

Gordon Herbert
Office of Rail Regulation

Our ref:
NRS12-006

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BY EMAIL

Dear Gordon

Consultation on a greater role for Office of Rail Regulation (ORR) regulating franchises in England and Wales

Thank you for the opportunity to consider this consultation.

Having regard to the scope of this consultation, I will limit my comments to those issues which may have a direct or indirect impact on train services for which the Scottish Ministers have statutory responsibility and/or cross border services.

As indicated in paragraph 2.7, we would welcome a discussion with the ORR on the proposals within the document and how these might apply to Scottish rail services. In particular, we would look to discuss the approach to complaints procedures and the disabled people's protection policies: these are currently reserved areas and therefore the proposals may have a direct effect on Scottish services.

Question 4 seeks views on the ORR's role in holding Network Rail (NR) to account. The Railways Act 2005 enabled the Scottish Ministers to exercise certain executive powers with regard to rail services in Scotland. As a result, the Scottish Ministers are the primary funder and specifier of NR's operations in Scotland. In addition to this, the policy of decentralisation has seen additional decision-making authority transferred to the NR Scottish operating route, with a view to much more local accountability and responsiveness. Given this, it is critical that the Scottish Ministers are fully involved in any review of the ORR's statutory functions with regard to NR, and I would seek an assurance from you on this.

Question 5 seeks views on whether any revision to the ORR's enforcement and penalties policies is necessary if it takes on a wider role. Transport Scotland has long-standing, previously expressed concerns about the ORR's enforcement policies and in particular whether they reflect the best outcome for passengers and freight customers. Therefore, regardless of the outcome of this particular consultation, I am of the view that the ORR should seek to review those policies, underpinned by the ethos of the PR13 process to place the best interests of the rail users at their heart. We would also have a strong expectation that the Scottish Ministers would be fully involved in this work, and that the ORR would be open to the possibility of different arrangements on the Scottish network should this represent the best outcome for Scottish passengers and freight users.

There will undoubtedly be resource implications for the ORR should it take on additional responsibilities as described in the consultation document. I would therefore seek an assurance that this will in no way affect the ORR's capability to discharge its functions in Scotland, in line with the Guidance issued by the Scottish Ministers under the terms of the Railways Act 1993 (as amended).

I hope the above is helpful, and am content for this response to be published on your website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steven McMahon', written in a cursive style.

Steven McMahon
Head of Rail Strategy