



OFFICE *of the*
RAIL REGULATOR

**REVIEW OF FREIGHT CHARGING POLICY:
EMERGING VIEWS ON KEY ISSUES**

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1. Introduction

Background

- 1.1 Since the publication of the May 2000 consultation document the issue of freight on rail has become even more prominent. The Government's ten year plan includes considerable support for rail freight, with the aim of increasing the rail share of freight haulage in the UK to 10% within 10 years. This document deals with the appropriate structure of charges and the framework for enhancements but the arrangements for funding freight growth will be a matter for the operators and SRA.
- 1.2 A list of the respondents to the May 2000 consultation document is provided in Appendix A. All non-confidential responses are available in the ORR library and will shortly be available on the ORR website.
- 1.3 Since May 2000, the Regulator has:
- received a final report from NERA/Symonds Group on the standalone cost of a freight-only network;
 - commissioned Europe Economics/Brown & Root to audit Railtrack's freight-specific costs; and
 - published his draft final conclusions on the periodic review of access charges for franchised passenger train services.
- 1.4 With the exception of the audit of Railtrack's freight-specific costs, all these documents are available from the ORR website. The publication of the audit report will depend in part on the Regulator's final conclusions on the issues of transparency in access charges for freight services and Railtrack's freight related costs.
- 1.5 This document reviews the responses to the May 2000 document and sets out the Regulator's emerging thinking on the key issues, together with a programme for finalising the review of freight charging policy.

1.6 Responses to this document should be sent to:

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by 29 September 2000. Respondents should indicate clearly if they wish all or part of their responses to remain confidential to the ORR. Otherwise it is expected that they will be published in the ORR library and on its website and they may be quoted from by the Regulator. Where a response is made in confidence, it should be accompanied by a statement which can be published, placed in the ORR library and on its website and quoted from by the Regulator, summarising the submission but excluding the confidential information. The Regulator may also publish the names of respondents in future documents or on the ORR's website, unless a consultee clearly indicates that he wishes his name to be withheld.

Further timetable and process

1.7 There was a mixed response to the Regulator's consultation on the timetable for finalising the review. Railtrack argued that the review should be concluded as a matter of urgency due to the need to finalise freight track access agreements. English Welsh & Scottish Railways (EWS) argued that the process should allow time to reach the "right solution", whilst the one other operator who commented on this issue expressed the wish for an "early conclusion". The Regulator currently intends to publish his provisional conclusions on freight charging policy around the end of October 2000. This is intended to allow for sufficient time for any responses to this consultation to be taken into account before finalising the conclusions.

1.8 In addition, the Regulator expects to update his existing document on criteria and procedures for the approval of freight track access agreements (published in December 1994) following finalisation of the review of freight charging policy, model clauses and the framework for enhancement. He is also currently in the process of reviewing his policy on connection agreements.

- 1.9 In setting the freight revenue assumptions for the periodic review, the Regulator currently expects to use the approach he set out in the May 2000 freight charging policy document. This involves making an assumption about freight revenue in the periodic review. If the expected income is materially affected by a revision in freight charging policy then this would be taken into account at the next periodic review. For example, if freight income is less than assumed in the periodic review, the 2006 Regulatory Asset Base (RAB) could be increased to cover the value of this shortfall. The precise arrangements would be set out as part of the Regulator's conclusions on the review.

2. *Regulatory principles*

Introduction

2.1 This chapter describes the Regulator's current views on the principles which should guide his policy on access charges for freight services, together with progress on the proposed EC Directive on charging and capacity allocation.

Principles

2.2 The May 2000 document set out six principles the Regulator was considering to guide his policy with respect to access charges for freight services. These were:

- preventing monopoly abuse by Railtrack;
- allowing Railtrack to recover the avoidable cost of its aggregate freight operations;
- promoting competition between freight operators;
- increasing transparency and predictability;
- avoiding distortions in the freight market; and
- providing appropriate incentives for Railtrack to develop the freight market.

2.3 The responses to the consultation were generally supportive of these principles, whilst acknowledging the need to balance the potential conflicts. The key issues raised in the consultation responses on which there was no consensus were:

- whether competition from other modes of freight transport restricts Railtrack's ability to abuse its position; and
- whether Railtrack should have financial incentives to develop the freight market.

- 2.4 Railtrack argued that competition from other modes of freight transport, coupled with the protections provided under sections 17 and 18 of the Railways Act 1993, mean that there is no need for additional protection against monopoly abuse. It also argued that the long-term effects of any monopolistic behaviour would be passed to the shadow Strategic Rail Authority (SSRA) through the single till. Other respondents questioned whether competitive pressure from road transport was sufficient to restrict Railtrack's ability to abuse its position.
- 2.5 The SSRA argued that Railtrack should have sufficient financial incentive to carry freight services and to offer track capacity to freight on an equal basis with passenger services. Railtrack argued that it should have an incentive rather than an obligation to develop the freight market and that it was important to distinguish between short-term and long-term incentives. Several other respondents supported financial incentives to Railtrack but not at the cost of affordability. In this context EWS and GB Railways Group argued that financial incentives would not be sufficient for Railtrack to encourage the development of the freight market. EWS believes that Railtrack could never be incentivised financially to promote rail freight.
- 2.6 The Regulator believes that his section 4 duties require him to take account of the possibility of monopoly abuse by Railtrack. Further, he considers the prevention of such abuse should remain a principle underlying his policy. In this area the Regulator's duties under section 4 of the Railways Act 1993 require him, amongst other things, to:
- protect the interest of users of railway services; and
 - promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that he considers economically practical.
- 2.7 The Regulator also believes that it is important for Railtrack to have a financial incentive to promote the appropriate development of the rail freight market. However, he acknowledges that financial incentives alone may not be sufficient to encourage the development of that market given its sensitivity to the price of track access.

Fixed and common costs

- 2.8 A key principle identified in the May 2000 freight charging policy document is that Railtrack should be able to recover its freight-specific costs. In its response Railtrack stated that it is indifferent to how its fixed freight costs are covered as long as they are funded. Passenger operators and passenger transport associations supported freight costs being recovered from freight operators and were opposed to any cross-subsidy from passenger services. Several other respondents believed that the SSRA should pay for the fixed cost element of freight-specific costs leaving charges related to variable costs to be recovered from freight operators. EWS suggested that all Railtrack's freight charges should reflect the marginal costs of operation. However, this would need to be reconciled with the principle that Railtrack should be able to recover its freight-specific costs and the Regulator will be discussing this issue with the SSRA.
- 2.9 The May 2000 freight charging policy document raised the question of whether freight operators should contribute to those costs which are common to both passenger and freight operators. Few respondents argued in favour of freight services contributing to these common costs. The SSRA argued that freight operators are not currently able to make such a contribution. Given these views, the Regulator's current view is that freight charges should not include a contribution to common costs. Since freight is largely incremental to the network, this will ensure that track access charges for passenger services do not increase or decrease as a result of freight use.

Expected efficiency savings

- 2.10 Most responses to the consultation document were in favour of including an assumption about efficiency improvements when setting access charges for freight services. However the responses differed on what that assumption should be.
- 2.11 In his July 2000 draft conclusions on the periodic review the Regulator set out his view that efficiency gains of 3% in 2001, 4% in 2002 and 2003 and 5% in 2004 and 2005 can be achieved by Railtrack. In reaching this view the Regulator took account of all the relevant evidence he received and relevant representations which have been made.
- 2.12 In the July 2000 draft conclusions, the Regulator also indicated that usage charges for franchised passenger train services should be based on the assumed level of efficiency

for the next control period as a whole. In particular he concluded that a sharp rise in usage cost followed by real decline in prices could create significant distortions to operators' incentives. This reasoning is likely to be even more significant for freight operators given the market environment within which they operate. Freight operators are potentially making decisions today which will affect the industry over the long-term and a large increase in their costs now could have a significant effect on the long-term investment decisions made by freight operators and their customers.

2.13 For these reasons the Regulator is considering whether freight charges should be based on the estimated level of efficient freight-related costs. For example, the cost of access to freight operators could be set at the efficient level of costs which Railtrack is expected to achieve in the medium term (*e.g.* at the end of the next two control periods). He would, however, need to be satisfied that:

- Railtrack is able to finance its activities by recovering the achievable level of costs through alternative services; and
- the overall resulting framework does not provide Railtrack with an incentive to discourage the growth of rail freight.

2.14 The Regulator considers this decision is closely linked to the Government's objective to increase rail's share of the freight market to 10% as stated in the Government's ten year plan for transport. Therefore the Regulator is discussing the options closely with the SSRA.

2.15 The Regulator is also considering whether there is a strong case for assuming greater efficiency savings for freight services than for franchised passenger operators in setting an efficiency assumption for freight track access charges. The Regulator would welcome comments on the relationship between this approach and the length of freight access agreements.

The proposed Directive

2.16 Since May 2000, the proposed EC Directive on charging and capacity allocation has had a second reading in the European Parliament. A number of amendments were made and the Commission and the Council are now considering them and conciliation discussions with the Parliament are planned.

2.17 In its response to the May 2000 document, Railtrack noted that there were several areas in which it believed that the Regulator's charging proposals would not be in line with the proposed Directive. In particular Railtrack was concerned about:

- including the social value of delay in compensation for possessions. It argued that this would conflict with the cap on compensation payments related to foregone access charge revenue envisaged by the Directive;
- the possibility that initial access charges might be lower than the expected usage cost in the short term. It argued that this would result from the proposed method of adjusting charges to take account of expected efficiency improvements over the next few years; and
- any form of trading access rights other than via Railtrack.

2.18 The Regulator is not currently proposing the trading of access rights other than via Railtrack and does not believe that his proposals are contrary to the requirements and purpose of the proposed Directive as it stands. In particular, he notes that the proposed Directive includes provision for:

- incentivising the infrastructure manager to reduce the costs of infrastructure provision and the level of access charges; and
- at least balancing income and infrastructure expenditure over a reasonable period.

Conclusions and next steps

2.19 In the light of the responses to the May 2000 consultation, the Regulator believes that the freight charging policy should reflect the principles set out in that document. The Regulator also:

- does not currently expect freight services to contribute to Railtrack's common costs; and
- is considering the appropriate efficiency adjustment for freight access charges;

2.20 He would welcome comments on all issues raised in this chapter.

3. Negotiation and transparency

Introduction

3.1 The Regulator is considering whether the current approach to negotiation and transparency remains appropriate. This involves confidential costs, combined with confidential, operator-specific, negotiated charges. Most respondents commented on this issue and generally there was strong support for a more deterministic approach (where the basis for freight charges is determined from more defined criteria published by the Regulator rather than case-by-case negotiation with Railtrack) since this would result in more transparent charges to freight operators. This chapter summarises the responses and the Regulator's current thinking on these issues, including the approach to recovery of freight-related costs.

A more deterministic approach

3.2 The responses to the consultation were generally supportive of a move to a more deterministic approach to setting track access charges for freight. However, Railtrack argued that this would limit its ability to recover freight-specific costs and might price some freight flows off the network. Railtrack was also concerned that a move away from negotiation would lead to a more complex charging structure. EWS, Freightliner and GB Railways were supportive of a more deterministic method of setting track access charges although some room to negotiate the split between the fixed and variable charge was supported by EWS. The SSRA argued that a tariff based system should be introduced for reasons of transparency and potential competition benefits.

3.3 In deciding whether a more deterministic approach should be taken, the Regulator is considering how Railtrack should recover its freight-specific costs and in particular any fixed costs which are to be recovered from freight operators.

3.4 There are a number of options, including:

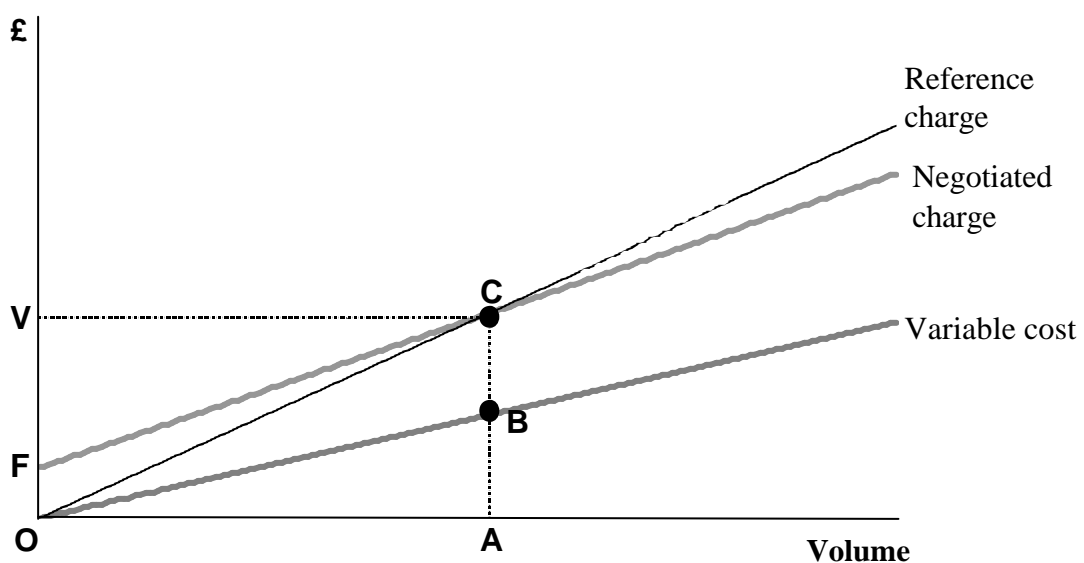
- negotiation of the fixed charge (as at present);

- allocating the fixed charge by commodity types (or groups of commodity types) reflecting their ability to pay;
- allocating to individual operators (where possible allocating by causation); and
- allocating the fixed charge equally across all traffic in proportion to usage.

3.5 The third option is illustrated in Figure 3.1. This implies an effective charge per gross tonne mile which would cover both the variable costs of the service (A-B in figure 3.1) and a proportion of the fixed costs (B-C). This would provide a reference charge available to all operators and potential operators. However, as indicated in the May 2000 document, the parties could be permitted to reallocate the total revenue requirement between a fixed charge (O-F) and a variable charge (F-V) to achieve the same expected revenue (AC=OV). This would:

- avoid undue discrimination by ensuring a fair proportion of the fixed costs are borne by all freight operators; and
- provide flexibility for Railtrack and operators to structure their charges so that they are able to respond to market conditions.

Figure 3.1: Freight costs and charging options



- 3.6 There is a danger that this could result in some marginal traffic being unprofitable, particularly for new entrants who would have to pay for a proportion of fixed costs in order to provide any service.
- 3.7 A variant on this approach would therefore be to provide for lower overall charges (i.e. with little or no contribution to fixed costs) for marginal traffic. This would be consistent with the SSRA response which argues that marginal traffic types should only pay the avoidable costs. However, this would require a clear definition of marginal traffic.
- 3.8 This approach could be extended to allocate a different proportion of fixed costs to different commodities. This would allow those traffics with the highest value to bear a greater proportion of the fixed costs and thus minimise any potential loss of traffic due to these costs. However, this would also require a definition of commodities and a view of what proportion of costs different commodities could bear.
- 3.9 The Regulator is considering the best way of providing more deterministic and predictable charges while allowing flexibility to deal with specific circumstances. He would welcome comments from consultees about the last approach to the allocation of fixed costs between operators and/or traffics and the options outlined above. In particular, comments are invited on the appropriate definition of marginal traffic, which types of commodities could afford higher track access charges and the practical implementation of these concepts.

Transparency

- 3.10 The May 2000 document consulted on greater transparency about Railtrack's cost structure (including its freight specific and avoidable costs) and access charges. Most respondents supported increased transparency in charging. Railtrack argued that transparency (of both costs and charges) within a system of negotiated charges would constrain its ability to negotiate a share of the value of freight flows and that it could give individual operators an unfair advantage.
- 3.11 The 1995 policy requires Railtrack to publish its freight-specific costs (aggregate freight costs) but not its avoidable costs for individual operators. Railtrack has argued that publication of freight-specific costs will allow EWS to calculate its avoidable costs and has consequently refused to publish these. EWS has argued that Railtrack

should publish this information and that this is required to give an informed view on the genuinely avoidable costs of freight.

3.12 If a more deterministic approach is adopted, the Regulator considers that it would be necessary to ensure cost and charge information is made available to users and potential users of railway services. He expects to publish more information in these areas in conjunction with his final conclusions on his policy for track access charges for freight services.

3.13 The May 2000 consultation document listed several other areas where greater information could be provided. This included requiring:

- Railtrack to produce separate accounts for its freight business. This was not generally supported in the responses and the Regulator does not expect to pursue this issue;
- identification of freight-only assets and their condition in the proposed asset register. Railtrack argued that this would be costly. The Regulator considers that a comprehensive asset register is essential for the efficiency of Railtrack's business and that this should identify freight only assets; and
- operators to supply Railtrack with accurate consist data. Railtrack claims it currently has incomplete information in this area and this is required to allow more accurate assessment of costs. The Regulator's current view is that, if Railtrack's view is substantiated, a model clause for track access agreements may be required. The model clause would require operators to provide Railtrack with accurate consist data. He is considering the existing obligations in this area, what additional information or enforcement may be required, and how its accuracy can be verified and would welcome comments. He also intends to discuss the issues directly with Railtrack, freight operators and the SSRA.

Conclusions and next steps

- 3.14 In the light of responses to the initial consultation, the Regulator's current view is that a more deterministic approach to freight charging should be adopted, that charges should be more transparent, and that more information on Railtrack's costs should be available. Comments are welcomed on the different approaches to setting charges described in this chapter.

4. Freight-related costs

Introduction

4.1 This chapter covers the issues relating to the costs of freight access and how these costs are assessed. The preceding chapter discussed the way in which fixed freight-specific costs could be recovered.

Avoidable and standalone costs

4.2 The May 2000 consultation document set out broad cost categories and consulted on how far freight operators should be required to cover all flow-specific, operator-specific, aggregate freight-specific or common costs. The responses to the consultation were varied in terms of both which costs fell into which categories and how far freight operators should be required to cover them.

4.3 Some respondents argued that costs would be lower if the network were to be operated only for freight services. NERA/Symonds have assessed the standalone cost of a freight-only network for the Regulator. A copy of their report is available from the ORR website. It demonstrates that the standalone cost of a freight-only network is likely to be considerably higher than Railtrack's current revenue from freight services.

Usage charges

4.4 In general, respondents were concerned about the affordability of usage costs and the implication of Railtrack's estimated costs for freight on rail. Some respondents favoured operator-specific charges which would link variable usage charges to the specific access rights. Clearly this would increase the complexity of the charging regime. Other respondents argued in favour of simplicity in charges. Some of these favoured simplicity whilst retaining incentives for modern track-friendly equipment. Railtrack was not against simplicity in prices as long as the prices cover marginal cost but were concerned that simplicity might hinder the creation of appropriate price signals for track-friendly equipment. EWS has argued consistently that Railtrack's usage costs are over-estimated.

4.5 Since publication of the May 2000 document, the Regulator has sent detailed explanations of the Booz-Allen & Hamilton (BAH) top-down model of usage costs to

freight operators and Railtrack for comments. Freight operators have argued that several other factors need to be considered in the model, including the extent to which the line is used (environmental degradation will cause replacement before wear and tear damage incurs maintenance costs, on lines which are little used), the efficiency of Railtrack's maintenance practices and the materials it uses. They also raised some technical issues relating to the approach to cost estimation for switches and crossings. Railtrack's main concerns were about the extent to which the model provided an accurate reflection of the degree of cost variability.

4.6 BAH has reviewed the model in light of the comments which were received and have made the following adjustments:

- separate usage cost estimation for switches and crossings and structures; and
- new input data including train operating speeds.

4.7 BAH has also concluded that the available evidence would not support further changes to the structure of the model. Furthermore, it is important to maintain the simplicity and transparency of the model. Hence the Regulator does not currently expect to ask BAH to make further adjustments to the model's structure.

4.8 Appendix B contains possible new usage charges for freight wagons and locomotives for which the necessary data is available. These charges have been calculated using the adjusted BAH model. The Regulator has written to freight operators asking for their views on the inputs used to populate the model (including vehicle weights, speeds and unsprung mass). This adjusted model was also used to estimate the total revenue from passenger usage charges for the draft conclusions on the periodic review. One option is for the usage cost estimates to be grouped into charge bands by vehicle type. This would retain incentives for track-friendly equipment and simplicity. The figures in Appendix B have been rounded to the nearest 25 pence to illustrate the effects which banding of charges might have. Comments on this approach would be welcome.

4.9 Several respondents favoured discounts for vehicles with track-friendly suspension. The Regulator recognises the merits of these arguments and has asked Railtrack to consider how such factors could be calculated and applied in practice.

Charges for electric traction

4.10 Responses to the May 2000 document were divided on the issue of whether or not freight operators should be included in the wash-up. This is the process by which Railtrack reconciles differences between actual and estimated consumption of electricity by franchised passenger operators. This can lead to either a rebate or an additional bill but to date has led consistently to additional charges.

4.11 Railtrack and passenger operators were in favour of including freight in the wash-up (though noting that given Railtrack's management systems this was not possible in the short run). Freight operators on the other hand were against their inclusion in the wash-up, principally because they favoured certainty and simplicity in charges. The SSRA favoured a weighted average price with no wash-up (either updated annually or with metered consumption) for freight operators. In considering this issue it should be noted that:

- whereas in the past the wash-up has always resulted in payments from operators to Railtrack, recalibration of consumption rates should remove this bias;
- increased use of metering in future should reduce the extent of the wash-up; and
- non-franchised passenger operators are excluded.

4.12 Given the points noted above the Regulator currently considers that continuing to exclude freight from the wash-up would not have a material adverse effect on Railtrack and other operators. However, if freight is excluded from the wash-up, he would need to consider whether the freight consumption rates should be reviewed more regularly.

Operational performance

4.13 The Regulator's current criteria for freight performance regimes (published in December 1994) are that he must be reasonably satisfied that the performance regime in each agreement:

- provides adequate incentives for both parties to improve performance, and in particular to avoid persistent failure by either party which may adversely impact on other users of the network;
- makes reasonable provision for compensation in the event of serious delay, persistent failure or cancellation;
- gives an appropriate balance of risk and reward for each party, and that appropriate account has been taken of the relative commercial strengths of the parties in establishing the magnitude of the risk and rewards faced by each party;
- is not likely to give rise to perverse incentives that will affect the way Railtrack regulates the operation of the network, and in particular that the operation of the performance regime will not cause Railtrack to discriminate unduly between users of the network; and
- is unlikely to lead to undue constraints on the capacity available on the network or act as a barrier to entry by new operators on the relevant parts of the network.

4.14 Responses to the May 2000 consultation document were generally concerned about the cost of the performance regime. It was also felt that performance regimes failed to reflect the commercial imperatives of rail freight as they are based on a system which reflects the social value of delay to passenger operators. Freight operators also argue that their customers already incentivise them to improve performances (although this may have little impact on Railtrack's incentives).

4.15 Railtrack was concerned that it does not currently recover the full costs it incurs as a result of FOC on TOC delay. In particular Railtrack has been concerned by its additional exposure from the recalibration of the operational performance regimes as part of the periodic review. KPMG's current estimate of the expected cost to Railtrack from the new payment rates for passenger operators and existing freight performance regimes is approximately £65 million over the next control period. The SSRA has stated that it believes it should fund this additional cost to Railtrack, given its public policy decisions on the social value of delay to passenger trains.

- 4.16 The Regulator's current view is that the need to provide incentives for improved performance for both Railtrack and freight operators should be balanced with the need to maintain an affordable system for freight operators. Comments are invited on the existing criteria and whether they should be modified to reflect this balance more directly.

Capacity charges

- 4.17 The periodic review of access charges for franchised passenger train services has considered the introduction of a new variable charge. This capacity charge would be based on the relative level of congestion of different parts of the network. It would compensate Railtrack for the additional costs (under the operational performance regimes) caused by trains running on congested parts of the network and also provide incentives for operators to prioritise their use of such congested parts of the network.
- 4.18 Respondents generally recognised the capacity constraints of a mixed use network. Views differed on how best to prioritise traffic in the face of these constraints and on whether freight operators should pay capacity charges. Passenger operators and passenger transport associations supported the concept of capacity charges for freight operators. Freight operators were opposed to the concept claiming it rewards Railtrack's inefficiency and that it is an additional cost that their main competitor, road haulage, does not face. Railtrack is supportive of capacity charges but believes capacity charges could be simplified for freight services and should only form part of a cost floor from which charges should be negotiated.
- 4.19 Railtrack's freight-specific cost submission includes the costs of congestion related delays caused by freight services. This amounts to 8% of Railtrack's estimated freight-specific costs.
- 4.20 The nature of freight operations and their need for on-time arrival varies considerably depending on the commodity being shipped. Some commodities (*e.g.* postal freight) have similar delivery needs to those of passengers, whilst others (*e.g.* aggregates) can have much more flexible delivery requirements. A capacity charge might be expected to give freight operators an incentive to reschedule trains carrying commodities for which delivery is less time sensitive.
- 4.21 The Regulator is currently considering the level of the capacity charge on the route sections covered by freight access rights and hence the materiality of these issues. He

is also discussing this issue with the SSRA and notes that for franchised passenger operators the capacity charge excludes the increase in societal value of delay since this will be reflected in the RAB at the next periodic review. It is also necessary to consider the potential interaction between a capacity charge and compensation for disruptive possessions (see chapter 5).

Conclusions and next steps

4.22 In light of the consultation responses and the advice from his consultants the Regulator:

- is considering whether banding of vehicle types for usage charges is more appropriate than levying vehicle-specific charges;
- is currently of the opinion that freight should remain outside the wash-up for traction electricity;
- is considering the most appropriate mechanism for compensating Railtrack for performance costs arising from freight operations on a congested network; and
- is considering his existing criteria for performance regimes in the light of his current view that a balance is needed between incentivising both parties for improved performance and maintaining an affordable system for freight operators.

4.23 He would welcome comments on all issues raised in this chapter.

5. *Other issues*

Introduction

5.1 The preceding chapters relate primarily to the structure of charges for existing freight capacity. This chapter covers issues related to enhancements, the definition of access rights, and compensation for disruptive possessions.

Freight-specific enhancements

5.2 Responses to the consultation document generally recognised that freight is unlikely to be able to finance major enhancements to the network. The Regulator's current view is that:

- the developing framework for enhancement should cover all network enhancements; and
- freight operators' rights under any existing agreements should be protected in any enhancement project. This would include provision of capacity to enable existing freight access rights to be continued beyond the termination of existing contracts, except to the extent that they are unlikely to be used. The Regulator will want to discuss with the SSRA the extent to which it should also be a requirement that existing spare capacity available for freight should be replicated in passenger upgrade projects.

Definition of access rights

5.3 Chapter 6 of the May 2000 consultation document discussed the definition of freight operators' access rights. The key issues emerging from the consultation responses were:

- the importance of flexibility of bidding rights to allow freight operators to react to changing circumstances in the market place within the life of their track access agreements;
- the need to ensure that rights remain subject to use-it-or-lose-it arrangements so that unused capacity is not tied up. The question of restriction of

competition through retention of access rights was discussed by several respondents; and

- the possibility that some access rights employed to serve high-value, time-sensitive commodities might face different charging arrangements, for example an adjusted capacity charge.

5.4 The current regulatory arrangements allow customers of freight operators to enter into access agreements with Railtrack and then to contract with an operator to carry their goods using those rights. This approach provides some protection from the potential restriction on competition through retention of access rights. The Regulator's current view is also that all access rights should be subject to the use-it-or-lose-it provisions which are being developed as part of the model clauses project.

Compensation for disruptive possessions

5.5 Currently freight operators do not receive compensation for maintenance and renewal-related possessions and Railtrack does not pay compensation to passenger operators for possessions taken during a negotiated "free period". However, as part of the periodic review of Railtrack's access charges, the Regulator's draft conclusion is that passenger operators should be compensated for all disruptive possessions. The Regulator recognises that taking night possessions may affect freight operators more than passenger operators and that Railtrack therefore may have a financial incentive to take more possessions at such times. If Railtrack did pay compensation to freight operators for disruptive possessions, this would lead to higher track access charges for freight operators (to offset the expected cost to Railtrack of the compensation it would have to pay to operators). He would welcome comments on whether freight operators should also receive compensation for disruptive possessions and if so, how the payments should be calculated or whether some other means could be developed to incentivise Railtrack to manage its possessions strategy so as to minimise adverse impact on freight operators.

Conclusions and next steps

5.6 The Regulator's current view is that:

- the developing framework for enhancement should cover all network enhancements;

- freight operators' rights under any existing agreements should be protected in any enhancement project; and
- all access rights should be subject to the use-it-or-lose-it provisions, which are being developed as part of the model clauses exercise.

5.7 In addition he would welcome comments on how disruptive possessions should be dealt with and the interaction with capacity charges.

Appendix A: Responses to the May consultation document

Train operators

Direct Rail Services Limited

English Welsh & Scottish Railway Limited

Freightliner Limited

GB Railways Group plc

Great North Eastern Railway Limited

Mendip Rail Limited

Prism Rail plc

ScotRail Railways Limited

Rail freight customers

ATH Resources

Associated British Ports Southampton

ASW Limited

Avesta Sheffield Limited

Brunner Mond (UK) Limited

Carless Refining & Marketing Limited

Corus Group plc

IMERYS Minerals Limited

LaFarge Redland Aggregates Limited

Marcroft Engineering Limited

The Post Office

PowerGen UK plc

RJB Mining (UK) Limited

Scottish Coal Company Limited

Stora Enso Transport and Distribution Limited

Tarmac Quarry Products Limited

Tibbett & Britten Group plc

TXU Europe Energy Trading Limited

Trade associations

Freight Transport Association

Rail Freight Group

Public bodies

Merseytravel

Midlands Rail Passengers Committee

Shadow Strategic Rail Authority

Strathclyde Passenger Transport

Others

Eurotunnel

Ian Braybrook

Powell Duffryn Rail

Railtrack plc

Scott Wilson Pavement Engineering Limited

Sinclair Knight Merz (Europe) Limited

Appendix B: Usage cost estimates for freight vehicles

Wagon/EMU type	Usage cost (£/kgm)	Usage cost rounded	Charging band	Indicative commodity types
IZA	1.89	2.00	A	Automotive
BDA	2.17	2.25	B	Steel
BFA	2.18	2.25	B	Steel
FNA	2.19	2.25	B	Chemicals
PFA	2.24	2.25	B	Coal
IFA	2.35	2.25	B	Enterprise, Intermodal
VGA	2.37	2.25	B	General Merchandise
FSA	2.45	2.50	C	Intermodal
KFA	2.52	2.50	C	Intermodal, General Merchandise
IVA	2.57	2.50	C	Automotive
FFA	2.64	2.75	D	Intermodal
IWA	2.67	2.75	D	Automotive
SSA	2.70	2.75	D	Steel
JSA	2.72	2.75	D	Steel
BBA	2.73	2.75	D	Steel
BAA	2.73	2.75	D	Steel
BZA	2.74	2.75	D	Steel
TTA	2.77	2.75	D	Chemicals, Petroleum
PJA	2.84	2.75	D	Automotive
JXA	2.90	3.00	E	Steel
KPA	2.99	3.00	E	Intermodal, Aggregates
JUA	3.06	3.00	E	Aggregates, Intermodal
Class 325	3.08	3.00	E	Mail
HEA	3.13	3.25	F	Coal
JAA	3.14	3.25	F	Intermodal
JGA	3.17	3.25	F	Aggregates, Intermodal
PHA	3.17	3.25	F	Aggregates
TDA	3.20	3.25	F	Chemicals
MK1LP	3.21	3.25	F	Mail
TIA	3.21	3.25	F	Intermodal
PBA	3.22	3.25	F	Intermodal
PGA	3.22	3.25	F	Intermodal
PAB	3.23	3.25	F	Petroleum
PAA	3.23	3.25	F	Intermodal, Aggregates
JHA	3.24	3.25	F	Aggregates, Engineering
JNA	3.24	3.25	F	Intermodal
HAA	3.25	3.25	F	Coal, Aggregates
PCA	3.25	3.25	F	Intermodal, Aggregates
MEA	3.28	3.25	F	Coal, Aggregates
TEA	3.29	3.25	F	Chemicals, Petroleum

Locomotive	Usage cost (£/kgm)	Usage cost rounded	Charging band
Class 8	2.18	2.25	B
Class 20	3.38	3.50	G
Class 59	3.53	3.50	G
Class 58	3.68	3.75	H
Class 60	3.70	3.75	H
Class 56	3.76	3.75	H
Class 37	3.80	3.75	H
Class 66	3.85	3.75	H
Class 47	4.04	4.00	I
Class 92	4.86	4.75	L
Class 86	5.25	5.25	N

Charge	Charging Band
2.00	A
2.25	B
2.50	C
2.75	D
3.00	E
3.25	F
3.50	G
3.75	H
4.00	I
4.25	J
4.50	K
4.75	L
5.00	M
5.25	N

Appendix C: Glossary

Consist data: information on wagon and locomotive mix of trains operating on the network, this may also include information on trailing weight, distance and origin-destination.

Electricity for traction: Railtrack procures electricity for traction purposes centrally for the Railway network, and then charges on the cost of electricity for traction to the various train operators.

Fixed Charge: that element of track access charges of freight operators levied by Railtrack which does not vary with gross tonne miles operated.

FOC: freight train operating company.

Gross tonne miles: the weight of both trains and goods carried multiplied by the miles travelled. This is the metric used in track access charges for freight operators.

TOC: train operating company, strictly speaking this would include FOCs but usually is used to refer only to passenger operators.

Trailing Weight: the laden weight of a train including all wagons but excluding the locomotive.

Usage cost: the wear and tear cost caused by individual trains running over track.

Variable charge: that element of track access charges levied by Railtrack which vary with gross tonne miles operated.

Wash-up: the system whereby the difference between estimated electricity consumption (that Railtrack uses to bill operators) and actual consumption by franchised passenger operators (the amount electricity companies charge Railtrack) is spread across all users.