Responses to consultation on PR18 draft determination – non Network Rail (M - Z)

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	William Roden
Job title*	Senior Policy Lead
Organisation	Midlands Connect
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

Midlands Connect welcome the approach taken by ORR to review Network Rail's proposed business plans – we welcome the move to devolved route teams and associated business plans within Network Rail, and assurance on the capability of Network Rail as System Operator.

We welcome that ORR have separately published an approach to 'Roles and Responsibilities for enhancements in Control Period 6' – we have separately responded to that consultation.

We welcome the ORR's focus on 'bottom-up evidence' and relationships with customers (operating companies) and other stakeholders. It remains unclear how ORR will ensure constructive relationships are delivered, best practice shared across Route Supervisory Boards and problems addressed, for instance NR agreeing scorecards with operating companies (para 2.13).

- **It should be clarified how ORR will consider whether the Route Supervisory Boards, as constituted, contribute to appropriate and effective governance, in its future assessments of NR's stakeholder engagement** (para 3.24).

It is not clear for instance, how a Northern Supervisory Board, benefits the LNE&EM and LNW route teams but similar joint boards are not required elsewhere. ORR should have a role in ensuring internal governance is appropriate and ensuring best practice is shared across route teams.

We agree that the regulator should not be seen as arbiter of all issues (para 3.22) however for the Route Supervisory Boards to retain the confidence of customers and stakeholders there should be assurance that any 'practical action plans' are acted upon and considered as appropriate.

- **ORR should clarify how it will ensure the principles of 'effectiveness' and 'transparency' are fulfilled by the Route Supervisory Boards in its oversight of stakeholder engagement.** It is not currently clear that ORR will report on this.

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

Midlands Connect welcome the focus to ensure the License fits the new structure of Network Rail.

Question 6:

Midlands Connect welcome the focus on stakeholder relations as a key duty and welcomes greater rigour to the definition than in the existing Licence.

Sub-National Transport Bodies have been enabled to provide a statutory strategy for their areas and act as a single, united voice in national process like the Rail Network Enhancement Pipeline. It will be for each TSB to develop the appropriate relationships with Network Rail (as partners) at both System Operator and devolved route team levels. However the draft definition of stakeholder does not provide clarity to NR where STBs fit, a simple solution would be to reference STBs alongside TfL (para 3.14).

- **We would like clarity from ORR/DfT on how engagement with Sub-National Transport Bodies will be defined, as part of Network Rail's 'stakeholder engagement'.**

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

We welcome the transparency of ORR's review, it is vital that all parties, including NR, feel that stakeholder engagement is a constructive and valuable exercise to ensure broad expertise is focused on effective, complementary solutions. We welcome NR's input to Midlands Connect and will work with its System Operator and devolve Route Teams to further secure a mature and effective approach to investing in our area.

It is vital that NR make best use of the opportunity to involve local expertise in developing and updating Business Plans. Sub-National Transport Bodies are being established across the countries to enable civic and business leaders to come together to offer a single, united voice on how multi-modal, long term investment plans can unlock wider economic benefits – with a robust, regional evidence base providing a unique insight into future infrastructure opportunities.

Network Rail is a key partner within Midlands Connect and could benefit from utilising our partners' expertise by having a clearer engagement strategy – this could mirror Highways England's approach to develop and co-produce route strategies to inform their planning.

ORR has failed to recognise the new legislation to establish Sub-National Transport Bodies and should clarify how it expects NR to consider STBs in its stakeholder engagement to ensure NR has a clear and consistent access to regional expertise when it is considering trade-offs.

Our review of Network Rail's scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

We welcome the requirement for jointly agreed scorecards, however it is concerning that some have not been agreed with operating companies. ORR should clarify how future issues can be resolved so there is confidence across all networks that NR's ambitions will be delivered.

- **Midlands Connect welcome that wider stakeholders will be engaged in developing and updating scorecards** (para 1.11).

Midlands Connect will continue to use the ORR's monitoring reports to understand how investment programmes are delivering holistic outputs in our area. We welcome that NR will publish scorecard updates quarterly and will welcome engagement with NR and ORR throughout CP6 to understand how any emerging issues can be resolved using this transparent process.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

Our review of Network Rail's proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.

Scotland

Freight & National Passenger Operator route

System Operator

England & Wales routes

Any other points that you would like to make
There have been a number of changes to rail investment process during 2017/18 – including market-led proposals and rail network enhancements pipeline. Our partners, including from the rail sector, have called for greater clarity in how the national vision for rail works cohesively, in what is already a complex industry. DfT published their ‘vision’ for rail in December 2017, Midlands Connect would be happy to work with DfT, NR, ORR and others alongside Network Rail’s final delivery plan to showcase to the public how rail investment can deliver effectively for the long term. This requires all industry bodies to make a concerted effort together to build business confidence over the next 12 months.

Thank you for taking the time to respond.

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Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Jonathan James
Job title*	Access Contracts Manager
Organisation	MTR Crossrail
Email*	

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Our approach to producing Network Rail's determination and to regulating Network Rail in CP6 For further information, please see chapters 2 and 3 of our overview document.

Our review of Network Rail's network licence Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

Our review of Network Rail’s stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

Our review of Network Rail’s scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

Our assessment of health and safety

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Scotland **Freight & National Passenger Operator route** **System Operator** **England & Wales routes**

Any other points that you would like to make
MTR Crossrail question how relevant the SISS charge is to our stations under LTC. This is because the Network Rail delivered ONFR (on-network functional requirements) works should be replacing and improving systems by December 2019 at stations where MTR Crossrail is SFO, so we question how this has been factored into generating the SISS charges for our SFO stations.

Thank you for taking the time to respond.

PR18 draft determination consultation: pro forma

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Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Deborah Hall
Job title*	Principal Adviser, Major Infrastructure Development
Organisation	Natural England
Email*	

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Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

Network Rail has been reclassified as a public sector body since 2014. It would be expected that any review and measurement of their performance should also seek to see how they are demonstrating their duty to have regard to conserving biodiversity as part of policy or decision making. Section 40 of the Natural Environment and Rural Communities Act 2006, places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its Biodiversity 2020 strategy. Further information is available here. Government has acknowledged in its response to the House of Lords Select Committee NERC enquiry that public bodies can do more to embed this duty.

The Infrastructure Projects (IP) section of the Strategic Business Plan (SBP) contains commitments which we welcome:

- Biodiversity net positive for major IP over £20m
- Renewal activities over 5k or 150m require a biodiversity risk assessment and evidence of opportunities to maximise biodiversity gains.

However, in the light of Government's 25 Year Environment Plan which commits government to leaving the environment in a better state than they found it, Network Rail's SBP should also demonstrate how its 40,000ha estate can contribute to this. This could be around a commitment to biodiversity net gain and contribution to the proposed Nature Recovery Network.

We would welcome the incorporation of high level contractual requirements that define the ambitions of the industry in these areas, with clear metrics to measure performance, specifically:

High Level Commitment: *to recognise the importance of green infrastructure (GI) as an integral asset of the rail network for enhancing the operational, safety and environmental performance of the network*.

Metric/KPI: *A metric that sets out timing for delivering biodiversity net gain across the Network Rail estate by a given date.*

This would build on the commitment that has already been made in CP5 for Network Rail Infrastructure Projects to deliver net gain by 2020 in line with Crossrail 2 and TfL. It would also mirror the commitment by Highways England in its Road Investment Strategy.

The revised National Planning Policy Framework (NPPF) was published on 24 July 2018. This also contains directions that planning policies and decisions are to provide net gains for biodiversity, and plans are to identify and pursue opportunities for biodiversity net gain (paragraphs 170, 174,175) and wider environmental gain (paragraphs 72, 102, 118). There is also recognition of the wider benefits of natural capital and ecosystem services (paragraph 170).

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

See response above regarding reclassification of Network Rail as a public sector body and subsequent duties.

Asset management could include a more ambitious vision for lineside vegetation management (currently subject to a Government review) and its value for biodiversity, green infrastructure and associated multifunctional benefits including climate change and operational resilience.

Through the Green Transport Corridors Project[1], Natural England has been working with Network Rail and Highways England to look at how the 'soft' vegetated estate (or green infrastructure) alongside and adjacent to road and rail lines can be used as a tool for enhancing the resilience of the 'hard' infrastructure asset to climate change. This green infrastructure can also help enhance safety and performance, reduce the whole life costs, as well as delivering biodiversity and ecosystem service benefits.

[1] Natural England NEWP 32 Transport Green Corridors Options Appraisal and Opportunity Mapping 2014, http://publications.naturalengland.org.uk/publication/5485064148221952

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

There has been no consultation with statutory environmental bodies on the Strategic Route Plans by Network Rail through stakeholder events. Natural England has not been consulted by DfT, ORR or RSSB for its views on the SBP. The events and engagement appear (from the links to the review) to have been focussed on relevant passenger and freight operators, as well as funders, passenger representative groups, local authorities and local enterprise partnerships (LEPs). This is disappointing as we do have considerable engagement with Highways England and the Road Investment Strategies and have been able to feed in at an early stage at stakeholder events. Network Rail's operations and the management of its estate has the potential to have both impacts and opportunities for the natural environment. As the Government's statutory adviser on the natural environment, Natural England would have welcomed early engagement to explore how Network Rail could deliver its role in operating, maintaining and renewing its network and contribute towards the ambitions set out in the Government's 25 Year Environment Plan

However, we have taken the opportunity to raise key issues around vegetation management in the Q&A at a presentation on the draft determination from ORR on 5 July. We would also welcome discussions on environmental issues with the ORR, so that we can engage at an early stage in the development of strategic plans. We are keen to discuss how vegetation can be turned from a liability into an asset, based on the work of the Linear Infrastructure Network (LINet), of which Network Rail is a founding member.

Lineside vegetation management issues account for the highest number of complaints to Network Rail. We think that considering lineside vegetation as an asset and taking on the recommendations for example in the Green Transport Corridors Project referenced above would lead to better customer and community relations and potential savings of some of the £100 million per year spent on vegetation related incidents on the network.

Our review of Network Rail's scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

The national scorecard set out in the Planning, Reporting and Regulatory Framework of SBP does not include any environmental metrics. There is only reference to a sustainability metric (tbc).

Without overarching requirements in the national scorecard, it is not surprising that the route plans do not have them either. Most do not refer to biodiversity at all (with the exception of Western and London North Eastern & East Midlands) even though they make considerable reference to vegetation clearance and tree removal.

We believe Network Rail do include metrics on the condition of Sites of Special Scientific Interest (SSSIs) owned or managed by Network Rail, or adjacent to Network Rail land holdings as part of their annual report to the Office of Road and Rail (ORR).However we have not to date been consulted by NR on these metrics or been approached by ORR for a view on these metrics. Natural England would welcome the opportunity to discuss the metrics relating to SSSIs as we have a number of statutory duties and general responsibilities in relation to SSSIs including ensuring their protection and safeguarding their existence into the future, by providing advice to SSSI owners and managers.

Network Rail must ask for advice and approval (known as 'assent') from Natural England before carrying out works in line with their statutory duties that are likely to damage the condition or special features of an SSSI. This includes planned works on land outside the boundaries of an SSSI that are likely to damage it.

We understand that the focus on improving asset condition and the use of scorecards are both a key focus for ORR and within two of the four priorities for this review:

Reinforce relationship between Network Rail and customers through use of scorecards

Reflect governments' objective that asset condition is maintained

The Network Rail Vegetation Management Review has the potential to have important implications for these priorities.

Network Rail currently has a commitment to biodiversity net positive for infrastructure projects and is focussed on its electrification programme (as set out in the IP Strategic Plan), which we strongly support. However there is currently no clear reporting mechanism for delivery of Network Rail's net gain commitments. The process for establishing a clear reporting mechanism needs to be established through engagement by the Regulator and Network Rail with Natural England to establish clear environmental performance targets and monitoring through key strategic plans and policies (such as the Higher Level Output Specification, Network Rail's Strategic Business Plan and supporting environmental policies).

Adopting a net gain approach **across all** Network Rail's 40,000ha estate (similar to Highways England net gain approach) could: significantly enhance its biodiversity; improve relationships with neighbours; offset biodiversity units lost through rail upgrade schemes; as well as reducing operational and resilience risks from tree and leaf fall – reducing the £100m a year Network Rail spend on vegetation related incidents.

We would like to see Network Rail and the regulators set more aspirational business performance indicators for biodiversity, landscape and green infrastructure in the next control period, and establish a funding mechanism (akin to the Highways England Environment Designated Funds) for engaging with stakeholder groups to improve the environmental performance of the rail network and enhance these important inter-city green corridors. We know that vegetation management issues are the single biggest cause of complaint to network rail and establishing a mechanism to help address this could provide a real opportunity for Network Rail to re-set relationships with neighbours whilst also enhancing biodiversity and helping to address the operational issues that an historic lack of vegetation management causes

We would also like to see Network Rail transition from their current 3-5 year funding for the creation and management of biodiversity offsets to the wider housing/infrastructure industry 'norm' of financing over an average of 25-30 years. We would also like to see the approach extended to non-lineside activities e.g. station upgrades etc.

Given that rail and road industry share the same regulator, we consider that the environmental performance targets set by the regulator (the Office of Road and Rail – ORR) are stronger and clearer for road than for rail, and we would like to see this addressed.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

No comment

Our review of Network Rail's proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.

There is potential to look at the sustainable management of Network Rail's soft estate. For example, timber and other plant materials can be used as biomass and as an income stream to feed into future soft estate management budgets. We are aware that Stobarts have been exploring opportunities to harvest timber from rail linesides to use as energy feedstocks.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

No comment

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

No comment

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.
Scotland   **Freight & National Passenger Operator route**   **System Operator**   **England & Wales routes**

Any other points that you would like to make

Thank you for taking the time to respond.

PR18 team
ORR
One Kemble Street,
London,
WC2B 4AN

Date: 29th August 2018

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Dear PR18 team,

Opportunity to comment on PR18 draft determination and changes to access contracts

Nexus welcomes the opportunity to comment on the PR18 draft determination and changes to access contracts consultations. Our comments are divided into two sections: the first as a customer of Network Rail, and the second as a regional stakeholder in the development of rail services in North East England.

Nexus as a customer of Network Rail

Nexus owns and operates the Tyne & Wear Metro system, which until 2002 ran exclusively on a rail network owned and maintained by Nexus. In 2002 an extension to the system was opened between Pelaw and South Hylton, running on Network Rail infrastructure.

In 1999, Nexus entered into a Track Access Agreement with Railtrack for the access between Pelaw and South Hylton. Due to the unique nature of the access, the Track Access Agreement is bespoke.

Response to the consultation on the ORR PR18 **draft determination**.

In relation to the draft determination, Nexus' primary comment is on the route scorecards (documents "*Supplementary document – scorecards and requirements*" *and "CP6 route strategic plan review summary – London North East and East Midlands (LNE & EM) route")*

Nexus commented on Network Rail's draft strategic business plans via letter on 6 March 2018. As a customer of Network Rail, Nexus raised a concern that it did not feature in any LNE&EM route scorecards despite the significant number of passengers travelling on the Tyne & Wear Metro on the section of line between Pelaw and South Hylton.

Nexus is pleased to see that its concerns about the Tyne & Wear Metro featuring in any LNE&EM scorecards are acknowledged in the LNE&EM section of the consultation document "*Supplementary document – scorecards and requirements*". However, actions to address these concerns do not feature at any other point in this document or the document entitled "*CP6 route strategic plan review summary – London North East and East Midlands (LNE & EM) route*".

Furthermore, Nexus has not had any contact from Network Rail to seek to develop and agree any scorecard targets for Control Period 6.

Nexus' comment on the draft determination is therefore same as previously outlined; the Tyne & Wear Metro should feature in the LNE & EM route scorecards.

Nexus also notes that paragraph 3.34 of "*Supplementary document – scorecards and requirements*" notes that cancellations are not included in the "CRM-P" (consistent route measure – passenger performance). However this section goes on to note that that these are included in operator scorecards and ORR will monitor Network Rail's performance on cancellations. Nexus considers this particularly important as Network Rail issues have resulted in suspension of Tyne & Wear Metro services for significant periods of time, generating few delay minutes but large volumes of cancellations. This issue highlights the importance of Tyne & Wear Metro being included on the LNE & EHM scorecard in order to ensure Network Rail prioritises the resolution of such issues to minimise the impact on passengers.

R**esponse to consultation on changes to access contracts**

As a consequence of the nature of the Tyne & Wear Metro system, Nexus is only party to one Station Access Agreement. This is for Sunderland Station, where Arriva Rail North is the Station Facility Owner. The other 11 stations on Network Rail infrastructure are operated and fully maintained by Nexus, with no other operators calling at these stations.

Nexus is supportive of methodologies which ensure that the Long Term Charge (LTC) accurately reflects the costs attributable to a particular station. This is particularly important to Nexus given that Nexus only accesses one station, as methodologies which average costs out across a geographic area can result in

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disproportionate changes in costs under the SAA. Such issues are unlikely to affect other TOCs, who access many more stations.

Nexus has been engaging with the Network Rail consultations on station access charges and was pleased to see the proposed approach of using the Operational Property Asset System (OPAS) data to more accurately attribute costs to stations. Nexus is therefore concerned that this approach is no longer proposed and instead a proposal to allocate the same amount of operational property MMR expenditure to each station in the same category in the same route is now proposed.

Furthermore, Sunderland Station is unique in that Nexus funded improvements to the station and bears the ongoing maintenance responsibilities for some of these improvements, such as the escalator. Such responsibility would normally fall to the SFO and Network Rail, therefore Nexus would query whether these have been properly taken account of in this methodology. There has been no visibility of the LTC calculation for each station and Nexus would welcome such transparency.

The LTC proposals would result in Sunderland Station LTC for Control Period 6 being £171,862 per year at 2017/18 prices. This would be an increase of 35% over the current Sunderland Station LTC for 2017/18.

Furthermore, in 2008/09 the LTC for Sunderland Station was approximately £24,000, so the proposed LTC for Control Period 6 would represent an increase of around 700% in 10 years. Whilst some LTC increases have been due to improvements made at the Station, these only account for a small proportion of this increase. Furthermore the movement of SISS costs from Track Access Agreements into the LTC in Control Period 5 added extra cost into the LTC which Nexus was not reimbursed for through a reduction in track access charges (unlike other TOCs) as the TAA fell outside the scope of the Periodic Review process.

Nexus does therefore not support the proposed methodology for LTC in Control Period 6 and requests the ORR reopen this methodology.

Nexus as a regional stakeholder (based on the pro forma questions)

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

Nexus broadly supports the ORR approach to producing the Network Rail's determination and the approach to regulation in CP6.

There have been significant changes to the make-up of Network Rail since the last periodic review and the route business plans have been an improvement on the level of detail previously seen at determination stage. The removal of enhancements from the route plans has enabled Network Rail to provide more focus on the needs of maintaining and renewing the current asset, the condition of which is contributing to poor performance and a cause of some delays.

Network Rail Delivery to customers
Nexus supports the continued use of scorecards to measure performance, but recognises the difficulties of agreeing performance when considering franchise commitments and asset conditions.

Network Rail's Efficient Expenditure
Nexus supports the ORR in the importance of maintaining asset sustainability. As more services and newer rolling stock are introduced over CP6, the assets need to keep pace and higher performance expectations will arise from service enhancements. Thus Nexus supports the ORR recommendation for additional funding of assets at the expense of less critical aspects of the industry plans.

Of particular concern to the North East is the condition and capacity constraints on the ECML, which are impeding the regional economic growth ambitions, therefore we strongly supports the case set out in the LNE&EM East Coast Supplementary Plan, and sees this as a priority for the allocation of the £1billion Sustainability Fund being proposed by ORR in its draft determination. The Supplementary Plan indicates that there is strong value for money case to support additional renewals investment.

We therefore request the ORR give serious consideration to the needs of the ECML and the final determination reflect this important priority.

Our review of Network Rail's network licence
Nexus broadly supports the review of the Network licence to reflect the changing face of the industry. On the specific questions in the supporting review documents Nexus offers these responses.

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?

Response: Nexus agrees with the proposed approach.

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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?

Response: No further steps identified.

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?

Response: Nexus agrees with the approach and does not have anything further to add.

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?

Response: Nexus considers this approach suitable for the national passenger organisations but would seek further assurances that freight operations are afforded suitable provision within the licence to reflect their important national role and the licence focus is not purely on passenger services.

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?

Response: Nexus supports the proposed alignment.

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?

Response: Nexus supports the broader definition, as the stakeholder landscape is also changing with the formation of sub national transport bodies (e.g. TfN) and there regional business units (e.g. North East Rail Management Unit (NERMU). We welcome the changes to Network Rail Route and SO governance structures which appear to be more inclusive and we thus support the elevated status affording in the propose changes to the license to make Stakeholder engagement a core duty.

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?

Response: Nexus are broadly supportive of the changes proposed. Although it is recognised that the PR18 determination does not include for rail enhancements, this falling directly with the DfT, should there still be a requirement within the licence to develop and deliver future enhancements in an efficient and effective manner (condition 1.1 and 1.2)?

Our review of Network Rail's stakeholder engagement

Nexus consider that overall stakeholder engagement in the development of the route and SO business plans was an improvement on previous years. However it did at times feel more like a briefing than a collaborative approach to developing the route plans.

Nexus welcomes it's inclusion on the SO Standing Advisory Groups as both a TOC and an Infrastructure Manager. However Nexus is still struggling to engage with the LNE&EM route as a TOC in its own right. We welcome therefore the inclusion in the network licence and the scorecards the requirement to effective engage with stakeholders and will seek support from the ORR to achieve this.

Nexus acting on behalf of (NERMU) is also engaging more with the route and the 'local' SO team regarding current performance and future enhancements. So from a regional stakeholder point of view, stakeholder engagement is generally good.

Our review of Network Rail's scorecards and requirements

From a regional stakeholder perspective Nexus on behalf of NECA and NERMU support the ORR approach taken on scorecards and SO governance. However, as has been highlighted above Nexus as a TOC has concerns with regard the LNE&EM route not having a scorecard for the Tyne and Wear Metro.

Our assessment of health and safety

Nexus broadly support the ORR approach taken in its draft determination

Our review of Network Rail's proposed costs and income
As the cost and timely delivery of interventions are key concerns of Nexus as a regional stakeholder, we support the robust approach ORR has taken in it considerations of the plans in the route ad SO business plans.

The financial framework for CP6 and affordability
Nexus broadly supports the ORR approach in its draft determination.

Charges and contractual incentives in CP6
Nexus as a regional stakeholder does not have any comments on this section of the draft determination. However as stated above Nexus as a customer wishes to express concerns with the proposed significant rise in the long term charge for the one Network Rail station it serves, namely Sunderland.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

Scotland
No comment on this annex

Freight & National Passenger Operator route
Nexus broadly support the draft settlements for the FNPO and also support the need to include Cross Country scorecards within the routes particularly the LNE&EM route in the North East. As we have expressed previously the capacity on the East Coast Mainline between Newcastle and York is particularly restrictive on Freight, Cross Country services and other long distance operators.

System Operator
Nexus supports the ORR draft settlement for the SO and are particularly pleased to see the inclusion of the additional requirements below.

- lead the development of a plan for journey time improvements,
- implement the recommendations from the Nichols' review of the SO's capital expenditure controls and processes,
- take account of lessons learnt from the May 2018 timetable change

England & Wales routes
Nexus particular focus is the LNE&EM route covering the main areas of interest for the North East of England. As a regional stakeholder for the North East Combined Authority, Nexus has a reasonable relationship with the route. It is hoping to build on this through the changes to governance structures, including the Supervisory Board.

Any other points that you would like to make

Nexus appreciate the opportunities afforded it to comment on the many and varied consultation through the PR18 process and commend the ORR on the way it has conducted the review.

Through the process of devolution and via the Transport for the North's governance Nexus on behalf of NERMU would like to offer any practical support to the ORR regarding monitoring of performance through our interaction with both the LNE&EM route and the 'local' SO contingent.

Thank you for your consideration of these comments and hope you find them useful.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely

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16 August 2018

Dear Joanna

ORR's Draft Determination for PR18: Northern's Response

<u>Context</u>

As we near the completion of PR18, the foundations are almost fully laid for promising structural changes to rail industry frameworks in CP6 in a context of uncertainty. Endorsing the position of our parent company, Arriva UK Trains, Northern plans to continue to inform and shape this process. We value the opportunity to respond to ORR's Draft Determination.

As you will be aware Northern is driving an ambitious programme of transformation. As well as featuring an additional 2,000 services per week by December 2019, we are introducing 98 new trains and acquiring further vehicles cascaded from the wider network. These initiatives will be pivotal in stimulating growth on the railway through step changes in journey times, capacity and customer experience.

Northern has a symbiotic relationship with Network Rail in delivering these customer benefits. It is thus absolutely critical that Network Rail delivers and goes beyond its outputs in CP6. With ORR we plan to jointly hold Network Rail to account, and continually challenge it to develop and implement plans to improve performance. We feel strongly that further work is required to establish a clearer line of sight between Network Rail's performance in all areas and the impact on customers in the North of England.

Having engaged closely in the development of Network Rail's CP6 Strategic Business Plans (SPBs), Northern has raised concerns about the overall decline in asset condition in the context of traffic growth. Northern has not been able to accept Network Rail's forecast performance trajectory for CP6. Having seen insufficient detail behind this, we remain of the view that Network Rail must deliver more through its £47.9bn expenditure, including through efficiency challenges.

As Network Rail continues to develop its devolved route structure, its governance should support full accountability within the route and System Operator (SO) functions. The routes must be empowered to make customer-facing decisions, incentivised by a challenging and consistent regulatory framework.

Regulatory Framework

We note the shift towards reputational incentives in regulating Network Rail's performance via route scorecards; largely driven by the company's reclassification. Northern continues to work with Network Rail LNW and LNE&EM Routes along with the SO function to target and boost the prominence of Route Scorecards. In the context of recent failures to deliver in many areas by Network Rail, such as the repeated deferral of the NWEP Phase 4 electrification scheme underpinning our structural timetable change, we question whether reputational incentives are sufficient to prompt behavioural change. To maximise the value of this approach, it must be fully clear who or which component of Network Rail is accountable for delivering on each area.

Like ORR, Northern has also experienced inconsistencies in the application and understanding of different Scorecard measures across LNW and LNE&EM Routes. This also includes the level of ambition and risk inherent in the Scorecard metrics. Based on our experience of the current application of Route Scorecards, Northern does not believe Regulatory Minimum Floors to be an adequate basis for potentially instigating an investigation into license breach. We note ORR has proposed to adjust Network Rail's CRM-P Regulatory Minimum Floor from 30% to 20% to reflect average CP4 and 5 performance. Regulatory intervention for failing to deliver challenging improvement targets would be a far more powerful incentive than for failing to deliver steady-state performance.

Performance

Northern remains of the view that Network Rail's forecast performance trajectory for CP6 is not reasonable or reflective of efficient application of the £47.9bn expenditure on CP6 operations, maintenance and renewals. As well as failing to achieve the PPM committed to government via our Franchise Agreement, the trajectory delivering a CP6 outturn of 91.1% PPM in 2023/24 compared to 93.5%, we have not had sufficient visibility of the detail and drivers behind this. Northern has not had sight of any further performance analysis by 13th July to demonstrate that the trajectory represents what Network Rail is funded to deliver for customers.

We also note that via the new CRM-P metric, the trajectory will inform Network Rail's Schedule 8 benchmarks in CP6. It is critical that the benchmarks are set at a sufficiently challenging level to fully realise the accuracy and incentive quality of the regime.

Network Rail must be incentivised to apply innovative technological and operational approaches to develop business cases for further performance improvements to incorporate into the trajectory. Northern is encouraged by the creation of a Performance Improvement Fund, and would welcome discussions with Network Rail and industry partners to prioritise targeting the initial £10m funding.

Particularly difficult for Northern in this context is LNE&EM being our 'Lead' Network Rail route and thus owning the Northern CP6 performance trajectory. The timetable structure and multi-operator interactions on the LNW Route, particularly in the Manchester area are major drivers of Northern's overall performance. It is also critical that LNW and LNW&EM routes adhere to a consistent approach to managing cross-boundary delays. We have experienced the quality of engagement from the routes to be inconsistent and regularly call for closer joint working. The absence of a 'Northern Route' as recommended by the 2016 Shaw Report remains a fundamental concern to us, and we will continue to champion this reform.

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Asset Condition

Northern remains highly concerned that Network Rail's CP6 SBPs as submitted to ORR did not contain the required volume of renewals (£2,526m LNW Route and £2,465m LNE&EM Route) to maintain asset condition at CP5 exit levels. We are therefore supportive of the additional £1bn expenditure (£222m LNW Route and £225m LNE&EM Route) that will be targeted to improve asset sustainability, protect performance and mitigate safety risk. We look forward to learning from Network Rail how this will be imported into the CP6 renewals workbank and drive improvement to the CP6 performance trajectory. We are furthermore pleased that £900m contingency funding will be reallocated from the central Group Portfolio Fund to the routes, to stimulate localised risk management.

Northern is also encouraged by the reallocation of funds from Network Rail's forecast CP6 headwinds to generate an additional £659m saving to support an overall efficiency increase from 8% to 10%. We understand this will be challenging for Network Rail. We have however been impressed by LNW Route's approach towards bottom-up planning of maintenance and renewals by asset management teams, and increasing accountability of delivery unit teams on the ground as a means of growing efficiency.

It is critical that Network Rail adopts longer term workbank planning horizons extending well beyond the close of CP6. We note ORR's Network Rail Monitor for Q3-4 2017/18 highlights that £441m worth of renewals work planned within Network Rail's budget for this year was not undertaken, and thus must be added to the backlog of work from CP5 that will now need to be reconciled in CP6 and beyond. Thus adopting longer term planning horizons is important to shaping contracting strategy to minimise risks posed by fluctuations in supply chain activity, effectively planning and deconflicting engineering access opportunities in advance, and aligning renewals with improvements to network capability. We have signalled to Network Rail that we would support annual iterative updates to the SBPs as workbanks develop.

Cognisant of the DfT's Enhancements Pipeline, we urge Network Rail to seize the opportunity to develop business cases to enhance the network concurrently with CP6 renewals. Northern has already informed constructive work by LNE&EM Route to identify incremental enhancements on top of the CP6 renewals workbanks, such as higher-speed crossovers and increased linespeeds to realise journey time benefits for customers. It is crucial that Network Rail utilises its asset management expertise to fully cost up the options and views them as cases for longer-term investment. Northern is keen to assist in fully capturing the benefits to inform these investment decisions.

Health and Safety

Northern is assured by the maturity of Network Rail's health and safety management in many areas, demonstrated for example by its ambitious Lost Time Injury Frequency Rate target of 0.17 to reduce workforce injuries by 2023-24. We do believe however there is room for further development. Notably, although Network Rail centrally remains the duty holder for legal safety obligations, it is crucial that the ownership and accountability for safety is fully adopted by the routes with devolution. Key to this will be adherence to consistent standards and approaches with strong guidance from the centre, including in relation to what comprises 'so far as reasonably practicable' when evaluating and mitigating safety risks.

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Eliminating level crossing risk is a key example of where Network Rail requires an ambitious and tailored strategy across the routes. Northern notes the ring-fencing of £109m to reduce level crossing risk in CP5, channelled through the Level Crossing Risk Reduction Fund. We are not only highly concerned that this mechanism no longer exists in CP6, but also that Network Rail does not have a challenging target by which to reduce FWI associated with level crossing risk across CP6. Across our 1,700 route mile network, level crossings represent a principle risk to safety of our customers, staff and members of the public.

We support Network Rail's focus on reducing risk at passive crossings, and the spending of an additional £25m to reduce risk on the LNW Route. It is important however that particularly in the context of service uplifts, the routes adopt a pragmatic approach to assessing and mitigating this safety risk at a crossing by crossing basis, utilising both ALCRM and Narrative assessment methodologies. We would encourage the routes to work closer with third parties to close or fund diversions to level crossings as the first option.

We understand and endorse health and safety management as a key thread running through Network Rail's CP6 plans. As noted in the previous section, we urge Network Rail to target its additional £1bn expenditure on CP6 renewals to mitigate safety risk posed by the ageing asset base, as well as improving asset sustainability and reliability.

System Operator

The role of the System Operator has never been more fundamental to the rail industry delivering promised service improvements to customers. Northern believes a major opportunity exists in CP6 to strengthen the SO in three key areas. Firstly, learning lessons from the development and validation of the May 2018 timetable, it is key the SO adopts a network-wide governance framework capable of project managing multi-operator structural timetable changes. This should encompass the training and allocation of resources within its Timetable Production function to ensure that timetable validation is not only conducted in line with the Network Code, but delivers the optimal and highest quality outcome for customers. Northern therefore supports the increase in SO expenditure from £142m in CP5 to £272m in CP6.

Secondly, boosting the whole-system modelling capability within the SO as a strategic body will inform the development of future timetable changes, with respect to performance and capacity. This capability urgently needs building in CP6 to improve the evaluation and management of major timetable changes in conversation with government, including in relation to franchise specification. We are encouraged by the allocation of an additional £55m in capacity planning systems in CP6, however agree that this investment must be programme managed carefully following the recommendations of the Nicholls review. This level of strategic oversight should drive Network Rail's Sale of Access Rights (SoAR) process, which is widely accepted by the industry as not fit for purpose; driven by technicalities and validation questions rather than strategic fit of proposed paths against available capacity. Northern also feels strongly that the SO should manage the SoAR process, to ensure objective assessment of proposals on behalf of Network Rail. We seek to continue to work with ORR and wider industry partners to increase the transparency and operator involvement in the SoAR process.

Thirdly, in the context of enhancements being channelled through DfT's 'Enhancements Pipeline' in CP6, we urge the SO teams to work with the routes more proactively to develop detailed business cases for presentation to third party funders. Amidst the shift towards Network Rail's 'Continuous Modular Strategic Process', Network Rail must utilise its asset management expertise to cost up schemes and promote a clear vision for what it seeks to deliver. Northern has highlighted to Network Rail its intention to collaborate in fully capturing the customer benefits. This approach will ensure tangible investment schemes are ready and available for proceeding with third party funders who will benefit from them. As client for enhancements, the SO must pursue opportunities to strengthen business cases through efficiencies and innovative approaches to reducing unit costs. Northern

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believes Network Rail's incentive to do this would be increased through competition in the design and delivery of infrastructure enhancements.

Charges and Incentives

Having been actively involved in a number of workstreams as part of the PR18 process informing the recalibration of charges and incentives for CP6, Northern welcomes the opportunity to comment on ORR's charges and incentives decisions published as part of the Draft Determination.

Northern is supportive of the shift from RPI to CPI in the indexation of Fixed and Variable Track Access Charges as proposed by ORR. We also approve of the removal of the Capacity Charge and REBs, and are keen to inform further industry work on bolstering Network Rail's financial incentives to facilitate traffic growth.

We are encouraged by ORR's decision to levy fixed charges on all operators in CP6, subject to a 'Market Can Bear' test, with operators allocated 'avoidable' costs, estimated to be 27% of Northern's total allocation of fixed costs. We agree that Network Rail's proposed new fixed cost allocation method will increase cost reflectivity, and a more granular understanding of exactly how traffic growth drives costs and therefore income to Network Rail. Northern is however concerned about the implications of the revised Access Rights policy for Open Access Operators. With revenue generated through fixed charges being factored into Access decisions, it is important that if required the Not Primarily Abstractive ratio or equivalent value is recalibrated to the correct level. Any revised Access Rights policy must be developed in a way reflecting the characteristics of new and existing Open Access services operating in all market segments, as well as operators with Franchise or Concession agreements with Transport Authorities. We have had little information on this approach thus far and are thus keen to understand more detail about how this would work in practice.

In principle we agree that increasing fixed costs on an annual basis with timetabled traffic will strengthen the incentive for Network Rail to facilitate traffic growth and boost capacity on the network. It is important that Network Rail quantifies and assesses this additional income when making decisions on Access Rights. Northern does however have concerns about the process for measuring and reconciling the costs associated with annual timetabled traffic growth. We seek clarity on how the annual increases will be calculated at an operator and Service Group level, and the process for franchised operators being held neutral against increases in charges over and above CP6 baseline traffic levels.

Northern recognises the potential risk of financial exposure to Network Rail posed by this approach in the event of traffic decline. We do not however support the options proposed by ORR to either set a floor for decreases in timetabled traffic, or to not adjust operators' fixed charges for any reduction in timetabled traffic. These options will reduce the accuracy of the approach, and thus its quality as an incentive for traffic growth. A decrease in timetabled traffic can be driven by a number of causes. It would not be appropriate for operators to continue to pay charges associated with a specific traffic volume, if the actual volume of traffic was reduced due to reasons outside of its control. The two options set out by ORR also risk removing reflectivity between traffic levels and fixed charges following a decrease in timetabled traffic for an operator. We seek to continue work with ORR and the wider industry to refine this approach.

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Northern continues to work with RDG, Network Rail and ORR on the recalibration of the Schedule 8 and Schedule 4 regimes for CP6. Considering the former, we are concerned by the level of uncertainty across the industry regarding not only Network Rail performance in CP6, but also the level of TOC-on-TOC interactions. This severely risks disbalancing the financial flows within the regime, and diluting its quality as an incentive for performance improvement.

We note the incorporation of the Network Rail route's forecast PPM trajectories via the CRM-P metric to into the CP6 Network Rail benchmark represents a novel approach. We have already expressed reservations over the LNW and LNE&EM route performance trajectories, notably not reflecting the level of performance improvement we consider should be deliverable in CP6. In light of these we are apprehensive the overlay of this forecast on historic performance trends and forecast traffic growth will result in Network Rail's benchmarks not being sufficiently challenging.

In light of this uncertainty, we were concerned not to see reference by ORR within the Draft Determination to a mid-Control Period re-calibration of the Schedule 8 regime, as had been discussed at the RDG Schedule 8 and Schedule 4 Working Group forum. We understand ORR and DfT are not in a position to formally commit to re-opening the regime, and thus parties seeking a further re-calibration will be required to do so under existing mechanisms within the Track Access Contract. It would be useful to see the outcome of further analysis from ORR and Network Rail regarding the likelihood, timing and extent of a possible further recalibration, and understand how operators will be protected against the financial impact of this occurring outside the Periodic Review Process.

Northern notes the most significant change to the Schedule 4 regime for CP6 to be in relation to Notification Discount Factors (NDFs). Acknowledging ORR's 3rd May conclusion that the NDFs should be updated in CP6 to reflect research into passenger behaviour amidst planned disruption, we have worked with industry partners to inform RDG's recent paper to ORR setting out refined options for Schedule 4 notification thresholds.

Northern's customers have recently suffered from unprecedented volumes of late notice possessions. Any late notice possession or change to agreed possession activity or footprint is severely detrimental, particularly when published timetables must be revised after tickets have been purchased and journeys planned. This leads to inconvenience and uncertainty that reduces the attractiveness of rail compared to other transport modes and causes reputational damage to the industry. This also necessitates resource-intensive work to develop amended Short Term Plans and to plan rail replacement operations and communications activity.

Northern believes it is critical that the focus on notification by the T-22 threshold is preserved. This is the key point beyond which late notification has an adverse impact of customers, and can cause a knock-on effect on planning. In the context of the current compression of Informed Traveller timescales across the industry, Northern does not support the introduction of an intermediate threshold at this stage, which we feel would reduce the incentive for notification by T-22 at the latest. We are therefore pleased ORR has confirmed on 31st July that it will not be pursuing an additional intermediate threshold in CP6.

Northern also strongly believes that the role of the regime as a behavioural incentive for accurate and timeline notification of possessions by Network Rail could be strengthened by bringing Network Rail's Access and Timetable planning teams closer to the customers suffering the disruption on the ground. This could be achieved through holding these accountable teams within Network Rail to closely monitored metrics and KPIs linked to performance against the regime.

We were pleased to see reference within the Draft Determination to concerns previously raised by Northern in relation to the Schedule 4 Access Charge Supplement (ACS). Specifically these were that emergency timetables should not be factored into the final ACS calculation in CP6, and that the CP6 ACS calculation must assume 100% compliance with the T-26 (maximum) notification threshold. These

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concerns were articulated and counter-proposals set out in a paper from our parent company Arriva UK Trains to ORR on 27th March 2018. We would be keen to conduct further dialogue with ORR to further develop the proposals set out within this paper, to ensure that Network Rail is funded through the ACS to perform at a level that is as a minimum acceptable to its customers.

Stakeholder Engagement

The devolved Network Rail strategic business planning process has provided a novel channel for Northern to input into its CP6 delivery plans, communicate our customer priorities. The overall level of engagement with Network Rail LNW and LNE&EM routes has improved in quality during the process, however we have had limited proactive engagement from the SO route on the content of its SBP. The nature of dialogue has been inconsistent between the routes. We believe there would be merit in future for more regular and structured engagement, with routes following a standardised approach.

We have not seen sufficient evidence of positive joint work between the routes, particularly relating to critical cross-boundary activities and the development of operational strategies that are fundamental to protecting the performance of the railway as a system. Northern has also expressed to Network Rail the need for a sharing best practice between the routes. We have been encouraged by the development of key strategies and planning tools on individual routes that we believe would be beneficial for a wider application within Network Rail.

Most notably, Northern is highly concerned by the concept of the 'Lead Route', designed to designate a point of focus for operators spanning multiple routes. We have experienced that different routes provide a different level of service to 'Lead TOCs', such as detailed evidence and analysis underpinning CP6 performance trajectories. Northern's Lead Route is LNE&EM Route. We expect to work equally closely with LNW Route, and that the LNW Route provides Northern with an equivalent level of service to its Lead TOCs. Instead our engagement with each route has been inconsistent and largely in isolation from the other. In order to develop strong performance improvement plans and strategies for improving capability across our network it is essential that communication from the Network Rail routes is more aligned and consistent.

As noted above, Northern continues to champion the creation of a Northern Route which we feel would be more closely aligned to delivering tangible customer benefits to passengers in the North of England.

Conclusion

CP6 will challenge the industry to apply new ways of working to deliver a safe, high performing railway and improve the service offering for customers. It is essential customers do not feel any impact of declining asset condition amidst a backdrop of traffic growth. For this to be the case, the devolved Network Rail routes must be held directly accountable for ambitious plans to develop strong operational strategies, drive efficiencies and apply technology innovatively. Northern has welcomed the opportunity to shape Network Rail's CP6 SBPs, along with the regulatory and policy architecture that frames and incentivises us to improve as an industry.

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We remain concerned about the lack of ambition within Network Rail's CP6 performance trajectories and seek to work with ORR and industry partners to incorporate further improvement. More widely, further work is required to directly link Network Rail's performance in all areas to the experience of our customers in the North of England. Successful implementation Network Rail's CP6 delivery plans will be fundamental to realising the benefits we have promised to our customers through our pioneering transformation programme.

Northern looks forward to further dialogue with ORR in finalising the PR18 process as we approach the publication of its Final Determination in October, followed by Network Rail's Draft Delivery Plan in December.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely

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29th August 2018

Dear Joanna,

CP6 Performance Trajectory

Context

Northern has not been able to accept Network Rail's forecast Performance Trajectory for CP6. Noting dialogue continues between the parties and that Network Rail has last week shared updated information with us, we have seen insufficient detail behind this. Northern also remains of the view that Network Rail must be incentivised to deliver more through its £47.9bn expenditure to improve performance for our customers. We understand the Regulatory Performance Trajectory for passenger operations will be expressed in terms of a Common Route Performance Measure (CRM-P) although a range of other Operational Performance metrics may also be included in Route Scorecards.

Having been closely involved in the development of Network Rail's CP6 Strategic Business Plans (SPBs), we have been engaging with Network Rail on CP6 Performance Trajectories. We aspire to reach agreement on these with LNE&EM and LNW Routes respectively, the former being our 'Lead' Route, however this has proved extremely challenging.

Notwithstanding the difficulties experienced reaching agreement on the Scorecard Performance Trajectories, it is worth noting that Northern has a well-developed joint Performance Delivery Strategy with Network Rail to promote continual performance improvement. Throughout the process, Northern has noted that this strategy is not well reflected in the Operations and Performance Improvement sections of the SBPs.

To inform its decision making we note ORR has asked train operators to provide evidence as to why agreement on the Performance Trajectories as not been possible. The key reasons behind this lack of agreement are set out below.

1. Misalignment with our Franchise Commitments

Network Rail's proposed CP6 Performance Trajectory for Northern was set out in the LNE&EM Route SBP. Assuming a CP5 exit at 89.0% PPM MAA and the first year of CP6 delivering 89.2% - this saw a CP6 outturn performance level of 91.1% for the 2023/24 year. Northern is committed via its Franchise Agreement with Rail North Partnership to deliver 93.5% PPM MAA for the year 2023/24. As tabulated below, this represents a significant 2.4% delta between the level of performance Network Rail has proposed it will deliver and what Northern has committed to government and its customers in the North of England.

Figure 1: CP6 Performance Trajectory as published in the LNE&EM SBP against Northern Franchise target

	PPM MAA								
	CP5				**CP6**				
		Arriva Rail North Franchise							
Year	**15/16**	**16/17**	**17/18**	**18/19**	**19/20**	**20/21**	**21/22**	**22/23**	**23/24**
SBP published figure	91.53	91.00*	91.73*	89.0	89.2	89.4	89.8	90.5	91.1
Franchise target	N/A	92.65	92.80	92.95	93.1	93.3	93.4	93.5	93.5
Actual	90.40	91.13	88.19						

**Targets agreed with Network Rail annually under the parties' Performance Strategy*

Northern has consistently reiterated to Network Rail that this delta is unacceptable, and has explained how the Franchise-agreed performance plans are linked to Northern's revenue/subsidy profile. Cognisant that traffic growth and structural timetable change has a bearing on performance, Northern's performance is not currently meeting its Franchise-agreed targets due to a number of factors that came to effect during CP5 including infrastructure enhancement delays, increased TOC-on-TOC interactions and exceptional events including the Liverpool wall collapse, Manchester Victoria terror attack and extreme weather.

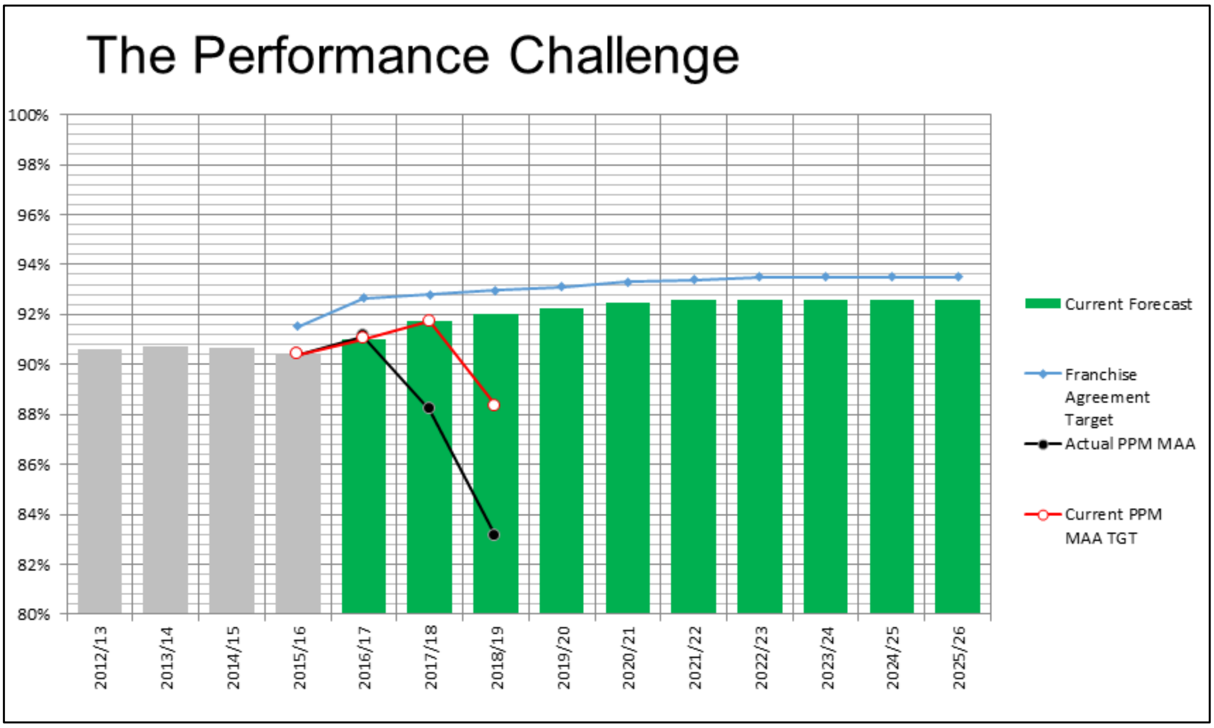
Considering infrastructure, the ITT for the Northern franchise issued in February 2015 was based on multiple assumptions which included the timely delivery of nationally-significant infrastructure programmes. These included:

- NWEP Phase 3 (Preston-Blackpool North electrification): assumed delivery by 31st March 2017, actual delivery May 2018.
- NWEP Phase 4 (Manchester-Preston electrification): assumed delivery by December 2016, actual delivery December 2018 at the earliest, with no confirmed completion date.
- NWEP Phase 5 (Manchester Victoria-Stalybridge electrification): assumed delivery by 30th September 2017, actual delivery of line speed improvements only with no electrification May 2018. No date for completion of electrification.
- NWEP Phase 6 (Oxenholme-Windermere electrification): assumed delivery by December 2017, cancellation announced in July 2017.
- NWEP Phase 7 (Wigan-Bolton electrification), assumed delivery by December 2017. No date for completion of electrification.
- Castlefield Corridor capacity enhancements: assumed delivery by December 2019. No date for completion.

As well as the delivery of Northern's planned timetable enhancements to deliver the Train Service Requirement (TSR) included within our Franchise Agreement, performance improvement plans developed as part of Northern's bid are dependent on the timely delivery of infrastructure schemes. Most recently, the further delay to the NWEP Phase 4 scheme announced in January 2018 necessitated a re-write of Northern's already-deferred May 2018 timetable plan in compressed timescales. This has driven an unacceptable level of performance for Northern's customers. Targeted interventions to improve performance included the temporary removal of 165 train services daily from 2nd June 2018, and consolidation of the plan focusing on issues such as unit displacement, capacity delivery and throughflow in the Manchester area.

The delay to planned timetable changes has also lowered the number of services delivered compared the numbers assumed within planned Northern's PPM MAA targets, which have not been recast due to variation in booked services. Delivering the target number of PPM failures across a lower number of services has lowered Northern's deliverable PPM MAA outturn. This illustrates how it is not straightforward for Northern and Network Rail to jointly plan and agree trajectories over a five year horizon. The extent of Northern's deviation from its Franchise-agreed targets is set out graphically below:

Figure 1: Northern Actual PPM MAA and Current Forecast versus Performance Strategy and Franchise Agreement targets



As noted previously Northern is committed via its joint Performance Delivery Strategy with Network Rail to ensure the delivery of strong performance through joint initiatives. Focusing on Right Time, priorities included within the strategy directly relate to continuous improvement of operational plans.

Weekly performance Control Rooms in Northern's four regions feed into identification and mitigation of emerging performance risks, supported by the Performance Sub-Alliance and Alliance Boards with Network Rail. Through this strategy Northern is committed to working with Network Rail to agree a CP6 Trajectory that embodies improvement, to deliver a level of performance that our customers deserve and expect from us. In this climate of uncertainty however, we seek support from ORR to iteratively agree the CP6 Performance Trajectory on an annual basis.

2. Lack of supporting detail

Network Rail has been unable to provide details on the influencing factors of Northern's performance across CP6, or underpinning analysis that has produced the projected impacts associated with each influencing factor. In addition, Network Rail has failed to share information as to how these impacts have been phased over the Control Period to produce the Scorecard Performance Trajectories. Northern has not had sight of any further performance analysis as set out in ORR's Draft by 13th July to demonstrate that the trajectory represents what Network Rail is funded to deliver for customers.

Northern was first made aware of Network Rail's proposed CP6 Performance Trajectory as set out in the LNE&EM SBP in November 2017. The LNE&EM Route Performance team followed this with a Waterfall graph as attached as Appendix 1, included within the February 2018 version of the SBP. No explanation is provided to support the figures underpinning the graph, which focuses principally on Northern-led initiatives such as 'Improved Fleet' delivering a 1.4% uplift), including the rationale behind counteracting the positive impact of improvements with traffic growth – stated to drive a 0.032% PPM worsenment.

CP6 Performance Trajectories were also discussed at the industry National Task Force (NTF) forum. We note that Appendix 2, a submission to NTF by Network Rail in April 2018, refers to 'overall strategy and assumptions' being 'outlined in the SBP', and that 'any modelling done has been consulted with the operator'. It is the case that the final SBP document only contains high-level information with respect to CP6 performance assumptions, and Northern has not been consulted on any associated modelling.

The parties have met bi-laterally on an ongoing basis to discuss the CP6 Performance Trajectory, during which Northern has consistently sought greater detail behind Network Rail's proposal. Appendix 3 as an outcome of a meeting between our respective Performance teams in July 2018 demonstrates the limited detailed calculations or modelling sitting behind the PPM MAA trajectories, linked to the 'levels of unknowns going into CP6'. The parties agreed at this point that further work is required to 'understand the true baseline performance that can be delivered outside of' abnormal events, including 'late running infrastructure enhancement projects and extreme weather'.

Whilst this work to re-baseline continues, alignment with Northern's Franchise-agreed trajectory is paramount, as this is what we have agreed to deliver for our customers. This was re-emphasised to Network Rail recently at a bi-lateral meeting between Northern and both LNE&EM and LNW Routes in August. Appendix 4 highlights the key messages of this meeting – notably Network Rail's acknowledgement that 'there is limited data that sits behind the trajectory'. Network Rail has not provided further detail underpinning the proposed CP6 trajectory following this meeting.

We have also seen limited joint work between LNE&EM and LNW Routes on the development of the trajectory. Although the former is our 'Lead' Network Rail route and thus owns the Northern CP6 performance trajectory. The timetable structure and multi-operator interactions on the LNW Route, particularly in the Manchester area are major drivers of Northern's overall performance. It is also critical that LNW and LNE&EM routes adhere to a consistent approach to managing cross-boundary delays. In line with this at LNW Route SBP Stakeholder events on both the 12th and 16th July 2018, we requested further detail relating to CP6 Performance plans for Northern, however were referred to the LNE&EM Route Performance team, as our Lead Route. Overall, we have experienced the quality of engagement from the routes to be inconsistent and regularly call for closer joint working.

Last week, in late August 2018, the LNE&EM Route performance team shared with Northern an amended Waterfall graph illustrating a revised performance trajectory following recent bi-lateral discussion. This is attached as Appendix 5. Notably, this features a lower CP6 2018/19 start point of 79.0% PPM MAA compared to the 89.0% shown the previous Waterfall graph (Appendix 1), whilst retaining the 91.1% PPM MAA 2023/24 CP6 exit point, requiring the parties to deliver an additional 10% PPM MAA improvement required to deliver the 91.1% outturn. Of the 12.1% PPM MAA improvement trajectory included within Appendix 5, the majority is driven by Northern initiatives (8.25%).

Limited commentary is supplied with the graph by Network Rail for each performance driver. No indication of the phasing of the improvements is provided, which prevents visibility of year on year targets. Northern is highly concerned by the proposal of the lower base, without accompanying explanatory detail on how improvement will be phased during CP6. As referenced above, the 91.1% outturn proposed by Network Rail continues to be unacceptable to Northern. It is critical that a step-change in the trajectory is made to take parties back to Northern's franchise bid level; 93.5% CP6 outturn. Central to this will be incorporation into the trajectory of work with Network Rail and other TOCs to recover from poor performance at the end of CP5, to close the subsequent performance gap.

Another area of concern for Northern is the level of performance to which the Network Rail benchmarks will be calibrated. As noted above, the CP6 Performance Trajectory proposed by Network Rail includes both Network Rail and Northern components. At the RDG Schedule 8 recalibration working group of the 28th August, ORR suggested that Network Rail benchmarks for CP6 would be set to only support the Network Rail component of the uplift. It is important that Network Rail benchmarks should set to build from the level of performance delivered by the Northern and TOC on TOC component of the trajectory. This is key given that the majority of improvement forecast for CP6 proposed by Network Rail is delivered through Northern initiatives.

Northern therefore expects that Network Rail benchmarks will be regressed from the CP6 outturn and phased based on the level of improvement forecast for each year, thus basing the Network Rail component exclusively on what Network Rail forecast to deliver and ensuring alignment with the Regulatory Settlement and the level of performance it will be funded to deliver.

3. <u>Methodology limitations</u>

Network Rail have derived the CRM-P trajectory by working backwards through a series of correlation models based on regression analysis starting from a PPM Trajectory. Northern believes that this approach is flawed. While CRM-P is a Network Rail focused metric, PMM is an "all industry" performance outcome measure influenced by many factors. These include Network Rail's performance as infrastructure manager, traffic manager and overall System Operator as well as train operator performance and wide-ranging external factors.

Network Rail's approach to producing a proposed PPM trajectory is also based on a "bridge" analysis between CP5 end-point and CP6 end-point – this does not provide a phasing across the Control Period. There does not seem to be an evidence based approach to producing the "steps" in the bridges for each Operator in the Route SBPs.

Northern believes that Network Rail should have derived the CRM-P trajectory "bottom up" based on the benefits delivered by the estimated impact of each initiative or influencing factor reflected in the Route SBPs.

4. <u>Absence of Network Rail improvement initiatives</u>

Network Rail's Route SBPs contain a number of encouraging innovative technological and operational approaches to mitigate the performance impact of declining asset condition in a context of overall traffic growth. These will be bolstered by factors including the establishment of a CP6 Performance Innovation Fund as set out in the Draft Determination. The SBPs also feature renewals workbanks that include the replacement of life-expired infrastructure in modern equivalent form, and crucially interventions to boost reliability and safety on high-risk geotechnical assets. Northern also requested that Network Rail include within the trajectory the deferred benefits from infrastructure enhancements contained within the CP5 trajectory that were still funded and at this stage but not yet realised, including the NWEP 4 & 5 schemes.

It is also important that the additional £1bn expenditure (£222m LNW Route and £225m LNE&EM Route) set out within the Draft Determination to improve asset sustainability, protect performance and mitigate safety risk is incorporated into the CP6 Performance Trajectory. We have not seen evidence of this, nor the associated overall efficiency increase from 8% to 10%. Northern disagrees with the statement by Network Rail in the NTF paper (Appendix 2) that 'all opportunities have been included' in the trajectory. Concurrently, we seek more detail on the performance strategy driven by Network Rail CP6 asset improvement plans.

Within the supporting information provided by Network Rail to support the proposed trajectory, notably the Waterfall graphs attached as Appendices 1 and 5, the forecast improvements are largely driven by Northern initiatives rather than Network Rail elements of the SBPs. We have seen no evidence to demonstrate Network Rail initiatives are comprehensively being factored into the plans. This is supported by the comments expressed under 'Table 3.4: Assessment of confidence in process' within the report by Arup (Appendix 6) published on 11th July in association with the Draft Determination (*L4AR004b: Assessment of train performance trajectories in Network Rail's Route Strategic Plans for PR18'*). Arup states that the approach taken by LNE&EM Route to produce performance plans *'seems to be rigorous but we have seen little detail on how assessments were made'.* Similarly, Arup noted the approach taken by LNW Route was 'well reasoned' however was also 'lacking in detail on how assessments were made'.

We see this additional detail as a critical first step to joint work towards iteratively building in further performance betterment into the Trajectory as CP6 progresses.

<u>Conclusion</u>

The HLOS required Network Rail to work with Operators to determine 'stretching but realistic' performance targets for CP6. Constructive dialogue continues between Northern and Network Rail regarding the CP6 Performance Trajectory, and we look forward to further close-work on this subject. As set out above, Northern does not believe what Network Rail has proposed thus far represents a sufficiently ambitious target to deliver continual improvement for customers in the North of England. As well as raising our concerns formally to ORR in a formal letter relating to Network Rail's Strategic Business Plans for CP6 (Appendix 7) in February 2018, we have further iterated our position in our August 2018 response to ORR's Draft Determination (Appendix 8).

The lack of detailed evidence behind the Performance Trajectory, combined with methodological limitations and the absence of Network Rail-driven improvement initiatives has left the parties unable to agree on the Trajectory with delivers a CP6 out turn PPM (MAA) of 2.4% less than the target within our Franchise Agreement. In a climate of uncertainty, where Northern's planned service uplifts and performance plans developed at the time of the franchise bid have been challenged by slippage of significant infrastructure programmes, we seek ORR's endorsement of an iterative refinement to the parties' CP6 Performance Trajectory on an annual basis.

Should you require any further information, please do not hesitate to contact me.

Yours Sincerely,

pp

Rob Warnes
Performance and Planning Director

northern

Open Access Rail

Office of Rail and Road

1 Kemble Street

London

30th August 2018

By to Email: pr18@orr.gsi.gov.uk

Dear Sir,

2018 Periodic Review: Comments on Charges and contractual incentives in CP6

In respect on the above consultation please find attached the response on behalf of Open Access Rail Limited.

Open Access Rail Limited is an independent company specialising in the provision of new open access rail services. A key part of providing open access services is gaining access to the network on a fair basis. They way in which open access is charged is largely determined by the ease of access to the network. We are supportive of open access operators paying more in terms of charges but only in return for greater access to the network.

Comments on Infrastructure Cost Charges (ICC) for open access operators

It was established in *GNER v ORR 2006,* that open access operators cannot pay the same as franchised operators in terms of charges. This is based on access to the upstream markets by open access, where franchised operators have a considerable advantage. The Court decided that these very different conditions to access the upstream market justify a radically different charging regime for franchisees and open access. We are concerned that the ORR has not developed clarity on its policy on how access to the network for open access will be post the implementation of the ICC. We therefore seek clarity from the ORR regarding the following:

(A) Ease of access for open access operators

Clarification is sought from the ORR as to how paying more will lead to ease of access. This is a fundamental aspect in the development of new open access. We are concerned that this element has not been developed as part of a clear policy on implementing the ICC.

Open Access Rail

(B) The Economic Equilibrium Test and Not Primarily Abstractive test

The EET test is due to be implemented from 1st January 2019. This test is different from the NPA test. We are concerned that there is no clarity from the ORR how the EET test will be implemented and the status of the NPA test. The implementation of the EET test alongside the NPA test is a further restriction on competition. This is perverse given the requirement to pay the ICC. Clarity is required from the ORR on the implementation of the EET test and whether the NPA test will be withdrawn.

The implementation of the ICC alongside ease of access is crucial if open access is to be developed further. We would welcome some clarity from the ORR on the link between charges, ease of access and the open access economic tests.

Yours faithfully

Jonathan Cooper

For Open Access Rail Limited

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Registered in England Number: 11409858

Open Access Rail

Office of Rail and Road

1 Kemble Street

London

30th August 2018

By to Email: pr18@orr.gsi.gov.uk

Dear Sir,

2018 Periodic Review: Comments on "Our review of Network Rail's stakeholder engagement"

In respect on the above consultation please find attached the response on behalf of Open Access Rail Limited.

Open Access Rail Limited is an independent company specialising in the provision of new open access rail services. A key part of providing open access services is gaining access to the network. How Network Rail engages with open access is vitally important if more open access is to be developed.

We note the consultation and do not disagree with its findings. However, we would add that for small open access operators it is difficult to be seen in Network Rail's business as a whole and to engage in the large number of meetings that takes place. We would ask that Network Rail notes this and seeks ways where open access could be included more.

Yours faithfully

Jonathan Cooper

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Open Access Rail

Office of Rail and Road

1 Kemble Street

London

30th August 2018

By to Email: pr18@orr.gsi.gov.uk

Dear Sir,

2018 Periodic Review Draft Determination System Operator draft settlement document

In respect on the above consultation please find attached the response on behalf of Open Access Rail Limited.

Open Access Rail Limited is an independent company specialising in the provision of new open access rail services. A key part of providing open access services is gaining access to the network. The System Operator role and its functions are vitally important if more open access is to be developed. It is with this in mind that our response is framed.

Strategic Planning Timescales

Open access operations take time to set up. Network Rail's strategic planning process to date does not allow for capacity to be identified or developed that aligns with the timescales of an open access operator. Typically, open access operators are requested by Network Rail to bid into existing service patterns as a way to determine if capacity exists. This means an open access operator is bidding into a timetable that they will not actually be able to operate services in.

In addition, from January 2019 there will be new obligations under the EET test, on open access operators, to detail their plans some 18 months in advance. In order to satisfy this requirement, the System Operator will need to be more adept at being able to assess capacity in time for the SoAR panel to sell.

Moving forward we hope that open access operators will be considered by the System Operator in terms of strategic capacity planning to allow open access bids to be made in a robust and within industry timescales.

Strategic Planning Capacity

Identification of capacity for open access services has been a poor process. There is a reluctance of Network Rail to plan the network according to the Network Code or in accordance of the contractual rights that operators have. Open access operators rely upon the System Operator to plan the network according to the contractual rights held by operators and the Network Code Part D process.

Despite Network Rail securing extremely flexible contracts its teams are reluctant to use this flexibility. In addition, open access operators are disadvantaged by a failure of Network Rail to have a methodology to determine what the capacity of a line is. Network Rail often expects that open access operator to fit around existing services – this is not an efficient way of timetabling for all operators. This methodology also results in timetables that often place open access operators at a disadvantage in terms of calling patterns and journey times.

The System Operator should put in place training for its staff in terms of the contractual railway and introduce an agreed methodology for capacity identification as a matter of urgency.

Strategic Planning – Enhancements

Currently there is a disconnect between the business case outputs of enhancement schemes and how this translates into an operational railway. For example, the Stafford Area Improvements (£250M) business case was predicated on the basis of additional trains operating between London and the North West. Despite this Network Rail has been reluctant to sell capacity to open access operators. We believe that the measured outputs should be based on the business case benefits (i.e. delivering a capability to allow up to X additional paths) of an enhancement rather that the physical construction output (i.e. build a flyover)

The Sale of Access Rights Process

The SoAR process for open access operators is flawed in that it often depends upon the development of an actual timetable rather than a high-level view of capacity to allow it to sell paths. It is also flawed in the way that the routes effectively have a veto on whether rights will be sold. We are therefore pleased to note that "The SO intends to improve the processes underpinning the SoAR Panel and to strengthen its ability to analyse the impacts of capacity allocation decisions; and ν timetable production".

We would like to see a SoAR panel that is fully independent in its decision-making process where the Routes do not have a veto. We also would ask that the Network Rail develop a capacity identification process that works to the industry timescales to allow applications for rights to be made rather than applying for rights after the timetable has been developed.

If you have any questions, please contact me.

Yours faithfully

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Open Access Rail

Jonathan Cooper

For Open Access Rail Limited

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Open Access Rail

Office of Rail and Road

1 Kemble Street

London

30th August 2018

By to Email: pr18@orr.gsi.gov.uk

Dear Sir,

2018 Periodic Review: Comments on "Our review of Network Rail's network licence" Supplementary document – Review of Network Rail's network licence"

In respect on the above consultation please find attached the response on behalf of Open Access Rail Limited.

Open Access Rail Limited is an independent company specialising in the provision of new open access rail services. A key element in accessing the network is the network licence as it sets out the obligations of Network Rail.

We have reviewed the consultation and provided our response to the specific questions that the ORR has raised – please see below:

Question	Response
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?	We believe that such an approach will make the devolved routes and System Operator more aware of their obligations. We support alignment of the network licence.
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?	No
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?	We agree with the proposals.
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	We agree with the proposals.

requirements around how Network Rail structures its organisation. Do you have any views on this position?	
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?	We agree with the proposals.
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?	We agree with the proposals.
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?	We agree with the proposals.

If you have any questions, please contact me.

Yours faithfully

Jonathan Cooper

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Andrew Thomson
Job title*	Acting Public Transport Officer
Organisation	Plymouth City Council
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6 For further information, please see chapters 2 and 3 of our overview document.
We have no comment to make on this aspect of the draft determination.

Our review of Network Rail's network licence Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.
We have no comment to make on this aspect of the draft determination.

Our review of Network Rail's stakeholder engagement For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.
We have no comment to make on this aspect of the draft determination.

Our review of Network Rail's scorecards and requirements For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.
We have no comment to make on this aspect of the draft determination.

Our assessment of health and safety For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.
We have no comment to make on this aspect of the draft determination.

Our review of Network Rail's proposed costs and income For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.
We have no comment to make on this aspect of the draft determination.

The financial framework for CP6 and affordability For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.
We have no comment to make on this aspect of the draft determination.

Charges and contractual incentives in CP6 For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.
We have no comment to make on this aspect of the draft determination.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.

Scotland

We have no comment to make on this aspect of the draft determination.

Freight & National Passenger Operator route

We have no comment to make on this aspect of the draft determination.

System Operator

We have no comment to make on this aspect of the draft determination.

England & Wales routes

Western Route (including sections of the Wessex Route as set out by ORR in the route reviews):

Plymouth City Council welcomes the Office of Rail and Road's approach in not requiring any top down changes to the Western Route Strategic Plan which was submitted by Network Rail. However we need to understand what the targeted adjustments to the plans will mean for the schemes proposed by Network Rail for delivery in CP6 for the region and for other works that have been identified by the Peninsula Rail Task Force, which Plymouth City Council is a member of.

The priorities for Plymouth and the wider South West Peninsulaare to ensure that the network is resilient and reliable so that services into and out of the region see fewer days of disruption either through extreme weather or through engineering possessions. Recent years have seen the vulnerability of the single route into the region exposed on numerous occasions either through flooding or, in the worst case, the line being washed out at Dawlish and a landslip near Teignmouth leading to the closure of the line for 9 weeks whilst repairs were undertaken.

Network Rail's plans need to ensure that the line is resilient so that the planned increases in service frequencies and reductions in journey times can be delivered and maintained giving reassurance to passengers that their journeys will not be disrupted and maintaining the regions strategic connectivity with national and international markets.

There needs to be reassurance that funding is made available in CP6, including from the identified additional investment by ORR and any other efficiency savings, that schemes that will deliver the improvements necessary to deliver two trains per hour between Plymouth and London and reducing journey times.

There is a requirement that Network Rail allocates funding to schemes during CP6 that have been identified to ensure that these do not stall between development and delivery. These schemes will build on improvements that have either already been or are being delivered and will deliver a more resilient railway and more frequent services into the South West including to Plymouth.

The following list details the schemes that require funding in CP6 to deliver resilience, journey time and capacity improvements:

Resilience:

- Dawlish Sea Wall resilience plans
- Flood resilience works on the Somerset Levels
- Development of a diversionary route from Exeter to Castle Cary via Yeovil when the GWR route is blocked
- Castle Cary to Exeter capacity upgrade

Journey times

- Exeter – Waterloo timetable study and infrastructure development for redoubling of track and passing loops between Salisbury and Yeovil
- 2 direct trains per hour between London and Plymouth – major service improvements through hourly semi-fasts supported by electrification to Bedwyn and major capacity and line speed improvements between Newbury and Westbury
- West of Great Bedwyn to North of Market Lavington infrastructure enhancements
- Selective electrification of Dainton banks with electrification of railway between Aller Junction (Newton Abbot) and Totnes

Capacity:

- Services reintroduced from Okehampton to Exeter and from Plymouth to Tavistock, first phases of reopening northern route from Plymouth to Exeter
- Capacity upgrades between Newbury to Westbury to enhance train frequencies
- Electrification to Bedwyn, reducing journey times and releasing IETs for semi-fast services by using electric multiple units between Newbury and Bedwyn

Any other points that you would like to make

We have no additional comments to make.

Thank you for taking the time to respond.

Rail Delivery Group

Response to

The ORR consultation on the Draft Determination

Date: 31 August 2018

Rail Delivery Group Limited Registered Office, 2nd Floor, 200 Aldersgate Street, London EC1A 4HD
www.raildeliverygroup.com 020 7841 8000 Registered in England and Wales No. 08176197

Rail Delivery Group response to

The ORR consultation on the Draft Determination

Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

Tom Wood

Rail Delivery Group

2nd Floor, 200 Aldersgate Street

London EC1A 4HD

Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on its Draft Determination for the 2018 Periodic Review. We are making separate responses to the consultation on enhancements in CP6 and the consultation on changes to the network licence.

2. ORR's consultation consists of numerous documents and a very wide range of topics related to the forthcoming control period. We have focused our response on what we consider to be the most significant issues.

3. RDG is content for this response to be published on the ORR website.

General

4. RDG supports a draft determination and associated proposed licence changes, supported by sufficient monitoring arrangements by ORR, that will support Network Rail in embedding truly devolved and empowered route businesses, enabling a clear line of sight from the customer through train operators to route businesses, and supported by the services provided by the System Operator, Infrastrucutre Projects and other central functions.

Investment in Research and Development (R&D)

5. The RDG welcomes the ORR's support for the principles of R&D but is disappointed that it has set an initial funding allocation of only £100m in CP6, significantly less than that sought by Network Rail in its strategic business plan and around half the level that Network Rail spent in CP5.

6. We note and agree with the statement in the Draft Determination that "*In the event that Network Rail manages risks effectively, this would allow central risk funding to be used to increase spending on R&D over CP6.*" and encourage the ORR to confirm this in its Final Determination.

7. The ORR's unease over effective governance of R&D has led Network Rail to conclude that it will govern and deliver the entire CP6 R&D programme. If this was the intent of the determination the RDG will work to support Network Rail. However, the proposed Network Rail programme will primarily be focused on improving infrastructure asset sustainability, performance, safety & security of the railway, and will deliver less than half of the whole-system, cross-industry, collaborative R&D required to fully realise the benefits of the current long-term Railway Technical Strategy Capability Delivery Plan. The supply chain shares this concern. The supply chain's willingness to co-fund R&D is demonstrated by the £29m co-funding in the CP5 programme and the £64m committed to the UK Rail Research and Innovation Network (UKRRIN). There is now a risk that this funding will be drawn to co-funding the Network Rail programme and thus make it more difficult for other parts of the industry to secure co-funding of R&D activity. There is, therefore, a gap and imbalance in funding and capability to deliver the R&D required by industry in CP6. This will reduce future benefits.

8. RDG urges the ORR to consider a significant increase in the allocation of funds to R&D in CP6 to allow delivery of a broader programme with the resulting future benefits to the

railway and the communities, businesses and people it serves. The industry would like to be involved in the governance arrangements for the programme.

9. RDG welcomes the establishment of a performance innovation fund but notes that at this stage only an initial funding of £10m is allocated. The industry, through the National Task Force, is keen to be involved in shaping the purpose of the fund and in developing appropriate governance arrangements for it.

Efficiency

10. The RDG is aware that Network Rail and some of its other members have included comments on ORR's efficiency assumptions in their responses to the Draft Determination. We make a general observation on ORR's role in assessing renewal efficiency. We consider it important that the way efficiency is assessed does not prevent Network Rail from doing the right thing in terms of small scale enhancements on the back of renewals. We described our views on this more fully in paragraphs 14-16 of our response to the consultation on renewals efficiency last year.

Asset Sustainability

11. We note the ORR proposal that Network Rail should allocate an additional £1bn to renewals to improve asset sustainability. However, we do not believe ORR should be specific on how Network Rail achieves improved asset sustainability by requiring additional renewals spend rather than, say, leaving Network Rail flexibility to increase maintenance and monitoring as well as more renewals. It should be for Network Rail to determine how it can best deliver improved asset sustainability. We also note that part of the proposed £1bn additional renewals spend is being funded by the proposed reduction in R&D expenditure. There is a clear trade-off between R&D and asset sustainability, which needs to be considered carefully for CP6, as any reduction in R&D could negatively impact on future asset sustainability.

12. Network Rail agrees that more should be spent on asset sustainability but considers that the shortfall is about half of the £1bn proposed by ORR. Network Rail describes the rationale for this view in its response.

Train Performance

13. We believe it is important that the ORR and franchise authorities fully recognise the implications from Network Rail's funding settlement being fixed. There is limited scope for Network Rail to increase spending to ensure outputs are delivered and this is inconsistent with fixed performance targets in franchise agreements. We therefore consider that there would need to be sufficient flexibility in franchise contracts to respond to changes in Network Rail outputs.

14. We would welcome clarity from the ORR on how it intends to regulate performance targets at a route level during the control period.

15. In the draft determination, the ORR indicated that Network Rail and train operators should work together to consider whether agreement could be reached on performance trajectories in CP6. The ORR said that Network Rail should provide it with an updated set

of performance trajectories by 13 July 2018. Some passenger operators continue to have concerns about the process that has been followed and the quality of discussion and analysis before and since the draft determination. A specific concern of some train operators is a lack of clarity around how the Consistent Route Performance Measure – Passenger (CRM-P) trajectories proposed by Network Rail have been calculated. Though it may be clear which influencing factors have been considered by Network Rail in determining trajectories (such as the effects of timetable change and improvements to infrastructure), a number of operators have said that there is less clarity about how these factors are translated into performance impact. Some train operators believe that this has limited the extent to which they have been able to challenge the trajectories put forward by Network Rail, which has in turn limited the convergence between operators and Network Rail in expectations around performance. The RDG will continue to facilitate discussion between Network Rail and operators to drive performance improvements through the National Task Force and other forums.

16. Network Rail considers that there should be ongoing work to develop performance plans, using the scorecards as a vehicle for discussing, and ideally agreeing, forecasts. Network Rail also believes it is important that the CRM-P forecasts are realistic (particularly in the early years) so that Schedule 8 benchmarks and the CRM-P targets are set appropriately.

17. We agree it is important that there are ongoing discussions on performance measures in scorecards between Network Rail routes and train operators. We also consider that ongoing discussions are needed with franchise authorities where there is misalignment between the train performance that can be realistically delivered (underpinned by robust joint performance strategies), and train performance in franchise agreements.

18. The RDG supports the principle of a re-opener for Schedule 8 where ORR considers there has been a material change such as for changes resulting from new Crossrail services. The industry has been discussing this reopener with ORR at the Schedule 8 working group.

System Operator (SO)

19. The industry considers that ensuring the capability and capacity of the SO is a high priority for CP6 and is strongly supportive of a well-resourced and funded SO. We welcome the increased funding in the draft SO settlement but, in light of the recent timetable planning problems, some train operators consider it is worth reviewing whether there should be more IT investment related to timetabling activities. The performance of the System Operator should be monitored to ensure it is providing sufficient support services to routes and train operators.

Access Charges

20. Open Access Operators (OAOs) are concerned about the high level (£4/train mile) that the ORR is proposing for the new infrastructure cost charge to be levied on new services in CP6, particularly as this is in addition to the increase in variable usage charges. We have previously commented that the introduction of a new infrastructure cost charge for OAOs should be considered in conjunction with a new access policy. ORR acknowledges that the access policy will have to be revised, and we would welcome discussion and clarity on this, including confirmation that the new access policy will be implemented at the same time as the new charges, if confirmed in the final determination. Additionally, there is a lack of clarity on how inter-urban services are to be defined and on precisely which

services will be classed as new open access services, given that some proposed services will already have been discussed.

21. The ORR is proposing to change the structure of fixed track access charges (FTAC) for CP6, where the money Network Rail would receive would change depending on how many trains it accommodates in the timetable. It is important that Network Rail is not exposed to an unreasonable amount of financial risk in CP6. Network Rail's fixed costs, which the FTACs are designed to recover, will not vary with traffic levels in the short term. Therefore, if Network Rail receives less money through FTACs in CP6 because of this change to the charging framework, Network Rail is likely to need to reduce its expenditure in other areas (e.g. maintenance or renewals).

22. The ORR consultation on changes to track access contracts includes (paragraphs 3.2 to 3.5) a proposal for a contingency provision to deal with the scenario that the review is unable to be implemented on 1 April 2019 because Network Rail has objected to the Final Determination. We support the proposal to include the contingency arrangement as a standard clause in the new model versions of the track access contracts for CP6 and beyond.

Freight

23. Freight operators are very concerned about the proposal to increase freight charges from year 3 of CP6. They consider the ORR proposal represents a steep real-terms increase of more than 30% from the 3rd year of CP6 to the end of CP7. If confirmed, this would have significant costs implications for freight operators, making the sector less competitive and resulting in modal shift from rail to road.

24. Freight operators consider a more gradual move to full cost recovery over a longer period than that proposed by the ORR would be compliant with relevant legislation, provided this happens within a reasonable time frame. Freight operators propose that charges are capped at CPI+1% until full cost recovery is achieved.

25. Network Rail supports a broadly stable infrastructure charging position for freight in CP6 and recognises this helps support existing traffic and growth which is important to freight and core to the CP6 Strategic Business Plans. Ultimately it is not just about the level of charges, but the overall financial/funding proposition for freight. Network Rail also supports the principle of cost reflective charges, though recognise that capping/phasing may be appropriate. However, any changes to ORR's proposed caps/phasing would mean reductions in other Network Rail activities and programmes for CP6 recognised in the ORR's draft determination, given the fixed funding in the Statements of Funds Available. Overall, Network Rail considers that ORR's proposals are reasonable.

26. We have several comments on the impact assessment for the ORR freight charging proposal, namely:

    a. the reasoning behind the ORR's proposal lacks transparency. In particular, we are unclear as to how the ORR has reached its conclusion that the capping/phasing period should be concluded by the end of CP7 and why this could not happen over a longer period.

    b. the MDS Transmodal analysis quoted was undertaken in 2015, when coal traffic represented a much larger proportion of overall freight volumes. Given the decline in the traditional coal market, this analysis does not accurately reflect the current composition of freight traffic. We therefore recommend that the ORR revises its assessment based on the current freight traffic mix. Freight operators have commissioned MDS Transmodal to carry out an update of its analysis, however the results from this work will not be available until after the 31 August response deadline.

c. Freight operators do not agree that increased charges will incentivise the procurement of track-friendly vehicles. It is the differential between track-friendly and less track-friendly vehicles that partly drives decisions on which wagons to buy. Even if the differential in charges increases in absolute terms, this will be so marginal that it will have no impact on incentives. Furthermore, the freight sector already has a very strong track record of purchasing low track force bogies when it does buy new wagons.

27. We consider that the incentive to grow freight traffic should be strengthened and the industry would be happy to work with the ORR to consider how best this is achieved.

Stakeholder Engagement

28. Effective stakeholder engagement is vital for an effective and efficient railway. ORR is not proposing to be prescriptive about stakeholder engagement but expects that Network Rail, its routes and SO will be required to engage in a manner which is effective, inclusive, well governed and transparent. We support this principle. However, it is worth noting that there is ongoing work to fully establish and embed Network Rail's governance arrangements for CP6 (including the SO advisory board and Route supervisory boards) and so this remains an area where there will be continuing engagement between train operators and Network Rail.

Health and Safety

29. The industry supports the ORR proposal that £80m more safety related investment is made for improvements to level crossings and access walkways.

Budget Flexibility

30. We appreciate that Network Rail's move to becoming a public sector organisation has imposed constraints on the company's ability to move money freely between different years of the control period and between operating and capital expenditure. There are implications from these constraints. For example, as mentioned earlier the fixed funding limits the flexibility to meet fixed outputs, such as train performance to achieve franchise targets. Budget constraints also affect renewal or maintenance plans that impact on access planning, the supply chain and efficiency. The full implications of these constraints may not yet be evident and we suggest there is further discussion to help mitigate the impact.

Joanna Whittington
Chief Executive
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

03 August 2018

Dear Joanna,

PR18 Draft Determination: variable usage charge

Following publication of the PR18 draft determination on 12th June, I am writing in response to the ORR's draft decision to cap the variable usage charge (VUC) for rail freight for the first two years of CP6 only. Freight operators are deeply concerned about the proposal, which represents a steep real-terms increase in charges of more than 30% from the third year of CP6 to the end of CP7. If confirmed, this would have significant implications for rail freight, making the sector less competitive and will inevitably result in modal shift from rail to road. RDG freight operators urge the ORR to review its decision and consider the alternative proposal below in light of the observations made in this letter.

The reasoning behind the ORR's conclusion lacks transparency. ORR states that any cap or phasing-in period must not be open ended. However, it is not clear how ORR has determined that full cost recovery must be achieved by the end of CP7 and why this could not happen over a lengthier period. The ORR's impact assessment refers to the legal advice behind the decision but does not set this out.

Freight operators believe a move to full cost recovery over a longer period of time would also be compliant with relevant legislation, provided that that this happens within a reasonable time frame. **RDG freight operating company members would therefore propose instead an increase of CPI +1% until full cost recovery is achieved.** The greater Network Rail's cost efficiency going forward, the sooner that full cost recovery will be achieved with this shallower profile.

Not only would a shallower increase in the VUC still be consistent with legislation, it will better enable ORR to fulfill more of its other statutory duties. In particular, it will enable freight operators to plan the future of their businesses with a reasonable degree of assurance by enabling them to mitigate the transitional impacts associated with increased charges; it will better protect the interests of users of railway services; and it will contribute to the achievement of sustainable development.

As you know, both the Department for Transport (DfT) and Transport Scotland have a policy of encouraging rail freight growth. In his Guidance to the ORR[1], the Secretary of State requests that the ORR has regard to the objectives of the Rail Freight Strategy (2016)[2] by considering the affordability of freight charges, provide certainty about CP6 costs and take "all appropriate steps to support the growth and development of the rail freight sector". Indeed, in articulating its view to the ORR on 8th March 2018[3], the Department for Transport (DfT) said it would like to see *"capping charges in real terms, to the full extent consistent with the legal framework, at the current end of CP5 level (i.e. uncapped end CP5 rates) in order to provide rail freight operators and investors with certainty about the level of this charge for the next control period"*. It also says, *"we support the proposed approach in the FNPO plan to keep the overall level of charges the same (in real terms) as at the end of CP5."* ORR appears not to have had regard to this in its draft decision.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629698/guidance-to-the-office-of-rail-and-road.pdf.
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/552492/rail-freight-strategy.pdf.
[3] http://orr.gov.uk/__data/assets/pdf_file/0008/27467/department-for-transport-letter-regarding-vuc.pdf.

Network Rail supports a broadly stable infrastructure charging position for freight in CP6 and recognises this helps support existing traffic and growth which is important to freight and core to the CP6 Strategic Business Plan. Ultimately it is not just about the level of charges, but the overall financial / funding proposition. Network Rail also supports the principle of cost reflective charges, though recognises that capping / phasing may be appropriate.

Furthermore, freight operators believe that the ORR's impact assessment is based upon out-of-date information which invalidate its estimates of modal shift from rail to road. The impact assessment refers to an MDS Transmodal study, which estimated that a doubling of the VUC would see a 4.6% reduction in tonne-kilometres. However, the analysis quoted was undertaken in 2012, when coal traffic (largely captive to rail) represented a much larger proportion of overall freight volumes and oil prices were higher. Given the decline in the traditional coal market, the analysis does not accurately reflect the current composition of freight traffic, most of which faces strong competition from road. The 2012 MDS report estimated that a 50% increase in VUC would see a reduction in 6.6% of intermodal traffic and a 7.7% reduction in construction traffic, but only a 0.2% reduction in ESI coal traffic. It is recommended therefore that ORR revises its assessment based on the current freight traffic mix.

Finally, the ORR's belief that increased charges will incentivise the procurement of track-friendly vehicles is misplaced. It is the differential in charges between track-friendly and less track-friendly vehicles that partly drives decisions on which wagons to buy. Even if the differential in charges increases in absolute terms this will be so marginal that it will have no impact on incentives. Increasing charges for all types of wagons will delay decisions on purchasing all new wagons. Furthermore, the freight sector already has a very strong track record of purchasing low track force bogies, when it does buy new wagons.

Freight operators would urge the ORR to review and reconsider its decision.

Yours sincerely,

John Thomas

John Thomas
Director of Policy, Rail Delivery Group

Rail Delivery Group

Response to

The ORR consultation on changes to the network licence

Date: 31 August 2018

Rail Delivery Group response to

The ORR consultation on changes to the network licence

Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

Tom Wood

Rail Delivery Group

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London EC1A 4HD

Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on changes to the network licence. We are making separate responses to the consultation on the Draft Determination and the consultation on enhancements in CP6.

2. RDG is content for this response to be published on the ORR website.

Comments on the proposals

3. RDG supports the ORR proposal to update the licence to better reflect Network Rail's structure and to more generally align it with changes to the CP6 regulatory framework. This will help make the licence more relevant and clearer to interpret and apply to make compliance more straightforward for those who are accountable and responsible for meeting the licence obligations.

4. Network Rail is currently doing a lot of work to develop a stakeholder engagement model, which includes a principles-based code of practice, stakeholder engagement strategies (for Route businesses and national functions) and an annual assessment of engagement. Notwithstanding this, Network Rail recognises that further improvement is required in CP6 to develop and embed the framework.

5. We note the ORR comments in its consultation that the licence will not be prescriptive on stakeholder engagement but expects that Network Rail, its routes and System Operator (SO) will be required to engage in a manner which is effective, inclusive, well governed and transparent. We fully support this intention and agree with the principles. We suggest that these overarching principles (as set out in paragraph 10 of the consultation) are reflected in the licence rather than the "stakeholder engagement duty" requirements set out in Condition 1.7(b) to (e) of the proposed licence that appear rather prescriptive. We believe that the network licence, should be more purposive in nature whilst leaving flexibility as to how particular obligations are discharged. Flexibility is important to enable Network Rail's routes and SO to develop new ways of engagement with its stakeholders.

6. It is also worth noting that there is ongoing work to fully establish the SO advisory board and Route supervisory boards and their governance arrangements and so this remains an area where there will be continuing engagement between train operators and Network Rail.

7. We agree with the principle that a stakeholder engagement duty should be a core and overarching duty in the licence. We agree that the existing stakeholder relationships licence condition is outdated and too narrow and therefore we are supportive of the principle of updating the definition of stakeholder in the licence.

8. Freight operators believe that the proposed licence changes could be strengthened to further the interests of freight and national passenger operators. Although FNPO is not the same as geographic route businesses in that it has no asset management responsibilities, it is reliant on those geographic routes to ensure it can deliver for freight and national passenger operators and meet its own scorecard targets. It is therefore important that the FNPO route has sufficient influence over the geographic routes and support from the System Operator in order to be able to deliver for its customers.

9. We agree with Network Rail that the licence should not restrict the company's ability to make decisions in the interests of efficiency and delivering for its customers.

10. RDG supports the proposed changes to the safety and standards licence condition but considers that there is room for improvement. Rail Industry Standards already allow for the relevant Standards Committee to comment on the suitability of any proposed alternative arrangements. This facilitates the transparent application of the process and industry scrutiny of such deviations. It is proposed that a link is made to this existing industry process and we propose that Clause 12.3 (a) is rewritten as follows:

    > "it has, in consultation with affected parties, identified an equally effective measure which will achieve the purpose of the standard and asked the relevant Standards Committee to comment on the proposed alternative; and"

11. The legal drafting of the licence will be critical, particularly because the allocation of obligations is complex within a single legal entity. This is the case where more than one part of Network Rail's business has an accountability for processes which makes up a system captured by a single licence obligation. Given the intended scale of change to the licence and the legal drafting being completed over a short period of time, we suggest that the ORR carries out a formal review early in CP6 to assess how well the changes are working.

2018 Periodic Review Consultations

Variable Usage Charge Consultation
FNPO and System Operator Draft Settlement Documents
Draft Determination – England and Wales Summary
Draft Determination – Scotland Summary
Enhancements in Control Period 6
Review of Network Rail's Licence

Response from Rail Freight Group

August 2018

1. Rail Freight Group (RFG) is pleased to respond to the consultations listed above as part of the draft determination for CP6. No part of this response is confidential. This response covers all consultations in turn. We have commented on the key areas for freight in these documents.

2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have around 120 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

3. As open access users of the network, the periodic review is of fundamental importance to the rail freight operators, and their customers. Decisions made will influence the ability of the sector to thrive, to grow new business and improve existing traffic and to encourage investment now and longer term. Conversely, the wrong settlement could further undermine the position of freight operators, cause modal shift to road and lose private sector investment.

4. Overall, we consider that this draft determination, and the associated decisions, are broadly reasonable but we have a number of concerns;

    a. The level of increase of variable usage charges for freight in CP6 and CP7 is significant and risks loss of traffic to road. We consider a gentler increase in charges would mitigate this risk.

    b. The ORR's impact assessment is weak and fails to properly address the impact on the freight market of the proposed increase in charges, including consideration of a wider range of options for mitigating these risks.

    c. Outstanding areas, including around the delivery of specific requirements of the Transport Scotland HLOS must be concluded in a timely manner

    d. The proposed changes to Network Rail's licence, whilst better than the earlier proposals, remain weak for freight.

Variable Usage Charge Consultation

5. The freight industry has been concerned over the potential for a significant increase in variable charges caused by Network Rail's failure to deliver the expected efficiency target in CP5. We are therefore pleased that the ORR has taken some steps to try and manage this, by phasing in the introduction of increases including a two year stable period at the start of CP6.

6. We are also pleased that the DfT and Transport Scotland have confirmed their support for stable charges in CP6, in particular confirming that this is consistent with their respective SOFAs. The Network Rail SBP for the FNPO route is also based upon stable level of charges.

7. However, the proposed increases for CP6 and the planned increases for CP7 represent a significant increase in costs for freight operators of 43% over 10 years which cannot be absorbed by operators without detrimental impact on the market. The profile of increases, particularly in CP7, could also damage customer confidence and investment.

8. For CP6, ORR cite an average increase of around 11%. We understand that based on the draft price lists the actual increase for different commodities and wagon types varies significantly, with some bulk sectors including construction well in excess of the average. Although the freight operators may have some limited choice over how increases are passed on, customers in these sector will be facing potential increases in charge which will be detrimental to their plans for growth.

9. It is unclear how, and why ORR have chosen the particular profile of increases over CP6 and CP7 and whether other alternatives were considered – for example profiling the increase over a longer period. There has also been no apparent consideration of whether a 'freight efficiency deal' could be considered, as in PR13, to reduce increases in return for joint measures to help reduce industry freight costs.

10. Most significantly, the ORR does not appear to have fully assessed the impact of price increases on existing rail traffic, instead relying on work undertaken for PR13. Changes in the rail freight market, and other exogenous factors, since 2013 are likely to make the degree of change greater, as around 1/3 of the market at that time was coal and relatively inelastic to price changes. The freight operators have therefore asked MDS Transmodal to refresh this work for PR18, the results of which are expected shortly.

11. The work undertaken by CEPA for ORR in the context of the 'ability to pay' test confirms that intermodal and construction traffic remain highly elastic and at risk of reverse modal shift with price increases, but this does not appear to have been considered in the assessment of the variable charge.

12. Given the likely impact on the existing market, as well as on future prospects, we consider that ORR should revisit the potential options for increasing charges and

see whether there are other trajectories which would lead to full compliance over a longer period with reduced damage to the freight market. Given DfT and TS's commitments, this would not undermine the basis of the draft determination for CP6 and any consequential impacts for CP7 would be assessed in PR23. RDG have suggested an annual increase of CPI+1% and we would support this.

13. More generally, there are a number of other comments on the impact assessment for the VUC and freight;

    a. The adjustment for track friendly bogies creates a spread of VUC rates, but the increase will nonetheless apply to all types of vehicle. The logic that operators could switch rolling stock to 'avoid' an increase is therefore flawed.

    b. The assessment seems to suggest that an operator would choose to change rolling stock as a direct consequence of VUC changes. This is unlikely. Rolling stock investment will be made either if equipment is life expired, or if market growth demands it. When deciding to invest, the option for track friendly bogies will be one consideration amongst many. A higher overall VUC rate will tend to increase the differential between track friendly and other bogies so may help to encourage uptake only if a decision to invest has been made. However, the suppressed market potential which a higher VUC rate will create will reduce the case for investment.

    c. There has already been significant investment in track friendly bogies and there is little evidence cited on the extent of the wagon fleet that is not track friendly, and no evidence to suggest the level of VUC is preventing further investment. Whilst this incentive remains valid, we think it is overplayed in the impact assessment compared to other factors.

    d. The 'Delivery of ORR's General Objectives' section does not cover the duty to 'promote the use of the network for the carriage of goods' which is an omission. ORR should confirm how they align a policy which will reduce the volume of rail freight moved with this duty, with reference both to existing traffic, and also to growth.

FNPO Draft Settlement Document

14. We support the ORR conclusions on the FNPO plan, in particular the requirement to better define governance between the FNPO and geographic routes. We remain concerned that the incentive on geographic routes to accommodate freight is weak, and the single FDM target which is included on route scorecards could drive behaviour to accepting less freight, not more, to ensure performance targets are met.

15. We strongly support the recommendation to include safety spending within core spend.

System Operator Draft Settlement Document

16. We support the ORR conclusions on the System Operator plan.

17. An effective system operator is vital to the freight sector particularly with increasing devolution and plans for greater integration between franchises and Network Rail. The investment plans outlined in the business plan for the SO are important in establishing this function. Despite the recent issues with timetabling, this remains a key priority.

Draft Determination – England and Wales Summary

18. The overall draft determination for England and Wales appears reasonable, subject to the comments above.

19. We note the additional measures to provide a greater stretch on efficiency, in order to return to CP4 efficiency levels. Network Rail's efficiency is critical for freight operators as it feeds directly into VUC and we are pleased that ORR continues to push for greater levels of efficiency. However, it is unclear whether Network Rail have convincing plans to work more efficiently, including investment in technology, and it is unclear how ORR will monitor to ensure that efficiency is not being achieved at the expense of outputs.

20. We would be concerned if any of the additional £64m of property income is assumed to come from freight sites. Some members are already reporting rent reviews with very significant increases. Although this is being progressed through commercial channels there is a real concern that freight users might be targeted unfairly for additional rent, and ORR must not act to encourage this.

21. We note that ORR has not set outputs for Network Rail other than where required by an HLOS or in respect of a scorecard. We are concerned to ensure that this approach will give sufficient scrutiny of Network Rail and enable a holistic view of overall outcomes. We would expect this policy to be kept under review.

Draft Determination – Scotland Summary

22. We note that the work to confirm how the Scotland route will work to deliver the freight growth and freight journey time requirements, and the gauge and capability requirement set by Transport Scotland is still in development. It is imperative that this work is concluded as planned, and that confirmed plans are made for CP6.

Enhancements in Control Period 6

23. We note the revised roles and responsibilities for monitoring and regulating enhancements, which have been developed in conjunction with Department for Transport and Transport Scotland, in line with their new approaches to

enhancements.

24. For England and Wales in particular, ORR's future role is of monitoring and reporting only, with no ability to regulate outputs. In effect therefore, any enhancement project funded by DfT is unregulated. Although DfT are incentivised to work with Network Rail to ensure delivery of projects, their processes are more opaque to industry and it is unclear to what extent they will look to protect outputs which are important to freight users.

25. ORR may wish to consider how best it might seek to advise DfT if it becomes aware of such risks materialising.

Review of Network Rail's Licence

26. We agree with the need to update Network Rail's licence to reflect recent changes including devolution and consider many of the changes to be reasonable.

27. We have had a number of discussions regarding how the Freight and National Passenger Operators route should be treated, and we note that the current draft goes further than previous in requiring Network Rail to have arrangements to deliver for freight. However, we remain concerned that, by treating the FNPO route differently in the licence, it weakens its authority in the business, and leaves freight operators and customers exposed in some areas.

28. FNPO does not have direct responsibilities for the OMR of the core network, but it does have a regulated business plan, income stream and budgets. It is the commercial lead for freight operator contracts, is the sponsor for freight enhancements and has a role in developing Network Rail's property portfolio as well as the commercial relationship with freight operators. These activities are placed in the FNPO route to ensure they are given sufficient focus, particularly as the geographic routes move to becoming even more aligned with passenger businesses.

29. We recognise the ORR does not wish to tie Network Rail to any particular organisational structure, including having an FNPO route. Indeed, there could be other models where each route, and SO, had specific freight and national operator requirements instead of a central function (although this would have other challenges). However, by omitting the FNPO from the licence requirements today, it means that Network Rail's governance of freight is weaker than for other areas.

30. The omission of FNPO from the licence particularly affects the interpretation of other conditions. For example, under Asset Management, the route businesses and SO must be consulted to changes in asset management policies – but this as drafted means that the FNPO route do not need to be consulted. On land disposal, FNPO would not be required to consent to the disposal of land under the new proposed clause (even if that land might have freight utility). The clauses which enable ORR to require confirmation of accuracy of information

would not, as written, apply to the FNPO route. This is clearly not the intention, but by omitting FNPO as a route business, it creates these impacts, and means that ORR could not use the licence as a way of enforcing freight outcomes.

31. Although it is for the ORR to consider the proposed wording, we would suggest that an extension to the proposed clause might be appropriate to include … *'This must be either as a separate route business, or by making specific and clear obligations on the route businesses to take into account the interests and reasonable requirements of freight and national passenger operators'.* The licence should also clarify that the description of route businesses should where applicable include any route covering freight and national operators.

ORR PR18 DRAFT DETERMINATION CONSULTATION

RAILFUTURE SCOTLAND RESPONSE (SCOTLAND ROUTE)

Railfuture Scotland is most grateful for the invitation to the Glasgow Discussion Meeting and the opportunity to respond.

Railfuture's antecedents were formed to campaign against excessive rail closures in the 1960's, followed by a period of strengthening the railway's competency and competitiveness to the current situation of restoring train services to some of those communities who were so unfairly excluded. There is some vindication of our policies but there is still too much obstruction to projects to expand the railway network.

The ORR review is complex, comprehensive and positive. Railfuture Scotland does not want to try to improve on it. However, certain comments should me made and this is the opportunity. These are essentially with respect to Scotland Route although some go beyond to the whole network and even to ORR itself. Ralfuture Scotland supports the ORR Review and do not are or not meant to detract from this very positive work.

RESPONSE TO "SCOTLAND" SECTION OF THE CONSULTATION

ROUTES: The ORR is maintaining the balance between devolution to routes and the security of an overall, across the UK, centralised railway organisation. There were advantages in a separate infrastructure/operator organisation. Interested parties knew who to approach. Some of that has been lost with the integration. Despite the most senior officers of ScotRail giving up their off-duty time to make enthusiastic presentations to Railfuture Scotland it seems less easy to approach the railway business at a lower level. The diversion of concerns to a "call-centre" has been disappointing.

PRIORITIES: Priority must be Operation, Maintenance and Renewals. Beyond that there should be a significant consideration for network expansion. Excluded communities also contribute to funding of the railway and should not be easily dismissed. The recognition that the Railway is a lot more than just a commercial enterprise should be extended to consideration of communities presently excluded from the rail network.

JOURNEY TIMES: The review seems to accept the priority of reducing journey times (between main centres) which appears to be the very top priority of Transport Scotland. All passenger feedback, as surveyed by Transport Focus, is that these journey time improvements, which are often quite small, are well down the list of train user priorities and well behind reliability and fares.

FARES: While fare levels are not part of this review they are essential to competitiveness and benefit of the railway to our economy and environment. For several decades road user costs have reduced in real times while public transport fares have increased. ORR, at the highest level, may have a part to play in this imbalance?

RELIABILITY: The ORR Review, quite rightly, considers reliability extensively. The railway in present times seems to take much longer to overcome inevitable disruptions, whether because of technology, general incompatibility, trained staff reduction or counter-productive safety risk assessments. Many of today's disruptions would have been dealt with locally and more quickly in the past.

ROLLING STOCK INCOMPATABILITY: This review and other recent reports have commented on unreliability due to rolling stock incompatibility. The railway must remain an integral transport network with slow and fast passenger services and slow and fast freight services. The railway organisation is extremely good in this respect. However, rolling stock incompatibility must be continually reviewed. In terms of Scotland Route the concept of running “tram-trains” on one of Scotland’s fastest and busiest internal main lines must be subject to the most critical of appraisals.

LABOUR DISRUPTION: The Review does not consider organised disruption by staff. It appears there will always be a clash situation between operators and organised labour. However, in this respect, Scotland has to be congratulated on constructively avoiding the worst excesses of the disputes which have so damaged the economy and people’s lives in the South east of England.

FREIGHT ON RAILWAY: Both the overall and Scotland SBP’s and Reviews considers rail freight positively at a time when certain important individuals remark that the railway would run better without freight trains and that heavy freight should be transferred to the roads. A 7.5% (per annum?) increase in freight on rail for Scotland seems aspirational and is most welcome considering the almost extinction of ESI traffic. It has to be re-iterated why rail freight is important in present times. The reasons are for economic cost, environment and safety. For safety, heavy goods vehicles are involved in fatalities out of all proportion to their use. It may not be the operators’ fault but just presence of so many big heavy vehicles on the public road increases fatalities. It is a heavy industry operating in the public street. While every effort is being made to improve operating conditions for railfreight the main issue is road haulage competition. While road haulage will remain an essential hard-working industry it is very heavily subsidised on several counts. If road haulage is to be heavily subsidised then so should other freight transport modes be heavily subsidised. Does ORR, at the highest level, have a part to play in this imbalance?

VARIABLE USER INFRASTRUCTURE CHARGES – FREIGHT: From the above, it is most concerning that ORR are introducing additional charges on certain rail freight traffics while not adopting similar considerations for road haulage. These charges require a totally independent review. It is ironic that the introduction of additional charges for ESI traffic arrived just as ESI traffic disappeared.

VARIABLE USER INFRASTRUCTURE CHARGES – PASSENGER: There appears to be some justification for changes to infrastructure for open access operations in that there seem to be few, if any, open access operations that are truly serving new demands are not relatively extractive of franchised services. It is most welcome that ORR recognise the possibility of open access services that could serve new and presently excluded demands and that any such proposals would not be subject to additional infrastructure user charges.

ROUTE CAPACITY: In consideration of the VUC’s considered above ORR could put more emphasis on keeping route capacity for other than the assumed priority traffic. This would prevent freight and local passenger services being squeezed out by ever more frequent “Inter-City” services and also deny the assumption that HS2 services will have free run of the “classic” existing lines once off the purpose-built infrastructure. Even additional franchise services could be monitored in case they attempt to prevent open-access proposals on capacity grounds but could be inhibiting genuine new freight and local passenger services.

SAFETY: All safety improvements and the current good safety record are to be applauded. However, all activities carry a risk and eliminating risks have costs which may be counter-productive. Is there any appraisal of the prohibition of “Red Zone” working in Scotland and whether it is the result of an effective risk assessment compared to other Network Rail ROUTES?

SAFETY and RSSB: RSSB is to be commended on safety investigations and recommendations but are RSSB actions be independently monitored? RSSB investigate many “Near miss” or “Close call” incidents, and rightly so, even where there has been no contact and no cost. Therefore, it appears incredible that a collision between a passenger train (at high speed) and a car on the tracks at Cleghorn Level Crossing on 3rd December 2016 should be deemed unnecessary to investigate by RSSB. Especially as this crossing has not been free of other incidents and incurs significant delay charges to Network Rail and delay costs to road users, including emergency services.

LEARNING FROM CP5: It is essential that lessons are learned from the challenging task of costs and delays. Timetable disruption on Scotland Route is emphasised. Surely the main cause of disruption for Scotland in CP5 was the retrospective enforcement of EU Electricity Clearance Regulations on Scotland Route Electrification projects. This decision appears totally unnecessary given the long-term good record of overhead electrification on the British network. It has caused cost overruns and delays over the Scotland Route. There should be a lesson on risk assessments and decisions which are counter-productive to safety. Was ORR involved in this particular decision?

PROPERTY SALES: The selling of railway property to improve the railway’s financial results has been visited and re-visited again and again and again over the past 60 years. It is disheartening to see it visited again but it is appreciated that Scotland considers only a very small gain from this activity. Are consequential losses monitored? This leads to another aspect, below.

PUBLIC USE of NON-OPERATIONAL LAND WHERE PRACTICABLR: There has not been a good record of allowing such use in the past. There appears no shortage of funding for massive palisade fencing in inappropriate locations.

MAINTENANCE/EMERGENCY ACCESS: Many locations used for maintenance access have been sold or leased to private parties. Often these are changes are made with legal burdens for continued rail maintenance access. The private parties naturally wish to consolidate their gains and many accesses appear to be lost or inhibited resulting in increased cost and delays of maintaining the railway and preventing quick action on disruptions. Can the status of maintenance accesses under private party control be monitored?

SPECIFIC LOCATIONS: Specific locations are not part of the ORR Review. However, the Scotland Route Strategic Business Plan mentions one location several times, Carstairs. While this may be based on the necessary renewal of track the opportunity for journey time reductions (less than a minute??) is emphasised. Various stakeholders, including HS2, are mentioned but not the local community, economy or even the State Hospital. Successive ScotRail franchises have been instrumental in re-instating train services for Carstairs and the Clydesdale District. These services are essential for the local economy. The local communities must be involved in any decisions which could, once again, lose or threaten these train services. Neither is there any mention of this station’s capacity and importance in maintaining a wider service across Southern Scotland at times of operational disruption elsewhere.

ELECTRICITY POWER CHARGES: The increase in costs of traction electricity are mentioned and that these are beyond the control of Network Rail. There is a wider concern that reducing carbon emissions will increase electricity cost for all users. However, the point here is which transport modes will be cost disadvantaged most? There seems every likelihood that increasing electricity charges will disadvantage rail sustainability against road travel and, particularly, road haulage.

Ralph Barker

Treasurer, Railfuture Scotland

31st August 2018

30 August 2018

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ORR CONSULTATION: 2018 PERIODIC REVIEW; ORR'S DRAFT DETERMINATION SUMMARY OF CONCLUSIONS FOR ENGLAND AND WALES

1. INTRODUCTION

1.1 This letter constitutes the response from the Railway Industry Association (RIA) to the above consultation published in June 2018.

2. BACKGROUND TO RIA

2.1 RIA is the trade association for UK-based suppliers to the UK and world-wide railways. It has 215+ companies in membership covering all aspects of rolling stock and infrastructure supply and covering a diverse range of products and services. As well as the vast majority of the larger, multi-national companies, 60% of RIA's membership base is comprised of SMEs.

2.2 The Oxford Economics 2018 report shows that the UK rail sector contributes annually over £36 billion Gross Value Added (GVA) to the UK economy, employs 600,000 people and generates £11 billion in tax revenues. It is also a growing industry with the numbers of rail journeys expected to double in the next 25 years along with significant growth in rail freight traffic. The full report can be accessed via the following link: https://www.riagb.org.uk/RIA/RIA_new/Press/Oxford_Economics.aspx

2.3 RIA provides its members with extensive services, including:

- Representation of the supply industry's interests to Government, Network Rail (NR), TfL, HS2, ORR and other key stakeholders
- Providing opportunities for dialogue and networking between members, including a number of Special Interest Groups
- Supply chain improvement initiatives
- Provision of technical, commercial and political information every week
- Export promotional activity, through briefings, visits overseas, hosting inwards visits
- Organising UK presence at exhibitions overseas.

Executive Summary

- **We welcome both the approach of a more robust SoFA calculation and the additional money allocated to renewals in the Draft Determination (DD), but if we are to deliver renewals as efficiently as possible during CP6, it is crucially important that the profile of renewals expenditure is both smooth and visible and not 'feast and famine' like previous Control Periods. To that end, we also welcome ORR's request of NR to review and smooth its expected CP6 renewals profiles. It is also important that, collectively, the industry reacts positively to the recent Transport Select Committee recommendations on this issue (paras 4.1-4.5).**
- **Whilst we appreciate this consultation is restricted solely to Operations, Maintenance and Renewals (OMR) expenditure, RIA remains concerned at the lack of visible pipeline of enhancement projects. We will also cover this point in our response to the parallel ORR**

consultation on ORR's role in enhancements in CP6 (para 4.9).

- **We are concerned at the proposed reduction from £440m to £100m in the CP6 R&D funding allocation. The supply chain's willingness to co-fund is demonstrated by the £29m co-funding in the CP5 programme and the £64m committed to UKKRIN but there is now a risk that that supplier co-funding will be drawn to co-fund the NR programme to the further detriment of non-infrastructure and cross-industry R&D (para 4.10).**
- **Engagement with suppliers by the Routes during the preparation of their respective Strategic Business Plans was sporadic and inconsistent. We would suggest that, in future, ORR monitor this aspect of the SBP planning process more closely (paras 6.1-6.3)**
- **We are aware that there are aspirational targets for the share of supply chain work passed through to SMEs, but these do not seem to be being measured by NR in a comprehensive or consistent way. We suggest that ORR might want to look at how it monitors NR's performance here (para 7.2).**
- **We believe it is vital that Network Rail has appropriate flexibility to move funds between budgets, both in times of financial years and Routes. Without such flexibility we run the risk of having a re-run of the renewals problem in CP5, where lengthy lobbying was required to gain approval for NR to vire an additional £200m into the CP5 renewals budget (paras 8.1-8.2).**

3. FORMAT OF SUBSTANTIVE RESPONSE

3.1 As requested we are structuring our response letter along the lines of the pro-forma supplied. We have responded only to those subject headings of major concern to us.

4. ORR'S APPROACH TO PRODUCING NETWORK RAIL'S DETERMINATION AND TO REGULATING NETWORK RAIL IN CP6

A More Robust SoFA

4.1 We understand that, for Periodic Review (PR) 18, the publication of Statement of Funds Available (SoFA) was made several months later than had been the practice for earlier PRs. The purpose of this, we believe, was to enable ORR to do more efficiency analysis at the front end of the process and to therefore arrive at a more robust SoFA which, hopefully, will be subject to less significant change throughout the remainder of the process until the Final Determination (FD) is made. Assuming that to be correct we believe that this is a much more sensible approach and that it should be applied in future PRs. The potential benefits of this in smoothing renewals work profiles in discussed more fully in para 4.4 below.

Smoothing the Renewals Work Profile

4.2 We were pleased to see that the DD includes a commitment to increased renewals expenditure (now roughly £18bn we believe for CP6) and also that it remits NR to establish a smoother work profile within CP6 and an orderly transition into the following CP.

4.3 RIA has made it clear for a number of years via numerous submissions and consultation responses (most recently in our response to the Network Rail Strategic Business Plans consultation and our submissions of 15 December 2017 and 26 April 2018 to the Transport Select Committee (TSC) hearings on Rail infrastructure investment) that a smooth profile of renewals work is essential because it:

- Allows suppliers to deliver more efficiently (we believe between 10-30% of cost can be stripped out by have a stable predictable pipeline);
- Provides the confidence for suppliers to invest in the necessary people, processes and plant to improve productivity and deliver more effectively; and
- Provides confidence for SMEs who otherwise have very little visibility of forward workload.

4.4 RIA advocated in its submissions to the TSC that DfT should bring together key stakeholders to address and fix this renewals pipeline issue and in its response, the TSC said,

> *"We support the Railway Industry Association's call for the Department for Transport to bring together all the key stakeholders, including suppliers, Network Rail and the Office of Rail and Road, to evaluate the effects of the current system on the renewals spending profile. This process should identify and implement a mechanism by which investment can be smoothed out from the start of control period 6 in April 2019, throughout the period and beyond".*

The DfT will be responding shortly to the TSC recommendations and we are already in discussions with it about taking this forward. We look forward to working constructively with ORR on this too.

4.5 We mentioned in paragraph 4.1 our support for the more robust SoFA process undertaken for PR18. Looking further ahead, we believe that continuation of that process into further CPs should allow, at the same time, or very shortly after, the SoFA is published, a minimum 'baseline' of renewals activity to be established for each year of the relevant CP. This will give NR the confidence to plan and suppliers the confidence to invest (in that context, we currently see limited evidence of advance design work for CP6 suggesting a continuation of the traditional slow start). This will be one of the options, but not necessarily the only one, to be discussed as part of the dialogue mentioned in 4.4 above.

4.6 With specific regard to monitoring renewals profile performance in CP6, we welcome the fact that ORR will be taking proactive measures to evaluate NR's progress, and is booking access in sufficient time to enable the required renewals to be carried out as programmes. We believe that, as well as this proactive measure, there also needs to be a lag indicator showing NR's actual performance against programmes in renewals delivery; and we would welcome ORR taking a lead on this too.

4.7 With Routes taking greater ownership of their budgets and delivery it is not clear to us who within NR will be taking responsibility for looking at progress of the delivery of the overall renewals programme – early warning of potential problems/significant changes in volumes would be very important to the supply chain. Perhaps ORR could consider this if it is not already doing so – we would welcome further discussion on how we might tackle this together.

Digital Railway Signalling Renewals

4.8 Of the roughly £5.5bn expected to be allocated to overall signalling renewals for CP6, only £764m has been earmarked for full Digital Railway (DR) signalling. Work done as part of the Sector Deal suggests that a target Signalling Equivalent Unit (SEU) rate of £230k is deliverable and creates an opportunity to accelerate the roll-out of DR and deliver in CP6 a larger proportion of the bow wave of signalling work that would otherwise occur. In order achieve this smoothing the team believe that an allocation of £2.3bn for DR signalling in CP6 would be more appropriate and would allow suppliers to ramp up in a planned manner. RIA led the Sector Deal work on this and would very much welcome the opportunity to discuss the options around how we might increase the DR signalling allocation for CP6.

Treatment of Enhancements

4.9 For the first time, the DD for PR18 does not deal with enhancements because responsibility for funding these now rests with DfT and they will be subject to a rigorous stage gate approval process. Whilst we fully understand the need for appropriate checks and balances to be applied to Government funded projects, our concern is that this will delay enhancement schemes coming to the market in CP6 – particularly when viewed alongside the fledgling process for attracting third-party funded enhancement schemes. Our concern is that, although the increase in renewals funding is very welcome, the likely hiatus in enhancements is problematic in that multi-disciplinary enhancements requires slightly different skillsets to the largely single-discipline renewals. The risk therefore is that any enhancements hiatus could compromise the retention of the multi-disciplinary skillsets required to deliver them – if unused they could well look to other rail clients, other sectors or indeed move overseas which would create a longer-term problem. We will deal with this more fully in our response to your parallel consultation on Enhancements in Control Period 6.

R&D Funding

4.10 Whilst welcoming the additional money allocated to renewals we are concerned by the reduction in the DD from £440m for R&D for the whole of the industry to £100m focussed solely on the infrastructure needs for R&D. This we believe will produce an unintended funding gap in rail R&D funding, likely to result in a significant reduction in cross-industry research and development – eg there would now no longer remain a significant source of 'pump-priming' funding available for rolling stock or train operations. In turn this would dramatically reduce the ability of suppliers to undertake high risk leading-edge developments in these areas and therefore adversely impact their ability to contribute to vital cross-industry research programmes – and this particularly affects SMEs. There is therefore an urgent need to identify potential additional sources of funding to support non-infrastructure rail R&D and, given that the railway is a 'system', to ensure optimum benefit from the above £100m allocated to infrastructure R&D. RIA's Technical Director David Clarke wrote in more detail to John Larkinson at ORR on 21 August outlining our concerns and to initiate discussions to see how this R&D gap can be closed.

5. ORR'S REVIEW OF NETWORK RAIL'S NETWORK LICENCE

5.1 Given the move towards increased devolution to the Routes we welcome the proposal to strengthen the need for all NR to comply with the relevant standards.

6. ORR'S REVIEW OF STAKEHOLDER ENGAGEMENT

6.1 We have mentioned in previous submissions our disappointment that there is little direct reference to suppliers or the supply chain in these ORR consultations. It is therefore particularly concerning to note that in the second bullet of paragraph 4.6 on page 34 says with reference to stakeholder engagement in the production of the Strategic Business Plans (SBP), that "there was engagement with a good range of stakeholders, including passenger and freight operators, national and local funders, passenger and freight end-user representative groups, local authorities and local enterprise Partnerships (LEPs)". The absence of suppliers or the supply chain in this list is a notable and significant omission.

6.2 We believe that to help produce robust and credible SBPs, dialogue with the supply chain would be an obvious requirement. It is difficult for RIA to say that there was no such dialogue at all, but if there has been, we have seen very little evidence of it. Indeed, at the recent joint RIA/CECA Draft Determination event, at which John Larkinson spoke most effectively, when asked if they had been consulted during the production of the SBPs only one out of an audience of about 40 suppliers said that they had had any significant dialogue with NR during the SBP production process.

6.3 Clearly, this cannot be corrected retrospectively but going forward we would once again stress most strongly that the supply chain, in its role as a NR delivery agent, should be viewed as a key stakeholder as part of this process and that ORR must include the supply chain as part of its stakeholder engagement review. We would welcome the opportunity to discuss this with ORR further and would be very willing to facilitate such engagement in future.

7. ORR'S REVIEW OF NETWORK RAIL'S SCORECARDS AND REQUIREMENTS

7.1 RIA has already made the request in paragraph 4.6 above, for ORR to monitor NR's renewal delivery against programme and we would be happy to talk with ORR further about this.

7.2 Additionally, RIA's SME companies are an integral part of the supply chain and their need for visibility of workbank has already been mentioned in the final bullet of paragraph 4.3 above. There are various Governmental aspirational targets concerning the proportion of work that should flow down to the SME community. Whilst this is a helpful acknowledgement of the importance of the work they do and the innovative approaches they can bring to efficiency, we do not believe that this is being monitored very scientifically, if at all. We believe that ORR might want to address this aspect in respect of NR and would be happy to discuss this further with you and NR (perhaps with NR Commercial Projects Director, Infrastructure Projects, Stephen Blakey, who is a regular and willing attendee at RIA's bespoke SME Group).

8. THE FINANCIAL FRAMEWORK FOR CP6 AND AFFORDABILITY

8.1 We have already raised in our response to the SBP consultation, and at the joint RIA/CECA event mentioned above, our concern regarding NR's potential lack of budgetary flexibility in CP6. Whilst we clearly understand the need for a very clear accountability regime following reclassification, we believe there is still a risk that the flexibility proposed in the DD may be a constraint on efficient delivery.

8.2 In particular, we note in paragraph 4.12, sub-paragraph (c) of page 35 of the Supplementary document - financial framework, that NR can "bring forward up to 10% of capital expenditure for a future year to an earlier year (**but not the year in which the request is made)** subject to consultation with DfT early enough for DfT to submit a request to HMT at least six weeks ahead." The above highlighting is ours. Our concern here is that should we have a similar issue with renewals funding as we did in CP5 we would not, on the face of it, be able to bring forward money to help keep renewals moving during that current year. As you will no doubt recall, the sector had to lobby hard to gain the extra £200m for renewals in CP5 which was a time-consuming process, so we believe there is a potential risk here. We do understand that part of the reason for such strict governance is to ensure that adequate planning is undertaken to reduce such risks, but we would welcome the opportunity to discuss this further with ORR.

9. CONCLUSION/NEXT STEPS

9.1 We hope this submission is helpful. There are a number of areas above where we have said we would welcome further discussion with you and, if you agree, we will set up a bilateral with John Larkinson to do that.

9.2 In parallel with this submission we are also responding separately to ORR's consultation on 'Enhancements in Control Period 6 – Roles and Responsibilities'; and it would make sense to also include in any discussion the issues raised therein.

9.3 We are of course ready and willing to discuss any part of this submission with you at any time.

For more information, please contact RIA Policy Director Peter Loosley.

RSSB Response to ORR PR18 Draft Determination – Research and Development

Draft determination's effect on R&D within the industry.

The approach the regulator has taken to bids for Research, Development and Technical (R,D & T) funding, as part of the CP6 determination, seems to us to be short term, solely focused on Network Rail (NR), and signals lower overall investment in R,D&T than in CP5. The Rail Technical Strategy (RTS) was conceived as the way in which cost reduction, performance and sustainability in the rail industry would be improved over the next 30 years but the draft determination does not enable the RTS to be delivered as envisaged by the rail industry to secure its long-term future. Confining the investment to NR alone will not achieve industry or political sustainability and affordability objectives.

Purpose and Level of R&D Investment

The initial industry advice to DfT anticipated that the industry bid for R&D funding should be included in the NR Strategic Business Plan for the benefit the entire industry. The regulator appears not to have interpreted it this way, seeing it NR's R&D funding requirement. Consequently, Network Rail is focussing on activity that generates benefit within CP6 to its business alone.

This decision is at odds with the industry's view of what is required to secure the long-term future of rail.

It is our view that the regulatory settlement that deals with R&D should be for the whole industry, not only for NR. The regulator must reflect this longer-term whole industry view in its determination.

Enabling Future Benefits

Industry Investment in R&D is vital to deliver capabilities and benefits the railway needs to be sustainable and affordable in the future. Confining funding to NR alone will not achieve this.

Greater investment in R,D&T is required to extract more capacity from the existing network. Again, this will not be achieved by channelling funds exclusively to NR.

Signals to Industry

In real terms, £100m represents a decrease from the R&D funding spent in this control period. During this time the industry has undertaken a significant alignment of R&D activity and has united behind a single industry plan in the RTS:CDP.

Setting a low 'initial' fund of £100m in CP6 sends a damaging message to the industry and the supply chain. It intimates that the government and regulator are no longer serious about building an improved railway and supply chain for the future,

This messaging will switch off investment in R&D and, in effect, reverses the gains and momentum achieved in CP5.

Prioritisation and Risk

Substantial and sustained investment in R&D at the industry level is vital if the railway is to meet the challenges it is facing in CP6 and beyond. It is needed if the rail industry is to contribute effectively to alleviate broader societal challenges.

Without this investment the industry will not be able to deliver affordably the capacity needed to service demand without building costly new infrastructure.

Maintenance of the existing railway will become unaffordable without new technologies and approaches that can only be made available through R&D. Investment in R&D will need to rise sharply to accelerate the delivery of solutions to the railway's challenges

R&D investment in the wider elements of the RTS:CDP is vital to the success of other industry initiatives. This includes Digital Railway and the development of per second timetabling through automation proposed by NR SO. We understand this is agreed in principle by ORR.

Governance and Matched Funding

Other parts of industry have been shown to be highly effective in managing R&D and innovation spend and in attracting third party match funding, something NR must develop experience in.

RSSB shares the regulator's view that governance of R&D spend must be rigorous and robust with strong and effective governance. Our experience is that successful R&D relies on: collaborative working; a whole systems approach - with strong levels of cooperation across the industry; and strong industry sponsorship.

Recommendation

We believe it essential that the regulator provides leadership with others in the industry to establish long-term cross-industry R&D in CP6 and beyond. Without clear signals to the industry, incorporated within the determination, there will not be sufficient impetus generated to engineer long term reductions in cost that are so urgently needed.

In the light of the very disappointing allocation of funds for R&D we ask ORR to question the DfT whether;

- A proportion of the SoFa funds could be extracted from NR and re-directed to another body to deliver those elements of the RTS which are now unsupported.
- NR can be directed to provide funds for the unsupported elements of the RTS from its overall CP6 allocation.
- The overall governance arrangements within the industry for delivering the RTS remain fit for purpose.

Without action on these issues the RTS, outside of NR, will wither and die. The regulator has within its power to influence the DfT and industry to act and ensure that this does not happen.

RSSB's response to ORR's consultation on changes to Network Rail's network licence conditions

08 August 2018

V1.3

Foreword

This document provides RSSB's response to the consultation on the Office of Rail and Road's (ORR's) proposed approach to reviewing Network Rail's network licence for use at the start of Control Period 6.

RSSB particularly welcomes and supports ORR's proposals:

- To update licence condition 22 - Network Rail's obligations to comply with specific standards.
- To emphasise that all parts of Network Rail including the routes must comply with relevant standards and the alignment of this condition with RSSB's standards framework.

These proposals provide a good alignment with the standards framework and are consistent with the views expressed by our members at the senior industry standards meeting – the Industry Standards Coordination Committee (ISCC).

This paper is set out in six sections:

- About RSSB and its role in standards development
- How the standards framework has evolved
- What RSSB has done to increase industry's awareness of the standards framework and legal obligations
- Response to the proposal to update licence condition 22
- Recommendations

About RSSB and its role in standards development

Through research, standards, analysis and insight, RSSB supports our members and stakeholders in driving improvements in health and wellbeing and delivering a safer, more efficient and sustainable rail system.

RSSB provides industry with a clear framework to help them apply standards, rules and guidance, and to take full advantage of the requirements and agreed best practice they contain.

This framework helps rail companies to comply with the law and work effectively with each other, reducing costs, boosting sustainability and removing barriers to open markets for railway products and services.

Industry requires standards when:

- An appropriate authority has determined that a standard must be complied with under specified circumstances, for example Railway Group Standards (National Rules).
- It needs a recognised method of meeting a requirement that must be complied with, that is, something whose use gives a presumption of conformity with that requirement, for example Rail Industry Standards.
- There is an economic benefit in providing requirements that set out a way of doing something to promote a consistent approach and avoid duplicative effort, for example Rail Industry Standards.
- It needs access to useful information or recognised good practice, for example Rail Industry Guidance Notes.

Standards provide economic and technical benefit by pooling knowledge, supporting management of risk, fostering collaboration and facilitating innovation.

RSSB's role in the framework involves using our technical and governance expertise to bring the industry together and, facilitate collective decision-making on the content of relevant standards via various representative groups and committees.

How the standards framework has evolved

The standards framework has evolved in line with the changes to the legislative framework where the need to comply with standards is given force by different means, depending on the appropriate authority that requires compliance. These are:

a) European wide Regulations, such as Technical Specifications for Interoperability (TSIs), Common Safety Methods (CSM) and national laws, such as Acts and Regulations.

b) National Rules imposed by law in specific circumstances – these include those contained in Railway Group Standards (RGSs) which are applicable on the GB mainline railway network.

c) Requirements which are industry agreed good practice which can help companies meet their legal and other obligations <u>but are not directly imposed on companies via legislation.</u> *These requirements are imposed by companies on themselves, their staff and their supply chain through Safety Management Systems (SMS), specifications and third- party contracts – these include requirements in Railway Industry Standards (RISs).*

d) National Operations Publications (NOPs) such as the Rule Book which provide instructions to staff and are needed to operate the railway efficiently and safely as required in law.

e) Guidance that supports compliance with the requirements in a) b) c) and d) above – including Guidance notes and best practice issued by the regulator, RSSB, industry associations and bodies.

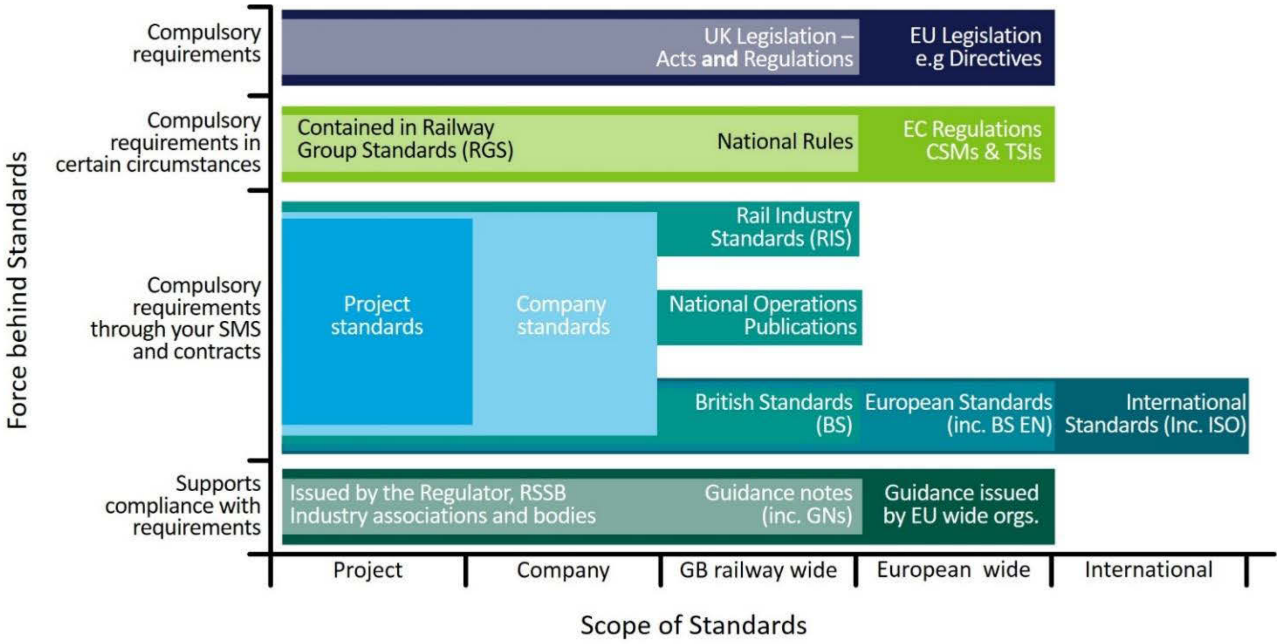
The rail industry has adapted in most of the areas but has often not fully understood c) especially the status of RISs and the need to consider and use such standards. There have been suggestions that even though these standards are agreed and approved collectively by representatives of each constituent area of the sector, their use can be ignored as they do not have the same legal status as RGSs.

This view often ignores the obligations under Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) which place requirements on Infrastructure Managers (IMs) and Railway Undertakings (RUs) to include in their SMS, procedures for identification of [all] relevant standards and assessment of their applicability according to their activities.

There is also concern that the level of regulatory monitoring these standards receive from the ORR is lower than the monitoring afforded to RGSs. These views undermine the value of such standards which contain very useful, GB-specific good engineering, operations, and management practice.

This flawed assertion that 'only compulsory RGSs matter', has also meant that there has sometimes been a reluctance to limit National Rules contained in RGSs to their agreed legal scope because of the flawed view that only standards made compulsory by law or licence will be used and applied.

The diagram below illustrates the scope and force of standards under the current legal framework:



What RSSB has done to increase industry's awareness of the standards framework and legal obligations

RSSB has in the last two years conducted many briefings and workshops (approximately 75 across the industry to over 1200 individuals) to help increase awareness of the standards framework and legal obligations in general. We have also improved our website and now provide videos to help enhance understanding of the standards framework and legal obligations. Our 27-minute legal framework explanatory video has had over 25,000 views over 12 months.

In addition, RSSB held two industry workshops (one for ISCC members and one for conformity assessment bodies) to consider how to address the gaps in knowledge and understanding about:

- The current standards regulatory framework
- The use and application of all types of standards
- The ability to assess applicability, suitability, use and application of RISs compared to RGSs that contain national rules.

The workshops identified various challenges, one of which related to the work carried out in the past two years to clean up RGSs to align with requirements that are held elsewhere, such as European standards legislation, including the withdrawal of RGSs containing National Safety Rules (NSRs). Those requirements that were considered useful have been retained and published as RISs. However, this work has highlighted industry's misunderstanding of the force and scope of RISs.

Based on the feedback from the briefings and workshops, RSSB tabled two papers with ORR's input and cooperation to ISCC in March and May 2018.

The March paper highlighted the need to increase the scope of the licence conditions to acknowledge standards beyond RGSs and, set out specific expectations the regulator has of licence holders in terms of how these standards are to be applied. ISCC supported including explicit reference to other applicable standards in the licence conditions.

The May paper provided clarification on the applicability of RGSs under the Interoperability and licence regimes and when compliance becomes compulsory. This paper presented options to explicitly extend this applicability assessment to other standards beyond RGSs such as RISs.

Response to the proposal to update licence condition 22

The recognition in licence condition 22 of the need for industry to identify and comply with other applicable standards or be able to demonstrate adoption, (in consultation with affected parties), with an equally effective means of meeting the purpose of the standard, is welcomed and supported by RSSB.

This specific change recognises other industry agreed standards such as RISs, and the need for licence holders to use RISs or something equally effective based on consultation with others.

Recommendations

In addition to the proposal to update licence condition 22 which we support, we also recommend that the ORR:

a) Continues to emphasise the role of RGSs as National Rules and the need for the sector to continue to constructively work with RSSB to align the standards framework with the legal regime.

b) Continues to promote a risk-based application of requirements and standards rather than a 'compliance culture' focussing on compulsory standards only.

RSSB for its part will continue to promote standards as a force for good and, carry on our efforts to increase awareness of the regulatory framework and the correct application of standards. We value and wish to keep working closely with the ORR on these matters, assisting where required to address challenges and opportunities related to standards.

Response from Mr. Roy Freeland (Perpetuum Ltd)

Dear Sir

I would like to express concern over the level of R&D expenditure proposed.

There is a severe shortage of research funding available for SMEs supplying the Rail Industry.

This is made worse by BREXIT which is likely to exclude us from future EC funding. Also we are seeing Innovate UK and DfT cutbacks in funding competitions for the rail industry.

My own company has been extremely successful using such grants to speed up developments and put us in a world leading position in train and track monitoring systems. These systems are not only having a major impact on reducing operating costs and improving reliability and safety in the UK but has also made us a major exporter worldwide with a significant increase in UK employment.

The UK rail industry needs to improve – it cannot do this without funding and support for technological improvements.

Please reconsider the proposed cut in R&D spend in CP6. The Rail Industry has made substantial commitments to R&D and the Government must do the same.

Sincerely

Roy Freeland

President, Perpetuum Ltd

Unit 7, The Quadrangle,

Abbey Park Industrial Estate,

Romsey. SO51 9DL

Response from Mr. Simon Babes – Movement Strategies

A short note to express our concern regarding the reduction of R&D funding in the CP6 Strategic Business Plan from the original £440m to £100m, which we understand will be directed towards NR's infrastructure priorities.

We like to participate in collaborative co-funded R&D programmes, operating as part of a team of SMEs, academic institutions and larger organisations because it not only builds our capabilities, but it creates new partnerships and visibility for us in the industry. There are plenty of opportunities to advance R&D initiatives relating to rolling stock in our area of expertise, which is the use of data to (i) better understand passenger behaviours and (ii) to develop strategies for delivering improvements to passenger journeys.

We are members of RIA and we're supporting their initiative to engage with yourselves, BEIS and DfT, discussing the reduction, the likely implications, as well as some potential ideas.

Regards

Simon Babes
Managing Director

Movement Strategies
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Periodic Review 2018 team
Office of Rail & Road
One Kemble Street
London
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Sent via email to: pr18@orr.gsi.gov.uk

31 August 2018

Dear Sir/Madam,

Periodic Review 2018, Draft Determination: London & South Eastern Railway Limited's response

London & South Eastern Railway Limited (Southeastern) has been running the train service between London and Kent and parts of East Sussex since 2006. We operate one of the busiest networks in the country including the UK's first domestic high-speed service with Javelin trains.

Southeastern is operated by Govia, a joint venture between leading transport operators Go-Ahead (65%) and Keolis (35%).

Thank you for providing ('Southeastern') with the opportunity to comment on the draft determination for CP6. Our response is the culmination of industry engagement firstly led by Rail Delivery Group in 2015 and built on locally with positive engagement with the Network Rail South East route in working to understand the draft determination and the effect that this will have on Southeastern. The response below outlines the areas of key concern or support. Some of them reiterate concerns that we raised during the Network Rail Route Strategic Business Plan consultation period which have not been addressed in the Draft Determination.

Where Southeastern has assessed the Draft Determination document and associated papers, we have compiled our response into the sections as laid out in the response proforma on the ORR website.

There is no part of this document that should be considered confidential for the purpose of publication on the ORR website.

Our review of Network Rail's scorecards and requirements

Performance Metrics

The Southeastern joint performance team has worked to collate and verify the inputs into the CP6 performance model. Whilst Southeastern understands the quantification, assumptions and model, we do not support the low trajectory that Network Rail aims to deliver in terms of performance for Southeastern in CP6 and believe that Network Rail should have a higher target to aim for. In addition, we believe that P50 is in line with industry standards and we support the move by the ORR to align this across the rail network.

Our view on the regulatory floor is that we are supportive of having this measure, but we believe that 30% is not tight enough to incentive Network Rail to deliver, at least in line with, their trajectory. As this is a new measure, Southeastern would support this being reviewed on a more frequent basis than every Control Period to ensure that sufficient action is being taken where necessary in the event that performance outputs are below expectations.

For reactionary delay, Southeastern are concerned that this measure may incentivise Network Rail to cancel services during peak hours to recover more quickly to reduce overall reactionary delay; particularly if reactionary delay will be a published measure. It is therefore important that there is clarity over the off-peak/peak split of cancellations for reactionary delay, and that Network Rail are not incentivised to cancel services during the peak. Service cancellations, particularly during the peak, lead to more overcrowding and a reduction in overall passenger satisfaction. We believe that the drive for investigating poor reactionary delay should be led by the Train Operator, and that consideration should be taken by the ORR as to how this can be linked into passenger satisfaction scores (through NRPS).

In terms of NRPS, there are still differing industry views as to how performance and NRPS are aligned, and we wish to continue to work with the South East route to ensure that our methodologies are aligned.

Southeastern would like to see the ORR set a specific final determination in terms of funding and outputs for the South East route. This will ensure certainty for Southeastern and give a minimum level of spend to strengthen reliability across the route.

Performance Plans and Improvements

As you will be aware, the Southeastern franchise is expected to change on 1 April 2019. This gives the challenge that there are no confirmed TOC performance plans and therefore those that have been included have been estimated based on the DfT ITT.

Southeastern welcome the creation of an innovation fund, but our view is that £10m is too small for a national fund. Due to the small scale, we don't believe that we would sufficiently benefit from this. Southeastern would also not support the majority of this money being moved into Opex funded schemes, and we believe that the fund requires an approvals process which involves the Train Operators through, for example, the Partnership Board or Alliances.

We are disappointed that all the additional vision schemes were not funded in the draft determination. However, we do support the South East route in their prioritisation of these: recognising that track and structures require significant improvement which will go some way to reducing TSR numbers and stabilising performance. We would like it recognised, however, that these will not deliver a performance improvement that will be expected with the new franchise – and which the £166m unfunded performance improvement fund would go some way towards addressing.

Recent events have also led Southeastern to believe that more funding is required for trespass and fatalities: some of which we believe to sit within the safety improvement vision fund. We would like to see additional funding spent in this area to address the issues we are currently facing.

In terms of weather resilience, Southeastern are supportive of the increase in funding allocated towards drainage, but don't believe this goes far enough in addressing the risk sites of concern. We also believe that conductor rail heating installation and renewal needs to be funded, but do support the increase in vegetation funding providing that Network Rail can evidence this has been spent in priority areas. Currently Network Rail fund the fleet-fitted anti-icing system in place over Winter and we require this to continue into CP6 as this is used to support the South East winter fleet.

Southeastern welcome any improvements from Network Rail in terms of response, particularly in the 0-8 mile range of London termini.

Charges and contractual incentives in CP6 / The financial framework for CP6 and affordability

Schedule 8

A reopener for Schedule 8 must be considered and available if required in CP6. For Southeastern, there are many significant changes and unknowns expected at the start of, and into, CP6 which will have an impact on performance; for example, the franchise change, and further Thameslink timetable changes. Having a reopener available is key to ensure that the railway industry can respond effectively to these changes and have neither side significantly advantaged or disadvantaged as a result.

To ensure robust alignment to the scorecard process, we would also welcome an investigation by the ORR into how a Schedule 8 mechanism can be aligned to an agreed target between the operator and Network Rail. This is so that it can be flexible enough to be altered should a target be amended for an upcoming year.

Access and Schedule 4

We believe that Network Rail must have the ability to access all parts of the Railway to allow regular maintenance to take place. When planned correctly, Southeastern are supportive of these access requirements, and encourage the ORR to develop a more robust mechanism to allow Network Rail to enforce this access where the overall benefit will be to the end users of the Railway.

Southeastern have reviewed the proposed changes to the Schedule 4 discounts and believe that having the same discount factor at T-22 and D-26 does not give Network Rail sufficient incentive to finalise access plans and proposals early. Whilst we recognise that this has been done to try and align with the passenger journey, Southeastern requires time to turn the proposed possessions into a deliverable train service plan: which T-22 will not give. We therefore object to the proposed changes and would also welcome an additional discount factor prior to D-26 to give earlier certainty of the final engineering plan.

In the event of infrastructure failures after restriction of use events (under Schedule 4), customer compensation is a significant cost and revenue loss. Currently this is not recognised when settling restriction of use claims and the ORR are not proposing to change this in CP6. Customer compensation has been built into many franchise specifications, and will be at the 15 minute delay repay threshold in the new Southeastern franchise specification commencing at the start of CP6. We are therefore disappointed that for CP6, the ORR has not ensured that the contracts will be adapted to ensure Train Operators are sufficiently compensated to include these losses, which we do not believe the current or future proposed unchanged regime does.

We note that in the draft determination, on page 74, it states that "South East had broadly agreed access arrangements and so focused on ramping up delivery for the start of CP6 by setting up a mobilisation team". However, no access has been agreed by Southeastern in advance of the standard industry EAS process, and there is insufficient detail from Network Rail to enter into conversations around later years. Going into CP6, we believe the current process and principles for agreeing access through the EAS process will continue. Southeastern have also assumed that the overall level of access that the South East route will require will be the same, or less, than the current access demand.

Other charges and incentives

It is not clear from the Draft Determination how the uplift in Fixed Track Access Charge is derived. From the impact statements ORR had commissioned; it was set out that Southeastern can expect a 16% increase in FTAC in CP6 compared to CP5 (excluding indexation). We understand that the capacity charge shall be abolished in CP6 and we welcome that this will be levied through the suite of fixed charges, but it remains unclear how any increase in FTAC is made up of;

- Southeastern's usage of the network in terms of train mileage and impact on assets
- Specific impact of geographic disaggregation (use of a high-density network)
- How abolished charges are now reflected in FTAC in CP6, such as Capacity Charge

Depots

We consider depots and stabling facility investment to be a priority spend for safety reasons. We also require the ORR to ensure that broader future stabling requirements are considered by Network Rail to ensure that suitable future stabling sites are protected from asset sales.

We welcome a commitment from Network Rail to continue to work with Southeastern to refine the depots and stabling workbank to ensure that it meets user requirements, and to ensure that concerns raised through the SBP consultation period can be resolved.

Southeastern also want to note that the safety constraints across the depot and sidings estate are significant. These should be assessed by the ORR and DfT to ensure the funding allocated to Network Rail to address these aligns with the requirements within the new franchise. In addition, Southeastern are under current ORR enforcement action around safety at depots. We are therefore concerned that the funding set aside by Network Rail is insufficient to ensure this is adequately addressed in depot and sidings maintenance and renewals within CP6.

When undertaking works within depots or sidings, provision needs to be allocated to ensure that the railway can continue to operate as normal and therefore Network Rail must ensure adequate funding is in place to cover additional costs associated with using alternative locations or arrangements. This will also apply when undertaking other types of work elsewhere around the network.

Comments on System Operator and Enhancements

Capacity Planning

The System Operator draft determination notes that the capacity planning headcount will change over CP6 and we understand that this is to support the future workload of the team through the calendar of events. However, the large 2022 timetable change expected within the new Southeastern franchise is not listed in the calendar. Please can you confirm whether System Operator is resourced sufficiently to cater for this change?

With the T-12 review currently ongoing, Southeastern would like to understand how the outcome of this will be considered within the final determination.

Southeastern also request that Capacity Planning resource should be increased to allow for timely processing of a moderate level of "late change" to the engineering work plan. Currently Informed Traveller bids at up to around TW-16 are processed and uploaded to passenger information systems at TW-12, whereas those sent to Network Rail after around TW-16 are not processed until TW-1, with journey enquiry engines not reporting the latest version of the plan until that point.

Southeastern support the development of the whole system modelling programme, but urge that this covers the "whole system" – for example power supply and Level Crossing risk assessments to ensure that as many controllable factors are included and assessed. Where tools are developed, we urge that the capacity planning team is sufficiently resourced to implement the findings of the tools that are made available.

Enhancements and System Operator

Overall, Southeastern is concerned that the additional efficiency challenge may lead to a drive to remove any performance improvements, through value engineering, of any project. We would encourage the ORR to review this area in advance of the final determination, and in their ongoing assessment of Network Rail's project delivery.

Separating out enhancements, or any improvement to the infrastructure, from renewals may create a very complex process in proportion to the size of additional investment required to deliver a large benefit. Therefore, we encourage the ORR, alongside DfT, to review again how to ensure that small incremental costs which deliver an improvement (hence enhancement) can be funded more easily, ensuring that the Railway does not miss opportunities whilst carrying out work. This will also deliver overall passenger improvements through less access requirements with less disruption to passengers.

For line speed enhancements, Southeastern has been working in partnership with Network Rail to deliver some improvements for Kent County Council. This has proven that consideration must be taken at an early stage as to how the improvements can be realised and needs to be done alongside the operator. The draft determination focuses more heavily on ensuring linespeed improvements across Scotland, but we urge the same rigour to be applied to give improved linespeeds within the South East route.

In terms of Continuous Modular Planning, Southeastern support the principles behind this and welcome the opportunity to work with Network Rail to shape future enhancements across the Southeastern network to improve services for our passengers. Within the draft determination we note that Network Rail are sufficiently funded to carry out this activity, but also wish to highlight that this needs to include provision for Train Operators to work alongside Network Rail in carrying out this activity such that the correct specifications can be designed and agreed at the earliest opportunity which will reduce the potential need for late scope changes, and therefore reduce the risk of cost increases.

Our review of Network Rail's Stakeholder Engagement

Southeastern welcome the continuation of the stakeholder engagement process that Network Rail South East route have undertaken with respect to the business planning process.

If you have any queries on these points raised, please do not hesitate to contact me.

Yours sincerely,

Ellie Burrows
Train Services Director, Southeastern

Copied to: David Statham, Elodie Brian, Jennifer Beston, Stuart Freer – Southeastern
John Halsall, Paul Harwood – Network Rail

[RDG (TLG) letter specifically on R&D]

John Larkinson
Director of Railway Markets and Economics
Office of Rail and Road

Dear John

30 August 2018

Response to PR18 Draft Determination

The cross-industry Technical Leadership Group (TLG) is accountable for delivering the Rail Technical Strategy Capability Delivery Plan (RTS:CDP). This response, from the TLG, regarding the Draft Determination, relates specifically to Research and Development (R&D).

The TLG welcomes the ORR's support for the principles of R&D and its recognition of the downstream benefits of a well-governed and targeted R&D programme. Nine out of the 12 CDP activities should be fully or partially covered by Network Rail's remit and will benefit from rail industry stakeholder's support to deliver maximum value from this investment.

We envisaged more opportunities to add value from R&D and the TLG is pleased to note from the Draft Determination the wording: "*In the event that Network Rail manages risks effectively, this would allow central risk funding to be used to increase spending on R&D over CP6*" and we encourage the ORR to confirm this in its Final Determination.

The TLG understands that Network Rail will be responding to ORR's feedback and will be seeking higher R&D spend for CP6. We support Network Rail proposing an increase in the R&D budget for CP6 but note that Network Rail's response will propose a CP6 total R&D spend of about half of what industry had originally proposed.

The ORR's unease over effective governance of R&D has led Network Rail to conclude that it will govern and deliver the CP6 R&D programme. If this was the intent of the Draft Determination the TLG will work to support Network Rail.

However, while the proposed Network Rail programme covers 9 out of 12 of the RTS:CDP activities - either in full or partially - it will primarily be focused on improving infrastructure asset sustainability, performance, safety & security of the railway and will deliver less than half of the whole-system, cross-industry, collaborative R&D required to fully realise the benefits of the RTS:CDP. This should be a concern to the ORR as much as it is to the TLG. The supply chain shares this concern. Its willingness to co-fund elements of the RTS:CDP plan is demonstrated by the £29m co-funding in the CP5 programme and the £64m committed to UKRRIN. There is now a risk that this funding will be drawn to co-funding the Network Rail programme and thus make it more difficult for other parts of the industry to secure co-funding of R&D activity. There is therefore a gap and imbalance in funding and capability to deliver the R&D required by industry in CP6. This will reduce future benefits.

We urge the ORR to consider a significant increase in the allocation of funds to R&D in CP6 to allow delivery of a broader, cross-industry programme with the resulting future benefits to the railway and the communities, businesses and people it serves.

Yours faithfully

Gary Cooper
(acting Chair of TLG)

Rail Delivery Group Limited Registered Office, 2nd Floor, 200 Aldersgate Street, London EC1A 4HD
www.raildeliverygroup.com 020 7841 8000 Registered in England and Wales No. 08176197

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Caroline Whittam
Job title*	Rail Programme Manager (Operations)
Organisation	Transport for Greater Manchester (TfGM)
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

TfGM understands that Network Rail's re-classification, its move towards greater devolution, and the removal of the enhancements programme from the process has resulted in a significant change in the landscape within which the Periodic Review was undertaken. TfGM is broadly supportive of the ORR's approach given these considerations.

In particular, we welcomed the review's focus on areas which impact passenger and freight customers the most, as well as a desire for greater route level regulation and the need for Network Rail's incentive mechanisms and performance measures to be comprehensively reviewed. TfGM supports bringing decision making closer to rail users and local stakeholders and are interested in how the new System Operator function develops, in order to provide better local focus and autonomy across the organisation.

We would, however, have liked to have seen greater attention given to the needs of regional and third party funders. This is especially important given the devolved nature of the settlement.

As a whole, the process and information provided has been difficult to navigate with a large number of consultations, technical route, and SBP documents. As a result, it has proven difficult to gain an overall picture of impacts where interests stretch beyond route boundaries.

Given the change to Network Rail's operating model, all these arrangements should be regularly reviewed and updated to ensure they continue to produce the right outcomes for customers and funders.

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

We support these changes and they should help clarify the relationship between the System Operator and Routes. We would also hope they assist Network Rail in managing the change to a more devolved structure.

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

TfGM appreciated the efforts Network Rail undertook when consulting during the PR18 process. The formal engagement took the form of two stakeholder workshops allowing for plans to be presented and open discussions to take place. Despite this, the process could have been more collegiate with decisions, with stakeholder involved in the formulation of the plans, rather than consulted once finalised.

In addition, the information provided was at a relatively high level which prevented greater levels of scrutiny. It was frustrating that topics such as timetabling and enhancements were omitted as they were covered by separate processes, i.e. System Operator events. The route level engagement also failed to compliment the current franchise map, an area where progress could be made.

Finally, TfGM would have welcomed Chief Executive level 1-2-1 engagement and understand this was provided to other stakeholders within LNW.

Our review of Network Rail's scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

Whilst we welcome the transparency a scorecard system will bring, we would encourage ORR to adopt more demanding requirements to ensure passenger and operator expectations are met. For example, Northern Trains has a Franchise Commitment for a PPM MMA in 2023/24 of 93.5%, whilst Network Rail are forecasting to deliver PPM MMA above 91.1%, which is potentially below the Franchise Commitment.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

No comment.

Our review of Network Rail’s proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail’s proposed costs and its other single till income.

TfGM generally supports the ORR proposals to:

- use efficiency savings to provide £1bn extra on renewals to reverse the decline in asset sustainability.
- Move £0.8bn risk funds from the centre to the route
- Introduce a Performance Innovation Fund

At this stage, we are unable to provide a detailed response to this section. However on budgetary flexibility we would not want to see cases of a reallocation between routes such that the pre-allocated distribution of funds around the network were to be changed.

The SBP appears to place undue confidence in the role of Digital Railway to address to address the forthcoming large scale signalling renewal programme. There is little in the Plan to provide confidence that the Digital Railway would address this level of renewals.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

ORR has moved from RPI to CPI a move TfGM welcomes given the adoption by government most departments of CPI.

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

We have previously responded to Network Rail’s consultation on methodology for allocating fixed costs to train operators and our key concerns remain valid:

- The methodology underpinning allocation of charges is unnecessarily complex and the lack of transparency makes it difficult to understand the impact on the passenger of changes to charges.

- Changes to the charging regime can have unanticipated consequences on certain operators, leading to inequitable allocation of costs. Our particular concern is around the impact on freight operators and regional operators (e.g. Northern) as they often provide the only service on some sections of the network.
- The allocation of fixed track access charges across operators is inconsistent with the policy applied to other transport infrastructure (e.g. roads), carries the risk of arbitrary changes in allocation for one operator as a result of timetable changes by other operators and creates unnecessary additional cost for service improvements.

We would like to see a simplification of the approach to charging and incentives so that it is more transparent and all stakeholders have a clear understanding of the reasoning behind the value. This would also support more third party investment by having a clear value available during the planning stages and assurance that it won't change, other than by a clearly stated inflation index.

We would also like to see a better link between the charging and incentive regime and the impact that it has on both passengers and freight customers. Within the rail industry there is too much focus on financial transactions and allocations that remove focus away from delivering the intended service and there are occasions where financial incentives encourage behaviour that provides a worse service to passengers or customers.

It is also important that any proposed changes to the track access charging regime must in future take better cognisance of the potential negative impact of such changes on third party funders and on the viability of schemes designed to improve the rail offer to both passengers and freight customers.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.

Scotland

N/A

Freight & National Passenger Operator route

We fully support the principles of having a separate FNPO route as this will allow a greater focus of attention of the requirements of freight operators and national passenger operators. It is essential that the FNPO route has enough authority to ensure that its needs are not treated as secondary to the other devolved routes. We would encourage the ORR to provide close scrutiny, at least until the devolved structure is more established, to ensure that the needs of FNPO are not ignored as a lower priority.

System Operator

TfGM welcomes the clarification of these activities and priorities, and would support a more joined up approach for the North, uniting the routes which make up the franchise areas governed by Transport for the North. Greater understanding of exactly what role the SO plays in this and measures to ensure this is monitored and embedded in the devolved culture of Network Rail would be appreciated.

England & Wales routes

No comment

Any other points that you would like to make

N/A

Thank you for taking the time to respond.

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Carol Smales
Job title*	Rail Development Manager
Organisation	Transport for London
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

As NR was unable to deliver the HLOS requirements during CP5 it is all the more important that its plans for CP6 are deliverable and costed robustly.

The focus has been on whether plans meet the needs of passenger and freight train operators and DfT/Transport Scotland. However there has been little consideration of how the plans meet the needs of regional funders and whether the costs allocated to those bodies are fair and reasonable. We have raised this point in discussion with ORR. The allocation of charges should be cost neutral between funders so that regional funders such as TfL and Urban Transport Groups should but be adversely affected by a change which is outside their control. This will be increasingly important with devolution to the regions.

The approach so far has been rather fragmented with information provided in a number of different documents including route SBPs, the SBP overview and the draft determinations making it difficult for those parties whose interests extend across a number of routes to assess the impact on costs and budget. There is no clear comparison of the difference between CP5 and CP6 costs and charges or the impact on individual operators and funders. This information should be included in the final determination.

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

This section includes comments on ORR's Consultation on the Network Licence

ORR's consultation on the Network Licence includes a proposal to remove licence obligation 8.4

"The licence holder shall cooperate with the Mayor of London and TfL for the purpose of:

(a) ensuring the efficient provision of railway services and of railway facilities; and

(b) coordinating where possible anticipated investment projects to the extent that such matters affect, or may affect, both the licence holder's provision of railway services and those in respect of which the Mayor of London and TfL have responsibility."

on the basis that it is covered by principles of stakeholder engagement in ORR's overall framework.

We object to this change as the proposed replacement is too vague and lacks the proactive requirement of the current condition. Instead the obligation should be strengthened given the devolved structure of NR which puts TfL at risk given the devolved structure of NR.

One issue is failure to agree between the routes and System Operator. This happened recently regarding the Sale of Access Rights where one route raised objections which led to a delay and left the System Operator in a weak negotiating position. Other examples include Tottenham Hale station where NR did not take account of TfL's concerns about the Access for All bridge capacity and Elmers End where NR has tried to pass responsibility for unrelated bridges in order to facilitate the trams project. A stronger licence obligation is required to protect TfL's position. We are happy to provide more detail if required.

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

NR's engagement with TfL was limited given our importance as a funder and specifier of rail services. This was partly because the process was route led and our services are minority operators on a number of routes. The Anglia route engaged with us and we have regular discussions at Chief Executive and Director level but engagement from other routes tended to be in the form of invitations to large stakeholder events. We would have welcomed more focussed technical engagement from NR.

Our review of Network Rail's scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

Operators and NR have in many cases failed to reach agreement on performance trajectories. The scorecards appear insufficiently challenging and assume little improvement in performance in CP6.

We urge ORR to take a more challenging view of performance in its final determination.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

The draft determination focuses on routes and is silent on how third parties are taken into consideration. We would like to understand how the safety of third party operations who interface with NR's network but where NR is responsible for the infrastructure has been taken into consideration. Failure to provide adequate provision may have a significant impact on the third parties such as TfL but may have a lower priority within the routes.

An example is the Wimbledon branch where reliability issues can then lead to safety issues due to stalled trains.

Our review of Network Rail's proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.

NR's costs in CP5 were significantly higher than expected and planned efficiencies were not achieved, resulting in a higher level of operations, renewals and maintenance expenditure planned for CP6.

NR's SBP is built up at route level which gives a higher level of confidence in the plans. However, there are differences between the formats and information presented in route SBPs. ORR needs to ensure that the plans are comprehensive with no gaps or duplication and that the quality of plans is comparable.

The supply chain has raised concerns around the phasing of works and steps should be taken to smooth the profile of expenditure where possible to improve efficiency and to minimise adverse effects on access.

We support the Digital Railway programme and its application to routes in London and the South East including the East London Line where it can to enable operation of 20tph on the core section.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

ORR has moved from RPI to CPI indexation of charges in CP6. We welcome this change.

Some expenditure will be centrally funded by DfT including historic payments, BTP costs and corporation tax liabilities.

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

We have previously commented on changes to the structure and level of charges. The fixed charge allocation was expected to lead to higher charges for urban and regional operators compared with long distance operators and this has been borne out by Network Rail's August FTAC price list. We have not received an explanation of why some operators are particularly adversely affected by the changes or how ORR will ensure that regional funders are treated fairly.

London Overground's annual FTAC has doubled from approximately £10m to £20m. Although some of the increase is due to higher service levels, it appears that there has been a significant transfer of cost from DfT to TfL. As TfL no longer receives revenue grant from DfT, there is no automatic adjustment to grant. We would like to understand what mechanism is in place to ensure that funders are held harmless to changes in the allocation of charges arising from the Periodic Review.

In its earlier consultations, NR proposed an increase in LU charges. As the charges predate the Railways Act, NR has no locus for increasing the charge.

We are disappointed that the changes will not provide an incentive to reduce the number of unused freight paths which currently limit passenger rail capacity on the network and there has been no review of Use it or Lose It for CP6. A better use of paths is essential to making efficient use of the network and at a time of financial constraints.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.

Please let me know if you have any comments

Any other points that you would like to make

Thank you for taking the time to respond.

Rail Director

Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF

TRANSPORT SCOTLAND
CÒMHDHAIL ALBA

Joanna Whittington
Chief Executive
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

14 September 2018

By Email:
PR18@orr.gov.uk

Dear Joanna

PR18 Draft Determination – response from Transport Scotland

My opening reflection is that this Periodic Review has seen a strengthening in our relationships, particularly with your Scottish team in Tara House, and I would like to thank colleagues at the ORR for the productive dialogue over the last months as we have sought to understand and shape the in-depth detail of various important elements of the Draft Determination.

As I mentioned when we last met, we particularly welcomed the approach to the very well written Scotland Annex, which provided a solid starting point for us to consider your assessment of Network Rail's plans to deliver Scottish Ministers' priorities as set out in our HLOS. It is clear that the ORR recognises that our absolute focus is to deliver Scottish Ministers' priorities for rail in Scotland, and we share a desire to avoid the difficulties experienced in recent years. Our strong view is that Route empowerment and aligned thinking across the industry in Scotland is key to a responsive and accountable railway, fully focussed on serving in the interests of our passengers and freight customers and, ultimately, Scotland's communities. This has been a central theme throughout the Periodic Review process.

The Draft Determination contained a substantial volume of detail, and therefore our response will highlight high level issues of key importance. We will respond separately to the related consultation on changes to the Network Rail Licence, and have already provided considerable detail in individual consultation responses and in correspondence through the Periodic Review process.

Network Rail strategies to deliver HLOS outputs

Network Rail is currently in the process of developing outputs in several important areas, such as journey time improvements and a gauging strategy for Scotland, which are due to be submitted to the ORR by 30 November 2018. We note progress is being made and that a detailed action plan to produce these outputs on time is in place. However, it is essential that ORR continues to monitor the process rigorously and that Transport Scotland is formally involved in the development of these strategies before they are submitted on 30 November. This will help to mitigate the risk of significant differences of view stopping the timely introduction of the new strategies at the start of Control Period 6.

You also propose to use a comprehensive tracker to monitor the delivery of the full suite of HLOS requirements in Control Period 6. We fully support this in principle – one of the lessons learned from Control Period 5 is that we collectively lost sight of key enablers of better services, such as the journey time improvement metric. I would ask that our officials discuss the best way to manage this process, including escalation through the regulatory escalator and trilateral meetings.

Affordability of the HLOS

There is a question over whether the ORR is in a position to confirm that the Scottish HLOS is affordable within the funding available within the SoFA. There are a number of areas where Network Rail has failed to provide accurate costs estimates, either in the Strategic Business Plan or in subsequent submissions, despite the passage of a year since the publication of the HLOS.

This is of significant concern, as it presents considerable risk to the management of the total Scottish Government funding package for rail in Scotland. We would also highlight that areas such as the gauging strategy for Scotland should be dealt with as part of the day job of maintaining the capability of the network, and thus included within the CP6 funding determination. It should not be viewed as an add on or an enhancement.

Strategic renewals

We have had a number of discussions on the renewal activities where there are significant choices about the level of outputs to be delivered, not least opportunities to improve services through the optimised scope. For ease of reference, let me refer to these as 'strategic renewals'. In your letter of the 27 August, you pose 2 specific questions in relation to the role of Transport Scotland in strategic renewals:

- Why Transport Scotland needs an approval role in Control Period 6?
- What is the approval role?

Under the Railways Act 2005 (2005 Act), the Scottish Ministers have the power to develop and publish strategies for railways in Scotland (including cross-border Sleeper services). In doing so, the Scottish Ministers must ensure that the priorities for railways are fully aligned to wider policies and strategies which seek to support Scotland's economy and its communities, and that there is a clear line of sight between this and public expenditure. It is against these objectives that Ministers and Transport Scotland will ultimately be held accountable by the Scottish Parliament.

Under the authority of the 2005 Act, we have recently published our Rail Enhancements and Capital Investment Strategy (RECIS). This provides a framework under which the Scottish Ministers can be assured that investment in improvements in rail services or in the network are fully aligned with Scotland's priorities. Among other things, it identifies a hierarchy of rail investments, including:

- *the ability to derive maximum utility from the existing network from opportunities (such as asset renewals or timetable exercises), fully exploiting these to ensure maximum value for money*

What this is designed to ensure is that, where there is an opportunity to exploit a renewal through optimised scope, that this is fully explored. Where there is sufficient evidence to suggest that additional investment may deliver significant benefits and represent value for the use of public funds, this is governed through the processes outlined in RECIS (the pipeline). It's therefore important for Transport Scotland that the route has more autonomy over timetable development which will be under greater scrutiny by Transport Scotland.

It is also important to reflect on the impact of the change from grant and capital borrowing in Control Period 5 to capital grant only in Control Period 6. Under the Public Finance and Accountability (Scotland) Act 2000, the Permanent Secretary of the Scottish Government (in practice the Chief Executive of Transport Scotland) is answerable to the Scottish Parliament to ensure that public funding, including that provided for rail services, is used '*economically, efficiently and effectively'.*

All of this has 2 distinct impacts on renewal activity:

- Where this relates to routine or safety critical renewal activities required to comply with the Network Rail Licence, assurance is provided by consultation and engagement with Network Rail and the ORR through the Periodic Review process. Thereafter, the sharing of delivery and financial information against the programme of works identified in the Final Determination. Any approval, escalation or enforcement activity would be within the gift of the ORR. For the avoidance of any doubt, Transport Scotland has neither the desire nor the resource to be involved in routine renewal decisions taken by Network Rail in pursuit of its Licence requirements, however, would expect to be consulted in renewal schemes as part of the regulatory processes.

- Where there is an opportunity for choice of outputs from renewals, Transport Scotland must be able to demonstrate to Parliament, if required, that the scope chosen, especially where discretionary scope and cost has been added, as far as it is paid for through public funding, has been developed and delivered in pursuit of the policies and strategies of the Scottish Ministers, as provided for under the 2005 Act. This would not be possible unless Transport Scotland is completely satisfied that the works are necessary, that they deliver optimum outcomes for passenger and freight users and are based on a whole system approach aligned to RECIS. It would not be satisfied with an advanced form of consultation.

I am conscious that we are close to the time where you will seek to make your Final Determination in October. It is therefore unlikely that we will arrive at an overarching policy solution to this question by that time. While we should still seek to find the right solution for the longer term, given the experience in Control Period 5, we do not want to enter Control Period 6 with uncertainty pending over the renewals programme. As outlined in your letter, there appears to be 3 strategic renewals in the Control Period. All of these necessarily require material choices to be made about the level of output, and therefore scope and cost, or are inextricably linked to proposed enhancements. Therefore, in order to move things forward, I would suggest that we approach each of these individually:

- ***Carstairs junction –*** In discussions with Transport Scotland, the ORR has acknowledged that a different, more inclusive approach to this renewal is required, given its history, the scope of the proposed enhancement and the extent to which plans for this junction have changed a number of times over previous years. These changes, including the recent decision by Network Rail to abandon a scheme it has developed to GRIP 4 at considerable cost, appear not have been informed by business case considerations, an understanding of current and likely traffic developments, or the availability of funds. The ORR has also indicated that the agreed approach to idenfitying the optimum approach to Carstairs would be built into the Final Determination.

Clearly, given the potential level of capital investment involved in the discretionary elements of the renewal, there must be a specific role for Transport Scotland which satisfies its statutory accountability for the economic, efficient and effective use of public funds. Please also note that, given the criticality of this junction to the delivery of cross border services, DfT has expressed a requirement to also be fully involved, which Transport Scotland wishes to facilitate

- ***Perth re-signalling –*** As acknowledged in your letter, it has already been agreed with Network Rail that this renewal will be considered under the RECIS as part of the Seven Cities Enhancement, since the scope of the renewal must be aligned with the wider strategic programme of output changes. We are continuing to work closely with the Network Rail team in Scotland on this, and it is worth noting that the ORR is supporting that work

- ***Integrated Electronic Control Centre (Edinburgh) -*** We have, as yet, had limited detail on this strategic renewal. It is clear, however, that its scope and delivery must be integrated with the wider Edinburgh capacity works currently being developed for delivery in CP6. Not to do so would create material inefficiencies. We are organising a discussion with Network Rail on this, but, broadly, will be seeking assurance that a much greater level of resilience and future proofing is built into the plans. We will also seek assurance on alignment with the overarching signalling strategy for Scotland, which I will cover later in this letter.

We can discuss next steps for other renewals planned, as appropriate, once we have sight of Network Rail's full programme for Control Period 6.

Digital railways

We have had extensive discussions with Network Rail and the ORR on Digital Railways at a Scotland and a GB level on the right way forward for the Scotland route. We have also been sighted on the work of the Digital Railway Programme Board and, while insightful, this work programme does not consider the position in Scotland in enough granular detail to provide sufficient assurance that the priorities of the Scottish Ministers, as opposed to those of the DfT, would be fully reflected in the digital signalling proposition.

This is an issue that our organisations have spoken and corresponded about at length. As a consequence, I think we have reached a mutual understanding of each other's position and a preferred way forward that satisfies the requirements within the HLOS and represents best value for the use of Scottish public funds.

For the avoidance of any doubt, and as our record of investment proves, we fully support technological innovation in the rail industry. However, this is most effective where it is seen as an enabler of improvements to the whole railway system, aligned to innovation in other areas focussed on the delivery of better services for passengers and freight users. Currently, there is no demonstrated whole railway business case for the deployment of Digital Railway technology in Scotland. That is why we see the development of the Digital Railway offer for the Scotland route must be a proposition which is firmly embedded within a broader, whole system signalling strategy for Scotland. Currently we have little confidence that the proposed Network Rail's Control Period 6 signalling strategy adequately reflects Scottish strategic priorities, including sustainable competitive costs and delivery of the necessary performance reliability and journey time improvements.

Our proposal is that a signalling strategy can best be delivered as follows:

- A short life working group, comprising Network Rail (lead partner), Transport Scotland and the ORR will be established to produce a plan, by the 31 March 2019, for the development of a long term, whole system strategy for signalling on the Scotland route, to include appropriate use of Digital Railway technology where this improves the business case. This plan will also include the level of funding required to develop that strategy, which will be agreed between Network Rail and Transport Scotland.

- The strategy itself will be developed in partnership under the Team Scotland governance arrangements, by the end of Year 1 of Control Period 6. It will embrace both conventional signalling and those parts of the Digital Railway programme which are appropriate for the Scotland route, either in part or in totality.

Costs – maintenance and safety critical renewals

Our respective technical teams have had detailed discussions with the ORR on the increase in maintenance and renewals costs on the Scotland route in Control Period 6. This has been very helpful - we now understand that the majority of the increases in maintenance activities relate to new early detection systems and vegetation management, which we support, while the increase in safety critical renewals relates to a spike in life expired assets (particularly signalling), which will continue into Control Period 7 and Control Period 8.

We are due to have a suite of discussions with Network Rail over the coming weeks on their maintenance and renewal strategies for Scotland in Control Period 6. A particular focus of this will be the extent to which these are demonstrably aligned with our policies and priorities, as outlined in the HLOS. As part of good governance, openness and transparency, we would expect to see the planned works programme and linked financial profile for each year in Control Period 6.

It is of critical importance that we continue to work closely with the ORR to monitor Network Rail's progress with the maintenance and renewals programme and the efficiency with which these are delivered. In particular, to avoid costs escalation and deferral of works seen, primarily in England and Wales, in Control Period 6.

Costs – central allocation

We are now much better informed on the rationale for the allocation of central costs to the Scotland route. However, in advance of Control Period 7, we would be of the view that this requires further, more detailed, bottom up analysis of the 'actual' costs incurred by the Route in procuring services from the Centre, rather than arbitrary figures based on, for example, track miles or headcount.

It is important that we are able to work with the ORR to monitor allocated Scotland route spend in Control Period 6 in detail, as over or under spend at the Centre presents a significant risk to the overall funding package put in place for Control Period 6. In this context, I note that Network Rail has agreed to provide us with a detailed breakdown for each cost item in each area of Central spend met by the Route, which will form the basis of the monitoring process. This should be available well in advance of the commencement of Control Period 6.

Costs – efficiency

We note the most recent projections of efficiency for the Scotland route and supporting Central services, which you indicate are higher than projections for E & W and GB. Our view is that these are challenging, but deliverable, and we would expect the ORR to apply considerable resource and focus to ensure that these are delivered or, where possible, bettered.

We have had a detailed discussion with the ORR on the approach to quantum and efficiency, and there are a number of actions which the ORR has recorded and will need to follow through in advance of the Final Determination:

- We note that central costs have reduced from the SBP submission. However, there is still concern about the level of increase compared to Control Period 5 figures. In our discussions, we have suggested a number of areas that we would expect the ORR to revisit to ensure that Network Rail is achieving maximum efficiency. For example, the 7,000 plus increase headcount in central functions since 2011 (and whether Scotland receives a proportionate share of such costs), the Systems Operator costs and the procurement of electricity for traction. We would look for feedback from you on your progress against all actions identified.

- As a consequence of further devolution, logic would dictate that there would be a shift in revenue requirements from the Centre to the Route. However, the opposite seems to be the case. From previous presentations, there is clearly an issue related to the classification of expenditure whereby functions or services purchased by the Scotland Route are physically located or delivered in Scotland, but are recharged to a Central function. This may go some of the way to explaining why there has been such a marked and disproportionate increase in Central costs in the Control Period 6 costs projections. We have previously asked Network Rail for further analysis of this, but this has still to be provided. This piece of analysis is of critical importance as we move towards the Final Determination, as it will help Transport Scotland to understand the true destination of Scottish public expenditure.

- Further work is needed to examine the true extent of contestability and challenge by the Route on Central costs. So far, we have seen little evidence that this is the case, despite Network Rail's policy position on this. We firmly believe that some centralised functions do deliver efficiently, whilst others do not; to take a high profile example we consider centralised train planning is simply grossly inefficient, and ineffective for reasons we've previously discussed with the ORR.

Research and Development

As outlined previously, we are fully supportive of innovation in rail and would fully support the aspirations of the industry in Scotland and at GB level to place itself at the leading edge of railway technology.

However, we also agree with the ORR's assessment of the Strategic Business Case, which in our view vastly overstated the requirement for research and development funding. In addition to the level of funding, we would also expect to see a clear line of sight between proposals for research and development and Scottish Government strategic priorities, including outcomes for Scottish rail passengers and freight customers.

Treatment of Risk

You have asked us to confirm our position on the treatment of risk funding in Control Period 6. We would offer the following position:

- We do not support the use of deferred works (‘contingent renewals’) to meet the costs of materialised risk. As demonstrated in Control Period 5, this approach can often lead to deterioration in performance and resilience.

- We support the proposition that Scottish ring-fenced funding can only be used in Scotland. In addition, our preferred approach is to route all risk funding through the Scotland Route. Any allocation of funding from that which is required to manage risks incurred by the Centre should be at the discretion of the Route MD, which supports Route empowerment. If the ORR is minded to allocate some risk provision to the Centre, then this should be capped and clearly ring-fenced for Scotland, with a full reconciliation provided to Transport Scotland on spend against the risk pot.

- Given the lead in time for planning and contract management, we would not expect £284m of operations, maintenance and renewal risk to materialise in Control Period 6. Therefore this figure should be reflected in your Determination as indicative and an absolute and exceptional ceiling that the Scottish Ministers should be expected to cover.

- We would expect to see an annual estimate from Network Rail on likely risk exposure, and would look to retain funding should risk fail to materialise. The payment of risk funding to Network Rail in Control Period 6 will be managed through the Grant payment arrangements on an annual basis, with adjustments for underspend made in the following year, or the last six rail periods of the given year.

Fixed Track Access Charges (FTAC) Profiles

To maximise value in the use of public resource, we have a definitive profile for FTAC. However, for reasons of commercial sensitivity, we will provide this to the ORR separately.

Freight & Variable Usage Charges

We have already corresponded, most recently in March 2018 with our policy position in relation to VUC and our serious concerns about the effect of any increase in VUC in relation to freight traffic. Our policy position in relation to rail freight, and our work with partners to sustain and grow the rail freight market has been clear and comprehensive. The ORR must reflect in detail on the proposed increase in freight charges from year 3 of Control Period 6, fully consider the views of freight operators in relation to phasing and the policy positions of funders and specifiers and move to an outcome which minimises the impact of any necessary increases in charges. We cannot have a position where stated Government policies risk being negated by a charging structure for rail which potentially results in modal shift away from rail.

I trust this is helpful and I look forward to further constructive dialogue over these matters to ensure the Final determination reflects the best possible outcome to support us build the best railway Scotland has ever had.

Yours sincerely

Bill Reeve
Director of Rail, Transport Scotland

Rail Director

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TRANSPORT SCOTLAND
CÒMHDHAIL ALBA

Claire Simpson
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4 October 2018

By Email:

Dear Claire

Consultation on Changes to the Network Rail Network Licence

Thank you for providing the opportunity to comment on your proposed changes to the Network Rail network licence.

As we look to learn lessons from Control Period 5, and as we move to much more devolved structures, we are supportive of a regulatory regime that can fully and effectively hold senior management on the Scotland Route, and within the central functions, to account for performance on the Scotland Route.

However, as per my letter of the 11th July, I am particularly concerned about the proposals within the document to embed the Systems Operator function as a condition of the licence. The reasons for this include;

- To embed a central function in this way will inevitably dilute the effectiveness of the devolved structure, and, in particular, the flexibility and responsiveness with which the decision makers at Route level can respond. We have examples where there has either been delay, or unsuitable actions progressed, through the need for the Route to either seek central approval of decisions; or where a GB wide-approach has undermined or acted as a barrier to localised decision making.

- This arrangement will compromise single-point accountability within Network Rail for delivery of key outputs specified by the Scottish Government, for example, performance and journey time improvements. Separation of authority from clear accountability is rarely satisfactory.

- As has been demonstrated by the need for an enquiry into recent timetabling failures, there are significant issues with the effectiveness of the Systems Operator model. I fully expect that lessons from the enquiry will be learnt, so to amend the Licence as suggested runs a considerable risk of embedding a flawed system into the architecture of Network Rail.

Given the nature of Licence change, it would take considerable time to undo or to amend any changes.

- By making a Systems Operator function a Licence condition, it could be argued that the ORR is dictating an element of Network Rail's business model. In separate discussion with us concerning devolved arrangements you have advised you consider it beyond the appropriate scope of a regulator to require a particular management structure, which this proposal seems to do. We remain concerned your proposal does not align with the ORR's general duties under Section 4 of the 1993 Railway Act. We suggest you may wish to consider further whether the ORR is overstepping its legislative competence in this area.

In a mature industry, the relationship between a Route and the central functions is better managed on the basis of trust and a true, shared understanding of the needs of rail users and funders in a particular area. In this context, the Centre should be subsidiary to the needs of the Route. What the ORR proposes for the Licence with regard to the Systems Operator in not aligned to this principle.

Further specific points we would want to raise are;

- Page 7, paragraph 5: Our engagement with RDG is limited, so the ORR should not assume that their response is a proxy for the views of organisations within the Scottish rail industry.

- Page 14, paragraphs 2.14-2.16: While we understand the need for a Systems Operator to act impartially, this should be in the context of supporting the delivery of the priorities for Scotland's railways as laid out in the HLOS.

- Page 15, paragraph 2:18: There should be alignment between the resources within the Route and its support mechanisms e.g. the SO, and the level of funding required for Scotland through the Periodic Review settlement.

- Page 20, paragraph 3.14: Referring to the Scottish Government as a 'stakeholder', misrepresents our role as the specifier and main funder of railway services in Scotland.

- Page 22, paragraph 3.21-3.23: There should be a requirement that asset management policies and criteria have taken full account of the differing priorities of funders.

I trust this is helpful and I look forward to further constructive dialogue on this matter.

Yours sincerely

Bill Reeve
Director of Rail, Transport Scotland

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Robin Jenks
Job title*	Policy Advisor
Organisation	TSSA
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

There is no opportunity provided by the pro forma associated with this consultation to give an introduction to our approach to the consultation. What will become apparent is that we have serious concerns about the direction Network Rail is going in in terms of devolution and how it is being expected to make more and more efficiencies. As a Union, we are constantly representing our many thousands of members in Network Rail who find themselves being re-organised frequently. As we will argue elsewhere in our response, contrary to the demand for efficiency which invariably means people losing their jobs, sometimes in large numbers, our members, Network Rail employees, complain that there just aren't enough staff but that they are being pressured to do ever more with less resources. We oppose this approach.

We also oppose what we see as race to privatisation because on the evidence that we have been made aware of, this will affect the health and safety of railway workers and passengers. It seems to us that the increasing levels of devolution and preparing for privatisation. The last time this was tried with the nation's largest Infrastructure Manager, it led to disaster - in the worse sense of the word - at Hatfield and Potters Bar. We don't want this to ever happen again which is why we are highlighting a series of safety concerns at different points in our response. We sincerely hope that these are considered and acted upon as they are based on the experience and knowledge of professionals in the railway industry.

In terms of this particular section of the proforma, when we reviewed the Overview document, we also considered the parallel contents of both of the summary publications (for England and Wales, and Scotland). Taking the three documents together, this provoked us to want to ask questions. For instance, in terms of accountability:

- Paragraph 17 from England and Wales summary conclusions document appears to mean further accountability to the Routes provoking the question: Will the Routes effectively be holding the Centre to account for consistent delivery? In our view, Network Rail is a national service with elements in the Routes.

- In terms of headwinds and tailwinds, we do not think Network Rail has worked out what this actually means but are saying what they think it is. What is the ORR's benchmark? And what money do they get?

- We also wonder why the Routes are going to be independently regulated for financial accountability but not for safety purposes which is retained as a national perspective.

  The Routes have taken on many activities formerly controlled from the Centre but from the draft determination they are not being held to account for how they perform in relation to health and safety. This seems to be completely inadequate as the Routes will be determining a range of activities, including Maintenance and Renewals.

- At the very least, who will hold the Routes to account for health and safety issues? How will Network Rail centrally do this?
  And what effective internal processes will Network Rail centrally have in place to deal with Routes that decide to adopt different standards that then go onto cause accidents and even catastrophic rail incidents when they put profits and financial considerations before a safe railway?

  On top of this serious concern, we are aware that the Wales Route is looking to remove its Safety Technical Engineering group, the very specialists who could monitor and report on health and safety.

- TSSA supports accountability but we can't see how devolution to date, the Strategic Business Plans or the issues identified by the ORR have recognised the need for cross boundary structures between Routes. Our question, therefore, is how are the boundaries between the Routes going to be governed and held accountable? And how will that benefit passengers?

- Impact of cross boundary issues is not just on workforce but also passengers and devolution, for example, London and South East. More and more services travel across London at a time of devolution. We are informed that there is no actual control for any cross route function – eg, Thameslink – the TOC and Network Rail are doing different things; Crossrail, also, crosses four 4 infrastructure bodies. Command and control - and accountability - are critical to avoid multiplying secondary delay.

- Paragraph 73 of Scotland summary document discusses the issue of determining where the Route can buy from, suggesting that it could be the Network Rail Centre or elsewhere. Our concern is that this further demonstration of a market-customer led approach will not only lead to significant job losses (in the order of a value of £600million according to the management briefs that TSSA officers and staff reps have recently received), but also has the potential to be unaccountable from a safety perspective (eg, the impact on the Safety Management System) when Routes are only required to justify themselves financial. It may also be influenced by changes to standards in order to reduce costs.

- We understand that in terms of the Road Fleet, PINS Notices have been issued to companies that could provide an outsourced service, in the event that this group is outsourced. This provokes TSSA to ask who will look after the management of Network Rail's O License?

  We are advised that there will be an impact on Network Rail staff members because both the Central team and in those in the Routes will either TUPE out of the organisation or lose their jobs. We are also advised that HGV activities could impact on members using businesses when it needs to be fit for purpose.

  Our view is that the budget, and demands for efficiencies, is dictating decisions, not the needs for effective management. The potential to break up the management of the road fleet into different contracts fails to see the economies of scale that a larger organisation can provide.

  It also fails to recognise that the one of the greatest safety risks Network Rail is experiencing at present is that of road vehicle accidents (deaths amongst rail workers have been steadily declining for many years and are now, thankfully, comparatively rare events. However, one area that has seen an increase is where staff are being killed when driving on the road, an issue recognised by the RSSB. Our conclusion is that outsourcing as a result of the demand for efficiencies is being allowed to outweigh reducing this issue by effective management! We also see this as an issue of accountability.

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

TSSA is the recognised Union that represents the managers and highly skilled, professional and technical specialists within the transport industry and especially in Network Rail. We would welcome open dialogue on proposed solutions with Network Rail, the ORR and other interested parties. However, despite requests, Network Rail has chosen not to consult with the Trade Unions, and, therefore, its employees, on the development of the Strategic Business Plans (SBPs). It is not surprising therefore that there are significant omissions which we have highlighted in our response.

We would also draw attention to Network Rail's annual staff survey (Your Voice) which shows that on average only around 35% of staff have confidence in the Network Rail senior leadership. This impacts on the credibility of any of the proposed plans to be successfully implemented in CP6 as Network Rail has not had input from the majority of staff on the ground who understand the details and implications of the proposals.

Many of the SBPs call for a reduction in the workforce, while the Network Rail annual staff survey (Your Voice) shows the majority of staff feel the organisation is currently understaffed, one of the main reasons why key programmes in CP5 have had to be deferred.

Our summary is that given the lack of confidence in leadership by staff, the lack of detail and consultation, we do not believe the SBPs represent a realistic and effective means to deliver on the ORR's, or Network Rail's, expectations for keeping passengers, the public and its own workforce safe and healthy in CP6.

Our review of Network Rail's scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

TSSA would make a number of comments in relation to health and safety:

Management of Change

We believe that Network Rail has overall lost control of the organisation and is not adequately identifying and managing the safety implications of changes it is making to the organisation's structure and operating models - despite this being a legal obligation. We have been informed that there are around 200 to 400 organisational changes every four weeks and that only a fraction of these are being processed through the application of the Common Safety Method for Risk Evaluation and Assessment or the provisions in the SMS.

Our general experience of devolution is one of many ineffectively controlled organisational changes; where despite through consultation, problems and issues being identified, the change goes ahead without addressing these fundamental concerns.

An example is the role of the Asset Protection Teams (ASPRO) that are in place to safeguard the integrity of the railway system from external changes (private investment for example). The implications of the removal of a central guiding mind where not fully considered, and this resulted in the fully devolved ASPRO teams in each of the routes, delivering inconsistently and holding significantly different views on their role and purpose.

We note that Network Rail has recently recognised this issue that we have been highlighting and have now acted to reimplement a guiding mind centrally.

However, rather than undertaking the unnecessary organisational change, to only reverse it once senior leaders are forced to act, and the disruption this caused to the workforce and to private investment, in the name of a rushed devolution, it would have been more efficient for Network Rail to adequately assess the safety implications of these changes in compliance with its own "Safety Validation Standard", SMS, or compliance with the Common Safety Method of Risk Evaluation and Assessment.

There are other examples where roles have been removed from a team, and the level of competence within a team has fallen short of the required level to perform the safety function of the team adequately.

We believe that Network Rail is broadly non-compliant with its legal obligations under Common Safety Method for Risk Assessment, or where the change is "not significant" the provisions in the Safety Management System are inadequate.

We believe the SBPs or the ORR determination do not recognise the above issues or provide measures to address these in CP6.

Design for health and safety / Prevention through Engineering and Design

Safety Engineering was an area where the UK rail industry was a world leader. While traditionally safety engineering limited itself to asset (process / system) safety and integrity, throughout the world these tools and principles have been applied to occupational health and safety, resulting in significant improvements in outcomes and risk reduction.

In response to the ORR letter expressing concerns that Network Rail has breached its operating licence, the Enhancement Improvement Programme was formed. This programme launched the "Prevention through Engineering and Design" (PtED) corporate policy. The policy placed a mandate on the Network Rail Board's Executive Committee to take ownership of Prevention through Engineering and Design and seek to make significant improvements across the organisation, to achieve the next level of safety and health improvement needed for passengers, the public and the workforce. The policy is a key enabler for Network Rail's delivery of "Leading Health and Safety on Britain's Railway" strategy.

We are concerned we do not see budget or PtED reflected in the SBPs, and that STE as the technical authority (for safety and engineering) does not have a professional head of safety engineering or resources dedicated to this area. This reflects a lack of clarity between accountability for system safety between the Engineering and Safety parts of STE, and now the System Operator.

Overall we feel this is missing a significant opportunity to improve safety in a measured and controlled engineering approach and does not address the risks created by the matrix model in CP5. Examples of such risks are the incidents where good design could have prevented their occurrence; such as Oakwood Farm Crossing where a train hit a crossing tractor, and the fatality at Bearsden Station.

We do not see the recognition of the above issues, or measures to address these in the SBPs or the ORR determination.

Safe Devolution

CP5 was a period of transition from the existing centralised organisational and operating model put in place to restore safety and confidence in the railway, after the failure of Railtrack, to a more localised and devolved operating model. Network Rail learnt from the lessons of Railtrack's devolved operating model (Hatfield and other significant loss of life events) but in CP4 recognised that if the government wanted to put in place the enablers for privatisation (ie, Devolution) that significant changes to the way safety was managed was required. Network Rail looked at the Oil and Gas Industry for a model of devolved operation and in particular the lessons learnt from the BP Texas Oils Refinery Explosion. Network Rail devolved operating model adopted the following key principles and safety controls:

1. Independent technical authority for safety and engineering

In a devolved operating model, most organisations create an independence authority (regulator) to provide governance (rule setting), oversight (assurance) and the ability to intervene (enforcement). The STE (Safety, Technical and Engineering) strategic business plan does <u>not</u> appear to recognise its own role as a risk control and key enabler for the implementation, governance and assurance of a devolved, alliance, partnership, or privatised route business operating model.

In its current implementation STE has several barriers to delivering against its original promise as an internal regulator and rule setter:

a). Too much focus on safety improvement initiatives (home safe plan), over its internal regulator role. This could be delivered by another internal function other than the technical authority to maintain its independence. For instance, the ORR as the external regular does not own or deliver industry wide improvements – it sets the outcome or broad requirements only;

b). No mechanism to sanction or enforce any rules or requirements. For example, the ORR as the external regulator can issue enforcement notices, take legal action, alongside the softer support it provides. STE as the internal regulator only has an advisory role. STE needs the ability to "fine" devolved business units and then target and fund improvement projects from these recovered monies. This is similar model that the ORR used for the level crossing improvement programme that has proven successful;

c). Not financially independent. STE with its mixed role as internal regulator and initiative owner and deliver, does not have clear budgetary delineation between these activities – and often they are the same people;

d). Not independent to performance or costs pressures from other parts of the business;

e). No effective means to set rules and defined levels of tolerance. The Business Critical Rules programme was originally tasked to deliver an alternative system to the Six Sigma based "Standards"

f). No effective means to measure and monitor rule compliance and take corrective action.

2. Competence

We believe that a highly skilled, experienced and trained workforce is one that delivers value for the tax payer and delivers higher levels of safety and health performance.

A core objective for STE in CP5 included the development of competency matrixes, to enable the assessment and control of devolved route business's capability and that of Network Rail centrally. These are <u>not</u> in place and TSSA and/or its reps have <u>not</u> been consulted on their introduction. We believe that under the current proposals there will be in effect at least four different competency systems at a national level:

a). Job Descriptions (that are subject to consultation);

b). Requirements contained in "standards";
c). Competencies in the Oracle database system;
d). The role-based competency initiative;
e). A competency matrix per profession.

We believe that without a unified and robust competence management system in place, further devolution presents an increased risk to the safety of passengers and the workforce. <u>Indeed, this is a finding from enquiries into major catastrophic events inside and outside of the railway industry.</u>

We do not see the recognition of the above issues, or measures to address these in the SBPs or the ORR determination.

3. Safety Measures

While the reduction in LTIFR is to be welcomed, TSSA notes that it is not a measure of safety performance or safety risk. We know from other industries that focus on LTIFR or other lagging indicators; risk builds up within the system through an organisational blindness to risk and sense of complacency in the adequacy of existing safety measures. This leads to a gradual reduction in existing risk control measures and a focus on short term risk mitigation over prevention and improvements led by an overall strategy.

For example, TSSA has raised concerns over the "close call system", as we recognise similar behaviours prior to the RSSB investigation into RIDDOR reporting in 2013. We believe that setting targets for number of close calls raised and time to close, linked to bonus payments, is incentivising hasty closure without addressing the root or immediate cause of the issue raised.

We are advised that often the feedback received is a justification why the close call can be closed from the system or why it is not a safety issue. This undermines the value of the close call system (that we support in principle) to improving the safety culture and providing a means of organisational learning.

We are disappointed that Network Rail has not worked with the TSSA to develop leading indicators of health, safety and wellbeing performance, that reflect the reality of safety and health performance.

Conclusions

Many of the issues and concerns above are not new, and the Network Rail instigated programmes in CP5 with significant budgets of public money (Business Critical Rules, Planning Delivering Safe Work, Safety Cultural Programme, and Role Based Competencies) significantly underdelivered against their intended outcomes.

Overall, we do not see a recognition or identification of the safety implications for "deepening devolution" or measures to prevent or contain them in the SBPs or by the ORR. While CP5 has been a 5-year preparation period for devolution, most of these preparations have not delivered as intended. Therefore, our concerns are that further organisational change (or "transformation") will occur in the name of devolution in CP6 at an increased pace, without addressing the systemic problems that exist in the organisation, programme inception and delivery, and will only lead to an increase in risk to the workforce and passengers.

We do not see the recognition of the above issues, or measures to address these in the SBPs, home safe plan, or the ORR draft determination, and ask for a further review by the ORR.

Our review of Network Rail's proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.

We would comment that the demand for efficiencies is not recognising all of the issues:

- Increased use of remote monitoring against potential landslips welcomed but doing that really because Network Rail haven't done the renewals and enhancements on the geology – thus, not dealing with the route causes. There is more money about but the problem is that the issues aren't being looked at in their totality of what needs to be done. Efficiency savings should be put into tackling these issues – good that the geology issues are recognised – but efficiency is a distraction.
- Foundations under the railway are 150 years old and have been affected by changing ground conditions and climatic change (eg, rising water table). Renewals enables a certain amount of make and mend but fundamentally we are advised that there is a

foundation issue that impacts on the alignment of the infrastructure (eg, Platform 6 at Milton Keynes – one of hundreds of examples).

- One cause is the increased length of trains. Construction of freight trains is a risk for the infrastructure. One multiple unit is comparable to a single Class 66. The C66 is so powerful – when it pulls a freight train that derails but remains upright, it continues moving, damaging rails, sleepers, signalling and potentially fouling adjacent lines (with the consequence for other trains) – control measures like axle counters don't always pick up the derailment if the wagons remain upright.
- There is an issue of vehicle comparability. Vehicles should match the infrastructure they operate on but this doesn't happen. Instead, NR has to adapt the infrastructure to the new trains, causing increased cost which is then hindered by the demand for efficiencies.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

Risk based funding:

- Risk base funding set aside and is there in case things goes wrong. Talk about giving most to the Routes but the pressure in the Routes is for day to day spending. Governance structure and approach to risk is flawed. Big initiatives have not delivered near original time and budget (eg, Business Rules – originally forecast at £2m, now £38m);
- Systematic problem with way Network Rail manages change and risk programmes.
- Forecasting – bad at devolution as it is up to the Routes to decide – eg, Business Critical Rules; eg, Digital Railway in Scotland (the Route may refuse to pay – see consultation document).

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents

For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.

Scotland

Freight & National Passenger Operator route

System Operator

England & Wales routes

Any other points that you would like to make

We want to highlight a number of areas that appear to have been overlooked by the SBPs and ORR's Draft Determination:

- Our experience is that to have a reliable and effective service costs money. We see that there is a watering down of safety because as we look at the tragedy in safety (eg, the recent Genoa bridge collapse), we also witness a culture where price becomes all important;

Evolution of the Routes:

- In the summary of the draft determination for England and Wales at Paragraph 27, there is a discussion about the evolution in the Routes around safety. We contest whether the Routes are mature enough to keep a safe operating railway as we think that they aren't mature. We have not seen evidence of the success of the Routes and as a consequence see Devolution in Network Rail as fundamentally flawed: it does not lead to either a safer or better railway, surely the key determinats.

Defects with devolution:

- One of the impacts of devolution is that in relation to CCTV on refurbished stations, no one has ensured that the same digital platform is being used for the CCTV system. The consequence of this is that there is an inability to be able to centrally access the systems. Thus, £200k is required to enable British Transport Police to be able to access the equipment.
- The Route Operating Centres (ROCs) get to control everything in their Route. However, there may be an event where resilience is not there – eg, if a ROC is knocked out (eg, knocking out London Bridge ROC would lead to a quarter of the railway being stopped). We are advised that ROCs are unable to transfer to another ROC leading to the issue of business continuity because financial constraints have prevented proper resilience which will only get worse under further devolution.
- Interoperability (EU 2nd Rail Package) underpins ERTMS. But, there is no interoperability on traffic management system. No proposals about how devolution and interoperability will be set, governed, enforced, etc, which runs counter to ERA (and includes safety requirements).

Asset condition:

- CP4 and 5 have produced a lot of deferred renewals work which prompts the question about how does the company know the state of the asset? For instance, the asset condition of signalling, because of deferrals, has worsened. Even if all of the CP6 work is completed, the assets will continue to deteriorate. But to ensure that the asset condition doesn't deteriorate will be very expensive so not all of the work can be done that should be done. By the start of CP8, signalling assets will have to be taken out of use, something that in reality may start happening as soon as CP7;

  We are advised that the deterioration of the assets will outstrip the rate of renewals, with timescales of 7-8 years for track assets and 12-13 years for signalling. In fact, the existing colour light signalling installed in many parts of the network is rotting now;

  Consequently, we see the CP6 plan as a strategic excuse. The railway is not sufficiently progressed to be able to introduce digital signalling to solve the problem and in reality would only be scratching the surface by overlaying the system alongside the existing equipment.
- There is also a question of the deterioration of the assets and its impact on the Routes. The problem is that the initial costs of new signalling systems are high in the short term but over a longer period it pays for itself. The current Control Period system is short term in its outlook but for a digital signalling system to reap the rewards that it promises requires a longer term view, may be a ten year perspective. Our fear is that some Routes have taken a short term view which could make new signalling systems unlikely.
- In terms of deterioration, we also want to highlight how moving the railway to a digital system may well enable more trains to run but it also accelerates the detrimental effect of defects as result of wear and tear on the track assets, increasing the whole life costs.
- We believe that the railway should have a strategic plan to stick to, that of an aspiration for full electrification. However, government decisions, based on cost, has led to the increasing use of bi-mode trains which are heavier than electric trains and

will cause more wear on the track. In fact, Wales is planning to use tri-modes which will mean additional weight again.

Maintenance standards:

- Devolution is cutting staff numbers and moving to a contract based organisation which is taking Network Rail to a Railtrack type organisation that will lead to safety issues around maintenance of track and signalling as well as in terms of lineside safety (eg, COSS – putting outside STE in Wales), all of which leads to a less safe railway. Network Rail staff have told TSSA that they can already see precursors to a major disaster with bridges and embankments failing and trains derailing (eg, Watford (passenger), Lewisham (freight)). Pendolino issue in Scotland.

- The Railtrack example is pertinent to Network Rail's devolution agenda which we believe the company is being forced in to by the Government, DfT and ORR. Each IMC did safety differently, something that still has implications for Network Rail. After Maintenance was taken in house on 2003-4, the Phase 2 re-organisation brought everything to the same standard; then Phase 2B & C introduced the templated structure which brought about greater control and the understanding of standards. Now, with devolution, each Route can go off and do its own thing.

- The Routes are moving away from the templated organisational structure as part of devolution and being given the chance to create optional roles in order to suit the business need. Against this backdrop is also the change of approach to Railway Group Standards that are no longer regarded as mandatory. Consequently, there is no consistency in the delivery of maintenance in particular routes which potentially imports risk into the railway (the very thing that templating and Group Standards was supposed to control). The situation gets worse and worse as reorganisations go through, leading to problems about consistent delivery and the inability to demonstrate delivery if doing the activity in a different way.

- TSSA believes that maintenance activities, governed by set standards, have to be carried out in a certain way whether on a busy intercity route or on in a quieter rural line. Those standards have evolved over a long period based on experience, so it is difficult to understand what latitude the Routes have actually been given. Instead, we believe that, just like the regulatory regime that exists for building a new NHS hospital, whether it is in Edinburgh or London, the same standards should be maintained across Network Rail. What is different is the customer base, especially if they can influence maintenance activities and standards. This may be seen through the efforts to attract Third Party investment for Enhancements (see the Standards Challenge Form on Network Rails' Website at: https://www.networkrail.co.uk/industry-commercial-partners/third-party-investors/template-agreements/) which is offering to review standards, including in relation to health and safety, to encourage investors – surely a race to the bottom?

Thank you for taking the time to respond.

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31st August 2018

Virgin Group and Stagecoach Group Response to ORR's CP6 Draft Determination

Virgin Group and Stagecoach Group welcome the opportunity to respond to ORR's Draft Determination published in June 2018 for Control Period 6 (CP6) and this response reflects both Virgin Rail Group (Virgin Trains West Coast (VTWC)) and East Midlands Trains (EMT)

It should be noted that we are broadly in support of RDG's collective response. However, there are some areas of this response which we do not support.

Having reviewed the Draft Determination, these are the areas we feel strongly about and would like ORR to revisit with a view to our suggestions being incorporated into the Final Determination (due October 2018).

ORR's Proposed Changes to Track Access Charges and Open Access Applications

ORR's proposals to change the structure of access charges as part of the current 2018 Periodic Review have important implications for franchised operators. They increase the risk of abstractive Open Access (OA) competition on core passenger flows, whilst providing no significant offsetting benefits to franchisees.

Promoting competition

Although we support ORR's objective to allow greater access to the Network for Open Access Operators, we feel certain elements of the proposed changes could be considered somewhat illogical and we feel should be amended to create a more level playing field for all operators, which is what should be desired by all.
At present, OA operators only pick up Variable Track Access Charges (VTACs). The objective behind ORR's proposal is that OA passenger operators should contribute to the renewal and maintenance of

the network via Fixed Track Access Charges (FTACs), with an overall intention of increasing on-rail competition by enabling OA to play a bigger role.

The 'Not Primarily Abstractive' (NPA) test prevents new OA services potentially damaging whole-industry economics by cherry-picking and siphoning off a proportion of existing revenue on the largest flows yet making no net contribution to overall system costs. We welcome the proposal for new OA operations to contribute towards 'fixed' Network Rail costs through 'Infrastructure Cost Charges' (ICCs) on top of variable charges. In principle, this goes some way to rebalance the payment of Access Charges across all operators, and would mean that larger scale OA operations could be permitted.

However, the ORR's proposals leave some aspects open to question and/or debate.

- Without other measures in place, revenue from OA ICCs could be considered a windfall gain to Network Rail in the short term.
- It would do nothing to cushion incumbent operators (or DfT's franchising budget) from the impact of significant revenue abstraction. Our suggestion for an alternative method of calculating the NPA Test would go some way to resolve this
- The proposed change to the Not Primarily Abstractive (NPA) test appears both arbitrary and illogical
- The proposals to vary franchise operators' ICCs within Control Periods look like a near-irrelevance to these operators, and
- The relatively high rate of £4 per train mile for OA operators could be seen as a financial incentive for NR to favour new OA access over new access by franchised operators – see below

<u>The level of ICCs for OA operators</u>

ORR is consulting on the proposal to levy ICCs of £4 per train mile for new OA operations – which would include new routes by existing operators. We support OA Operators paying this charge, but we believe it should be subtracted from the abstracted revenue in the NPA Test, as adding it to the generated revenue in the way the ORR suggests favours OA operators' applications for new services by making the 0.3 threshold unfairly achievable.

The proposed figure is higher than the average current FTAC for most franchises: the average being £2.49 per train mile for InterCity operators, which may incentivise Network Rail to favour OA operators over franchisees.

The ICC needs to be set at a level that makes it fair for all operators.

In addition, we believe current OA operators should be obliged to pay the new CC charge once they become profitable enough to be able to afford it. For consistent application of the new policy in the medium term, we believe that ICCs should also apply to any new or extended access agreements for current OA operators where they have achieved levels of profitability that demonstrate the ability to bear them.

<u>Change to the NPA test</u>

It is reasonable to assume that, under the ORR's proposals, the most attractive markets for new OA operation will be those with the largest revenue. These offer the best operating margin and therefore the greatest ability to pay the new ICCs.

ORR proposes to change the test by adding ICC payments to ‘generated’ revenue before applying the cut-off (around 0.3), making this threshold easier to reach. Such a degree of shift in the NPA metric would bring many more existing, and already franchise routes in-scope for OA operation.

This appears, even in its own terms, rather illogical. The cash raised in ICCs is not additional revenue to the industry over and above the revenue generated by the OA operator (to which ORR would add it, which has the feel of some double-counting). It can more reasonably be treated as a recompensing payment for the revenue abstracted from the existing railway. This would make it more sensible, if this sort of modification to the NPA test is the preferred way forward, to subtract ICC moneys from Abstracted revenue rather than adding them to Generated. This method would still result in an increase of the ratios, so supporting the spirit of what ORR is proposing, but by a level which would be more appropriate (subject of course to the £x per mile). **(Appendix A** highlights a worked example**).**

Fixed Charges for Franchised Operators

We note ORR’s proposal to perform a wash-up calculation of fixed charges every year during CP6 based on a comparison of planned train miles versus actual train miles. We are concerned that this will create a ‘cottage industry’ for very little benefit as the level of timetable changes we can implement will be strictly limited under our Service Level Commitment. We would be interested to know what benefit the ORR perceives this wash-up proposal to deliver versus the cost of undertaking this and managing disputes that would inevitably arise.

ORR’s Proposal to Change Indexation of Variable Track Access Charges from RPI to CPI

We support the proposal that from the start of CP6, Variable Track Access Charges (VTACs) should be calculated using CPI as opposed to the current method of using RPI – which would be an appropriate step to start shifting the industry away from RPI.

Exclusion from the Draft Determination of PR18 Consultation Conclusions

The Draft Determination has set out ORR’s decisions on most of the PR18 priorities, which have been included in over 20 industry consultations issued since May 2016. It is, however, disappointing to see that some of the key consultations in which we have collectively invested a lot of time and effort have not been clearly explained or concluded in the Draft Determination. For example, the proposed additional Schedule 4 discount factor threshold and improvements to the drafting of Schedules 4, 7 and 8. We accept that further details have been set out in supplementary documents. However, having gone through the Supplementary Document on Charges & Incentives, the conclusions to some of ORR’s proposals and working papers are unformed. Nonetheless, we would expect the Draft Determination to at least mention the consultations’ key objectives, decisions on their proposals and where appropriate, next steps.

Sustained Poor Performance (SPP)

Please see Neil Micklethwaite’s (Commercial and Business Development Director – Stagecoach Rail) letter dated 14 August 2018, explaining our position regarding SPP **(Appendix B).** We look forward to ORR’s response.

Scorecards and CP6 Performance Trajectories

We support ORR’s proposal for the methods of measurement contained within CP6 scorecards to be consistent across all operators and individual Routes as they become devolved. Targets will of course be specific to each operator/route. We expect ORR to measure and monitor Network Rail’s outputs against scorecards and would be interested to know how the ORR intends to enforce the scorecards. We are working with Network Rail to determine the TOC specific scorecards and will be actively involved in how the ORR/Network Rail/Industry scorecard metrics will be determined. Finally, we expect these scorecards to be tracked at the individual Route Supervisory Boards throughout CP6.

Virgin Trains West Coast has not yet been able to reach agreement with Network Rail on their proposed performance trajectories for CP6. Performance has deteriorated significantly this year and, importantly the exit target for CP5 is now unlikely to be met which further debases the trajectory. The whole of the risk around HS2 interventions needs understanding, and to that end we are working closely with Network Rail and other operators to identify and quantify those risks in terms of performance. We also seek more clarity on the performance impact of Network Rail’s proposed CP6 enhancement schemes. The work to resolve these issues and reach agreement on the CP6 performance trajectories remains ongoing.

EMT has formally communicated with Network Rail that it is not willing to agree to the CP6 performance trajectories proposed in the Strategic Business Plan. In summary, EMT does not agree with the values Network Rail is attributing to performance benefit generated by the £1.4bn investment in infrastructure on the route and the negative performance impact which NR is assuming will arise from forthcoming new timetables, notably the Thameslink KO2 timetable from May 2019 (now expected to be December 2019) and Midland Main Line (MML) KO1 timetable from December 2020. However, the last formal engagement which EMT had with Network Rail on this subject was EMT's submission to the National Task Force in March this year. As such, EMT's position remains unchanged. Additionally, EMT has separately requested clarity on how the values for each of the assumptions underpinning the trajectory were derived, though this has not yet been received.

We hope our comments and suggestions are helpful and we remain open to discuss any of these points in further detail prior to the Final Determination. We look forward to working with and supporting ORR further with the development of its Final Determination.

We look forward to ORR’s response to the points raised in this letter.

Yours sincerely

Darren Horley
Head of Commercial (Stations & Operations)
Virgin West Coast Trains Ltd

Appendix A

To illustrate the differences between adding ICCs to Generated revenue and subtracting ICCs from Abstracted revenue, we have re-calculated NPA ratios for recent ECML applications, using the figures from CH2M Hill's January 2016 report for ORR and ORRs' proposed £4 per train mile (which as previously stated appears arbitrary and too high in any case).

If ICCs are added to Generated revenue as per ORR proposal:

	ICC pa	NPA ratio: original report	NPA ratio: ORR proposal
Alliance Edinburgh proposal	£16.0m	0.41	0.53
Alliance W Yorks/ Cleethorpes	£6.9m	0.50	0.67

If ICCs are subtracted from Abstracted Revenue as per Virgin/Stagecoach suggestion:

	NPA ratio: original report	NPA ratio: revised proposal
Alliance Edinburgh proposal	0.41	0.46
Alliance W Yorks/Cleethorpes	0.50	0.60

Appendix B

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greener smarter travel

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14 August 2018

Dear Derun,

Passenger Operator Schedule 8 regime: Level of the Sustained Poor Performance ("SPP") threshold

Thank you for the opportunity to respond to your Working Paper of July 2018. The following comments represent the views of East Midlands Trains Ltd, the wider Stagecoach Group and Virgin Trains.

We have a strong objection to the SPP threshold being increased from 10% in CP6.

We would welcome clarity from the ORR that it recognises the SPP regime is key to offer financial protection to the operators from Network Rail's ("NR") poor performance. Our interpretation of the Working Paper is that there appears to be a policy shift where the ORR now considers the primary reason for the SPP regime is to better incentivise NR. The current protection offered to operators would appear to be decreased through a threshold increase to 20% of benchmark.

We believe that any development to increase the threshold cannot be considered in isolation and should be considered alongside:

- The difficulty and costs involved with pursuing claims against NR;
- The setting of performance benchmarks and payment rates; and
- That the costs to Operators of poor performance are increasing, particularly through statutory and regulatory changes (for example Consumer Rights Act ("CRA") / Delay Repay 15)

We believe that Schedule 8 (Sch8) and SPP should act together to incentivise better performance. It is clear that the above is not being achieved and we support the need for change to the existing regime. We consider that a strengthening of the existing regime would be a more effective mechanism to incentivise NR and better protect operators from continued poor performance.

Further comments provided below reflect our experience of suffering SPP within East Coast Main Line Ltd, Stagecoach South Western Trains Ltd, East Midlands Trains Ltd and through our shareholding on Virgin Rail Group Ltd (Virgin Trains West Coast).

The difficulty and costs involved with pursuing claims against Network Rail

We consider the statement that no SPP Claims have been made in CP5 to be factually incorrect.

We have been involved in significant SPP discussions/claims with NR throughout CP5 and have experienced that the claim process introduces significant costs, it requires extensive management intervention and can take a significant period (years) to resolve.

We believe that the substantial financial risk of SPP across NR has helped create a culture whereby NR has placed too great a focus on not creating an industry precedent for settling SPP Revenue claims. The above would benefit from ORR intervention to help provide clarity to all parties on what constitutes appropriate evidence to demonstrate a financial loss from SPP.

In the absence of such clarity, we remain concerned that NR may create burden of proof hurdles far above the intent of the SPP regime, and as a result, continue to dis-incentivise operators from pursuing claims, when NR's performance has triggered (and in our experiences – very significantly so) SPP claims. We believe the above has now reached a tipping point where the financial exposure point is such, NR will only settle revenue claims following a formal Arbitration process.

We are aware that the above points of principle have been made in response to previous consultations on SPP. It would be helpful if the ORR could clarify its current thinking on this issue.

The setting of performance benchmarks and payment rates

It would appear to ourselves that the CP5 review process saw NR being set reduced performance targets than it had within CP4. We have since suffered a consistently failing performance and created a culture where failure appears to the norm. We are concerned that this may be repeated and exacerbated in CP6 with reduced performance benchmarks being aligned to an increased SPP threshold. This creates a culture and behaviour in NR that accepts and maybe even incentives poorer performance – as the longer poorer performance continues the more likely it is that targets and thresholds get lower. This is not acceptable to train operators or our customers.

We would welcome clarity from the ORR on what steps are being undertaken to mitigate the above.

The increased costs to operators of poor performance

We believe that Customers now have greater expectations from the industry in terms of customer experience and how they should be compensated should they suffer from poor performance. Enhancements such as the introduction of Delay Repay commitments alongside the wider understanding of the CRA has meant that greater compensation payments are being made to Customers than ever before.

We would welcome clarity from the ORR on how the proposed changes to the threshold will better protect operators from the above.

Commentary on the technical aspects of the Working Paper

Paragraph 2 of the Working Paper states "The SPP threshold reflects the level of poor performance passenger operators must experience before they are eligible to make an SPP claim. Currently, a passenger operator can make an SPP claim when the average Schedule 8 payment made by Network Rail over 13 periods exceeds the amount that would be paid if performance were 10% worse than benchmark **for all** of that operator's service groups".

If the above is to be taken literally, there is a possible discrepancy to the Track Access contract template which states that the trigger is for each of the Service Groups rather than the aggregate of all service groups of that train operator. Clarity would be welcomed on whether the above has any bearing on the calculations and analysis undertaken by ORR which has subsequently influenced the recommendation.

Our suggestions for areas of improvement

1. Increased payment rates on a tiered basis

We propose that the ORR considers the introduction of a much simpler mechanism for claiming SPP, through increased Sch8 performance rates for given levels of NR performance relative to benchmark. For example, operators would automatically receive Sch8 * 2 at 20% above threshold and say Sch8 * 3 at 30% above threshold.

We see significant benefits in reduced transactional cost with the above process and the certainty and clarity of financial risk should suitably incentivise NR.

2. Streamlining the claims process

Creating a culture change for the settling of SPP claims. Periods of SPP absolutely worsen long term revenue. If it did not – then the entire industry (led by the Department for Transport) would not be trying to invest in schemes to enhance operational performance.

3. Settling revenue claims separately from cost claims

We note from your paper that there was a lack of industry support to a process which limits claims to costs only. We would suggest a further simplification would be to ensure NR is empowered to settle the cost elements of claims in isolation from the revenue element of claims – unless of course our recommendation 1 above was accepted.

The above would not significantly increase the administration for operators but would improve cashflow and financial certainty while the more complex revenue claims are considered in parallel.

We do not see why the above would need significant consultation outside of NR as it is simply an added option/betterment for operators.

Thank you again for the opportunity to provide comments on the proposed amendments. We hope our recent and relevant experience on this subject is beneficial to your further considerations and we look forward to continuing to support the Working Group.

Yours sincerely

Neil Micklethwaite

Neil Micklethwaite

Commercial and Business Development Director – Stagecoach Rail

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-P/KS/2793/18

Stephen Glaister
Chair
Office of Rail and Road

Cc: pr18@orr.gsi.gov.uk

17 August 2018

Dear Stephen

2018 periodic review: Draft determination

I welcome the opportunity to respond to the consultation on the draft determination and supplementary documents relating to Network Rail's finances and functioning during Control Period 6 (CP6). I am grateful for the efforts ORR staff have made to keep my officials updated and to seek their views during the course of the 2018 periodic review.

Network Rail's performance has caused widespread concern during Control Period 5 and I am pleased that the ORR is working to address these issues through its determination for CP6.

I welcome the move to regulate individual Network Rail routes. As well as establishing arrangements for the Welsh Government's role in monitoring the Wales Route, it will also be important for us to be recognised as a key stakeholder in the arrangements established for both the Freight and National Passenger Operators Route and the System Operator function.

A significant consequence of the proposals for the Welsh Government, in its unique position as a franchise funder but not infrastructure funder, is the proposal to adopt changes which would result in a significant increase in track access charges for the Wales and Borders rail service. The Funding and Outputs Agreement I have recently established with the Secretary of State for Transport in respect of the Wales and Borders rail service confirms the UK Government's longstanding commitment to pay the Welsh Ministers any amount by which the subsidy requirement would increase as a result of track access charges increasing from current levels following periodic reviews undertaken by the ORR. My officials are now working with Department for Transport officials to develop arrangements which will provide full protection for the Welsh Ministers in the context of the changes proposed.

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As I think you will be aware, the Welsh Government has experienced difficulties over many years in securing a fair level of UK Government funding for rail enhancements and in achieving the efficient delivery of enhancement schemes it has stepped in to fund. Against this backdrop, I am concerned that the proposals being consulted on do not provide clarity in respect of how schemes funded by the Welsh Government would be treated. My officials have raised concerns about this with the ORR's staff – along with details of the Welsh Government's concerns around the proposals for UK Government funded enhancements. It is particularly disappointing that, compared with Scotland schemes, less transparency around the development and delivery of England and Wales schemes is being proposed. Also, a clear link between the Department for Transport's pipeline and Network Rail's Governance of Railway Investment Projects processes needs to be established - and the ORR's role in respect of schemes not delivered by Network Rail needs to be outlined.

Given the concerns around the Department for Transport's enhancement pipeline process, I would welcome any support you feel the ORR is able to provide for the UK Parliament's Welsh Affairs Committee's recent recommended that the UK Government commits to reviewing the process within twelve months. The Committee has also encouraged the National Audit Office to examine how the new process is operating. I would be pleased to see the ORR maximising its role in these reviews.

It will be important for my officials to continue to be involved as the arrangements for CP6 are finalised.

Yours sincerely

Ken

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

PR18 draft determination consultation: pro forma

This pro forma is available to those that wish to use it to respond to our draft determination consultation, structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Please send your response to pr18@orr.gsi.gov.uk by **31 August 2018**.

Full name	Toby Rackliff
Job title*	Strategic Lead, Rail Policy
Organisation	West Midlands Rail Executive
Email*	

*This information will not be published on our website. Please see Appendix B of our overview document for details on how we will treat information provided to us as part of this consultation.

Our approach to producing Network Rail's determination and to regulating Network Rail in CP6

For further information, please see chapters 2 and 3 of our overview document.

The West Midlands Rail Executive (WMRE) recognises that since the ORR's last draft determination for Control Period 5 (PR13) substantial changes have taken place within the rail industry which directly impact on the nature and contents of the ORR's draft determination for PR18. Notably,

- Network Rail has been re-classified as a public sector body
- Network Rail's internal structure has become more devolved, providing individual routes with greater responsibility and greater accountability for the operation and management of "their" railway
- The core rail network enhancements programme for Control Period 6 is, unlike in previous Control Periods, no longer a part of the Department for Transport's High Level Output Statement and therefore no longer part of the ORR Periodic Review and Determination process

Given these changes, the ORR's new approach to producing the Determination and to the future regulation of Network Rail would appear to be broadly appropriate.

WMRE particularly welcomes the focus on:

- Network Rail's delivery to both its own and the wider rail industry's customers; and
- the principle of using reputational incentives to hold Network Rail to account and to encourage it to continually improve

The ORR's proposed "targeted monitoring and reporting" of individual Network Rail routes and its System Operator functions would appear to be an appropriate mechanism to hold Network Rail as a company, to account for their delivery to customers.

However, these new arrangements and in particular their effectiveness should be kept under review and improvements considered if the system appears not be driving the required performance outcomes.

Our review of Network Rail's network licence

Further information, see paragraphs 3.59-3.63 of our overview document and our supporting document on our review of the Network Rail's network licence. This also contains a set of questions that we would welcome your views on.

The proposed changes appear to be broadly appropriate and should assist in clearly identifying the specific roles and responsibilities of Network Rail's route and System Operator businesses.

Our review of Network Rail's stakeholder engagement

For further information, please see chapter 4 of our overview document and our related supplementary document on stakeholder engagement.

As the accountable devolved body for rail in the West Midlands, WMRE and its predecessor organisations have had a reasonable level of engagement with Network Rail (notably with the System Operator and LNW & FNPO routes) in respect of their business planning approaches to CP6.

We particularly welcomed the early engagement in the process from LNW Route and its acknowledgement that it will need to take account of major events such as planning for the Birmingham 2022 Commonwealth Games in its CP6 Delivery Plan.

One area where engagement from Network Rail could potentially have been improved, given that a lot of new information was presented at CP6 Delivery Plan meetings, would have been to have had dedicated follow-up sessions with attendees on a one-to-one basis to discuss the various elements in more detail, once participants had had time to assimilate and consider the issues.

Also, given that WMRE is a relatively new organisation, the importance of WMRE's role as:

- the democratically accountable devolved body for rail in the West Midlands
- the joint specifier (with DfT) the West Midlands Trains franchise
- the lead franchise contract manager of the "West Midlands Railway" business unit of West Midlands Trains franchise (responsible for holding the operator to account in relation to its Franchise Agreement with DfT)
- a member of the LNW Route Supervisory Boards for West Coast and West Midlands

- a member of the former Board and Working Groups for the West Midlands and Chiltern Route Study
- a member of the West Midlands Rail industry Working Group for Midlands Rail Hub
- the developer and sponsor of the forthcoming new West Midlands Rail Investment Strategy
- a key partner in the new tripartite “West Midlands Stations Alliance” with West Midlands Trains and Network Rail LNW Route
- a significant promoter/sponsor/deliverer of third party rail network enhancement schemes (e.g. major station enhancements at Birmingham Snow Hill, Birmingham Moor St, University and Perry Barr and a large number of new station proposals currently at an advanced stage of development)
- a main driver/funder of local timetabled rail service enhancements
- the champion of the “Single Network Vision” for West Midlands rail services http://wmrexecutive.org.uk/media/2851/single-network-vision-final-approved-version-170630.pdf

is arguably not fully understood by the wider rail industry and not always reflected in the level of engagement which the industry has with WMRE.

WMRE would therefore welcome a more formal recognition of our new role and wide ranging responsibilities by both the industry and its regulators.

Our review of Network Rail’s scorecards and requirements

For further information, please see chapter 5 of our overview document and our related supplementary document on scorecards and requirements.

The proposed “Scorecard” approaches appear to be broadly fit for purpose.

However, given WMRE’s involvement in the specification and management of the West Midlands Trains franchise and our representation on the new Route Supervisory Boards, we would welcome the opportunity to have some meaningful input into the design and content of the appropriate scorecards.

There should also be close alignment with Franchise Agreement performance targets and WMRE also supports the principle of further revisiting of passenger performance trajectories in order to reach agreement between Network Rail and the TOCs where required.

Also, under the terms of its new franchise agreement, West Midlands Trains is required to set up “separable business units” for its “West Midlands Railway” and “London Northwestern” operations. Consideration should therefore be given to creating separate Scorecards for each of WMT’s business unit to better reflect the operational reality (and public perception) of the new franchise.

There should be some flexibility to amend the key indicators on the “Scorecards” if required to reflect any future changes in industry, specifier, customer and stakeholder priorities.

WMRE also notes ORR’s comments in respect of incentivising Network Rail to managing reactionary delay and welcomes ORR’s commitment to “intervene if evidence emerges that Network Rail is not adhering to its commitments to manage reactionary delay effectively”.

Our assessment of health and safety

For further information, please see chapter 6 of our overview document and our related supplementary document on health and safety.

No Comment.

Our review of Network Rail's proposed costs and income

For further information, please see chapter 7 of our overview document and our related supplementary documents on our review of Network Rail's proposed costs and its other single till income.

WMRE has insufficient information on which to base a detailed response to this section.

However, we broadly support the ORR proposals for Network Rail to:

- use efficiency savings and some of the proposed R&D spending increase to provide £1bn extra on renewals to reverse the decline in asset sustainability
- move £0.8bn risk funds from the centre to the route (with £0.9bn allocated as "contingent renewals")
- introduce a Performance Innovation Fund

WMRE generally supports the principle of reallocating funding resources closer to the point of intervention requirement.

Indeed, we believe that there is significant scope for further reallocation of rail industry funding resources to both the route and sub-route level which would enable funding priorities to be determined at a level that is closer to Network Rail's customers, stakeholders and passengers.

WMRE also acknowledges that routes such as LNW recognise the challenges in relation to Land Value Capture and releasing the economic value of rail network and service enhancements, but notes that there is as yet no clear way forward in this area, which largely falls outside the scope of the ORR's draft Determination.

The financial framework for CP6 and affordability

For further information, please see chapter 8 of our overview document and our related supplementary document on the financial framework.

Part of our response to Chapter 7 (above) also relates to this area.

WMRE would also wish to make the following general points:

1. Historically, pressure on Network Rail to reduce costs and improve efficiency appears to have had significant negative outcomes for the industry as a whole.

   For example, the de-scoping of the Water Orton corridor re-signalling scheme a decade ago perpetuated an operational constraint in terms of restricted network capacity and poor operational flexibility, which had been originally proposed to be addresses at the time. This short-sighted approach means that:

   - the network constraint is still unresolved
   - it will now cost significantly more to address; and
   - much of the previous renewal will ultimately have been needlessly wasted.

2. There is a danger that if Network Rail focuses primarily on like-for-like (or even "modern equivalent") renewals, then the opportunity to deliver incremental, relatively low-cost enhancements to network capability which would deliver significant operational benefits and long term efficiency savings could be lost.

   Network Rail must be sufficiently incentivised to take a long term, broader view of the potential network benefits of such "value-added" renewals at both the micro (e.g. individual switch, crossing or signal replacement) and macro (whole renewal scheme) level.

3. Notwithstanding the above, there is a wider perception that some Network Rail schemes continue to suffer from unnecessary scope creep (especially when Network Rail is not itself the funder) and that it can difficult to challenge Network Rail in respect of such changes and their financial implications.

4. Network Rail's costs in relation to network or station enhancements funded by third party remain relatively high in relation to similar enhancements undertaken away from the rail network.

5. The potential benefits of contestability for third party investment (e.g. allowing other companies to bid for work otherwise undertaken by Network Rail) whilst desirable in principle, can prove difficult to realise in practice as Network Rail approval of development proposals and their delivery is unavoidable.

Charges and contractual incentives in CP6

For further information, please see chapter of 9 of our overview document. We have also published related supplementary documents on: our overall charges and incentives decisions, our proposals on the variable usage charge for CP6 and our proposals on infrastructure cost charges.

WMRE is delighted to see confirmation of the abolition of the Capacity Charge.

The Capacity Charge has been a blunt instrument that has not only failed to achieve its objectives, but has actually acted as a perverse incentive not to improve rail services in many rural areas.

As a direct result of the Capacity Charge, the cost of extending services from metropolitan areas such as the West Midlands to more lightly used routes increased significantly even though no additional services were operated over the congested parts of the network.

For example, the Capacity Charge increased the subsidy required from 3rd party funders to operate a second off-peak Birmingham to Rugeley Trent Valley service (through the extension

of an existing Birmingham – Walsall service). The additional cost of the Capacity Charge was a factor in the decision to withdraw funding for this second service on Monday-Fridays from 2010. However, any proposed changes to the track access charging regime must in future take better cognisance of the potential negative impact of such changes on third party funders and on the viability of schemes designed to improve the rail passenger offer.

Comments on our supporting annex to the Scotland summary, the draft settlements for the Freight & National Passenger Operator route and the System Operator (SO), or England & Wales route documents For further information, please see the Scotland summary, FNPO draft settlement document, and SO draft settlement document. Our other route review documents are here.
Given the significant changes which have taken place since the CP5 Network Rail Determination WMRE is broadly supportive of the draft settlements for the System Operator, Freight & National Passenger Operator and LNW Routes. However, we would expect the ORR to take account of any issues raised by rail operators in the WMRE area (West Midlands Trains, Virgin Trains, Chiltern Railways, Cross Country, Wales and Borders).

Any other points that you would like to make
As previously highlighted, WMRE has some concerns that both the rail industry and the ORR do not always fully recognise the extent of the devolution that has taken place in respect of rail transport governance in the West Midlands. WMRE would therefore welcome the ORR giving specific cognisance of the importance of WMRE's role as: • the democratically accountable devolved body for rail in the West Midlands • the joint specifier (with DfT) the West Midlands Trains franchise • the lead franchise contract manager of the "West Midlands Railway" business unit of West Midlands Trains franchise (responsible for holding the operator to account in relation to its Franchise Agreement with DfT) • a member of the LNW Route Supervisory Boards for West Coast and West Midlands • a member of the former Board and Working Groups for the West Midlands and Chiltern Route Study • a member of the West Midlands Rail industry Working Group for Midlands Rail Hub

- the developer and sponsor of the forthcoming new West Midlands Rail Investment Strategy
- a key partner in the new tripartite “West Midlands Stations Alliance” with West Midlands Trains and Network Rail LNW Route
- a significant promoter/sponsor/deliverer of third party rail network enhancement schemes (e.g. major station enhancements at Birmingham Snow Hill, Birmingham Moor St, University and Perry Barr and a large number of new station proposals currently at an advanced stage of development)
- a main driver/funder of local timetabled rail service enhancements
- the champion of the “Single Network Vision” for West Midlands rail services

in respect of its approach to Network Rail Determinations and the ongoing regulation of Network Rail as WMRE’s core rail infrastructure service provider.

Office of Road and Rail - Periodic Review 2018

Draft Determination Consultation Response

The West Yorkshire Combined Authority works to ensure that our region is recognised globally as a strong, successful economy where everyone can build great businesses, careers and lives. We bring together local councils and businesses to achieve this vision, so that everyone in our region can benefit from economic prosperity and a modern, accessible transport network.

The Combined Authority welcomes the changes proposed by the ORR especially in relation to increased spending on renewals, recognising the importance attached to the running of a railway that residents can rely on.

Network Rail in its Strategic Business Plan for CP6 stated that 'performance improvements desired by our East Coast Main Line (ECML) customers and stakeholders would require a significant programme of renewals beyond baseline funding'. The Combined Authority is particularly concerned about the reliability of the East Coast Main Line, which is of national strategic importance, connecting economies that contribute over £300bn to the UK economy. It provides for the Leeds City Region's main rail links to London and the South East, North East and Scotland.

In its draft Strategic Business Plan, Network Rail has set out a compelling case for additional renewals expenditure on the East Coast Main Line in the East Coast Supplementary Plan to drive up the reliability of the increasingly tired infrastructure on this route. The Supplementary Plan indicates that there is strong value for money case to support additional renewals investment.

The Combined Authority notes that the West Coast Main Line was substantially renewed in the 2000s, and the Great Western Main Line is currently subject to a programme of substantial renewals and enhancement. By contrast, the East Coast Main Line has not seen substantial investment in renewals for over 30 years, which is increasingly reflected in the reliability of the infrastructure.

The Combined Authority therefore strongly supports the case set out in the East Coast Supplementary Plan, and sees this as a priority for the allocation of the £1billion Sustainability Fund being proposed by ORR in its draft determination.

The Combined Authority also supports increased funding in timetabling systems and improved monitoring of Network Rail with regards to performance and efficiency.

West Yorkshire Combined Authority, 30 August 2018