



**RAILTRACK'S INVESTMENT
PROGRAMME:**

INCREASING PUBLIC ACCOUNTABILITY

**CONSULTATION ON PROPOSED
MODIFICATION TO
RAILTRACK'S NETWORK LICENCE**

Contents

Foreword.....	1
1. Introduction.....	3
2. Reasons for the Licence modification	5
Railtrack's obligations under the existing structure of contracts	5
Railtrack's obligations under the existing provisions of its Network Licence	6
The public interest need for change	7
3. Form of the proposed new Licence Condition	9
The general duty.....	9
Criteria and annual planning and reconciliation statements	10
4. Accountability and enforcement.....	13
5. Consultation process and question	15
Annex A: Railtrack's letter of consent dated 21 July 1997	16
Annex B: Proposed modification to condition 7 of Railtrack's network licence.....	17
Annex C – Existing network licence condition 7.....	21

Foreword

On 21 May I published a Statement on Railtrack's Investment Programme. In it I announced that I had concluded that it was timely to consider strengthening Railtrack's obligations to ensure delivery of its plans, and that I had therefore commenced discussions with Railtrack to seek to agree with it an appropriate modification to its Network Licence. I stated that the aim of this modification would be to meet public interest concerns - to secure timely maintenance of the railway network; its timely renewal and replacement in modern equivalent form; and its improvement, enhancement and development - without prejudicing Railtrack's effective management of a properly directed capital investment programme.

In that Statement I set out in some detail my reasons for seeking this modification. I further stated that when I had agreed an appropriate Licence modification with Railtrack I would then consult with interested parties to satisfy myself that their concerns were properly addressed.

On 26 June, Railtrack confirmed its agreement to work with me to produce a mutually agreed Licence modification which would give effect to its public accountability as owner of the nation's railway infrastructure. On 21 July, Railtrack formally agreed with my proposed text of such a mutually agreed Licence modification.

As required by the Railways Act 1993, I need to be satisfied that this proposed Licence modification properly addresses the public interest. I am therefore publishing the necessary statutory notice. In addition, in this Consultation Document I am once again setting out the reasons for this Licence modification - drawing on arguments and evidence which I have already published. I am also publishing the proposed modification, explaining its form and explaining the accountability it establishes and the enforcement powers it gives me.

I believe that this mutually agreed modification to Railtrack's Network Licence represents an important step forward in properly addressing the public interest issues of accountability without prejudicing Railtrack's own ability to develop, fund and implement its own investment programme. I am now asking consultees whether they agree with my assessment of the reasons why additional regulatory powers are needed in respect of Railtrack's investment and stewardship obligations and whether they

agree that the proposed Licence modification provides an appropriate way to address those concerns.

John Swift QC
Rail Regulator

1. Introduction

1. In this consultation document, I am seeking views on a mutually agreed modification to Condition 7 of Railtrack's Network Licence. The purpose of this modification is to increase Railtrack's public interest accountability for delivery of its investment obligations and for delivery of improved service quality and network capability. I have sought Railtrack's agreement to the proposed modification. Railtrack notified me formally of their agreement on 21 July 1997. This letter is reproduced at Annex A.
2. Under section 12 of the Railways Act 1993, before making agreed modifications, I am required to give notice stating:
 - (a) that I propose to make the modifications and setting out their effect;
 - (b) giving the reasons why I propose to make the modifications; and
 - (c) specifying a period, not less than 28 days, within which representations or objections with respect to the proposed modifications may be made.
3. I am therefore publishing a notice under section 12(2) of the Railways Act in accordance with those requirements, and seeking representations or objections to the proposed modification by Tuesday 9 September 1997. In addition, I am publishing this consultation document which sets out the effect of the modification I am proposing and the reasons why I am proposing it. The proposed modified Licence Condition 7 is reproduced at Annex B, and the existing Condition 7 at Annex C.

2. Reasons for the Licence modification

4. Section 4 of the Railways Act sets out my public interest duties. These include protecting the interests of users of railway services, promoting the use of the railway network for the carriage of passengers and goods, and the development of that network, to the greatest extent economically practicable. I must also aim to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance and to impose the minimum restrictions which are consistent with the performance of my functions. In addition, I have a duty to act in a manner which I consider will not make it unduly difficult for the holders of network licences (Railtrack in the current instance) to finance their activities.
5. Railtrack receives substantial sums of money in the form of access charges paid by train operators, indirectly supported by public subsidy, for the purpose of investment in the renewal and development of the rail network. These charges are approved by me. I must therefore satisfy myself as to the sufficiency of Railtrack's accountability, as owner of the nation's railway infrastructure, for the investment funded by these charges.
6. In May, I announced that I had commenced discussions with Railtrack in order to seek to agree a modification to its Network Licence because I considered that the existing structure of contracts and licence conditions, in relation to Railtrack's investment in and stewardship of the railway infrastructure, was inadequate to ensure achievement of my public interest objectives. I stated that the purpose of this modification would be to strengthen Railtrack's obligations and accountability to ensure that it achieves three key stewardship objectives:
 - (a) timely maintenance of the railway network;
 - (b) timely renewal and replacement of the network in the appropriate modern equivalent form; and
 - (c) improvement, enhancement and development of the network.

Railtrack's obligations under the existing structure of contracts

7. Railtrack's customers are principally train operators, who - under contracts approved by me - gain access to the rail network to provide services to passengers and freight customers. Those contracts provide incentives to improve performance, and set out

the framework under which train operators and Railtrack can work together to make changes which are mutually beneficial. But the contracts do not provide sufficient controls to ensure the delivery of Railtrack's stewardship obligations. This is for two reasons.

8. First, Railtrack is indirectly in receipt, through its access contracts, of substantial sums of money from the State - ultimately from taxpayers - providing it with the resources to deliver its stewardship obligations. But the access contracts with train operators contain no guarantee that train operators will get the modern equivalent railway for which they and funding bodies (including central Government and Passenger Transport Authorities) are paying, and on which basis I set access charges in January 1995.
9. Second, in part because most contracts are relatively short term, they do not provide sufficient incentives for required long term enhancement of the nation's railway infrastructure.

Railtrack's obligations under the existing provisions of its Network Licence

10. Looking beyond its access contracts, Railtrack is also under obligations in its Network Licence in respect of investment and stewardship. But I believe these obligations provide insufficient accountability. The existing Condition 7 requires Railtrack to publish an annual statement (the Network Management Statement) showing projections of future network capacity requirements, planned modifications to its network, and the proposed method for financing these within its overall financial framework. But this simply imposes an obligation to plan. It does not include requirements - and therefore public accountability - in respect of the delivery of those plans or their adequacy to satisfy the reasonable expectations of users and funders of Railtrack's network.
11. The Network Management Statement published last February was the first such statement to be published in a form and covering a period approved by me (before privatisation, this was a matter for the Secretary of State). It contains much more detailed information about Railtrack's plans than had previously been published. If these plans are carried through, Railtrack's expenditure will be in excess of the levels I assumed when I approved its charges in January 1995. As I said in my May Statement, that is most encouraging and reflects the substantial work which Railtrack has devoted to this task.

12. However, these are only plans. There is no obligation to deliver them. Railtrack has acknowledged that it has failed to meet its own plans for increasing the rate of spending on backlog maintenance and renewal work at stations and depots. Railtrack has recently had to relaunch this programme to seek to achieve the improvements in standards which underpin it, and which are reflected in the expenditure programme set out in its Prospectus. It is clear that a significant amount of work needs to be done by Railtrack to bring its investment plans to fruition. Moreover, there is currently no obligation on Railtrack to demonstrate how it proposes to link its investment programme to output targets showing the quality and capability of the network.

The public interest need for change

13. In my Statement in May, I said that assurances that the capital and maintenance programme will be carried out, the more especially when most of the annual expenditure in effect is funded by the State, require something more bankable than the expression of intentions or the short term pressures to meet contractual obligations.
14. I believe that Railtrack should be properly accountable for the maintenance, renewal and development of the network. This accountability is owed to its customers, to those funding the railway, to the State, and ultimately to passengers, freight customers and other users.
15. I am therefore now proposing formally - and Railtrack has agreed - a modification to Condition 7 of Railtrack's Network Licence, the purpose of which is to strengthen Railtrack's accountability to me for the delivery of its stewardship obligations, and to give me greater powers of enforcement in the event that Railtrack fails to deliver the programme to which it has committed itself, without prejudicing Railtrack's own ability to develop, fund and implement its investment programme.

3. Form of the proposed new Licence Condition

16. In considering the form of the proposed new Licence Condition, I have attached primary importance to establishing strong, measurable and enforceable obligations on Railtrack in respect of its investment and stewardship obligations. The new Licence Condition would place Railtrack under an explicit responsibility to act in a manner which will ensure that the plans it makes are appropriate for the delivery of its obligations, and that once established those plans are delivered in a timely, economic and efficient manner meeting the reasonable expectations of those with a legitimate interest in Railtrack's programme.
17. The proposed modification takes the form of an entirely new Condition 7 (at Annex B) to replace the existing Condition 7 (at Annex C). Paragraphs 1 and 2 establish a new and critically important general duty on Railtrack. Paragraphs 3 to 9 then place on Railtrack a series of further detailed and enforceable obligations pursuant to this new general duty.

The general duty

18. The core of the proposed licence modification is the new general duty (paragraph 2) requiring Railtrack to carry out its licensed activities to achieve the purpose of the condition to the greatest extent reasonably practicable having regard to all relevant circumstances including its ability to finance its licensed activities. That purpose (paragraph 1) is to secure:
 - (a) the maintenance of the network;
 - (b) the renewal and replacement of the network; and
 - (c) the improvement, enhancement and development of the network,in each case in accordance with best practice and in a timely, economic and efficient manner so as to satisfy the reasonable requirements of persons providing services for the carriage of passengers or goods by railway, and funders, in respect of the quality and capability of the network.
19. Therefore, for the first time, Railtrack will have explicit delivery and adequacy duties in respect of the stewardship of the network, in accordance with public interest

criteria. The definition of network in the context of this licence condition also includes, for the first time, stations and depots which Railtrack leases to train operators, and the major stations which it operates itself.

Criteria and annual planning and reconciliation statements

20. Railtrack will be required to show in advance how it will comply with its general duty and also to report annually on the effect of what it has done. To that end, it will be required to publish (within three months of the proposed licence condition coming into force) the criteria that it will apply in making its decisions in order to comply with the new general duty (paragraph 3). These criteria will have to show Railtrack's method of choosing the priority and timing of different types of work, the parts of the network on which the work is to be carried out, and the basis for reviewing these priorities. Railtrack will have to keep the criteria under review to determine whether they are fit for purpose, and revise them to make them fit for purpose.
21. Having set out its criteria, Railtrack will have to publish a planning statement, on or before the 31 March each year, similar in nature to the Network Management Statement published under the present Licence Condition 7 but going beyond present requirements. The Statement will have to demonstrate how Railtrack proposes to comply with its new general duty. It will have to be in sufficient detail to enable existing and potential train operators to plan their businesses, and to enable funders of railway services to plan their future financial and service requirements, in each case with a reasonable degree of assurance (paragraph 4).
22. As with the existing Network Management Statement, the form of, and period covered by, the new statement will have to be approved by me. However, the matters which the statement must cover (paragraph 5), are expanded. They include not only sufficient information about the basis of Railtrack's plans, but also their effect on the quality and capability of the network, as well as details of the costs and proposed method of financing the programme. The requirement now focuses more explicitly on the results of Railtrack's investment programme, and not just on its size.
23. A key element of Railtrack's stewardship obligations, as defined in paragraph 1 of the proposed modification, is its understanding of the reasonable requirements and business expectations of its customers and funders. This is something which Railtrack has already commenced through its account planning process. Nevertheless, the modified Licence Condition places formal obligations in respect of consultation (paragraph 6).

24. As I said above, the key issue is the delivery of plans, not the plans themselves. The modified Condition, therefore, establishes new requirements on Railtrack to report on its progress in delivering its plans to meet its stewardship obligations (paragraph 8). The modified Licence Condition will require Railtrack to publish a report on its progress against the previous year's planning statement, setting out the reasons and proposed actions in respect of any variance. This statement will have to be published on or before 31 July in respect of the planning statement published in the preceding year. The first such statement will be published next year in relation to Railtrack's performance of the Network Management Statement published in February 1997.
25. Railtrack will also be required to keep adequate information as to the actions it has taken to comply with its obligations under this condition, and will be required to furnish the Regulator with such information as he may reasonably require to monitor compliance with this condition (paragraph 7).

4. Accountability and enforcement

26. The purpose of the new Condition is not only to place on Railtrack the range of specific duties set out above in support of, and additional to, the new general duty but also to provide for accountability in respect of the key stewardship objectives set out in paragraph 6 above, and for powers of enforcement should Railtrack fail to deliver without good reason.
27. In order for it to comply with the new obligations, Railtrack will have to achieve challenging targets for the quality and capability of the network which reflect the modern equivalent railway for which train operators and funding bodies are paying. I would expect Railtrack to agree such targets with me.
28. However, I have a duty under section 4 of the Railways Act to impose on operators of railway services the minimum restrictions consistent with the performance of my functions and to act in a manner which will not render it unduly difficult for Railtrack to finance its regulated activities. I cannot, therefore, impose an absolute obligation on Railtrack which takes no regard of its ability to finance its activities. However, in arriving at my view of what it is reasonable of me to expect from Railtrack I would expect to agree targets which assume the highest reasonable level of efficiency on its part and which do not result in such improved efficiency providing disproportionate benefits to shareholders.
29. The proposed modified Licence Condition will give me investigatory and enforcement powers in a range of circumstances. In particular, I will be able to require Railtrack to take appropriate action if:
- (a) I am not satisfied that Railtrack's criteria or plans are adequate to enable it to comply with stewardship obligations created by the general duty to maintain, renew and develop the network;
 - (b) Railtrack fails to deliver on its plans without good reason;
 - (c) Railtrack fails to carry out proper consultation with operators and funding organisations; or
 - (d) I am not satisfied that the results of Railtrack's plans are likely to meet the reasonable requirements of train operators and funding organisations.

30. Commercial decisions about the specific schemes and programmes comprising Railtrack's investment programme will of course remain a matter for the company. But it is my responsibility to seek to ensure that the working of commercial incentives promotes the public interest and leads to a better railway for passengers and freight customers.

5. Consultation process and question

31. I am today commencing the statutory process of consultation required under section 12(2) of the Railways Act in respect of the proposed mutually agreed Licence modification. I am inviting train operators, funding organisations and others to comment on the proposed modification set out in Annex B, in particular focusing on the following questions:
- (a) do consultees agree with my assessment of the reasons why additional powers are needed in respect of Railtrack's investment and stewardship obligations; and
 - (b) do consultees agree that the proposed licence modification provides an appropriate way to address those concerns?
32. Comments should be made in writing and sent to
- David Chapman
Manager, Railtrack Regulation
Office of the Rail Regulator
1 Waterhouse Square
138-142 Holborn
London EC1N 2ST
- by Tuesday 9 September 1997.
33. It is my intention to place copies of all comments received in the ORR Library. Submissions made in confidence will be accepted, but should be clearly indicated as such.
34. Subject to any comments and representations I receive, I will consider whether to proceed with the licence modification in its present form or whether to seek to modify these proposals. Under section 12 of the Railways Act, any revisions to the proposal would be subject to securing the agreement of Railtrack as licence holder and, if material, to a further process of statutory consultation before implementation.

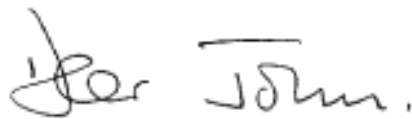
JOHN SWIFT QC
RAIL REGULATOR

Annex A: Railtrack's letter of consent dated 21 July 1997

The Regulator has received the following letter of consent from Railtrack to his proposed licence modification. The proposed modification, referred to in Railtrack's letter, is reproduced in Annex B.

RAILTRACK
Sir Robert Horton Chairman

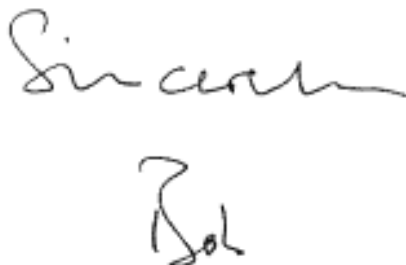
21 July 1997



**MODIFICATION TO CONDITION 7 OF RAILTRACK'S
NETWORK LICENCE**

I am writing to record the agreement of myself and my Board to the attached proposed modification of Railtrack's Network licence.

I understand you will now need to consult other parties on the proposal.



John Swift QC
Rail Regulator
Holborn Bars
138-140 Holborn
LONDON
EC1 2ST

Railtrack Group PLC 40 Bernard Street, London WC1N 1BBY
Telephone 0171 344 7100 Facsimile 0171 344 7103
DX 132140 Russell Square
Registered Office as above
Registered in England and Wales No 2688114

Annex B: Proposed modification to condition 7 of Railtrack's network licence

NETWORK LICENCE GRANTED TO RAILTRACK PLC:

Proposed modification to replace the whole of the existing Condition 7

"Condition 7: Stewardship of the Licence Holder's network

1. Purpose

The purpose is to secure:

- (a) the maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, economic and efficient manner so as to satisfy the reasonable requirements of persons providing services for the carriage of passengers or goods by railway and funders in respect of the quality and capability of the network.

2. General duty

The licence holder shall carry out its licensed activities to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

3. Criteria

The licence holder shall within three months of the coming into force of this Condition (or such later date as the Regulator may, after consulting the licence holder, specify) develop and publish the criteria which it will apply to comply with the duty including its method of determining the priority and timing of different types of work, the parts of the network on which it will be carried out and the basis for reviewing such priority. The licence holder shall from time to time

- (a) review the criteria to determine whether they are fit for purpose; and
- (b) revise the criteria so as to make them fit for purpose,

and shall publish any such revised criteria.

4. Annual Statement

After complying with paragraph 6, the licence holder shall prepare and publish on or before 31 March in each year (or such other date as the Regulator may, after consulting the licence holder, specify) a statement in a form and covering a period approved by the Regulator including the information specified in paragraph 5 in sufficient detail to enable providers and potential providers of railway services to plan their businesses and to enable funders of railway services to plan their future financial and service requirements, in each case with a reasonable degree of assurance.

5. Contents of the Statement

The statement referred to in paragraph 4 shall demonstrate the way in which the licence holder expects to carry out the duty and satisfy the criteria in respect of:

- (a) projections of future network quality and capability requirements;
- (b) planned modifications to the network;
- (c) the expected effect of such modifications on the quality and capability of the network, the quality of network services and the ability of users to provide improved services to their customers;
- (d) the estimated costs of, and the method proposed for financing, such requirements and improvements within its overall financial framework; and
- (e) a progress report on the matters referred to in the statement last published under paragraph 8.

6. Consultation

The licence holder shall consult persons providing, or potential providers of, services for or in connection with the carriage of passengers or goods by railway and funders regarding their present and future proposals in the provision of such railway services.

7. Records

The licence holder shall maintain adequate information as to the actions it has taken to comply with its obligations under this Condition. The licence holder shall furnish the Regulator with such information as he may reasonably require to monitor compliance with this Condition.

8. Reconciliation

The licence holder shall prepare and publish on or before 31 July in each year (or such other date as the Regulator may, after consulting the licence holder, specify) a statement in a form compatible with the statement published in the preceding year under paragraph 4 ("the preceding year's statement") setting out:

- (a) the works carried out by it during the year ending on 31 March in that year and the extent to which it has achieved the aims for such work set out in the preceding year's statement;
- (b) the extent to which such works have not achieved their aim, the reasons therefore and the steps the licence holder proposes to take to remedy such failure; and
- (c) the reasons for any material changes to the works set out in that statement;

9. Transitional

In respect of the statements required during the year 1998:

- (a) in subparagraph (e) of paragraph 5, the reference to "the statement last published under paragraph 8", and
- (b) in paragraph 8, the reference to "the preceding year's statement"

shall be deemed to refer to the statement published by the licence holder in February 1997 in accordance with the provisions of Condition 7 of this licence at the time of such publication.

10. Interpretation

In this Condition

- | | |
|------------|---|
| "criteria" | means the criteria referred to in paragraph 3; |
| "duty" | means the duty set out in paragraph 2; |
| "funder" | means the Franchising Director, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person who provides money by way of grant or loan with the primary purpose of securing the provision of railway services; |

"licensed activities"	includes the management of any estate, interest or right in the network;
"network"	includes, where the licence holder has any estate or interest in, or right over a station or light maintenance depot, such station or light maintenance depot; and
"the purpose"	means the purpose set out in paragraph 1."

Annex C – Existing network licence condition 7

NETWORK LICENCE GRANTED TO RAILTRACK PLC

"Condition 7: Statement of Future Network Capacity Requirements"

The Licence holder shall prepare and publish annually in a form, and covering a period, approved by:

- (a) at any time when the licence holder is a public sector operator, the Secretary of State; or
 - (b) at any other time, the Regulator,
- 5.1 a statement showing projections of future network capacity requirements, planned modifications to the licence holder's network and the method proposed for financing such requirements and modifications within its overall financial