

Depot Access

Commission to deliver a simpler and more integrated railway

Discussion paper 3.2

14 March 2023

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1. Introduction to Paper 3.2 - Depot Access

1.1 Aim

The aim of this discussion paper is to seek feedback from stakeholders on the opportunities that Great British Railways Transition Team (GBRTT) has explored for changes to the current contractual framework, regulatory rules, and industry processes that apply today at Light Maintenance Depots (Depots) owned by Network Rail. Some proposals may be relevant to other depot access arrangements such as at Freight Facilities. This paper is produced as part of the Commission from Department for Transport (DfT) on Simplification of Industry Processes.

1.2 Context

GBR has considerable work to do with the industry to determine the best operating model for depots, in particular which parties are best placed to plan and manage specific functions. Specifically, there is more work to do on asset management functions. Initial feedback from industry is consistent with our view that there may be significant benefits from a single party leading this function rather than it being split across different parties. However, this function could be undertaken by a number of different parties – including GBR, GBR-contracted TOCs, independent private sector maintainers, or devolved TOCs or bodies. The proposals in this paper are designed to be neutral to how this operating model is ultimately designed. This means we are at this stage limiting the scope of this discussion paper on opportunities to change the legislative, contractual, and regulatory framework, rules, and processes. There will be some important contractual and process simplifications that could be achieved, depending on the model that is ultimately implemented, but work on these issues will follow once the model is confirmed.

We recognise that this is only one part of what is required for GBR to deliver change and there are other critical enablers that need to be considered (see Figure 1 below).

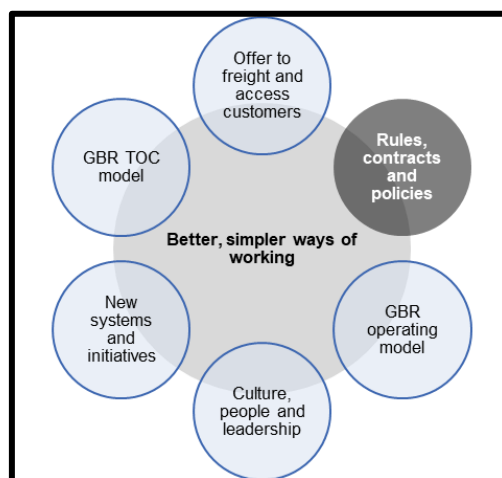


Figure 1: Critical enablers needed for GBR to deliver change

Nothing proposed in this paper is an indication of confirmed policy, and where we have made recommendations, these are subject to confirmation of the role and purpose of Great British Railways (GBR) and industry partners.

1.3 Summary of Proposals

Our vision is for a simplified contractual framework that reflects the changed operating environment, exploiting the efficiencies and opportunities created by GBR's new role as an integrated body, driving the right culture and behaviours, providing an excellent service to all passengers, customers, and freight users.

Our key proposals for simpler better depot processes are:

- A significant **simplification** of the current contractual documents which will make them **easier to understand** and manage. Deleting obsolete or outdated parts will **reduce their complexity** and enable parties to focus on the areas that are really important.
 - There is potential to consolidate and simplify the current suite of seven contractual documents into just three key documents.
 - We recommend that a single party takes accountability for asset management activities (**noting that the proposed operational model for depots is still under development and there are several options being considered**).
- The development of a new GBR Code, linked to a new Access and Use Policy bringing together and aligning similar Station, Network, and Light Maintenance Depot processes into a single **transparent, clear, and fair** contract. Parties will be less daunted by shorter, **simpler** documents and encouraged by **clearer contractual rules**.
 - All the current change processes could be brought together to give a consistent approach for Depots, Stations, and the Network.
 - This could include a single dispute resolution mechanism to resolve disputes in a fair and consistent way.
- A new **simpler**, consolidated process for making changes at depots which will encourage parties to improve depots by being **less bureaucratic**. It will consider materiality and impact to **speed up** project delivery, and **reduce conflict**, but still ensure there is proper **consultation** and compensation in appropriate cases.
 - Many changes could be exempt from the regulated change process in the future.
 - There is potential to remove the requirement for Landlord's Consent at many Depots.
- A joint asset management system to bring together and record all data on depots providing "one version of the truth" and enabling **better planning and delivery** of works, **improved productivity, lower costs, and better stakeholder safety**.
 - This would bring data from Depot Changes, Landlord's Consent, and maintenance/repair activities all together in one place.

We believe these proposals will put the interests of passengers and freight customers first, serving all parts of the industry, and ultimately lead to a better customer experience.

1.4 Content

Most of these proposals are focused on depots that are currently leased by Network Rail to DfT Franchised Operators and will be operated under National Rail Contracts (NRC) or Passenger Service Contracts (PSC) which will be managed by GBR. We recognise that GBR will have limited opportunities to make changes to existing depots that are let to non-DfT operators (such as Siemens, Hitachi) and Devolved Authorities. However, we will work closely with these parties to explore opportunities to alter existing arrangements to incorporate any proposals where they are supported.

For clarity most Network Rail depots used for infrastructure maintenance do not fall within the definition of a Light Maintenance Depot and are outside the scope of this Commission.

1.5 Questions for stakeholders

This paper is designed to provoke thought and challenge and we want to test our proposals with a wide range of stakeholders to make sure we deliver on the industry's aspirations for change. We welcome comments on any of our proposals, but there are also some specific areas that we are particularly interested in. These are set out in part 6 of the paper together with details on how you can respond.

2. The current framework

2.1 Depot Contractual Framework and Operating Model

2.1.1 What is a Light Maintenance Depot?

Under the Railways Act a “light maintenance depot” is defined as “any land or other property which is normally used for or in connection with the provision of light maintenance services, whether or not it is also used for other purposes”.

The term “light maintenance” is defined as:

- (a) the refuelling, or the cleaning of the exterior, of locomotives or other rolling stock;
- or
- (b) the carrying out to locomotives or other rolling stock of maintenance work (including the detection and rectification of any faults) of a kind which is normally carried out at regular intervals of twelve months or less to prepare the locomotives or other rolling stock for service.

2.1.2 What is the current Contractual Framework?

The majority of Depots owned by Network Rail (NR) in Britain are leased to Train Operating Companies (TOC) either in support of a Franchise Agreement granted by the Department for Transport (DfT), Transport Scotland or Welsh Government, or a Concession Agreement granted by Transport for London. Some are also leased to independent third-party operators not linked to franchise agreements. Finally, some are leased to Financers as security for third party investment in the facilities.

The TOC normally operates the Depot, holds the Depot Licence, and is designated as the Depot Facility Owner (DFO). The DFO grants Access Agreements to other Users who want to obtain light maintenance services at the depot or who wish to access the depot for the purpose of transiting through it to reach an adjacent network or facility. As there is no direct contractual relationship between Network Rail and other Users, it is required to enter into a Collateral Agreement to guarantee performance of its obligations under the Access Conditions.

The current Contractual Framework is shown in Figure 2 below:

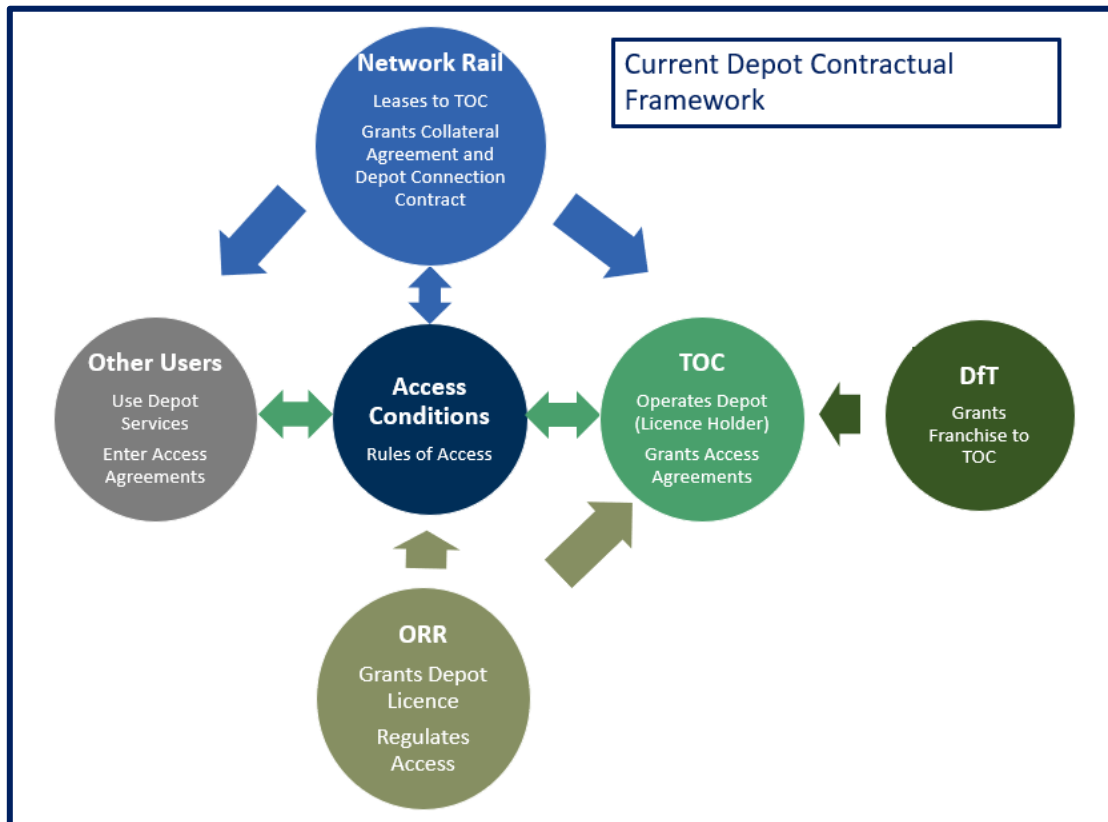


Figure 2 - The current Contractual Framework for most Depots owned by NR

2.1.3 What is a Depot Facility Owner?

Facility Owner is a defined term in the Railways Act. The Depot Facility Owner (DFO) is the person who has an estate or interest in, or right over, the depot and who grants permission (Access Agreements) to another person to use the facility. In order for a TOC to be a DFO they need to have a legal interest in the depot, and this is normally done by Network Rail granting a lease. The DFO is not required to be the operator of the depot.

2.1.4 What is the Depot Licence?

The Depot Licence gives permission for the Licence Holder to operate the depot and is issued by ORR to the Depot Operator when they have satisfied various requirements such as good repute, professional safety competence, financial fitness, and holding appropriate insurance cover. ORR normally assesses safety competence by whether an applicant holds a Railways and Other Guided Transport Systems (ROGS) safety authorisation.

2.1.5 What are the Access Conditions and Depot Specific Annexes?

The Depot Access Conditions (DACs) describe the rules that govern the relationship between all parties who use the depot covering matters such as how charges are agreed, the process for agreeing changes to the depot and remedies when things go wrong. Annexes to the DACs cover details relevant to the depot such as depot boundaries, description of facilities and services, and who is responsible for repair and maintenance. Depot Access

Agreements, which incorporate by reference the Access Conditions and Annexes, are approved by ORR.

2.1.6 What is the Access Agreement?

The Depot Access Agreement (DAA) is the contract between the DFO and any party who requires access to the depot. It sets out details of the light maintenance services that will be provided to the User and the charges for those services. A DAA is an “access contract” as defined in the Railways Act and therefore requires to be approved by ORR to be valid. Any changes to the DAA also require approval.

2.1.7 What is the Connection Agreement?

A Connection Agreement is a contract which grants permission for the depot to be connected to the rail network. It sets out the rights and obligations of the parties in relation to maintenance and use of that connection, including any charges. A Connection Contract does not confer any right to use the Network to run trains (this is via track access contracts) and is separate to other contracts which are required to be put in place such as depot leases, and depot access agreements. Connection Contracts are regarded as ‘access agreements’ under the Railways Act so require consultation, and approval from the ORR

2.1.8 What is the Operating Model?

Since privatisation, the industry has tried several different approaches to managing and operating depots to deliver better outcomes and support rolling stock procurement. There are four main operating models for depots in Britain at the moment and these are summarised these are summarised in Figure 3 below:

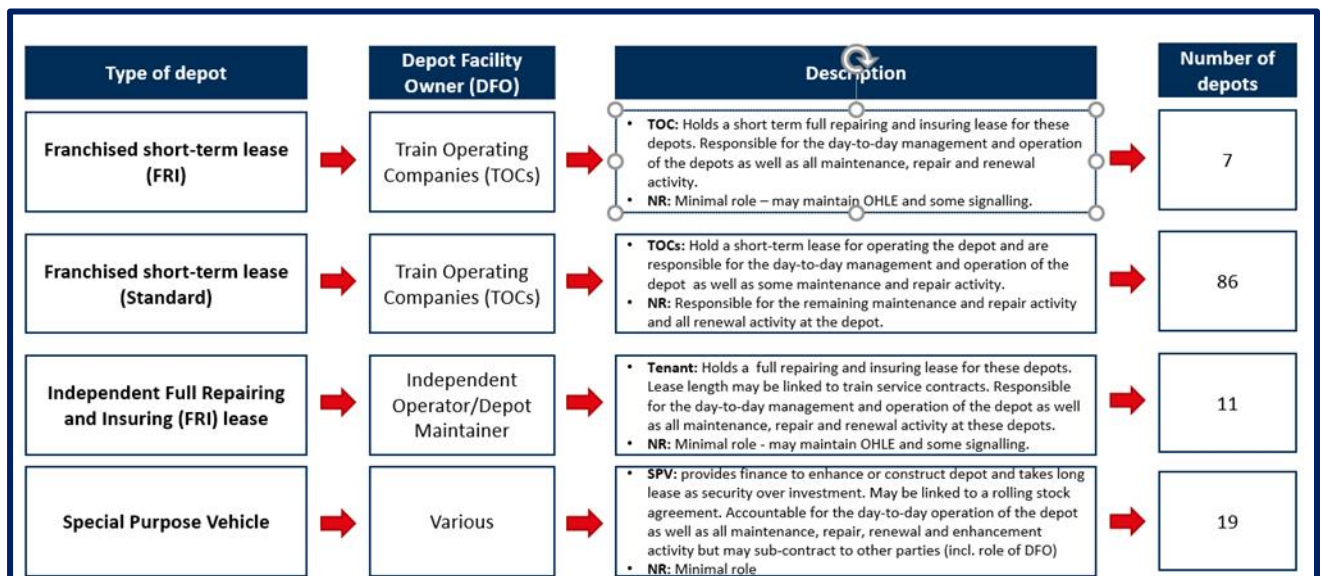


Figure 3 - Operating Models for Light Maintenance Depots currently owned by Network Rail

(There are other Depots not owned by Network Rail that also provide light maintenance services including those controlled by the DfT, Freight Companies, and other third parties).

2.2 Problems and Issues with the contractual framework and operating model

Building on the work already undertaken by GBRTT on the Depots Operating Model and through initial engagement with the wider expertise and key stakeholders in the sector, a number of common problems and issues have been identified with current contractual framework:

The Railway Act definition of a Light Maintenance Depot covers both large traditional Light Maintenance Depots with substantial facilities, as well as smaller sites with limited facilities. The ambiguity of the definition has prompted debate and at times conflicting opinions within the industry as to what services constitute Light Maintenance Services and the requirement for access to these smaller sites to be regulated. Some Operators see it as overly bureaucratic for such sites to be regulated by way of Depot Access Conditions

There are issues between Network Rail and some Operators over whether activities such as the provision of fixed battery charging (shore supplies), servicing of Controlled Emission Toilets (CET) and refilling of sanding tanks are considered to be light maintenance activities. Network Rail issued its policy in 2020 but this has not been universally accepted and there is still ambiguity and conflict between the parties, leaving the status of many facilities unresolved.

Many of documents and processes within the framework are old and outdated and were designed to protect an industry expected to decline. Some parts have never been used. The documents are difficult to understand and are perceived by some as barriers to third party investment. Complexity and regulation in multiple documents creates friction and inertia. Depots on long FRI leases operate under a simplified contractual framework and provide an example of what can be achieved using an alternative model, but these only represent a small proportion of all depots.

The Depot Specific Annexes (which date from 1995) include a Statement of Condition which scores the standard of repair of certain assets at the depot. In many cases this statement has not been changed since the 1990's even though elements of the depot have been renewed. The annexes also refer to "Existing Agreements" – legal contracts that may have an impact on the use of the depot. When challenged, Network Rail has been unable to provide copies of some of these documents or advise on their impact, and consequently stakeholders have questioned their purpose and value

The various rights and obligations are spread across several different contractual documents which make them challenging to interpret and manage effectively and efficiently. It also adds complexity when parties want to change the arrangements, as a change to one document could have unintended consequences on another.

Depot Services are defined in the Depot Access Conditions as any services provided by the Depot Facility Owner to a User in accordance with any Depot Access Agreement. The obligation to provide Depot Services is set out in the Depot Access Agreement but is further split between Beneficiary Depot Services and Off-Depot Services, each with separate definitions. Off-Depot Services are defined in both the DACs and the DAA. Depot Services are also referenced in the Depot Letting Conditions. Off-Depot Services are referenced in the Depot Specific Annexes, but Depot Services are not. Therefore, to fully understand Depot Services and any possible rights and obligations it is necessary to understand four separate but inter-related documents.

The current contractual model was designed with NR as the infrastructure manager and DfT as the Franchising Authority for services in England (and some cross border trains). It did not anticipate third party operation of, and investment in, depots. GBR will be an integrated body with accountability for both functions and therefore there are some key elements of the framework which no longer fit the new model.

At most depots Part B Depot Changes are approved using a voting mechanism (Requisite Majority). At many depots the current operator will hold the majority vote. Under the new proposed framework GBR could (though the franchise agreement) dictate how its own Operator responds to any GBR Change Proposals.

There are many contractual payments made between the parties for various charges and services that simply create a money-go-round and don't make any difference to profits or costs. These are sometimes referred to as "wooden dollars" (see Figure 4 below).

At Franchised Depots the DFO is required to pay property rent to NR. Other Beneficiaries at the Depot are required to pay Access Charges to the DFO which include a proportion of the property rent that the DFO pays to NR. The total amount of property rent that NR receives is combined with the other Charges it receives from Operators for use of the railway and is used to offset its grant from DfT. Currently many Operators are also funded by DfT to pay property rent to NR. Ultimately, therefore, the money paid by DfT in property rent simply reduces the grant that DfT will pay to NR. Furthermore, if GBR becomes the Franchising Authority, it will internalise this money-go-round, making payments to Operators under the new generation of operating contracts that cover depot costs, and then also charging them under Depot Contracts.

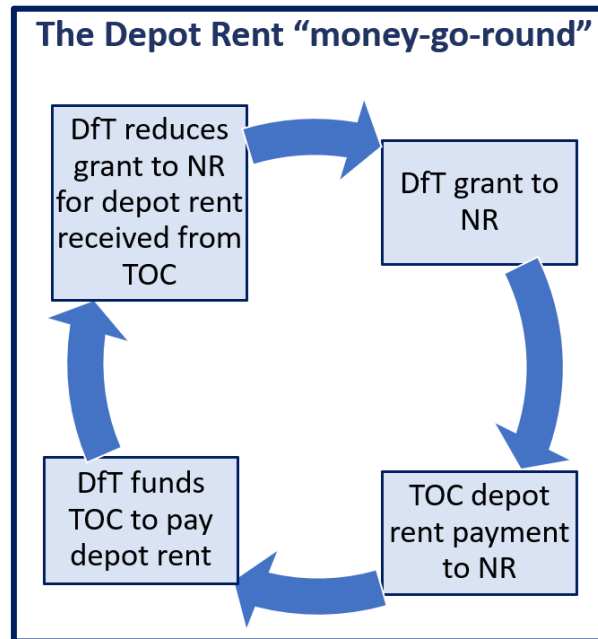


Figure 4 – The Depot Rent “money-go-round”

Operators who run services across many franchise areas are required to negotiate access charges and enter into numerous Access Agreements with the various DFOs. Some stakeholders have told us that, as the methodology for calculating charges is not prescribed, different DFOs adopt different approaches. This is time-consuming for the operators and also can lead to a lack of consistency for charges (It is acknowledged that both the ORR and the Access and Management Regulations provide some protection against inconsistent or discriminatory charging). Some also feel the termination provisions for Access Agreements are not flexible enough.

Cross Country Trains are Beneficiaries at around ten separate Depots, as are Freightliner and DB Cargo. Some Access Charges are reviewed annually while others are just indexed. As Depot rent costs form part of the charges for Access this results in a wide variance in unit costs for the same service.

The contractual split of maintenance, repair, and renewal responsibilities at most depots results in duplicated effort, extra costs, ambiguity, and conflict. Where responsibility for equipment or elements are unclear these are sometimes referred to as “grey assets. It takes considerable time and cost to resolve these issues and, in some circumstances, can lead to poor and potentially dangerous outcomes.

At a Depot in the north of the country the tenant is responsible for all repairs and renewals within the depot boundary which includes track. At the north end of the depot the access to the Network is via a bridge and constrained which means the tenant is required to book a possession and isolation of the mainline whenever they need to undertake maintenance. On a number of

occasions, the possessions have been cancelled at short notice due to operational needs which, to the frustration of the tenant, has delayed essential maintenance works. This has implications on the safe and efficient operation of the depot also imports additional cost and time to undertake works. NR was asked to take over responsibility for this area but was unwilling due to the risks of additional maintenance costs and possible compensation claims from the tenant for disruption to the depot.

At depots leased on FRI terms where there is single asset accountability this is less of a problem but there may still be complex interfaces between the depot and the Network which leads to ambiguity on responsibility

2.3 Making Changes at Depots

When parties need to make changes at the majority of depots there are two main processes that need to be considered:

- Depot Change
- Landlord's Consent

2.3.1 Depot Change

What is Depot Change?

When depots are updated, either by projects or changing use, there may be a material impact (either temporary or permanent) on the operation of the depot. Also, the contractual elements that guide the relationship between Network Rail, the Depot Facility Owner, and other Users at the depot may change.

These contractual elements are defined in the Depot Access Conditions (DACs) and the Depot Specific Annexes for each depot. Depot Change is the regulatory process used to ensure that all users of depot are properly consulted before changes are made and to facilitate, and where necessary, record these changes. The procedures are set out in the DACs and ensure that those changes are formally recorded, and, where required, regulated with the ORR.

Why does the ORR regulate Depot Change?

Under Section 4 of the Railways Act the ORR has a general duty to protect the interests of users of railway services.

All Depot Access Agreements incorporate Depot Access Conditions. As the Railways Act requires ORR to approve all Access Agreements this means any changes to the Access Conditions are also required to be approved by ORR.

The ORR has a shortened procedure for pre-approving certain changes to the Access Conditions known as "General Approvals". These include things such as increasing the quantity of items in the equipment inventory or adding a new item which is already listed in the template inventory. Changes that do not fall within the General Approvals require Specific Consent.

Do all changes at a Depot require Depot Change?

Some activities at depots such as maintenance and repairs, emergency works, and works that don't materially impact on the operation of the depot may not require Depot Change.

2.3.2 Landlord's Consent

What is Landlord's Consent?

Operators who hold a Depot Lease from Network Rail may be required to apply to NR for their written consent as Landlord before they are able to undertake certain works at a Depot. This is a bi-lateral agreement between NR and the Operator and does not require industry consultation. Consent is granted via a Licence to Alter using an on-line portal.

Do all works at a Depot require Landlord's Consent?

Some activities at depots such as maintenance and repairs, emergency works, and works that don't materially impact on the operation of the depot may not require Landlord's Consent. Some depots leased on FRI terms do not require Landlord's Consent for certain works.

Does Landlord's Consent replace Depot Change?

No - Landlord's Consent is additional process documenting agreement between Landlord and Tenant and does not remove the need to follow the other processes, where required.

2.4 Problems and Issues with the Change processes

Building on the work already undertaken by GBRTT on the Depots Operating Model and through engagement with the wider expertise and key stakeholders in the sector, a number of common problems and issues have been identified with these processes:

- The processes overlap with each other meaning, in some circumstances, two very similar processes need to be followed which adds to costs, time, and resource. They are seen as overly bureaucratic and can lead to a duplication of effort and delays to project delivery.
- Separate processes mean records of changes are currently stored across several separate databases in several separate organisations – Network Rail, Train Operating Companies, and ORR. This makes the retrieval of information unnecessarily complicated and increases the risk of a loss of corporate knowledge.
- The processes create uncertainty and confusion which can lead to delays in project delivery and increases in costs. They are considered by some as disproportionate for many works that seek to improve the depot - proposals that should be welcomed and not tangled up in a complex regulatory and commercial processes. Some stakeholders see this as a further barrier to third party investment and also comment that the complex arrangements around the delivery and assurance of works create further frustrations.

Stakeholders tell us that in some cases the time taken to receive regulatory and Network Rail approval for projects takes longer than the actual delivery of the works themselves.

- The current Depot Change process is complex and outdated. Unlike Station Change the process hasn't been updated since 1995. Stakeholders tell us the rules are sometimes confusing and illogical particularly to outside parties who do not have expert knowledge. Sometimes it is not clear when Depot Change (and Landlord's consent) is required. In addition, there are also different processes for Station Change and Network Change to add further confusion. This is seen as a barrier to investment in the industry.

The Depot Change process makes reference to both a "Change Proposal" and a "Proposal for Change" – While the wording is similar, they actual refer to two different types of change. To add confusion, they also still refer to a "Railtrack Change Proposal". The process includes very detailed rules on how to convene Depot Meetings to discuss and approve Change Proposals including who takes the minutes and how they are distributed.

- The level of detail in the Depot Access Conditions means many non-material alterations still need a depot change purely because of a requirement to update the Depot Annexes.
 - While it is recognised that there needs to be some form of obligation to engage and collaborate with other Users to discuss, plan, and implement works some stakeholders question the need for ORR to regulate this for many projects.
 - It is perceived that the Landlord's Consent process is not effectively managed by Network Rail causing delays and leading to many applications never being formally closed. This particularly causes issues at franchise change where applications are outstanding, and the incoming franchisee is expected to take them on. Network Rail also report that some works are undertaken before consent has been granted or without consent at all.

3. GBRTT Vision for future approach

Our vision is for a simplified contractual framework that reflects the changed operating environment, exploiting the efficiencies and opportunities created by GBR's new role as an integrated body by:



To realise our vision, we are proposing significant reforms to the current depot contractual framework, depot processes, and the way changes are governed at depots, and these are set out in section 4 below.

(*We recognise that the proposed operational model for depots is still under development and there are several options being considered and acknowledge that this may not be appropriate for devolved authorities and non-GBR depots)

4. GBRTT Proposals for simpler, better, industry processes

4.1 Depot Contractual Framework and Processes

GBRTT is proposing a revised contractual framework that reflects GBR’s assumed role as Franchising Authority, Infrastructure Manager, and enabling guiding mind. The new framework while accommodating GBR’s role as Franchise Authority, must also provide appropriate protections to non-GBR operators (freight, open access and services commissioned by other specifiers). It must also recognise the critical roles of the private sector in the provision of depot services.

We propose the development of a new GBR Code, linked to the new Access and Use Policy (see Paper 4.1 – Framework Overview). The Code will be based on an evolution of the current Network Code but bringing together and aligning similar Station, Network, and Light Maintenance Depot processes, so that there is just one set of transparent, clear, and fair, contractual rules incorporated into every Access Agreement. This will include effective mechanisms to resolve disputes proportionately and in a consistent way.

Through consolidation, simplification, and deletion we believe there is a huge opportunity to significantly streamline the current contractual framework into just three key contracts (together with the Depot Licence) as shown in Figure 5:

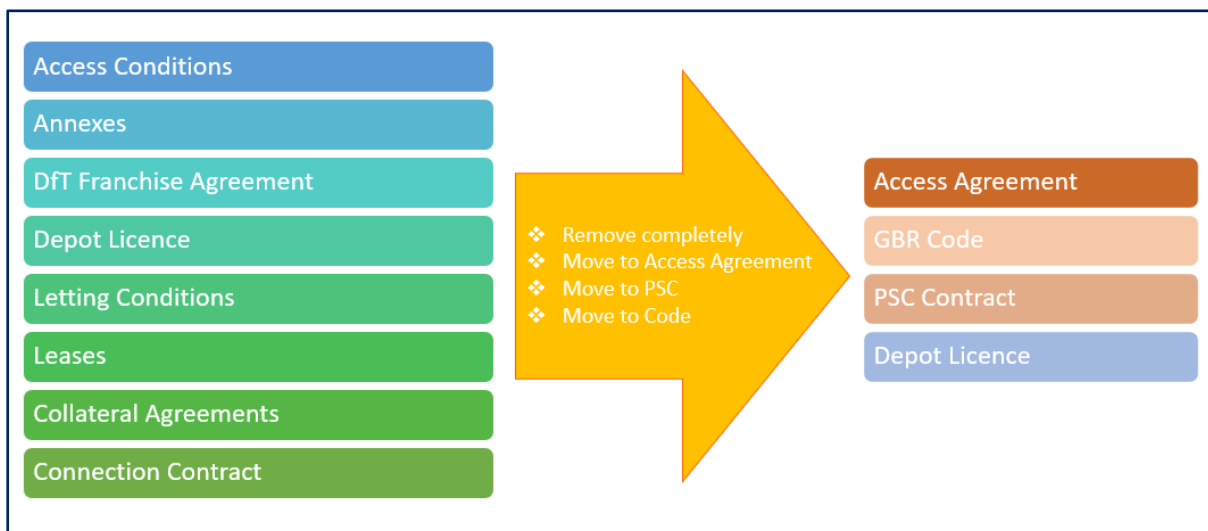


Figure 5 – Proposed simplification of Contractual Framework for Depots

We recommend that the operation of depots should take a similar approach as that for stations with a single operational team bringing together all depot management activities and this will enable a single party to take accountability for asset management.

We are not making any assumption on who that party will be as we recognise that the operational model for depots is still under development and several options are being considered.

Regardless of who is accountable for asset management, under the new contractual framework GBR could become the Depot Facility Owner for the majority of depots in England (where the current DFO is a DfT TOC). GBR could bring asset management activities together in a single team (as currently exists under FRI leases). We recognise that there will be different arrangements in Wales and Scotland and will explore with the devolved authorities to see how our proposals can support their aspirations. We understand that some parties may see this as a loss of control, but with GBR as the DFO, TOCs, independent maintainers, and the private sector, will continue to have an important role in operating depots as they have the relevant skills and are best placed to do this. This does not mean that GBR will employ depot staff and deliver services to depot Users, but there would be a single accountable party, unlike today. We see the role of the DFO as being accountable for what services are provided at depots but not how they are delivered. As DFO there would be the opportunity for GBR to work with TOCs and the private sector to drive efficiencies and innovation by aggregating and sub-contracting some common activities and services across more depots (such as track inspections, lifting equipment and utility costs).

It is also important to recognise that if GBR did become the DFO, it would need to understand and evaluate the commercial and operational risks associated with this role.

We also think the TOC would be the best party to hold the Depot Licence and safety authorisation for the depot. Some stakeholders have expressed safety concerns over splitting the role of DFO and Licence Holder, as this could lead to confusion over who has overall accountability for safety at the depot. GBRTT believes this can be done safely (we note it has already been done today at stations) and, working with industry parties, it will ensure that a full verification is undertaken before any changes are made to ensure all parties are satisfied there is no increase in risk. Careful consideration will also be needed to ensure that sub-contracts don't suffer from some (or all) of the issues described as affecting the current fragmented contractual arrangements.

An alternative option would be for GBR (as the franchising authority) to designate a lead TOC or independent maintainer at each depot as the DFO who then takes single accountability for asset responsibility (similar to the current arrangement between NR and TOCs under FRI leases) While this wouldn't deliver all of the benefits set out in Part 4.1.1 below, it is an established model which already simplifies the contractual framework and this should be considered as part of the development of the future operating model for depots.

At Feltham Depot South Western Railway (SWR) has a full repairing and insuring lease from Network Rail. SWR is accountable for the maintenance, repair and renewal of all property and equipment at the depot including track. SWR discharges its accountabilities through a combination of third party specialist contractors, its own trained staff, and Network Rail specialist teams. SWR is the Depot Facility Owner the Depot Licence Holder with overall accountability for safety.

We also recommend that the current Depot Access Agreements are reviewed in both their content and duration. Initially we had considered proposing five-year fixed term agreements, but some stakeholders expressed concerns over this approach, in particular the

administrative burden it would create, and the need to give operators more certainty over long term access. An alternative option would be a longer access agreement (perhaps tied to the PSC length where appropriate) but with provisions to review charges at periodic intervals and mutual termination provisions. (We note that the Access and Management Regulations already give protection to Operators over depot access with ORR able to direct the DFO).

If the proposal to remove the Depot Access Conditions is accepted, we envisage that some of the provisions will need to be moved to the Access Agreements such as Insurance and certain reserved rights. Also, some parties have told us they think the termination provisions are not flexible enough.

We agree with Stakeholders that Access Agreements will need sufficient detail to provide contractual assurance to support delivery of NRC/PSC/passenger commitments and to work with budgeting, charging and performance processes, providing certainty of charges. The level of detail and protection must also support the ability for all Operators to plan their businesses with a reasonable degree of certainty.

GBR will need to clearly set out its interpretation of the definition of light maintenance services and develop cost effective and efficient proposals to deal with the regulation of small scale light maintenance activities across the Network. This should include working with Freight Facility Operators who provide similar facilities. Some stakeholders have also suggested GBRTT should also review the content and terms of Facility Access Agreements as there may be opportunities to align and simplify these agreements as well. While we would not want to restrict the flexibility currently available to parties, we do see a benefit in reviewing these as part of this process providing there is sufficient industry interest and support.

4.1.1 What are the benefits of these proposals?

The introduction of a GBR Code will create a single set of transparent, clear, and fair contractual rules to be incorporated into every Access Agreement. This can include an effective mechanism to resolve disputes in a consistent way and hold GBR to account. It will be easier to make changes across all parties and will be easier to manage and govern. It will align the main change processes where possible which will reduce time and resources and add consistency to these disparate processes.

We think reducing and simplifying the current contracts will make them easier to understand and manage. Deleting obsolete or outdated parts will reduce their complexity and enable parties to focus on the areas that are really important and necessary. A clear interpretation of light maintenance services will also help. Outside parties will be less daunted by shorter, clearer documents and encouraged by clear contractual rules.

A single accountable party for asset management will promote efficiency by reducing duplication taking a cost efficient, whole-life approach to depot asset management. It will make the best use of the funds available through integrated depot planning to deliver maintenance, repair, and enhancement works in most optimal way. Another GBRTT workstream is currently looking at the detailed design of the operating model for depots and

as this work develops, we anticipate there will be further opportunities for process improvements around the delivery and assurance of works.

A new framework with clearer and simpler contractual documents will make it much easier for third party investors to engage with the railway and promote further investment in new depots and enhancements. It will also significantly reduce the number of Access Agreements that need to be granted to other Operators and enable a consistent methodology to be adopted for the calculation and apportionment of charges.

If GBR is the DFO it will no longer be required to grant depot leases to the operator of the depot as it will no longer require a legal interest in the property (this is a requirement under the Railways Act). It will no longer need Collateral Agreements with other Users as it will have a direct contractual relationship through Access Agreements. Similarly with a lead TOC as DFO there may still be an opportunity to remove leases and Collateral Agreements, but these would need to be replaced with an alternative contract.

We consider that there would be a significant opportunity for GBR to drive efficiencies, and innovation through aggregating and introducing competition for certain services and common activities across the depot portfolio. The removal of the leasing structure could also provide the opportunity to rationalise and co-locate some NR infrastructure maintenance facilities within depots and generate operational efficiencies.

We believe that any of the proposals set out in 4.1 above can be delivered without any additional changes to legislation.

Opportunities should be considered for simplifying elements of the charging framework in order to avoid complex money flows. Where requirements on charging currently contained in legislation limit potential simplifications they should be reviewed as the industry structure evolves, whilst retaining requirements that are critical for non-discrimination.

4.2 Making Changes at Depots

GBRTT is proposing a new consolidated process for making changes at depots. Many changes could be exempt from the regulated change process if they are non-material, improve the depot, have minimal impact, or Users have been made aware of them when they enter into an Access Agreement. Adequate protections would still need to be in place for proposals that impact operational flexibility or resilience.

A revised Change process will be clear when rights are restricted to just consultation or extend to compensation or objection. An indication of how this might work is shown below in Figure 6, but this would be subject to wider industry consultation – particularly the definition of non-material.

Type of Change	Non-material Change	Material Change	Exempt Activity
(Minor Modification forms part of each change process)			
Consultee Rights	Consultation only	Consultation, compensation, and objection	Notification only

Figure 6 – Indicative example for Depot Change types and consultation rights

We believe the level of detail required for any change proposals should be appropriate to the purpose of the process, which we think should just be an in-principle decision on the change (with the detail provided once a decision is approved).

It is recognised that there is still a need for an open and transparent process to ensure any proposed changes to depots are discussed with affected parties. We note that (unlike stations) there is no registration requirement for depot changes, but we do not think it is necessary for the ORR to regulate all of the changes it currently is required to. This obligation could sit in the GBR Code.

For changes that would require an amendment to the Access Agreement we recommend a formal process is still followed with approval from ORR as required under the Railways Act but there could be scope to further expand the General Approval provisions. (For example, changes that reduce the quantity of equipment at a depot). Provisions must also remain for protection against changes which restrict or remove services without proper consultation and compensation in appropriate cases.

We believe that GBR should be able to exercise a veto in some circumstances, but this should be subject to challenge and to regulatory oversight. GBR should not, for example, be able to block one operator’s proposals/improvements to simply protect itself or its PSC operators.

As in 4.1 above we recommend that through a single operational team GBR, Operators, and other stakeholders work together to develop integrated plans for many depots to identify and plan works collaboratively over the short, medium, and long term. Some parties suggest this should go further and include all railway works as sometimes these can also impact on depots and could provide opportunities for even more collaboration. We have been encouraged that this already takes place in some areas, but also recognise that it might not be appropriate for all depots.

The implementation of the new process should also consider the potential to move to a web-based system, supported by templated documents and clear timelines (in particular when the process should be initiated).

We also recognise the need for changes at depots to be recorded in some way and we recommend that this should be part of a joint asset management system rather than the current arrangements where consents are spread across several different databases in different organisations.

4.2.1 What are the benefits of these proposals?

Stakeholder engagement and industry consultation will support the further development of our proposals and whether they are implemented, but we believe there are significant benefit that could be realised.

There are currently around 30-40 Depot Change proposals per year which are required to be registered or approved by ORR under General or Specific Approval. On the assumption that a significant number of these could be considered non-material or exempt under the new proposals this could deliver a significant saving in time and resources.

The major benefit in developing integrated depot plans will be cost savings through better coordination, planning, and delivery of works. Through collaboration works can be delivered more effectively with less disruption to depot operations. The option to identify and “pre-approve” these works will generate further time and resource savings by not having to go through depot change. We have acknowledged that under the current operating environment this will be a challenge, and this may be a proposal that can be developed as GBR, and the new operating model matures. We are also aware that some operators are cautious and have challenged the proposal not to offer compensation through the depot change mechanism for such works and this needs further consideration.

A joint asset management system to record assets and changes at depots will bring all information together in one place providing “one version of the truth”. This will enable better planning for works, improved productivity, and improved stakeholder safety.

Under the new proposed contractual model depot leases may no longer be required and therefore the additional requirement for Landlord’s Consent is removed for most depots, saving time and resource. We will look at ways to improve the process for those depots that are still leased.

We believe that any of the proposals set out in 4.2 above can be delivered without any additional changes to legislation.

5. How will the changes be implemented and what are the risks?

Some contractual and legal arrangements are likely to need to be in place from day one of GBR, but it is recognised that the implementation of rail reform is likely to unfold over several years following the stand up of GBR, and this will require some industry processes to be changed iteratively as we move towards the final end state operating model.

If the proposals for the significant structural reform of the contractual framework are progressed consideration should be given to introduce these incrementally (perhaps as franchises are renewed) to mitigate risks of change. This could include using pilot schemes to test proposals before rolling out more widely. Where appropriate safety assessments will also be needed to ensure changes don't import unacceptable risks.

For the regulatory depot process improvements set out in this paper this is likely to mean a planned programme of changes in content and processes with significant industry consultation and ORR approval.

There may also be opportunities to bring forward some incremental changes and improvements under the current operating models and this should be considered where they can deliver industry benefits early. Again, these proposals could be piloted across smaller groups of depots initially to mitigate risk

Phase two of this workstream will consider implementation of the proposals developing a proposed delivery plan at a detailed level (subject to subsequent consultation where necessary) and is planned to start later this year.

We must keep focussed on the overall purpose which is to deliver simplified processes but also need to be aware of the potential risks of oversimplifying the framework to support GBR's proposed new role. We need to be sure that as any changes are implemented the appropriate checks and balances are in place to mitigate this. We must ensure all interested parties have a voice and remain engaged in the process to make sure we are designing contractual and regulatory mechanisms that are better and simpler and that third parties can rely on.

6. Questions for Stakeholders

We believe we have an exciting opportunity to review the plethora of industry rules and processes that have built up over time and now block the ability to deliver a more integrated and simpler railway. We want to deliver this for the benefit of all passengers and freight users. Our recommendations will not only help establish GBR but will also ensure it can work for the whole industry, making life simpler and delivering economic and social value.

In summary our proposals are:

- A significant **simplification** of the current contractual documents which will make them **easier to understand** and manage.
- The development of a new GBR Code, linked to a new Access and Use Policy bringing together and aligning similar Station, Network, and Light Maintenance Depot processes into a single **transparent, clear, and fair** contract.
- A new simpler, consolidated process for making changes at depots which will encourage parties to improve depots by being less bureaucratic. It will consider materiality and impact to speed up project delivery and reduce conflict.
- A joint asset management system to bring together and record all data on depots providing “one version of the truth” and enabling **better planning and delivery** of works, **improved productivity, lower costs, and better stakeholder safety**.

We welcome comments on any of our proposals, but there are also some specific areas that we are particularly interested in:

1. Are there any other problems or issues that GBRTT should consider within the scope of this Commission?
2. Are there any proposals for the Depot Contractual Framework and Operating Model that you do not agree with? If so, please say which ones and why
3. Are there any proposals for making changes at depots that you do not agree with? If so, please say which ones and why
4. Do the proposals deliver all of you aspirations? Are there any other proposals that GBRTT should consider?
5. Which (if any) proposals could offer opportunities to improve existing arrangements with devolved authorities?

Please respond with your comments to railwaycommission@gbrtt.co.uk by 31 May 2023.