

Draft design for PR18 overall framework

Consistent with July 2017 consultation on PR18 overall framework

Purpose

This document follows on from our recently published consultation on the overall framework for regulating Network Rail, which is available [here](#).

This document is for use as a tool to focus on and develop particular policy issues in discussion with stakeholders. We will update this document as our policies develop, and will publish updated versions periodically, including when we conclude on our overall framework consultation. This is a live document, intended to facilitate policy discussions.

Scope

This document follows the structure of the overall framework consultation document and summarises the policy positions set out in that document, covering:

- The organisation of Network Rail (Chapter 2 of the overall framework consultation)
- Network Rail and our determination (Chapter 2)
- Scorecards (Chapter 3)
- Network Rail's engagement with stakeholders to encourage effective delivery (Chapter 4)
- Monitoring and enforcement (Chapter 5)
- Change control (Chapter 6)

This document does not seek to capture all of the detail contained within the main consultation document, or of the subsidiary documents on 'route requirements and scorecards', and 'possible measures of the system operator's performance'. All of these documents are available on our [website](#).

In particular, this document does not include the reasons behind each of the policy positions. Instead, it focuses on setting out, in one place, the key policy positions to support stakeholder engagement and develop the detail of the overall framework in a consistent and clear manner.

Consistent with the consultation as a whole, this document does not cover the entire scope of PR18. For instance, it makes no substantial reference to the charges and incentives contained within track access contracts, the financial framework for Network Rail, or the arrangements for enhancements in CP6.

Using this document

In addition to summarising our current thinking, the document also states the current stage of policy development for each area. We label policies in the following five ways:

- **“Conclusion”** – ORR has publicly stated that it has concluded on this.
- **“Emerging view”**: ORR emerging view / proposal to be tested (which may still be subject to further consultation)
- **“Straw man”**: early content to test and challenge
- **“Issue”**: issues to resolve, including where several options exist
- **“Info”**: underlying context and assumptions

The distinction between some of these labels requires judgement and is only intended to support discussion. In the right hand column for each item, we signpost the relevant section in our [consultation](#) on the overall framework for regulating Network Rail, to which readers can refer for additional detail.

Version control

ID	Date	Comment
1.0	15/08/17	First publication reflecting the contents of the consultation on the overall framework for regulating Network Rail

Contents

1. **The organisation of Network Rail**
2. **Network Rail and our determination**
3. **Scorecards**
4. **Network Rail’s engagement with stakeholders to support effective delivery**
5. **Our approach to monitoring and enforcement in CP6**
6. **Change control**

1. The organisation of Network Rail

This section sets out how Network Rail is organised, for information and context when engaging with the rest of the policy areas.

ID	Description / narrative	Status	Reference in main consultation
1.1	Network Rail is responsible for the operation, maintenance, renewal and enhancement of much of the mainline rail infrastructure in Great Britain. It is a single company with a single licence (albeit noting its recent devolution of decision making to its routes).	<i>Info</i>	2.6 and 2.18
1.2	Geographic routes operate and manage the railway in their areas. There are six geographic routes in England centred on the main-line routes out of London, and separate geographic routes for Scotland and Wales.	<i>Info</i>	2.10
1.3	Freight and National Passenger Operator (FNPO) route provides a ‘single point of contact’ and is accountable for the delivery of performance and other outputs for customers that operate nationally, across multiple routes. It is also the ‘single point of contact’ for prospective open access operators.	<i>Info</i>	2.11
1.4	The System Operator (SO) performs two key roles in Network Rail’s devolved structure, providing: <ul style="list-style-type: none"> • expert analysis to support improved timetabling, better use of the existing network and analysis of how the network should be enhanced over time; and • a check against the routes to protect the benefits of a coordinated and integrated network, while also ensuring that operators retain fair and non-discriminatory access to the network. 	<i>Info</i>	2.14
1.5	Central functions We consider two broad categories of central functions: <ul style="list-style-type: none"> • Service providers: <ul style="list-style-type: none"> - Organised centrally for efficiencies of scale (e.g. Group Business Services, National Supply Chain); and - Charge costs to routes. 	<i>Info</i>	2.16

	<ul style="list-style-type: none"> • Other central functions: <ul style="list-style-type: none"> - sets policies (e.g. the technical authority); - provides assurance to the Board, e.g. with regards to compliance of policies and assurance of data (e.g. finance); - coordinates across the company; and - typically either hold routes to account for performance and/or ensure compliance with the company’s obligations and/or objectives. For example, managing compliance with debt limits. <p>We note that some central functions perform roles that fall under both categories, e.g. Infrastructure Projects provides services, but also undertakes assurance and sets policies.</p>		
--	--	--	--

2. Network Rail and our determination

This section sets out how we intend to regulate Network Rail as a single, yet devolved, company and how we will structure our determination and its component settlements.

ID	Description / narrative	Status	Reference in main consultation
2.1	In CP6, Network Rail will be regulated as a single company with a single licence, but with a greater focus at route and SO level. The determination will include a settlement for each geographic route, the FNPO, and the SO. The settlement for Scotland will be ring-fenced.	<i>Conclusion</i>	2.18 - 19
2.2	Central functions will not have a separate settlement, but will recharge their costs to the routes/SO.	<i>Emerging view</i>	2.24
2.3	Settlements will consist of funding requirements calculated on the basis of assumptions regarding the outputs that Network Rail is required to deliver, and the associated costs of delivering them, incorporating assumptions derived from bottom up targets for Network Rail’s efficiency. Settlements will be set in the context of the network licence, the financial framework, charges and contractual incentives, and the monitoring framework.	<i>Emerging view</i>	2.25
2.4	ORR will publish the final determination in October 2018, setting out the overall decisions for PR18. Although there will be ten settlements, only	<i>Info</i>	2.33

	<p>Network Rail as a single company (having appropriately engaged with its routes and the SO) can accept/reject its determination.</p> <p>If Network Rail rejected the determination, ORR could then accept its objections and adjust the determination (and restart the implementation process), or refer the matter to the Competition and Markets Authority to determine.</p>		
--	--	--	--

3. Scorecards

This section sets out our envisaged use of scorecards in CP6, and the areas where we may require specific measures and set regulatory floors.

Ref	Description / narrative	Status	Reference in main consultation
3.1	Scorecards will be used as part of the regulatory framework to set targets and as to inform ORR's monitoring and enforcement.	<i>Emerging view</i>	3. 3
3.2	ORR will focus on SO and route (geographic and FNPO) scorecards.	<i>Emerging view</i>	Chapter 3 summary
3.3	<p>For ORR to make full use of scorecards in CP6, they need to be:</p> <ul style="list-style-type: none"> • Balanced – to reflect the full range of outcomes that Network Rail is required to deliver; • Support comparison – between routes, and the SO where possible, as well as over time; and • Capture requirements specified in HLOSs – where appropriate. 	<i>Emerging view</i>	Box 3.4
3.4	<p>ORR may require specific measures to be included in scorecards to achieve the objectives above.</p> <p>If this requirement is not met, ORR would use other approaches to monitor Network Rail's performance.</p>	<i>Emerging view</i>	Box 3.4, 3.26
3.5	<p>A 'regulatory minimum floor' will be set in some areas, where:</p> <ul style="list-style-type: none"> • Additional assurance is beneficial to ensure Network Rail will deliver at least a certain level of performance; 	<i>Emerging view</i>	3.42

	<ul style="list-style-type: none"> • Outcomes may not be a priority for other parties; and • Where a reasonable HLOS requirement was not captured. <p>This floor would be below the assumed trajectory in our determination, and set at a level towards the lower end of what customers might reasonably expect to be delivered.</p>		
3.6	Performance below the regulatory floor would be likely to trigger an investigation for possible licence breach.	<i>Emerging view</i>	3.42
3.7	We will set regulatory minimum floors for: <ul style="list-style-type: none"> • train performance; and • asset sustainability. 	<i>Straw man</i>	3.44
3.8	We may set other reasonable requirements, including qualitative requirements, for example, to secure an output specified in an HLOS.	<i>Issue</i>	
3.9	As part of PR18, we will review the scorecards submitted in strategic plans, including the CP6 forecasts. The strategic plans should include proposals for forecast performance levels (potentially with a range of acceptable performance) and proposed levels of any regulatory minimum floor. These forecasts (subject to our review), and any regulatory minimum floors we establish, will form part of the determination and the settlement for each route. ORR will use this as the PR18 baseline for CP6 for routes/the SO to report against.	<i>Emerging view</i>	3.34
3.10	Within CP6, any alterations to scorecard measures/targets should go through an appropriate change control process including engagement with relevant stakeholders.	<i>Emerging view</i>	3.47

4. Network Rail's engagement with stakeholders to support effective delivery

This section explains how we hope to facilitate strong stakeholder engagement to achieve better outcomes for the railway.

Ref	Description / narrative	Status	Reference in main consultation
4.1	Network Rail's routes and SO should lead engagement with customers and stakeholders.	<i>Emerging view</i>	<i>Chapter 4 summary</i>
4.2	ORR will not be prescriptive in determining how Network Rail routes and SO should engage with stakeholders. ORR will set some minimum requirements and best practice principles.	<i>Emerging view</i>	<i>Chapter 4 summary</i>
4.3	At a minimum, each route and the SO could support stakeholder engagement by: <ul style="list-style-type: none"> • Having a CP6 strategic plan that reflects stakeholders' priorities; • Developing scorecards with stakeholders; • Using annual business plans and action plans to set out in more detail what the route/SO is seeking to achieve, how this reflects stakeholders' priorities and what this will deliver for stakeholders; and • Face-to-face discussions on a bilateral and multi-lateral level to complement the approaches above. 	<i>Straw man</i>	<i>4.11</i>
4.4	Principles for stakeholder engagement are that engagement is: <ul style="list-style-type: none"> • Effective, enabling stakeholders to influence priorities and challenge where necessary. Engagement should be proportionate; • Inclusive, involving all relevant stakeholders without undue discrimination; • Well-governed, with processes that encourage meaningful engagement and accountability, as well as providing for challenge and escalation; and • Transparent provision of performance information, and on how engagement has been taken into account. 	<i>Emerging view</i>	<i>4.16</i>
4.5	ORR will assess and grade the extent to which the routes and SO's strategic plans reflect engagement with stakeholders, including how they take account of different stakeholders' priorities.	<i>Conclusion</i>	<i>4.19</i>

4.6	Ongoing engagement will be assessed consistent with the principles of effective stakeholder engagement.	<i>Emerging view</i>	4.20 and 4.21, 4.24
4.7	ORR, or Network Rail centre, could lead the assessment.	<i>Issue</i>	4.22
4.8	Stakeholder engagement could be assessed through: <ul style="list-style-type: none"> • Stakeholder feedback (e.g. questionnaire or route board reporting); • Grading routes' and SO's governance processes and ongoing implementation (e.g. through maturity assessment); and • Independent assessment / input. 	<i>Straw man</i>	4.22

5. Our approach to monitoring and enforcement in CP6

This section explains how we expect to gauge Network Rail's performance, the range of action we might take in the event of good, poor, or unacceptable performance, and how we propose to use reputational incentives to drive improvements.

Ref	Description / narrative	Status	Reference in main consultation
5.1	Comparisons will be made across routes / the SO (in order to support effective reputational incentives), including where we have identified good practice as well as where we have concerns.	<i>Conclusion</i>	5.8
5.2	Route/SO-level scorecards will be used by Network Rail to link staff rewards with the performance of their route or business unit. <i>(Note: this is a decision for Network Rail, not ORR)</i>	<i>Emerging view</i>	5.11
5.3	ORR will use the assessment of route and SO engagement to inform and prioritise the level of our monitoring activity and other interventions, creating a procedural incentive. Where stakeholders have strong mechanisms to hold Network Rail to account, ORR will give these mechanisms space to work.	<i>Emerging view</i>	5.10
5.4	Where performance exceeds or is in line with expectations, ORR would likely rely on: <ul style="list-style-type: none"> • Routine publications that compare relative performance against targets and over time, highlighting good practice (e.g. Monitor; route level regulatory accounts); • Routine engagement with route/SO management teams and stakeholders; 	<i>Emerging view</i>	5.19-5.21

	<ul style="list-style-type: none"> Targeted monitoring in areas where local stakeholders do not have the interest or capability to engage; and Assessment of stakeholder engagement, with increased ORR engagement and provision of information to stakeholders if a route/the SO is not engaging effectively. 		
5.5	Where performance is below expectations, but there is effective engagement, ORR would monitor the progress of Network Rail / stakeholder discussions and their impact on performance. ORR would not automatically increase its oversight or escalate issues (but may choose to do so, in light of its own assessment of risks).	<i>Straw man</i>	5.28
5.6	If engagement is not effective, there would be enhanced monitoring (including informal investigations) and reporting (this might include more detailed targeted reporting and commentary in ORR's publications, publishing correspondence with Network Rail, etc).	<i>Emerging view</i>	5.29
5.7	If performance is below expectations (but not 'unacceptable'), ORR could consider: <ul style="list-style-type: none"> Public reporting of part of our regulatory escalator; Requiring Network Rail to communicate formally and publicly with customers; or Recommending Network Rail establish an improvement board. 	<i>Strawman</i>	5.29
5.8	Any formal action would be informed (as currently) by the principles: proportionality; targeting; consistency; transparency; and accountability.	<i>Emerging view</i>	5.31
5.9	Where performance is unacceptable ORR could consider: <ul style="list-style-type: none"> Calling Network Rail's management to attend a public hearing; Formally notifying the Secretary of State and/or Transport Select Committee where there has been, or is likely to be, a breach of licence; or Applying a 'sanction' to route level regulatory accounts, where there would be an associated impact in management pay (N.B. there would be no impact on the funds available to Network Rail). 	<i>Straw man</i>	5.32
5.10	Any enforcement action will continue to be via the Network Licence. This could be through either: <ul style="list-style-type: none"> ORR's overall assessment of Network Rail's performance against current licence 	<i>Info</i>	5.2

	condition 1 (network management), taking into account all the available evidence on Network Rail's performance; or <ul style="list-style-type: none"> • With reference to Network Rail's performance against any more specific 'reasonable requirements' (as referred to in licence condition 1). 		
--	--	--	--

6. Change control

This section explains how we intend to manage changes throughout CP6, retaining a clear link back to our determination and settlements whilst allowing Network Rail the flexibility to manage its business and respond to circumstances.

Ref	Description / narrative	Status	Reference in main consultation
6.1	Potential changes in CP6 could affect: <ul style="list-style-type: none"> • the routes'/SO's ability to plan effectively; • the accountability of routes/the SO to stakeholders and ourselves; and • the ability to compare across routes. 	<i>Info</i>	6.4
6.2	We envisage a number of sources of change: <ul style="list-style-type: none"> • Organisational changes – Substantial shifts in responsibilities between business units; • Geographical changes – Changes in route boundaries; • Financial changes – Substantial redistributions of route budgets may require a re-baselining; and • Changes to what routes/the SO are expected to deliver during CP6. <p>These changes all apply at the level of settlements and would effectively reflect a shift in funding/outputs between routes (and the SO potentially).</p>	<i>Emerging view</i>	6.6
6.3	There will need to be appropriate adjustments for the impact of changes to the portfolio and delivery of enhancements on the settlement.	<i>Issue</i>	6.8
6.4	ORR involvement should be proportionate. Small changes will attract less scrutiny than larger ones. For:	<i>Straw man</i>	6.12

	<ul style="list-style-type: none"> • Medium changes (that will have a material impact on the route/SO's performance): appropriate stakeholder engagement should take place; and • Large changes (that reflect a substantial change to our PR18 settlements): stakeholders should be consulted (except in emergency situations), and ORR would provide a formal opinion. <p>Small changes should be aggregated and adjustments to baselines made at year-end.</p>		
6.5	Network Rail will decide whether to implement a change or not, and ORR would not seek to prevent any changes (unless the change would lead to non-compliance with the network licence).	<i>Emerging view</i>	<i>Fig 6.1 and 6.19</i>
6.6	We will make the decision whether or not to amend the baseline at year-end, taking into consideration evidence of whether the change was justified or not.	<i>Emerging view</i>	<i>6.19</i>
6.7	If there is a material change in circumstances that affects large parts of the company, Network Rail can apply for a re-opener of the determination (as a whole).	<i>Info</i>	<i>6.2</i>



© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at orr.gov.uk

Any enquiries regarding this publication should be sent to us at orr.gov.uk