



2018 periodic review draft determination

**Supplementary document –
Review of Network Rail’s
network licence**

June 2018

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Context

Ahead of control period 6 (CP6)¹, we will make changes to Network Rail's network licence alongside, and in connection with, the [2018 periodic review](#) (PR18). PR18 is the process through which we determine what Network Rail² should deliver in respect of its role in operating, maintaining and renewing its network in CP6 and how the funding available should be best used to support this. This feeds through into the:

- service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
- charges that Network Rail's passenger, freight and charter train operator customers will pay for access to its track and stations during CP6.

This document has been published as part of the wider set of documents that form our [draft determination](#). This sets out our overall decisions on PR18 for consultation and the overall regulatory framework for CP6. We have also published an [overview document on the draft determination](#), setting out:

- our proposed decisions in all the main areas of PR18,
- a summary of how we will regulate Network Rail's delivery in CP6; and
- next steps in PR18.

In addition, there are high-level summaries of our main decisions for each of [England & Wales](#) and [Scotland](#). The full set of documents that form the draft determination is set out in the diagram below. After taking account of consultation responses, we will publish our final determination in October 2018.

A map of our earlier consultations and conclusions that have led up to our draft determination is available [here](#).

Responding to the consultation on our draft determination

We welcome comments on this document and/or the other documents that form part of our draft determination by **Friday 31 August 2018**. Full details on how to respond are set out in Appendix B of our [overview document](#). This includes how we will treat any information provided to us, including that which is marked as confidential. Subject to this, we expect to publish responses alongside our final determination in October 2018.

(a) ¹ CP6 will run from 1 April 2019 to 31 March 2024.

(b) ² All references to Network Rail in this document are to Network Rail Infrastructure Limited.

We have provided a [pro forma](#), should you wish to use this when responding. If you choose not to use the pro-forma, we would be grateful if you would make clear in your response that you are commenting on this supplementary document. This will assist our process for reviewing comments.

Our draft determination documents (includes weblinks)*

PR18 draft determination overview document		
England & Wales summary	Scotland summary (and supporting annex)	
Draft settlement documents	Supplementary documents	
FNPO route	SBP assessment	
System Operator		
Route review summaries		Scorecards and requirements
		Health & safety
		Review of Network Rail's proposed costs
	Other single till income	
	Stakeholder engagement	
	England & Wales	Policy
Review of network licence		
Overview of charges & incentives decisions		
Infrastructure cost charges consultation		
Western route	Variable usage charge consultation	
Other documents	Conclusions to earlier consultations	
Glossary	Conclusions to working paper 8 on managing change	
Consultancy & reporter studies	Conclusions on our approach to assessing efficiency & wider financial performance	

*Please note that some documents, including consultancy and reporter studies and impact assessments, will be published after 12 June 2018.

Summary

Network Rail Infrastructure Limited ('Network Rail') operates under its network licence which requires it to comply with the conditions we set in the public interest. These licence conditions underpin how we hold Network Rail to account, setting out the company's obligations and providing a formal set of requirements that support ORR's monitoring and compliance activities. We have statutory powers to take enforcement action where Network Rail breaches its licence conditions.

Network Rail's core obligations within the licence relate to securing the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of its customers and funders. Additional requirements include information provision, stakeholder engagement and corporate matters.

Since the last review of the network licence for control period 5, Network Rail has significantly transformed its business in order to improve the way it meets the needs of passengers and funders of its network. We strongly support this ongoing transformation and culture change within the business including reorganising around route businesses and a system operator. We consider these to be important changes to how Network Rail operates which are in the best interests of its passengers and funders.

This document sets out our proposals to restructure the existing obligations within the network licence and introduce a number of new obligations for the start of control period 6 ('CP6') to reflect these significant changes. It may be the case that elements of Network Rail's business structure evolve further during the control period and some of those changes may require further changes to the licence at a later date.

The changes we propose to make to the licence will mean that:

- the licence will clearly identify those obligations which apply to route businesses and the system operator (SO), and in future help to identify more clearly which management teams should be held to account when there is a breach.
- the company will be required to maintain both the structure of its business and its governance arrangements in a manner which supports devolution including new requirements on how the company makes changes to the business (managing change process);
- the licence will align with the 2018 periodic review ('PR18') outcomes and ORR's regulatory approach; and
- the licence will reflect the reclassification of Network Rail as a public sector arm's length government body.

Contact details

Should you wish to discuss this document during the consultation period, please contact Claire Simpson (claire.simpson@orr.gsi.gov.uk / 020 7282 2016).

Document structure and process

1. Different stakeholders are expected to have different levels of interest in the changes we propose to make to Network Rail's network licence. This paper has been split into two parts accordingly.
2. Part A is designed to be accessible to a wider range of industry stakeholders and sets out our rationale for the proposed changes to the licence. Our key proposals relate to new obligations which place requirements around the structure of the business; and the allocation of some of the existing requirements in the licence to the routes and/or the system operator.
3. Part B may appeal to a narrower audience as it sets out how we have dealt with each condition within the licence. It also explains the conditions which we are proposing to remove.
4. This document does not refer to every provision within the existing licence or set out legal drafting. Please also refer to the full version of the current network licence [here](#).

Consultation on the proposed revisions

5. In the coming months we will continue to engage with stakeholders – both bilaterally and through forums such as the Rail Delivery Group (RDG) working groups – on the proposals set out in this document.
6. We intend to publish the licence drafting to implement the changes set out in this document on 12 July 2018 for comment.
7. We will publish our final policy position alongside the PR18 final determination in October 2018. We are introducing the final policy as part of the final determination to enable consideration alongside the final settlements for CP6.
8. To implement changes to the network licence, we currently intend to follow the procedure for licence changes set out in section 12 of the Railways Act 1993. Under this procedure, the changes will only come into effect with Network Rail's agreement. Network Rail's decision will be separate to its decision of whether to accept the PR18 final determination.
9. There is an alternative statutory procedure, where we can make 'linked licence changes' necessary to deliver the periodic review. We do not currently propose to make any changes to the licence using this procedure as we consider that there would be a benefit in enacting all changes through one process. Whilst all of the changes we propose to make are to align the licence with our regulatory approach for

PR18, a number of the changes we are proposing are not necessary to deliver PR18. However some are, such as the new licence condition explained further in the [Working paper 8: Managing change affecting the PR18 settlements - conclusions](#) which puts specific requirements in place relating to the route and SO settlements. We will consider further which process to follow for those changes before making the PR18 final determination.

PART A – Rationale for changes to network licence

Introduction

- 1.1. Network Rail owns, operates, maintains and develops most of the mainline railway network in Great Britain. It was reclassified as a public sector arm's length government body in September 2014. Its sole member is the Secretary of State for Transport.
- 1.2. Network Rail operates under its network licence and is required to comply with the licence conditions. The licence conditions underpin how we hold Network Rail to account, setting out the company's obligations and providing a formal set of requirements that support ORR's monitoring and compliance activities.

Rationale

- 1.3. Network Rail is undertaking a process of transformation and culture change within its business, including by reorganising around route businesses and a distinct system operator (SO). Network Rail has also now moved fully into the public sector. These changes have prompted us to propose a significant shift in how we regulate the company, focussing our regulation on the routes and SO, while making more use of reputational incentives, including comparison between the routes. More detail on these changes to our regulatory approach are included in [the PR18 draft determination overview](#).
- 1.4. To support the benefits that will flow from these changes, we are proposing to change the network licence in the following ways:
 - to restructure the existing obligations to better reflect the day-to-day responsibilities of the routes and the SO. This will improve clarity about the allocation of responsibilities across the business, and will enhance accountability of the management teams for meeting those obligations. It supports our ability to put in place effective reputational incentives to improve performance and also allows many of its personnel to more readily understand which licence obligations are most relevant to them.
 - to include new obligations which require Network Rail to maintain its business structure, with routes and an SO responsible for certain functions, and have governance arrangements to support that structure. This will allow us to regulate Network Rail against that structure more effectively and will facilitate our ability to compare performance. It also helps to protect the incentives we

are putting in place at PR18 to encourage routes and the SO to improve and share best practice.

- to introduce additional requirements for managing changes that may take place during CP6, including requiring Network Rail to follow certain change processes. These proposals seek to protect the route and SO settlements that will be established through PR18, so that routes and the SO have clarity around what they are expected to deliver and the resources available to them.

1.5. These changes, alongside our regulatory approach for CP6, will allow us to regulate Network Rail more effectively, as well as allowing Network Rail and stakeholders to better understand how the licence obligations apply across the network business.

1.6. The remainder of this paper discusses the first two of these changes. More detail on the managing change proposals is set out in the [Working paper 8 - Managing change to the PR18 settlement - conclusions](#).

Status of Network Rail and the network licence

1.7. In the revised licence, there will continue to be a single network licence and the licence holder will continue to be Network Rail as a single company. Any legal obligations set out in the licence are imposed on the company alone. We will not separate the licence or require legal separation of route businesses or the SO.

1.8. Any enforcement action for breach of licence, taken using our statutory enforcement powers, would be taken against the company. However, we will be very clear in our regulatory reporting and in any enforcement action where we consider that a route business or the SO has failed to comply with obligations which have been allocated to it. We may also take enforcement action if the company is failing to ensure that a business is able to meet obligations allocated to it in the licence. This will help to drive the positive behaviours we expect of the management of Network Rail, and those expected of its SO and route businesses.

Change to the network licence

1.9. In this document where we have identified responsibility sitting with either the route businesses or the SO, we call this 'allocating' an obligation.

1.10. This document does include some new ordering and structure for the licence conditions, but the structure of the revised network licence may change further at legal drafting stage, in particular around the responsibilities allocated to the route businesses and the SO. A number of other proposals for improving drafting of the licence are being considered and some of these may also be taken forward to

ensure that the licence is fit for purpose for CP6. We set this out in more detail in Part 2.

1.11. We will provide detail of any structural or drafting changes in the legal drafting consultation.

1.12. However, while the changes to the licence may be significant to meet the objectives of this review, this is not intended to be a “root and branch” review of the policy underpinning the network licence. The review focuses on some particular areas to ensure that the conditions are fit for purpose for CP6.

Questions

We welcome all comments on any aspect of this paper. However, we have also included questions in each section which highlight some issues you may wish to consider in your response to the respective parts of this paper. These questions are also in the [pro-forma](#), should you wish to use this when responding.

1. We consider that aligning the network licence with the devolved structure of Network Rail and our regulatory approach for CP6 will provide additional clarity and consistency. Do you agree, or are there any compelling reasons why this is not the case?
2. Do you consider that any further steps should be taken, within the scope of this review, to embed the Network Rail operating model and our regulatory approach for CP6?

2. Structure of Network Rail

Summary

- 2.1. Network Rail has undergone a process of transformation, including how it structures itself with route businesses and a distinct SO. These changes have prompted us to propose a significant shift in how we regulate the company, focussing our regulation on the routes and SO, while making more use of reputational incentives, including comparison between the routes.
- 2.2. As our aim is for the network licence to better reflect this, a new section would be introduced at the start of the licence. This section would embed the key elements of this structure and the constitution of these separate businesses into the licence.
- 2.3. To further support these structural changes, the licence will also require Network Rail to maintain appropriate governance arrangements. This is consistent with the internal governance principles set out in our [PR18 draft determination](#) – overview document.
- 2.4. In this section we explain our rationale and set out the new obligations which would require Network Rail to maintain its structure in a particular way.

Geographic route businesses

- 2.5. The revised licence will require Network Rail to designate its network into separate route areas.
- 2.6. The licence will place a new requirement upon Network Rail to maintain businesses for each route which will:
 - take primary responsibility for the operation, maintenance, renewal and replacement of that route; and
 - comply with the route-allocated obligations under the licence.
- 2.7. Recognising the longer-term nature of the network licence and the likelihood of changes to route boundaries, the licence will be silent upon exactly how many routes there are and it will not specify the current route geographical areas. However, any changes to the current route geographical areas would be covered

by the managing change process explained in [working paper 8 - Managing change to the PR18 settlements - conclusions](#).

- 2.8. Unlike other Network Rail routes, there has there has been a significant degree of rail devolution to Scottish Ministers, and a separate Network Rail route for Scotland for many years. Following reclassification in 2014, a [Memorandum of Understanding](#) was agreed between the DfT and Scottish Ministers setting out the functions devolved to Scottish Ministers with regard to Network Rail.
- 2.9. Scottish Ministers are responsible for:
- setting a strategy for passenger and freight services in Scotland;
 - being the franchising authority; and
 - specifying and funding outputs for the railway in Scotland through a separate High Level Output Specification (HLOS).
- 2.10. Although the route obligations under the network licence will not differ for the Scotland route, Network Rail will have a new requirement to maintain a specific Scotland route area and route business to reflect these differences.

System Operator

- 2.11. The revised licence will place a new requirement upon Network Rail to maintain a business to fulfil the functions of the SO, being to:
- promote coordinated and integrated operation of the network and planning of the network;
 - take primary responsibility for:
 - establishing and maintaining long term plans;
 - the process for the allocation of capacity on the network;
 - the process for timetabling railway services (and other activities) on the network;
 - holding and controlling of information relating to those processes; and
 - comply with the SO allocated obligations under the licence.

Governance

- 2.12. Consistent with the PR18 internal governance principles, Network Rail will be required to establish, maintain and comply with governance arrangements which enable each route and the SO to perform their functions effectively and efficiently (and the SO to also perform its functions impartially).

2.13. The governance requirements will also include:

- a requirement for each route business and the SO to have an officer (or officers) appointed to manage and oversee the activities of that business. This role is currently performed by the route and managing directors within Network Rail who have day-to-day responsibility for running those businesses;
- a requirement that the governance arrangements will enable route businesses and the SO to make assessment of the services they require, and where they procure those services. This embeds our internal governance principles in the overall framework and our regulatory support for contestability and improved accountability of Network Rail's services to its geographic routes and the SO.

Independent-mindedness of the SO

2.14. To reflect our vision for an independently-minded SO, we will require within the licence that the SO undertakes its role in a way which is sufficiently independent from the rest of the business and in an impartial manner.

2.15. This would mean that the SO will act, and Network Rail will enable the SO to act, in the best interests of the system as a whole, neither unjustifiably favouring routes nor train operators in the way in which it fulfils its functions. We propose to set requirements to reflect this in two areas:

- Network Rail will be required to establish governance arrangements which enable the SO to perform its functions impartially, effectively and efficiently.
- The SO itself will be required to undertake its functions impartially, transparently and by persons with appropriate expertise. In doing so, the SO will be prohibited from unduly discriminating in the way it engages between different parts of Network Rail (such as different route businesses) or external stakeholders.

2.16. To further the effective performance of the SO's role, we will also require that commercially sensitive information obtained by the SO from any person in the performance of its functions is kept confidential and is not used for any other purpose.

Resources

Assets and personnel

- 2.17. The licence will require Network Rail to assign personnel and assets to each route business and the SO to ensure compliance with the conditions in the licence. There will then be a requirement to maintain appropriate, accurate and readily accessible records of this.

Sufficiency of resources

- 2.18. We will include in this section the existing duty to act in a manner calculated to secure sufficient resources for all parts of the business to be able to meet its obligations (Licence Condition 4.14). It will require Network Rail to determine whether (within the financial package available) routes and the SO have sufficient resources to fulfil their functions.

Co-operation

- 2.19. The different parts of Network Rail need to cooperate to fulfil their functions even where accountability may sit with one business, such as a route. We would expect all other parts of Network Rail, including central functions, to co-operate in an effective and responsive manner. To reflect this, there will be a new requirement that any other part of Network Rail must assist and cooperate to meet all of the obligations within the licence.
- 2.20. The allocation of an obligation to a route or the SO is not intended to allow other parts of Network Rail to ignore that obligation, but rather to focus accountability on a particular business. This provision is intended to ensure that the obligations are not lessened overall.

Managing change process

- 2.21. The [working paper 8 managing changes to the PR18 settlements - conclusions](#) sets out our policy position in respect of managing changes to the business during the control period. The licence will include a provision which will require the licence holder to comply with these requirements.

Freight and national passengers

- 2.22. In our overall framework document we describe the Freight and National Passenger Operator route ('FNPO') as being:

“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, and delivers for its customers by working with the geographic routes, System Operator and other parts of Network Rail.”

- 2.23. Network Rail states that it treats the FNPO as an operational route and for the purposes of PR18, it has a scorecard and settlement in the same way geographic routes do.
- 2.24. There are currently no specific requirements within the existing licence regarding freight and national passengers. In the revised licence, it is our view that the interests of freight and national passenger organisations should be explicitly reflected. However, the licence obligations which will require specific activities to be carried out by geographic routes, such as asset management, would not apply to the FNPO route.
- 2.25. Therefore we will include an obligation upon Network Rail requiring it to put in place specific institutional arrangements to ensure that the interests of freight and national passengers are represented. We will not require a specific route business for the purposes of the network licence as it is not expected that the FNPO route would have obligations directly placed upon it.
- 2.26. Freight and national passengers will also continue to be protected under the licence by the requirements placed upon Network Rail, its route businesses and the SO through its general duties, and in particular the stakeholder duty. In addition, any changes Network Rail wished to make to the FNPO route, its outputs within the scorecards or PR18 settlement would be subject to the managing change process in the same way as changes to geographic routes.

Questions

3. Do you agree with our proposals for new licence conditions around the structure of Network Rail (with route devolution and a SO) and the requirements around governance? Do you have any specific views on the requirements we propose to put in place?
4. We have not proposed specific requirements upon the FNPO as we do not propose that it will have specific network management responsibilities. However we will protect the interests of freight and national passenger organisations through requirements around how Network Rail structures its organisation. Do you have any views on this position?

3. Allocation of existing obligations

Summary

3.1. In this section we set out our rationale for how we have adapted the existing licence obligations and allocated these to routes and the SO. We have focused on three areas in this section:

- the general duties applicable to the whole network business (including routes and the SO);
- specific obligations allocated to the routes and the SO; and
- information requirements.

Part 2 of this document sets out in detail how allocation will work across all other conditions (such as restrictions on activities and industry standards).

3.2. We explain below the three overarching general duties in the revised licence. These are drawn from the existing licence and are important because they set out broad outcomes which are fundamental to the role of Network Rail within the rail sector. They are also important as they are relevant to the whole network business, including the SO and routes. The three overarching general duties are:

- General network management duty;
- Information for passengers duty; and
- Stakeholder duty.

3.3. In fulfilling the general duties, the licence also identifies specific obligations relating to network management, planning and information for passengers. A number of these obligations cover the core day-to-day responsibilities undertaken by the routes and the SO. We explain below how we will allocate these to the routes and SO. The revised licence will have a Network Rail ('licence holder'), route and an SO section and will set out specific conditions to be complied with.

3.4. The licence is not intended to identify all of the activities of the routes or the SO or provide extensive detail on processes. In allocating responsibility across route and the SO we have generally not sought to expand beyond the existing requirements upon Network Rail.

3.5. However, we have identified the need for a small number of new obligations to facilitate the allocation of responsibilities within the licence in a way which properly

reflects responsibilities within Network Rail. Where this is the case, we have flagged it and we have also provided the numbers of current licence conditions for reference.

General duties

- 3.6. There are three overarching duties in the existing licence. We will raise the prominence of these by creating a distinct set of core duties within a separate section of the licence. These important obligations set out the broad outcomes which Network Rail must meet and which can be considered to be fundamental obligations to ensure that the network operator as a whole has a consistent strategic direction. The full text of the current general conditions is set out in Table 1 below.
- 3.7. In order to ensure that the different businesses within Network Rail follow the strategic direction set by these conditions, the routes and the SO will have a responsibility for complying with these obligations to the greatest extent reasonably practicable, as well as the company.

Table 1 – General duties

Network management

1.1 The purpose is to secure:

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

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

- (i) the quality and capability of the network; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.

1.2 The licence holder shall achieve the purpose in condition 1.1 to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

Information for passengers

2.1 The purpose is to secure the provision of appropriate, accurate and timely information relating to planned and actual movements of trains on the licence holder's network to enable train operators to meet their information obligations to passengers and prospective passengers, including when there is disruption.

2.2 The licence holder shall achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances, including the funding available.

Stakeholder relationships

8.1 The purpose of this condition is to ensure that the licence holder shall treat stakeholders in ways appropriate to their reasonable requirements in their capacity as stakeholders.

8.2 The licence holder shall achieve the purpose in condition 8.1. In particular, the licence holder shall, to the greatest extent reasonably practicable, deal with stakeholders:

(a) with due efficiency and economy and in a timely manner; and

(b) with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced network facility owner and operator...

8.7 Condition 8.2 does not apply to the performance by the licence holder of a contract or the exercise of any discretion conferred by a contract.

3.8. The 'network management duty' is a particularly important obligation in the licence. It sets out Network Rail's core obligations to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of its customers and funders. It covers both the quality and capability of the network and the facilitation of railway service performance.

3.9. In addition we consider that the duty to provide appropriate information for passengers on train movements represents a core function which Network Rail delivers to train operators and, ultimately, end users of the railway network.

3.10. We also consider that the stakeholder engagement duty represents a core function, particularly given the range of stakeholders and the increasing focus we are placing upon the quality of engagement during this control period. We will make some changes to the definition of stakeholder to reflect this, which we discuss below.

Changes to the definition of 'stakeholder'

3.11. Our vision for CP6 is that, over time, customers and other stakeholders can and should play a much more significant role in working closely with Network Rail's routes and the SO to agree priorities and challenge performance. This is reflected in our

proposal to raise the prominence of the existing stakeholder duty (Condition 8.1-8.2) and include it as one of the three core duties. We will be able to assess whether Network Rail is compliant with this duty during the control period and take action when we consider there to be a breach of this duty.

- 3.12. The licence condition sets out our broad expectations for stakeholder engagement but is not prescriptive, recognising that Network Rail's stakeholders have different interests, needs and capabilities. This is particularly important as it also provides routes and the SO with sufficient flexibility to tailor how they engage with their different stakeholders to enable different and innovative approaches to develop over CP6.
- 3.13. We are not going to change the substance of the stakeholder duty but we will change the definition of stakeholder to reflect this broader objective. We will also remove some specific obligations around stakeholder engagement which we no longer consider to be necessary given the importance we will place upon complying with the general stakeholder duty.

Definition of stakeholder

- 3.14. The current definition of stakeholder within this condition provides a detailed description:

“Stakeholder means:

- a) any person providing services relating to railways;*
- b) any person providing a railway facility or a network, including one which is proposed to be constructed or in the course of construction;*
- c) any funder;*
- d) any other person who has expressed in writing to the licence holder a serious and credible:*
 - i) interest in providing or intention to provide; or*
 - ii) interest in providing or intention to provide finance for or in connection with**either or both of:*
 - i) services relating to railways; and*
 - ii) a railway facility or a network, including one which is proposed to be constructed or is in the course of construction;*

e) *the Mayor of London and TfL in respect of their functions related to the provision of services relating to railways*

f) *Passenger Focus and London TravelWatch in their respective statutory functions.*”

3.15. To make this general duty fit for purpose, both in the context of route devolution and our broader vision for stakeholder engagement, we propose to change this to a new, shorter definition which would cover any organisation, individual or community with which Network Rail has (now or in the future) a significant relationship and/or which can be impacted by the activities of Network Rail.

3.16. This would include individuals (for example passengers or line-side neighbours), customers (and owning groups), national funders, local funding bodies, investors, freight end users, passenger representative bodies, companies that form part of our supply chain, regulatory authorities and local government agencies and authorities.

3.17. Therefore although it would remove explicit reference to some stakeholders, the protections afforded by the licence would not change for these stakeholders as the broader definition would capture them and our expectations of Network Rail's performance in this respect will be a key consideration during CP6. It also has the benefit of being more flexible to change. For example, the list currently includes Transport for London but does not include Transport for Wales.

3.18. The new definition would replace the current definition within Condition 8.8 of the licence and, for the reasons set out above, we would also remove Conditions 8.4 (Cooperation with the Mayor of London and TfL) and 8.5 (Cooperation with passenger representatives).

Network management responsibilities

3.19. A number of network management obligations cover the core day-to-day responsibilities undertaken by the routes and the SO. We explain below how we have allocated these to Network Rail (the 'licence holder'), the routes and the SO. The revised licence will have a Network Rail, route, and an SO section and will set out specific conditions to be complied with.

Network Rail network responsibilities

Planning

3.20. Network Rail would have some 'network wide' planning functions within the licence which are not allocated, but we anticipate this would be informed by the planning carried out by the route businesses and the SO. Therefore the 'network wide' planning would consist of:

- Planning which covers the short, medium and long term, to meet reasonably foreseeable future demand for railway services (and to consult on and publish its plans); (current licence conditions 1.4-1.6, 1.8)
- a network wide 'Delivery Plan' (1.10-1.13) taking into account the contents of route business and SO plans and consulting with routes and the SO (new)
- in doing so, Network Rail would need to have due regard to the long term plans developed by the SO. (1.16)

Asset management policies and criteria

- 3.21. Network Rail (currently through its Safety, Technical & Engineering Authority) develops central asset policies, as well as providing route and project specific advice. There is an existing condition within the licence which requires policies and criteria to be developed in respect of maintenance, renewal replacement, improvement, enhancement and development of the network (1.19).
- 3.22. We consider this to be a legitimate 'central function' with the routes and the SO engaged and inputting into the development of those policies. Therefore we have built upon the existing licence condition to reflect this by requiring consultation with the route businesses and the SO. Network Rail would also continue to be required to comply with these policies and criteria once developed.
- 3.23. In addition to this, Network Rail would be required to maintain appropriate information about assets which have not been allocated to a route business, including information about their condition, capability and capacity; and appropriate collated information about assets on a network-wide basis. (1.20)

Route business network responsibilities

Planning

- 3.24. Through their responsibility for the day-to-day operation and management of the railway, the route businesses take responsibility for a number of network management requirements which exist within the licence. Therefore in addition to the general network management duty which would apply, we will allocate the responsibility for route-level planning to the relevant route (1.4-1.6, 1.8).
- 3.25. This includes an obligation to prepare and publish a delivery plan in respect of the performance of its route (1.10-1.13) and in doing so, have due regard to the long-term plans developed by the SO (1.16). The route delivery plans are critically important for informing the network-wide planning.

Asset management policies and criteria

3.26. The routes would be required to apply the policies and criteria developed by Network Rail (1.19(b)) and engage with Network Rail on the development of those policies both in respect of the network wide policies and route specific approaches.

3.27. Routes would also be required to maintain appropriate information about assets allocated to them, including information about their condition, capability and capacity (1.20).

SO network responsibilities

Long term and SO planning

3.28. One of the main functions of the SO is to provide a long-term planning function for the network. The licence defines the long-term planning objective as the “effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence”.

3.29. We consider that it is appropriate to allocate some of the existing long-term planning responsibilities within the licence to the SO. Therefore, in addition to the general network management duty which would apply the SO will be responsible for:

- *Long term plans* - establishing and maintaining long term plans to promote the long term planning objective. (1.14)
- *SO level planning* - this would include a requirement to prepare a separate delivery plan in respect of the performance of the SO Functions. (1.4-1.6, 1.8, 1.10 – 1.13)
- *Asset management policies and criteria* – the SO would apply the policies and criteria developed by Network Rail (1.19(b)) and engage with Network Rail on the development of those policies.

3.30. We also consider that it would be appropriate to make a change to the licence definition of long term planning objective to better reflect the role of the SO, in particular its role in identifying future opportunities for rail investment. As well as the effective and efficient use and development of capacity, we consider that the long term planning objective should also encompass the development of the overall network in a manner which will satisfy the future reasonable requirements of railway service providers and funders (consistent with available funding).

Timetable planning

3.31. The development and production of the network timetable is recognised as one of the key outputs of the SO. The licence sets out the broad requirements around timetable planning which would be allocated to the SO. It would require the SO to: run an efficient and effective process, reflecting best practice, for establishing a timetable, and any changes to it (1.23), and; use reasonable endeavours to resolve promptly any timetabling disputes (2.5(a)).

Capacity allocation

3.32. The allocation of capacity and the process for reaching a decision involves critical input from the routes, central services and external parties, in particular train operators. Most notably, the route has a role in developing the proposals at a local level with train operators and ultimately a dedicated panel makes decisions on allocation of capacity (which may be put forward for approval by ORR or to determine an appeal).

3.33. A key role for the SO is the ownership of the framework under which the capacity allocation is managed and this supports the routes and providers' input at a local level. The SO also plays a central role in the assessment of the system-wide impact allocation of capacity could have on the whole network performance.

3.34. We expect the SO to take accountability for setting and running a capacity allocation process that is fit for purpose and we will include a new licence obligation upon the SO to reflect this. The existing licence condition to co-operate with any potential provider or potential funder to identify capacity would also be allocated to the SO (1.18).

3.35. We do not currently propose to set out all of the inputs from other parties in the licence explicitly, but note the co-operation condition we propose in the 'Structure of Network Rail' section above would place a requirement upon the routes to assist and cooperate and on Network Rail to ensure the SO gets the assistance it needs.

Information for passengers

3.36. In addition to the general duty to secure the provision of appropriate, accurate and timely information so that train operators can meet their information obligations to passengers, the SO will have the following specific licence requirements allocated to it:

- a) to cooperate with train operators to enable them to provide appropriate, accurate and timely information to enable railway passengers to plan and make their

- journeys with a reasonable degree of assurance, including when there is disruption. (2.4)
- b) to procure the publication of a national timetable of railway passenger services. (2.6)
 - c) to establish and maintain efficient and effective processes for making changes to the national timetable (2.7); and
 - d) to grant access to information it holds on the planned movement of trains on the licence holder's network to enquiry service providers. (2.10)

Regulatory information to ORR

- 3.37. Our ability to obtain high quality information from Network Rail is important for effective regulation; especially as our monitoring and enforcement activities rely on having reliable access to such information. Without it we would not be able to effectively protect the interests of customers and funders. For example, Network Rail's regulatory accounts are the primary source of information about the company's regulatory financial position, while our Network Rail monitor provides an important overview of how the company is performing.
- 3.38. Part D of the licence contains a number of obligations around the provision of information to ORR, including requiring Network Rail to respond to general information requests; the provision of regulatory financial statements and annual/periodic returns; and requiring cooperation with any Reporters (third parties appointed to undertake additional scrutiny of the company's activities). Such information requests will often relate to the routes and the SO.
- 3.39. In addition to the specific company level requirements, we consider that the licence should enable ORR to direct information requests to a route or the SO and for it to then be responsible for compliance with those requests. A similar approach would be adopted in relation to instructions for the Reporter to inquire into specified matters relating to a route or the SO.
- 3.40. Similarly, we consider that accountability would be strengthened if the route/SO MD could be required to confirm the accuracy and completeness of information provided to the regulator by Network Rail in circumstances where we consider this to be appropriate. However, this would not be an automatic requirement.

Other conditions

3.41. We have grouped together the remaining licence conditions into the following categories:

- Industry obligations - a number of industry obligations would require compliance by all parts of Network Rail's business so that routes and the SO will have a specific responsibility for compliance. These obligations include safety and standards, and requirements around environmental policies.
- Restrictions on activities – these are where conditions contain a prohibition on a particular activity and it is important that it is clear that any part of Network Rail's business could breach the licence condition (even if the subject matter of the condition is more relevant to some business units). Therefore, routes and the SO will be responsible for complying with these conditions in the performance of their functions. These obligations include land disposal and restricted use of information requirements.
- Corporate conditions – these are licence conditions which place obligations that are 'corporate' in nature and would be expected to be undertaken within Network Rail's national functions, where there may be no particular role for the routes or SO. These conditions include regulatory undertakings and specific insurance requirements.

Questions

5. We have sought to align the existing network management and timetabling requirements within the licence with the responsibilities held within Network Rail by the routes and the SO. Do you have any views on how we have allocated these?

6. We have proposed some specific changes to the definition of stakeholder within the licence to ensure the definition captures all of Network Rail's stakeholders and supports the broad purposive intent of the stakeholder general duty. Do you have any views on this proposed definition?

PART B - Breakdown of licence modifications

In Part A above, we set out the rationale for changing the licence, what new obligations we consider are necessary and how we have allocated responsibility across routes and the SO. In this section we provide more detail on the changes by setting out the key conditions within the current licence, whether a condition is allocated to routes or the SO and whether we are proposing changes to the condition.

Where we state “no change” this indicates that there is no change in the overall expectation set in that condition. In the process of legal drafting we may restructure the conditions further and/or change the drafting. For example, to improve clarity and/or to ensure that the drafting works alongside other conditions in the licence. Where we state “changes proposed” we explain this under each heading.

A. Structure of Network Rail

As stated above, our aim is for the network licence to better reflect Network Rail’s operating structure and support the devolution of route businesses and the role of the SO. A new section would be introduced at the start of the licence. This section would embed this structure and the constitution of these separate businesses into the licence.

We set out below a description of each of these conditions, however the detail may change through the legal drafting process. Any changes to our proposals will be clearly flagged when we consult on the legal drafting.

Licence condition	Changes to condition	Accountability
Ensure its business complies with the requirements set out in the licence	New obligation	Network Rail
Designate its network into geographical route areas with: - Scotland as a route area - England and Wales designated to one or more route areas	New obligation	Network Rail
Establish a route business for each route area to:	New obligation	Network Rail

Licence condition	Changes to condition	Accountability
<ul style="list-style-type: none"> - take primary responsibility for the operation, maintenance, renewal and replacement of the route (excluding SO responsibilities); and - comply with the route business allocated obligations under the licence 		
<p>Maintain and comply with governance arrangements to ensure that the route businesses can effectively/efficiently perform their functions, including:</p> <ul style="list-style-type: none"> - having a responsible officer - assessing how goods/services for the route should be obtained 	New obligation	Network Rail
<p>Structure its business to be able to properly take into account the interests of freight and national passenger operators</p>	New obligation	Network Rail
<p>Establish an SO to –</p> <ul style="list-style-type: none"> - promote the coordinated and integrated operation of the network and planning for the network, - take primary responsibility for: <ul style="list-style-type: none"> i. Long Term Plans; ii. the capacity allocation process; iii. the timetabling process iv. holding/controlling information for those processes - comply with the SO allocated obligations under the licence 	New obligation	Network Rail
<p>Maintain governance arrangements to ensure that the SO can effectively, efficiently and impartially perform its functions, including:</p> <ul style="list-style-type: none"> - having a responsible officer - assessing how goods/services for the route should be obtained 	New obligation	Network Rail
<p>Ensure that there are arrangements in place to suitably protect sensitive information obtained by the SO in performing its functions</p>	New obligation	Network Rail

Licence condition	Changes to condition	Accountability
Assign personnel to route businesses and the SO to ensure compliance with the licence	New obligation	Network Rail
Ensure sufficient resources available for meeting the reasonable requirements of freight and national passenger operators to ensure compliance with this licence	New obligation	Network Rail
Allocate route assets to route businesses and other assets to route businesses and the SO to ensure compliance with the licence	New obligation	Network Rail
Maintain appropriate records of assets/personnel assigned, allocated or otherwise used by a route business or the SO	New obligation	Network Rail
Ensure that the SO and route businesses provide and receive such cooperation/assistance as is necessary to ensure compliance	New obligation	Network Rail and SO / route business
Act in a manner calculated to ensure it has sufficient resources to enable proper/efficient conduct of the business and compliance with the Act / licence	No change (currently 4.14)	Network Rail and SO / route business
Comply with the managing change process specified by ORR	New obligation	Network Rail

B. General duties of Network Rail including its route businesses and System Operator (“General duties”)

There are three overarching duties in the existing licence where we will keep the current expectation but raise their prominence by moving them into a separate section at the front of the licence. These important obligations set out the broad outcomes which Network Rail must meet and which can be considered to be fundamental obligations to ensure that the network operator as a whole has a consistent strategic direction.

We propose changes to the definition of stakeholder which we discuss in detail in Part A above.

Licence condition	Current ref	Changes to condition	Accountability
Secure the operation, maintenance, renewal etc. of the network to meet reasonable requirements of service providers and funders to the greatest extent reasonably practical, having regard to all circumstances including its ability to finance its licensed activities.	1.1 – 1.2	No change	Network Rail and SO / route business
Provide appropriate information on train movements to train operators to allow them to meet their information obligations to the greatest extent reasonably practicable having regard to all circumstances.	2.1 – 2.2	No change	Network Rail and SO / route business
Treat stakeholders in ways appropriate to their reasonable requirements including, to the greatest extent reasonably practicable, dealing with stakeholders with efficiency/economy and with a specified degree of skill, diligence, prudence and foresight.	8.1 – 8.2	Changes proposed	Network Rail and SO / route business

C. Network Management and timetabling

Part C contains specific obligations relating to network management. A number of these obligations cover the core day-to-day responsibilities undertaken by the routes and SO. We explain below how we have allocated these to the routes and SO.

Licence condition	Current ref	Changes to condition	Accountability
Planning			
Plan how it will comply with general network management duty (see 1.2) over short, medium and long term.	1.4	No change	Network Rail and SO / route business

Consult and take into account views when planning	1.5	No change	Network Rail and SO / route business
Prepare (and provide to ORR) plans, strategies or other documents demonstrating its compliance/proposed compliance with the general network management duty. These shall include specified documents and shall demonstrate the position, as appropriate, on a network basis and at a suitably disaggregated level. Documents to meet and be provided in accordance with ORR guidelines.	1.6 – 1.8	No change	Network Rail and SO / route business
Prepare, provide to ORR and publish a delivery plan (to meet ORR guidelines)	1.10 – 1.13	No change	SO / route businesses to provide a delivery plan for their responsibilities and Network Rail to provide network-wide delivery plan.
Have due regard to long term plans.	1.16	No change	Network Rail and SO / route business
Asset management			
Develop asset management policies/criteria. Review/revise asset management policies/criteria to ensure they remain sufficient periodically and when directed by ORR.	1.19(a), 1.22	No change	Network Rail
In its development and revision of those policies and criteria, consult the SO and each route business	NEW	New obligation	Network Rail and SO / route business – responsible for making representations where appropriate
Apply those policies/criteria	1.19(b)	No change	Network Rail and SO / route business

Make information available about policies/criteria.	1.19(c)	No change	Network Rail
Maintain appropriate information about relevant assets	1.20	No change	Route businesses for assets allocated to them and otherwise to Network Rail
Maintain appropriate information about relevant assets on a network-wide basis	NEW	New obligation	Network Rail
SO Decisions			
Ensure that decisions around long term plans, capacity allocation and timetabling are made with appropriate expertise, impartially and transparency	NEW	New obligation	SO
Long Term Plans			
Establish and maintain long term plans, to promote the long term planning objective. Review/amend long term plans periodically and when directed by ORR	1.14 – 1.15, 1.17	No change	SO
Capacity allocation			
Run a best practice process for managing the allocation of capacity.	NEW	New obligation	SO
Cooperate with potential providers/funders to identify ways to satisfy reasonable requirements on capacity allocation.	1.18	No change	SO
Timetabling			

Run a best practice timetabling process and where necessary initiate changes to relevant industry processes to enable business planning with a reasonable degree of assurance.	1.23	No change	SO
In doing so, (a) use reasonable endeavours to resolve timetabling disputes; and (b) respond expeditiously to urgent timetabling matters.	2.5	No change	SO

D. Information for passengers

Similar to Part C above, Part D sets out specific obligations which cover core day-to-day responsibilities. In respect of information for passengers, we will allocate these to the SO.

Licence condition	Current ref	Changes to condition	Accountability
Cooperate with train operators to enable provision of information.	2.4	No change	SO
Publish the national timetable of passenger services.	2.6	No change	SO
In doing so: (a) establish a process for providing information on relevant timetabling changes; and (b) apply those processes to the greatest extent reasonably practicable.	2.7 – 2.9	No change	SO
Grant access to information to credible inquiry services.	2.10	No change	SO

E. Information Requirements

Part D of the current licence contains a number of obligations around the provision of information to ORR, including requiring Network Rail to respond to general information requests; the provision of regulatory financial statements and annual/periodic returns; and requiring cooperation with the Reporter. Such information requests will often relate to the route and SO businesses.

In addition to the specific company level requirements, we consider that the licence should enable ORR to direct general information requests to the route and SO businesses and for it to then be responsible for compliance with those requests. A similar approach would be adopted in relation to instructions for the Reporter to inquire into specified matters relating to a route or the SO business.

Similarly, we consider that accountability would be strengthened if the route/SO MD could be required to confirm accuracy and completeness of information provided to the regulator by Network Rail in circumstances where we consider this to be appropriate. However, this would not be an automatic requirement.

Licence condition	Current ref	Changes to condition	Accountability
Information for ORR			
Provide to ORR such information as ORR may reasonably require in the conduct of its functions under Part 1 of the Act.	10.1 – 10.5	No change	Network Rail and SO / route business - where request made specifically to them.
Where requested by ORR, route/SO MD shall be required to confirm accuracy/completeness of response to request or detail reasons for not giving confirmation.	NEW	New condition	Network Rail and SO / route business
Regulatory accounts			
Prepare regulatory financial statements for itself and Network Rail Infrastructure Finance (Network Rail Infrastructure Finance “NRIF”) in accordance with Condition 11 and Regulatory Accounting Guidelines.	11.1 – 11.2	No change	Network Rail
Prepare accounting records for itself and NRIF in accordance with Condition 11 and Regulatory Accounting Guidelines.	11.3	No change	Network Rail

Maintain (and keep under review) systems of control and governance arrangements to ensure information reported is accurate, complete and fairly presented.	11.3	No change	Network Rail
Where requested by ORR, route / SO MD shall be required to confirm accuracy/completeness of statement/record or detail reasons for not giving confirmation.	NEW	New condition	Route businesses and SO
Make a statement approved by the board certifying the adequacy of its resources for the next 12 months.	11.5 – 11.6	No change	Network Rail
Submit to ORR details of the main factors taken into account in the making of the statement. Including a requirement to consult the route businesses and SO and explain how it has taken into account their views	11.7	New condition (in part)	Network Rail and SO / route business – responsible for making representations where appropriate
Notify ORR if its directors become aware of circumstances that cause them no longer to have reasonable expectation expressed in the most recent statement and publish that notification.	11.8	No change	Network Rail
Procure a report from its auditors answering specified questions in relation to the regulatory financial statements and setting out whether the auditors are aware of any inconsistencies between the statement made by Network Rail and the findings of the auditors.	11.10 – 11.11	No change	Network Rail
Enter into a contract with its auditors including a term that the auditors will provide explanation/clarification of their reports and further information to ORR as is reasonably required.	11.12	No change	Network Rail
Deliver to ORR a copy of the financial statements and other information as soon as reasonably practicable and within one month following the end of the financial year.	11.13	No change	Network Rail

Publish financial statements and information within one month of delivery (subject to specified modifications).	11.13	No change	Network Rail
Annual and periodic returns			
Prepare and provide ORR with an annual return, meeting requirements set by ORR, by a specified return date.	12.1 – 12.2	No change	Network Rail
Where requested by ORR, SO / route MD shall be required to confirm accuracy/completeness of annual return or detail reasons for not giving confirmation.	NEW	New condition	Route businesses and SO
Publish the annual return within one calendar month of the return date.	12.5	No change	Network Rail
Prepare and provide ORR with a periodic return at a specified time and for a specified period.	12.6	No change	Network Rail
Where requested by ORR, SO / route MD shall be required to confirm accuracy/completeness of periodic return or detail reasons for not giving confirmation.	NEW	New condition	Route businesses and SO
Reporters			
Comply with an instruction from ORR for the Reporter to inquire and report into specified matters.	13.2	No change	Network Rail, with SO / route businesses responsible where request made specifically to them
Enter into a contract with the Reporter meeting specified requirements and to be approved by ORR.	13.4	No change	Network Rail
Comply with the Reporter Guidelines	13.5	No change	Network Rail and SO / route business

Cooperate fully with the Auditor.	13.6	No change	Network Rail and SO / route business
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F. Industry Obligations

We propose to group together a number of licence conditions setting out industry obligations.

Where an obligation requires compliance with a particular standard, all parts of Network Rail must comply and we propose that the routes and SO will have a responsibility for compliance.

We also propose changes to licence condition 22 which requires Network Rail to be a member of RSSB and meet specified standards. Following a proposal from Network Rail and discussions with a range of stakeholders, we are proposing to change the condition so that it much better aligns with the standards framework that has developed since the condition was first introduced in 2003. We are proposing that, in addition to being required to comply with all applicable Railway Group Standards, the condition will also recognise the need for Network Rail to identify and comply with other applicable standards or be able to demonstrate that it is adopting – in consultation with affected parties - an equally effective means of meeting the purpose of the standard.

We propose to consult on the specific drafting for this change in July, alongside any other drafting changes.

Licence condition	Current ref	Changes / New	Accountability
Stakeholder relationships			
Publish information on the principles and procedures by which it will comply with its general stakeholder relationship duty (see 8.2).	8.6	No change	Network Rail
Safety and Standards			
Be a member of RSSB and a party to the constitution agreement.	22.1(a)	Changes proposed	Network Rail

Comply with obligations under the constitution agreement and the articles of association.	22.1(b)	Changes proposed	Network Rail
Exercise rights to ensure that RSSB acts in accordance with constitution agreement.	22.1(c)	Changes proposed	Network Rail
Comply with the Railway Group Standards Code and Railway Group Standards as applicable to its licensed activities.	22.2	Changes proposed	Network Rail and SO / route business
Environment			
Have a policy on protecting the environment, together with operational objectives and management arrangements for giving effect to the policy. Wherever there is a material modification, this must be promptly sent to ORR.	23.1 – 23.2	No change	Network Rail
Act with due regard to the policy and operational objectives and use its reasonable endeavours to operate the management arrangements effectively.	23.3	No change	Network Rail and SO / route business
Rail Delivery Group			
Become a member of RDG and comply with its obligations under the RDG articles.	25.1	No change	Network Rail and SO / route business

G. Restrictions on Activities

Part B of the existing licence sets out a number of restrictions on activities.

Where the licence contains a prohibition on particular activity, it is important that it is clear that any part of Network Rail could breach the licence condition (even if the subject matter of the condition is more relevant to some business units).

In order to ensure that the different businesses within Network Rail are accountable for ensuring that the prohibition is not breached, there are a number of obligations where we propose that the SO and the routes will have a responsibility for compliance.

Specifically in relation to land disposal, we propose that a new obligation should be introduced requiring that land may only be disposed of where the SO and (where a route is responsible for the land) the route have given their approval.

We also propose to expand this part of the licence and move other existing restrictions (Non-discrimination and Restricted use of information) into this section.

Licence condition	Current ref	Changes to condition	Accountability
Financial ring-fence			
Shall not conduct business other than Permitted Business, de minimis business or business approved by ORR.	4.1	No change	Network Rail and SO / route business
Not acquire/retain shares or investments other than those specified.	4.3	No change	Network Rail
Not have an agreement/arrangement with a cross-default obligation unless specifically permitted .	4.11	No change	Network Rail
Not allow encumbrances other than specified arm's length encumbrances or transfer amounts to any affiliate/related undertaking other than in a specified way.	4.13	No change	Network Rail
Not declare a dividend without ORR's consent.	4.29	No change	Network Rail
Not make a distribution or redemption/repurchase of share capital without ORR's consent.	4.30	No change	Network Rail
Not make a payment to a funder other than specified payments.	4.31	No change	Network Rail
Land disposal			
Not dispose of land other than with consent or where required by an enactment.	7.1 – 7.2	No change	Network Rail and SO / route business
Not dispose of land unless SO and (where a route business is responsible for the land) the route	NEW	New Condition	Network Rail accountable and route business/SO

business have approved the disposal.			to comply with condition
Where seeking ORR's consent to dispose, it must give at least 2 months' notice, providing such information as ORR requires.	7.3	No change	Network Rail
Interests in railway vehicles			
Not be directly/indirectly interested in the ownership of any railway vehicle in Great Britain.	5.1	No change	Network Rail and SO / route business
Prohibition of cross-subsidy			
Not give any unfair cross-subsidy to, nor receive any unfair subsidy from, any affiliate and shall ensure there is no unfair cross subsidy between the Network Business and any other business of Network Rail.	6.1	No change	Network Rail and SO / route business
Maintain separate accounting records and maintain other accounting records in line with ORR policies and shall allow those accounts to be audited.	6.2	No change	Network Rail
Non-discrimination			
Not unduly discriminate between particular persons or between any classes or descriptions of person.	9.1	No change	Network Rail and SO / route business
Restricted use of information			
Not without consent disclose protected information other than where specified.	14.1	No change	Network Rail and SO / route business
Take all reasonable steps to ensure that persons to whom protected information is disclosed use it only for the purpose for which it was disclosed and do not further disclose other than in accordance with the condition.	14.2	No change	Network Rail and SO / route business

H. Corporate Conditions

A number of licence conditions place obligations which are ‘corporate’ in nature and would be expected to be undertaken within Network Rail’s national functions, with no particular role for the routes or SO.

By grouping these conditions in a separate section, these conditions can be identifiable as being not of primary concern to routes and SO. Further consideration will be given to whether the licence could contain further indications of this distinction, such as in the section heading (which does not have legal force). We propose some changes to the following conditions:

- The licence currently requires that Network Rail complies with specific requirements relating to its Management incentive policy and employee incentive scheme. We are currently considering how best to update these requirements for CP6 and we will consult upon any changes as part of the legal drafting consultation, which we are intending to publish on 12 July.
- As part of our PR18 final determination, we will consider whether to propose a change to the fee payable by Network Rail²⁷ for the state financial indemnity of its private sector debt. This is currently 1.1% (on an annual basis) of the daily outstanding amount of indebtedness incurred by Network Rail Infrastructure Finance plc that is supported by the indemnity. Further information on this is contained in [PR18 draft determination Supplementary document – Financial framework](#).

Licence condition	Current ref	Changes to condition	Accountability
Governance			
Must follow best practice corporate governance arrangements by: (a) complying with UK Corporate Governance Code; (b) maintaining a board with specified attributes; and (c) publishing specified information required by the FCA.	15.1	No change	Network Rail
Management Incentive Plan			
Implement and comply with the incentive policy referred to in the Network Rail Ltd articles of	16.1 – 16.4	Changes proposed	Network Rail

association. Not to change the policy without ORR's consent.			
Send to ORR and apply a management incentive plan (MIP). Publish statements summarising the terms of the MIP and how MIP criteria have been applied.	16.5 – 16.9	Changes proposed	Network Rail
Maintain, implement and comply with an employee incentive scheme.	16.11 – 16.13	Changes proposed	Network Rail
Fees			
In each year, pay ORR the aggregate of the annual fee determined by ORR and the fair proportion of any CMA reference costs. The payment shall be made within 30 days of ORR giving notice.	18.1	No change	Network Rail
Pay a fee for the state financial indemnity.	3.5	Changes proposed	Network Rail
Insurance			
In respect of licensed activities, maintain insurance against third party liabilities in accordance with ORR consent.	20.1	No change	Network Rail
Claims allocation and handling			
Be a party to approved agreements/arrangements for handing claims against operators and the allocation of liabilities.	21.1	No change	Network Rail
Not waive rights under claims handling arrangements or vary claims handling arrangements except as provided for in those arrangements.	21.2	No change	Network Rail
Regulatory Undertakings			
Procure an undertaking from NRIF requiring it to give financial statements as specified in Regulatory Accounting Guidelines.	11.14	No change	Network Rail
Network Rail shall: (a) provide evidence of undertaking from NRIF; (b) inform ORR where directors are aware of a breach of the condition	11.15	No change	Network Rail

or an undertaking; and (c) comply with a direction from ORR to enforce an undertaking.			
Procure and maintain an undertaking from NRIF around what business it may conduct.	4.2	No change	Network Rail
Procure an undertaking from NRIF and subsidiaries around investments.	4.3	No change	Network Rail
Procure undertakings from NRIF and subsidiaries around cross-default obligations.	4.11	No change	Network Rail
Procure undertakings from NRIF and subsidiaries around encumbrances.	4.13	No change	Network Rail
Procure a specified undertaking from its ultimate controller on licence compliance.	4.16 – 4.19	No change	Network Rail
Procure a specified undertaking from its ultimate controller on the provision of information.	4.20 – 4.23	No change	Network Rail
Procure a specified undertaking from NRIF on the provision of information.	4.24 – 4.25	No change	Network Rail
In relation to undertakings shall - (a) provide evidence of undertakings; (b) inform ORR where directors are aware of a breach of the condition or an undertaking; and (c) comply with a direction from ORR to enforce an undertaking.	4.26	No change	Network Rail
Not enter into agreements with ultimate controller or its subsidiaries where undertaking not there or breached or 4.26 not complied with.	4.27	No change	Network Rail
Not enter into an agreement with NRIF or its subsidiaries where undertaking not there or breached or 4.26 not complied with.	4.28	No change	Network Rail

I. Conditions proposed to be removed from the Licence

To ensure that the network licence is fit for purpose for CP6, it is proposed that the following obligations be removed.

- A number of provisions around financial indebtedness in Licence Condition 3 were not drafted to regulate a company which is classified as a public sector arm's length government body and it is proposed these are removed.
- It is proposed that the obligation to maintain an investment grade issuer credit rating is no longer relevant and should be removed.
- It is proposed that the obligation to notify the Secretary of State and ORR on a change of control should be removed on the basis that it is unnecessary. As shareholder of Network Rail, the Secretary of State would already be aware of any change and we consider that ORR would also be informed.
- Based upon the principles of stakeholder engagement in our overall framework we propose to remove more detailed conditions around specific stakeholder engagement activities.

Licence condition	Current ref
Financial Indebtedness	
Network Rail shall use reasonable endeavours to ensure financial indebtedness of Network Rail, NRIF and any subsidiaries do not exceed prescribed limits.	3.1
Where the above limit is exceeded, Network Rail shall provide ORR with details of steps to end the excess, take those steps and provide evidence of this.	3.3
Network Rail shall provide financial statements confirming it has complied with financial indebtedness limits and notify ORR if there is a reasonably expectation that it might not.	3.4
Financial ring-fence	
Network Rail shall use reasonable endeavours to ensure it has an investment grade issuer credit rating.	4.15
Change of control	
If any person obtains control of Network Rail, it shall notify the Secretary of State and ORR as soon as possible.	19.1

Stakeholder relationships	
Network Rail shall cooperate with Mayor of London and TfL to ensure efficient provision of railway services/facilities and coordinating anticipated investment projects.	8.4
Network Rail shall cooperate with Passenger Focus and London TravelWatch whenever reasonably requested.	8.5

Question

7. We have proposed a number of changes to the licence, including changes to reflect Network Rail's reclassification as a public sector arm's length government body, changes to requirements around safety standards and changes to the structure of the licence. Do you have any further comments on the changes which are set out above?

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