expressed in terms of the On Time and Cancellations metrics, and subsequently converted to Network Rail-attributable average minutes lateness for the calculation of benchmarks.

# Network Rail payment rates

14. The Network Rail payment rate is the rate at which payments are made in relation to Network Rail performance either side of the Network Rail benchmark. There are separate Network Rail payment rates for each service group.

15. The Network Rail payment rate for compensation to (and bonus payments from) train operators is based on the assessed marginal revenue effect (MRE) of train performance for that service group. The MRE is the modelled change in revenue for that service group resulting from a one-minute change of performance minutes (a measure of lateness and cancellations) across the recalibration period. The Network Rail payment rate calculation converts the MRE for that service group into the modelled change in revenue for a one minute change in performance minutes for a single day.

16. In PR23, the MREs for all service flows were calculated by multiplying the revenue for the flow, based on ticket sales data, by the semi-elasticity for the flow. A semi-elasticity is a parameter reflecting how revenue is expected to vary with changes in performance minutes. The MRE for a service group is the sum of the MREs for all the flows within that service group.

17. The Network Rail payment rate for a service group is calculated as follows:

    (a) first, the MRE for the service group is multiplied by a price base factor, to convert the MREs in outturn prices from the historical period used to the values for the start of CP7; then

    (b) the product from this is divided by the sum of all the busyness factors across the historical period used. (Busyness factors are a measure of the planned number of schedule stops in the timetable for a rail period compared to the average number scheduled in the bi-annual timetable.)

18. Different groups of passengers across the network have different responses to poor performance in terms of how it affects their future travel intentions. This was reflected in the PR23 recalibration of Schedule 8 payment rates, through the semi-elasticities used in the payment rate calculations for the different service groups. See our PR23 policy position on Schedules 4 & 8, paragraphs 3.41 to 3.48, for more detail on the approach taken in the PR23 recalibration.

# Train operator payment rates and the star model

19. The train operator payment rate is the rate at which payments are made in relation to operator performance either side of the operator benchmark. There are separate train operator payment rates for each operator service group.

20. The train operator payment rates are the amount a train operator will pay for delays that it causes. The train operator payment rates are also set at the service group level.

21. All payments under the Schedule 8 regime are made through a 'star model' with Network Rail at its centre. Under this star model, all Schedule 8 payments are made bilaterally between Network Rail and operators, with no payments flowing directly between operators. Train operator payment rates are calculated so that, if all train operators perform at expected levels, with the expected interactions with other operators, Network Rail would overall make no net gain and no net loss from the payments to and from train operators for delays caused by other train operators.

# Other features of the Schedule 8 performance regime

22. The Schedule 8 passenger performance regime also sets out:

    (a) The requirement for Network Rail and train operators to record information relating to the reasons for delays and incidents and for Network Rail to establish and agree the records necessary to operate train performance schemes.

    (b) The procedures and compensation payable as a result of cancellations of services. Each cancelled stop is deemed to be equivalent to a specified number of delay minutes, which reflects the disruption that passengers face as a result of cancellations. The 'deemed minutes late' arising from cancellations are added to the lateness arising from delays when assessing performance against benchmarks.

    (c) Monitoring points and monitoring point weightings (MPWs). These parameters ensure that payments reflect the passenger usage along the route of the service. Typically there are around four to five monitoring points for each service code (although for short-distance services or very long distance ones fewer or more would be appropriate). A MPW reflects the proportion of passengers alighting or interchanging at the monitoring point or one of the stations preceding it (subsequent to the previous monitoring point).

(d) Sustained poor performance (SPP) provisions. These provide for additional compensation to be payable to a train operator when lateness and cancellations attributable to Network Rail reach a specified threshold, beyond which it is considered the liquidated sums nature of Schedule 8 could start to undercompensate the operator significantly. In CP7, SPP provisions now apply not just to public service operators but also in the open access operator model contract. The policy intent behind SPP was set out in a November 2014 letter available on our website.

## Changes to existing performance regimes in CP7

23. The model passenger contract contains a provision to allow Network Rail or the train operator to propose changes to the parameters in Appendix 1 of Schedule 8 during a control period (set out in paragraphs 17.1 and 17.2 of Schedule 8). Through this provision:

- either party can propose a change to the other (e.g. a recalibration);
- if the parties agree, they need to seek our approval; and
- if they do not agree, then either party can refer the matter to us. We would then decide whether to determine the matter ourselves or whether to refer it for resolution under the Access Disputes Resolution Rules.

24. In our PR18 final determination, we set out three broad types of recalibration under which parties can propose such a recalibration. This guidance referred to the scope and justification for Network Rail or a train operator seeking a within-control period recalibration of Schedule 8. See the PR18 overview of approach and decisions, paragraphs 9.59 to 9.75.

25. In addition, in PR23 we introduced a new provision to allow for ORR to initiate an update of Schedule 8 parameters during the control period. This new provision is implemented through a new paragraph 17.1A in model public service operator and open access operator track access contracts. This new provision is included in Schedule 8 for the passenger, freight and charter sectors. Through this provision, ORR intends to recalibrate Schedule 8 in advance of year 3 of CP7. In addition, ORR is able to initiate a recalibration in the event there is a material change in circumstances.

# Caps on bonus payments

26. The performance regime includes both penalty payments for performance worse than benchmark and bonus payments for performance better than benchmark. Normally, where Network Rail's performance is better than benchmark, the train operator's revenue, at least in the long term, can be expected to increase. However, there are some circumstances where the revenue response may be significantly dampened or removed, for example where significant overcrowding occurs. In such cases we will consider approving caps on performance regime bonus payments. We set out the type of evidence that may justify such a cap in a guidance letter issued in August 2006[1].

# New or additional services

27. When calibrating Schedule 8 for new or additional services, a similar calibration approach should be used to the one we used during PR23. However, in some situations, modelled rather than historical data will need to be used.

28. In the absence of historical data that would allow use of normal calibration techniques our views are as follows:

    (a) Network Rail payment rates – semi elasticities can be applied as in the PR23 recalibration. The estimated fare revenue at stake can be based on revenue forecasts.

    (b) Benchmarks – the TOC benchmark should be based on the average historical performance of the operator over the most comparable part of the network, whereas for Network Rail it can be based on performance on the line or its nearest equivalent. In both cases, if information about performance with similar rolling stock is available, this can be used. For major changes, full timetable modelling and simulation may have been undertaken and could be used to inform benchmark setting. We would expect Network Rail and the operator to discuss the most appropriate approach with ORR before submitting a regime.

    (c) Monitoring points and weightings can be based on demand forecasts.

29. All scheduled passenger services should be incentivised throughout their journey (that is, with monitoring points at destination stations and relevant intermediate points

[1] Performance regime review: Caps on Schedule 8 bonus payments, ORR, 22 August 2006, available at http://webarchive.nationalarchives.gov.uk/20131001175041/http://www.rail-reg.gov.uk/server/show/nav.177

as specified above). The only circumstances where it might be acceptable not to have trains monitored throughout their journey are where:

(a) complete monitoring cannot be achieved for technological reasons; and/or

(b) the number of trains terminating is very small and the number of passengers and revenue is not materially significant – for example, less than one percent of:

(ii) the total revenue of the service group; and/or

(iii) passenger numbers within a service group.

30. New services may be included in existing service groups or new service groups. Changes to existing monitoring point weightings are likely to be needed if the number of passengers alighting between or at the particular monitoring point(s) is expected to change as a proportion of the total passengers alighting for the service group. We will expect to receive supporting information for material changes.

31. When additional services are added to an existing approved contract, this may involve new routes where there are no existing monitoring points, or it may require a change to monitoring point weightings. If new terminating points are introduced, additional monitoring points will generally be needed to maintain the principle that all services are incentivised.

32. Where services are reallocated across two or more public service operators, we would expect to see the performance regimes of the affected operators recalibrated to ensure that the revised services continue to be properly incentivised.

33. For completely new operators we may be prepared to approve a contract containing provisions for the operator subsequently to develop and agree a full performance regime with Network Rail, or have one established in an arbitral process. In such cases, we will expect this development to be completed as quickly as possible, to reflect our principle that all parties should be incentivised to improve performance. We will also expect the provisions to establish a very clear process for the development and incorporation of the new regime. As an alternative, a regime with estimated parameters may be approved, but with provisions for retrospective adjustment in the light of actual experience. We expect fully functioning regimes to be in place once a full year's experience has been gained.

# Bespoke performance regimes

34. It is possible that in some instances applicants seek a bespoke performance regime. Where this is the case, we will consider the justification and evidence for the proposal. We would expect any such regime to satisfy the principles set out above and also to:

    (a) not pose any undue financial impact on or risks to funders;

    (b) be financially neutral at the levels of performance expected at PR23 or, if appropriate, as a result of a subsequent change to the benchmarks; and

    (c) not require additional and unnecessarily burdensome delay attribution or other data capture systems.

# Schedule 8 payments under a future reformed industry structure

35. Through PR23, ORR has introduced a mechanism that may ‘switch off’ Schedule 8 payments for the future operators of an integrated rail body, such as the UK Government’s proposed Great British Railways (GBR) entity, if such a body is created and in the event that there is sufficient legislative change to permit this. Certain conditions will have to be met before giving effect to this new provision, such as:

    (a) the need for sufficient developments in rail reform and changes in industry structure; and

    (b) the need for a sufficiently robust regulatory and incentive framework to be in place to promote improvements in railway service performance.

36. This mechanism has been included in the contracts of operators that were, at the time of PR23 implementation, contracted by DfT and which we would therefore expect to be contracted by an integrated rail body in the future. Schedule 8 will continue unchanged for non-GBR operators and, as such, the new mechanism has not been included in the model contract for public service operators or open access operators. Delay attribution will continue across the system. See our PR23 policy position on Schedules 4 & 8 (paragraphs 3.5 to 3.13).

# Schedule 8 of the model freight contract

37. Schedule 8 of the model freight contract (which is also included in the model freight operating company customer access contract) is designed to incentivise Network Rail and freight operators to minimise disruptive events for which they are responsible. Schedule 8 is the mechanism by which each freight operator receives compensation from Network Rail for the impact of poor performance on its services, and through which a freight operator must pay Network Rail when its performance detrimentally affects other operators' trains on the network. The performance regime also provides for compensation to be paid for the cancellation of an operator's train or a long period of disruption to an operator's services. The freight regime is subject to the principles of the 'star model' described under the passenger section.

38. The performance regime in the model freight contract is similar in some respects to that in the model passenger contract in that it is a benchmarked regime. However, unlike the passenger regime, freight operators are measured on their actual impact on other operators, rather than a modelled impact on other operators. The regime is also calibrated at a more aggregated, sector-wide level, rather than at operator service group level as in the passenger regime.

39. In PR23, we introduced a new provision to allow for Schedule 8 parameters to be updated during the control period – this provision is contained in paragraph 13 of the model freight operator contract. See also our PR23 policy position on Schedules 4 & 8 (paragraphs 3.17 to 3.35)

## Benchmarks

40. The Network Rail and train operator benchmarks are defined in minutes of delay per 100 miles (rather than average minutes of lateness, which are used in Schedule 8 for passenger operators). Payments are made when Network Rail's or a freight operator's performance diverges from its benchmark, with compensation paid for worse than benchmark performance and bonuses received for better than benchmark performance.

41. The Network Rail benchmark is based on Network Rail's regulatory performance trajectory, as determined in ORR's PR23 final determination. The freight operator benchmark is based on average past performance over the five-year recalibration period. In CP7, the freight operator benchmark has been set midway between the

CP6 value and that calculated in the PR23 recalibration, as explained in our [PR23 policy position on Schedules 4 & 8] (paragraph 3.55).

42. The Network Rail and train operator benchmarks are the same for all freight operators. Since the benchmarks are normalised for the distance operated, they are suitable for all sizes of operator.

## Compensation and bonus payment rates

43. The Network Rail payment rate represents the amount of compensation paid to freight operators or bonuses paid to Network Rail when Network Rail performs worse or better than its benchmark. It is intended to reflect the average financial impact on a freight operator of each minute of delay to a freight train attributable to Network Rail or another train operator.

44. The train operator payment rate is the rate of compensation paid to Network Rail or bonuses paid to a freight operator when the freight operator performs worse or better than its benchmark. It is based on the average estimated financial impact of a freight operator causing a minute of delay to the train operators with whom freight operators interact.

45. The Network Rail and train operator payment rates are the same for all freight operators, and were recalibrated for CP7 through PR23.

## Cancellation arrangements

46. Cancellation payments compensate freight operators for some of the financial impact of each freight train cancellation attributable to Network Rail. A service can be delayed for twelve hours before it is treated as a cancellation. The sum paid for a cancellation is referred to in the track access contract as the ‘Cancellation Sum’. There are two Cancellation Sums in the track access contract: the higher Cancellation Sum is paid for cancellations above the Cancellation Threshold and the lower Cancellation Sum is paid for cancellations below the Cancellation Threshold.

## Late Notice Cancellation Sum

47. The Late Notice Cancellation Sum is paid to a freight operator by Network Rail when the operator experiences a cancellation under Schedule 4, which is notified less than 12 weeks before the service is due to commence but is not due to a disruptive event, and when the operator and Network Rail are unable to agree an alternative slot.

## Service Variation Sum

48. The Service Variation Sum is paid by Network Rail to the train operator for each planned service that is diverted or otherwise amended in specified circumstances as a result of a Network Rail caused incident.

## Disruption Sum

49. The Disruption Sum is a sum paid by the train operator to Network Rail when a restriction of use is cancelled or the commencement delayed due to a reason attributable to the train operator.

## Incident Cap Access Charge Supplement Rate

50. Operators have the ability to limit their Schedule 8 liability to single incidents through with an incident cap. Such caps are funded through an access charge supplement (ACS) so that Network Rail recovers the likely cost associated with the cap. The menu of incident caps and associated ACSs (paragraph 11.2 of Schedule 8) allows freight operators to choose their favoured incident cap level each year and pay Network Rail the associated ACS.

## Annual Caps

51. Freight operators and Network Rail have reciprocal annual caps on the net liability they face under Schedule 8. These provide an important protection to freight operators by providing certainty about the maximum liabilities they could face.

52. The appropriate size of an annual cap depends on the scale of operations. Smaller freight operators with a market share of less than 5% of total freight train miles in a given year have a default reciprocal annual cap of £839,521 (2023-24 prices). Larger freight operators are required to negotiate their own annual caps with Network Rail, and where agreement cannot be reached, we determine the level of cap. Both parties are required to review the cap at the end of the year if annual contract mileage has varied by 2.5% or more since the cap was last updated.

## Bespoke Regimes

53. We consider that bespoke arrangements to the freight performance regime would be the exception to the rule. This is due to the development of the standardised and simplified model performance regime for freight; this was established for CP4 and updated for subsequent control periods.

# Schedule 8 of the model charter contract

54. The performance regime in the model charter contract is similar to the regime in the model freight contract, in that:

    (a) it is a benchmarked regime;

    (b) charter operators are measured on their actual impact to other operators;

    (c) it is designed to incentivise both parties to minimise disruptive events for which they are responsible;

    (d) both parties are under an obligation to avoid and mitigate the effects of any delays or cancellations;

    (e) a charter operator receives compensation from Network Rail for the impact of poor performance on its services and a charter operator must pay Network Rail when the operator's performance detrimentally affects other operators;

    (f) operator payment rates are calibrated using the principles of the 'star model'; and

    (g) the regime provides for compensation to be paid for the cancellation of an operator's train or a long period of disruption to an operator's services.

55. In PR23, we introduced a new provision to allow for Schedule 8 parameters to be updated during the control period – this provision is contained in paragraph 11 of the model charter operator contract. See also our PR23 policy position on Schedules 4 & 8 (paragraphs 3.17 to 3.35).

## Benchmarks

56. Payments are made when Network Rail's or a charter operator's performance diverges from its benchmark, with compensation paid for performance that is worse than the benchmark and bonuses received for performance that is better than the benchmark.

57. As there is no regulatory performance target for Network Rail in respect of charter services the Network Rail benchmark in the model charter contract is based on average past performance over the five-year recalibration period. The charter

operator benchmark is also based on average past performance over the five-year recalibration period.

58. The Network Rail and train operator benchmarks are the same for all charter operators. Since the benchmarks are normalised for the distance operated, they are suitable for all sizes of operator. The benchmarks were set for CP7 through PR23.

## Compensation and bonus payment rates

59. The Network Rail payment rate represents the amount of compensation paid to charter operators or bonuses paid to Network Rail when Network Rail performs worse or better than its benchmark. It is intended to reflect the average financial impact on a charter operator of each minute of delay to a charter train attributable to Network Rail or another train operator.

60. The train operator payment rate represents the amount of compensation paid to Network Rail or bonuses paid to a charter operator when the charter operator performs worse or better than its benchmark. It is based on the average estimated financial impact of a charter operator causing a minute of delay to the train operators with whom charter operators interact.

61. The Network Rail and train operator payment rates are the same for all charter operators, and were recalibrated for CP7 through PR23.

## Cancellation arrangements

62. Cancellation payments compensate charter operators for some of the financial impact of each charter train cancellation attributable to Network Rail. A service can be delayed for twelve hours before it is treated as a cancellation.

63. In the charter performance regime there is only one cancellation payment rate for charter operators, compared to two cancellation payment rates in the freight performance regime. The payment rate for a cancellation is referred to in the track access contract as the ‘Cancellation Sum’. It was recalibrated for CP7 through PR23.

## Joint cancellation sum

64. In the performance regime in the model charter contract, charter operators receive a payment for the financial impact of each charter train cancellation where Network Rail and an operator are equally responsible for the delay.

65. In the model charter contract this payment rate is referred to as the ‘Joint Cancellation Sum’. It was recalibrated for CP7 through PR23.

## Incident Cap Access Charge Supplement Rate

66. As in the model freight contract, charter operators have the option to limit their liability through the performance regime with an incident cap, which reduces their exposure to a single incident. The likely cost to Network Rail of providing an incident cap is funded through an access charge supplement (ACS). The menu of incident caps and associated ACSs (paragraph 9.2 of Schedule 8) allows charter operators to choose their favoured incident cap level each year and pay Network Rail the associated ACS.

## Annual Caps

67. Charter operators and Network Rail have reciprocal annual caps on the net liability they face under the Schedule 8 performance regime. These provide an important protection to charter operators by providing certainty about the maximum liabilities they could face. All charter operators have the same reciprocal annual cap of £856,764 (2023-24 prices).

## Bespoke regimes

68. Our approach for bespoke arrangements to the charter performance regime is the same as for the freight regime: it would be the exception to the rule given the development of the standardised and simplified model performance regime for charter operators.